

STATE BAR OF TEXAS



FILED

Jun. 09, 2020

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

Office of the Chief Disciplinary Counsel

June 9, 2020

64478

Ms. Jenny Hodgkins
Board of Disciplinary Appeals
Supreme Court of Texas
P. O. Box 12426
Austin, Texas 78711

Via e-filing to filing@txboda.org

Re: *In the Matter of William A. Cohn, State Bar Card No. 04512980*; Before the Board of Disciplinary Appeals, Appointed by the Supreme Court of Texas

Dear Ms. Hodgkins:

Attached please find the Petition for Reciprocal Discipline of Respondent, William A. Cohn. Please file the original Petition with the Board and return a copy to me.

Pursuant to Rule 9.02 of the Texas Rules of Disciplinary Procedure, request is hereby made that the Board issue a show cause 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 upon Respondent in this State would be unwarranted.

Thank you for your assistance in this matter. Please do not hesitate to call if you have any questions.

Sincerely,

Amanda M. Kates
Assistant Disciplinary Counsel
State Bar of Texas

AMK/tbg



FILED
Jun. 09, 2020

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

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

IN THE MATTER OF §
WILLIAM A. COHN, § **CAUSE NO. 64478**
STATE BAR CARD NO. 04512980 §

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, William A. Cohn, (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, but not currently authorized, to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at William A. Cohn, 291 Germantown Cove, Cordova, Tennessee 38018-7238.

3. On or about June 5, 2018, a Petition for Discipline was filed in Disciplinary District IX of the Board of Professional Responsibility of the Supreme Court of Tennessee in a matter styled, *In Re: William Allan Cohn, BPR #005873, Respondent, an Attorney Licensed to Practice Law in Tennessee (Shelby County)*, Docket No. 2018-2875-9-AJ (Exhibit 1).

4. On or about May 8, 2019, a Judgment of the Hearing Panel was entered in Disciplinary District IX of the Board of Professional Responsibility of the Supreme Court of Tennessee in a matter styled, *Petition for Reciprocal Discipline - Cohn*.

Tennessee in a matter styled, *In Re: William Allan Cohn, BPR #005873, Respondent, an Attorney Licensed to Practice Law in Tennessee (Shelby County)*, Docket No. 2018-2875-9-AJ (Exhibit 2).

5. On or about October 22, 2019, an Order of Enforcement was entered in the Supreme Court of Tennessee at Nashville in a matter styled, *In Re: William Allan Cohn, BPR #005873, An Attorney Licensed to Practice Law in Tennessee (Shelby County)*, File No. M2019-01855-BAR-BP, BOPR No. 2018-2875-9-AJ, that states in pertinent part as follows:

...Pursuant to Tenn. Sup. Ct. R. 9, § 12.4, William Allan Cohn, is hereby Publicly Censured...

(Exhibit 3).

6. In the Judgment of the Hearing Panel, the Panel found that after completing the necessary pleadings in a divorce matter, his client's wife refused to sign the documents. Respondent was then terminated by his client. Respondent believed that the fee agreement entitled him to additional fees, and he used the cost deposit to cover the additional fees. No costs had been incurred during the course of the representation, and the cost deposit should have remained his IOLTA account until they were refunded to the client. The Hearing Panel further found that Respondent violated Rules of Professional Conduct 1.15(c) (safekeeping property and funds) and 8.4(a) (misconduct)

7. Copies of the Petition for Discipline, Judgment of the Hearing Panel and Order of Enforcement 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 hearing of this cause.

8. 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
Petition for Reciprocal Discipline - Cohn
Page 2 of 3

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 Court of Tennessee at Nashville and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Amanda M. Kates
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
Telephone: 512.427.1350
Telecopier: 512.427.4167
Email: akates@texasbar.com



Amanda M. Kates
Bar Card No. 24075987

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 William A. Cohn by personal service.

William A. Cohn
219 Germantown Cove
Cordova, Tennessee 38018-7238



Amanda M. Kates

IN DISCIPLINARY DISTRICT IX
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FILED

2018 JUN -5 PM 12:55

BOARD OF PROFESSIONAL
RESPONSIBILITY

ew EXEC. DIR.

IN RE: WILLIAM ALLAN COHN,
BPR No. 005873, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Shelby County)

DOCKET NO. 2018-2875-P-AJ

PETITION FOR DISCIPLINE

Comes now the Petitioner, the Board of Professional Responsibility of the Supreme Court of Tennessee, by and through Disciplinary Counsel, pursuant to Tenn. Sup. Ct. R. 9, and files this Petition for Discipline against William Allan Cohn.

1. The Respondent, William Allan Cohn, is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee. Mr. Cohn's most recent office address as registered with the Board of Professional Responsibility is 291 Germantown Bend Cove, Cordova, Tennessee 38018-7238, being in Disciplinary District IX. Mr. Cohn was licensed to practice law in Tennessee in 1978 and his Board of Professional Responsibility number is 005873.

2. Pursuant to Tenn. Sup. Ct. R. 9, § 8.1, attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of Professional Responsibility, the hearing panel, hereinafter established, and the Circuit and Chancery Courts.



3. Pursuant to Tenn. Sup. Ct. R. 9, § 1, the license to practice law in this state is a privilege and it is the duty of every recipient of that privilege to act at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Pursuant to Tenn. Sup. Ct. R. 9, § 11.1, acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline.

4. The Respondent has failed to conduct himself in conformity with said standards and is guilty of acts and omissions in violation of the authority cited *infra*.

5. On December 8, 2017, the Board authorized the issuance of a Public Censure. Pursuant to Tenn. Sup. Ct. R. 9, § 15, Mr. Cohn has requested a formal hearing on this matter.

File No. 51469-9-KB – Frank Houseton

6. On February 23, 2017, the Board received a complaint from Frank Houseton against Mr. Cohn and forwarded the same on March 7, 2017, to Mr. Cohn for his response within ten (10) days. True and exact copies of the complaint and the Board's letter are attached as Exhibit A.

7. On March 11, 2017, the Board received Mr. Cohn's response and forwarded it on March 15, 2017, to Mr. Houseton for his reply within ten (10) days. True and exact copies of Mr. Cohn's response and the Board's letter to Mr. Houseton are attached as Exhibit B.

8. On March 23, 2017, the Board received Mr. Houseton's reply and forwarded it on March 27, 2017, to Mr. Cohn for his response within ten (10) days. True and exact copies of Mr. Houseton's reply and the Board's letter are attached as Exhibit C.

9. On April 6, 2017, the Board received Mr. Cohn's reply and forwarded it on April 6, 2017 to Mr. Houseton for his response within ten (10) days. True and exact copies of Mr. Cohn's reply and the Board's letter are attached as Exhibit D.

10. On April 17, 2017, the Board received a response from Mr. Houseton which was forwarded on April 18, 2017, to Mr. Cohn for his response within ten (10) days. True and exact copies of Mr. Houseton's response and the Board's letter are attached hereto as Exhibit E.

11. On April 27, 2017, the Board received a response from Mr. Cohn advising that he rests his case on his prior responses. A true and exact copy of Mr. Cohn's response is attached hereto as Exhibit F.

12. On October 5, 2017, the Board sent a letter to Mr. Cohn requesting additional information and asked that a response be provided within ten (10) days. On October 11, 2017, the Board received the requested additional information from Mr. Cohn. True and exact copies of the Board's letter and Mr. Cohn's response are attached hereto as Exhibit G.

13. On November 8, 2017, the Board sent a letter to Mr. Cohn requesting additional information and on November 13, 2017, the Board received a response from Mr. Cohn. True and exact copies of the Board's letter and Mr. Cohn's response are attached hereto as Exhibit H.

14. On November 13, 2017, the Board sent another letter to Mr. Cohn requesting additional information and on November 21, 2017, the Board received a response from Mr. Cohn. True and exact copies of the Board's letter and Mr. Cohn's response are attached hereto as Exhibit I.

15. On March 20, 2018, the Board received a letter from Mr. Cohn and on March 26, 2018, the Board received additional information from Mr. Cohn. True and exact copies of Mr. Cohn's letters are attached hereto as Exhibit J.

16. On September 6, 2016, Frank Houseton (hereafter "Complainant") consulted with William Cohn (hereafter "Respondent") about representation in an uncontested divorce.

17. Respondent quoted a fee of \$1,320.00 plus \$495.00 for filing fees and costs.

18. Complainant entered into a written fee agreement and paid \$500.00 down on that day.

19. Respondent's fee agreement and receipt for payment clearly delineated the \$495.00 payment as costs, expenses and filing fees.

20. Respondent provided Complainant a pamphlet captioned Information About Divorce Fees and Costs which Complainant acknowledged receiving by his signature to the fee agreement.

21. The information in the pamphlet and the fee agreement indicated that if a spouse would not agree to execution of a Marital Dissolution Agreement, the divorce would become contested and would require a substantially higher fee for further representation.

22. Respondent prepared the applicable divorce pleadings and documentation and met with Complainant on December 1, 2016, to go over the details of the written agreements.

23. Complainant paid his remaining balance on December 13, 2016.

24. Respondent scheduled a date in January 2017 for Complainant's wife to come to his office to execute the agreement.

25. On that date, Complainant's wife reviewed the agreements and declined to execute them.

26. Complainant then met with Respondent who advised that Complainant would have to pay a retainer for a contested divorce in order to proceed.

27. Complainant met again with Respondent in February 2017, and advised Respondent he did not wish to proceed with the divorce and requested a refund of fees.

28. Respondent declined to refund his fees and an altercation occurred.

29. On February 8, 2017, Respondent sent Complainant a letter stating his understanding that Complainant did not wish to proceed with his divorce.

30. Respondent's letter stated that he would keep Complainant's file open pursuant to Complainant's prior statement that he would pursue the divorce in a year or two.

31. Respondent's letter further indicated that if Complainant wished to close his file, Respondent would apply the monies paid by Complainant toward his contested divorce.

32. Respondent included an itemized bill indicating he had performed 6.9 hours of legal work at the rate of \$275.00 per hour for a total of \$1,897.00.

33. The itemized statement does not indicate that Respondent incurred any costs and only identifies time devoted for which Complainant was charged a fee.

34. Respondent failed to reimburse any costs to Complainant and applied the \$495.00 paid for costs and expenses to his outstanding fees without the consent of Complainant.

35. Complainant subsequently resolved his divorce *pro se* in October 2017, after his wife filed a divorce complaint.

36. Mr. Cohn's use of the \$495.00 paid by Mr. Houseton for costs, expenses and filing fees as payment of attorney fees, without Mr. Houseton's permission, violated of RPC 1.15 (Safekeeping Property and Funds).

ALLEGED VIOLATIONS

37. By the aforementioned acts and omissions, Mr. Cohn has engaged in unethical conduct in violation of the Tennessee Rules of Professional Conduct and more specifically set forth hereinafter:

Rule 1.15 (c) SAFEKEEPING PROPERTY AND FUNDS

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

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;

AGGRAVATING FACTORS

38. After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanctions to impose.

39. Mr. Cohn's failure to acknowledge the wrongful nature of his conduct is an aggravating circumstance justifying an increase in discipline to be imposed.

40. Mr. Cohn's selfish motive is an aggravating circumstance justifying an increase in discipline to be imposed.

41. Mr. Cohn's substantial experience in the practice of law, having been licensed in Tennessee in 1978, is an aggravating circumstance justifying an increase in discipline.

42. Mr. Cohn's prior disciplinary offenses are an aggravating circumstance justifying an increase in discipline.

PRAYER FOR RELIEF

WHEREFORE, PETITIONER REQUESTS that a Hearing Panel be appointed from Disciplinary District IX to hear testimony and to receive evidence in this cause and to make such findings of fact and order such disciplinary action as it may deem appropriate.

Respectfully submitted,



Alan D. Johnson, BPR #010505
Disciplinary Counsel - Litigation
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

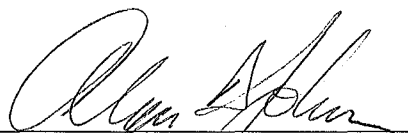
NOTICE TO PLEAD

**To: William Allan Cohn, Esq.
291 Germantown Bend Cove
Cordova, TN 38018-7238**

You are hereby notified that you are required to file your Answer with **Rita Webb, Executive Secretary, Board of Professional Responsibility, 10 Cadillac Drive, Suite 220, Brentwood, TN 37027** and serve a copy of your Answer upon Disciplinary Counsel within thirty (30) days after service of this Petition. If you fail to file an Answer, the matters shall be deemed admitted and a default judgment taken.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon the Respondent, William Allan Cohn, Esq., by First Class Mail and by Certified Mail, No. 7013 3020 0001 2394 3534, Return Receipt Requested, addressed to him at 291 Germantown Bend Cove, Cordova, TN 38018-7238 this the 5th of June, 2018.



Alan D. Johnson



BOARD OF PROFESSIONAL RESPONSIBILITY
of the
SUPREME COURT OF TENNESSEE

SANDY L. GARRETT
CHIEF DISCIPLINARY COUNSEL
KRISANN HODGES
DEPUTY CHIEF DISCIPLINARY COUNSEL
BEVERLY P. SHARPE
DIRECTOR OF CONSUMER ASSISTANCE
LAURA L. CHASTAIN
ETHICS COUNSEL

10 CADILLAC DRIVE, SUITE 220
BRENTWOOD, TENNESSEE 37027
(615) 361-7500
(800) 486-5714
FAX: (615) 367-2480
www.tbpr.org

KEVIN D. BALKWILL
STEVEN J. CHRISTOPHER
ALAN D. JOHNSON
WILLIAM C. MOODY
M. PRESTON SHIPP
EILEEN BURKHALTER SMITH
A. RUSSELL WILLIS
DISCIPLINARY COUNSEL

March 7, 2017

CONFIDENTIAL

William Cohn, Esquire
291 Germantown Bend Cv
Cordova, TN 38018-7238

When Responding Please Use:
Re: File No. 51469-9-KB

Dear Mr. Cohn:

Enclosed is a complete copy of the original complaint received by the Board of Professional Responsibility concerning your conduct. Supreme Court Rule 9, Section 15(a) requires that a complete copy of the original complaint and any addition or supplemental written submissions be provided to you. It is necessary that you **submit a clear and concise statement within ten days of your receipt of this letter** concerning your acts surrounding the above matters for the purpose of a disclosure of the truth. When responding to this letter, please be sure to note the file number above on all correspondence. Your communications to this office should be directed to my attention. A copy of your response will be sent to the Complainant to ascertain the Complainant's comments.

Your failure to timely respond to this complaint of misconduct will result in the filing of a Notice of Petition for Temporary Suspension, pursuant to Section 12.3 of Tennessee Supreme Court Rule 9.

Your cooperation will enable a proper disposition to be made of this matter in a manner consistent with the rights of the public and the protection of attorneys from unfounded complaints. Please note that Tennessee Supreme Court Rule 9, Section 32, addresses the extent of confidentiality applicable to this matter.

Sandy Garrett
Chief Disciplinary Counsel

By: *Kevin Balkwill*
Disciplinary Counsel

KB:cg
Enclosure

Exhibit A

C6

From: admin@tbpr.org
Sent: Thursday, February 23, 2017 8:22 AM
To: Complaints - Board of Professional Responsibility
Subject: Complaint Form Submission

Complaint Form Submission

2-24-17
ND
SB

- **Name Prefix:** Mr.
- **First Name:** frank
- **Last Name:** houseton
- **Home Address1:** 8696 haystack cove
- **Home Address2:**
- **Home City:** cordova
- **Home State:** TN
- **Home Zip:** 38016
- **Home Phone:**
- **Employer Name:** retired
- **Work Address1:**
- **Work Address2:**
- **Work City:**
- **Work State:**
- **Work Zip:**
- **Work Phone:**
- **Incarcerated?:** false
- **Inmate Id:**
- **Cell Phone:** (901) 216-4908
- **Preferred Place of Correspondence:** Home
- **Email:** frank4129@outlook.com
- **Formality Type:** Formal Complaint
- **Lawyer First Name:** william a
- **Lawyer Last Name:** cohn
- **Lawyer Address1:** 291 germantown bend cove
- **Lawyer Address2:**
- **Lawyer City:** cordova
- **Lawyer State:** TN
- **Lawyer Zip:** 38018
- **Lawyer Phone:** (901) 757-5557
- **Lawyer Date of First Contact:** 2016-09-06
- **Lawyer Date of Last Contact:** 2017-02-16
- **Case Category:** Civil
- **Case Number:**
- **Case County:**
- **Case Federal District:**
- **Lawyer Relation:** My Attorney
- **Type of Case:** Domestic (Family)
- **Criminal Type?:** false

- **Criminal Charges:**
- **Stage of Criminal Case:**
- **Concerns:** contacted mr cohn for my divorce i was very specific on the kind of divorce i wanted, but upon viewing the proposition i know it the it was not what we have agree on when i reach out to him about it he want to charge more money for something that i already have \$1800 which is way than advertise he also claim that my divorce couldn't be file that way i requested but my respond to him was why didn't you tell me this upfront before i paid you at the point he stood up from his chair very angry and told me get out of his office I ask what about my divorce and the fees already paid he repeated get out of my office and put his hands on my chest and pushed me out of his office this incident transpired on 02/16/2017 at this point I have paid a fees for a divorce I didn't get and been physically assaulted by this "professional" who was supposed to represent me.
- **Alternate First Name:**
- **Alternate Last Name:**
- **Alternate Address1:**
- **Alternate Address2:**
- **Alternate City:**
- **Alternate State:**
- **Alternate Zip:**
- **Signature:** frank houseton sr
- **Signature Date:** 2017-02-23

[View Complaint Form Submission](#)

**THE
COHN
LAW FIRM**

RECEIVED

MAR 06 2017

BOARD OF PROFESSIONAL
RESPONSIBILITY

291 Germantown Bend Cove
Cordova, Tennessee 38018

Phone: (901) 757-5557

Fax: (901) 757-5535

Dallas, Texas Phone: (972) 994-9393

Mailing Address:

P.O. Box 38413

Memphis, Tennessee 38183-0413

CLIENT RECEIPT OF PAYMENT

William A. Cohn, Attorney (✓)

Client Name:

Frank Houston

Type of Case:

Ure. Div - ID

Amnt Paid: Cash: _____

Check: _____

Debit Card: _____

Credit Card: _____

Copy attached _____

Receipt copy attached _____

ATTORNEY FEE [✓]

Retainer []

CHARGED:

\$ 1,320⁰⁰

Costs, Expenses, &

Filing Fees

CHARGED:

\$ 495⁰⁰

Amount PAID by Client TODAY:

for ATTORNEY FEE /
OR Retainer

\$ 500⁰⁰

Amount PAID by Client TODAY:

for Costs, Expenses
& Filing Fees: \$ _____

Credit: _____

BALANCE OWED:

for ATTORNEY FEE / Retainer \$ 820⁰⁰

Credit: _____

BALANCE OWED:

for Costs, Expenses
& Filing Fees: \$ 495⁰⁰

RECEIVED BY: _____

Signature

Date: 3/6/16

Signer Print name: Cohn

THE COHN LAW FIRM

291 Germantown Bend Cove
Cordova, Tennessee 38018

Phone: (901) 757-5557

Fax: (901) 757-5535

Dallas, Texas Phone: (972) 994-9393

Mailing Address:
P.O. Box 38413
Memphis, Tennessee 38183-0413

CLIENT RECEIPT OF PAYMENT

William A. Cohn, Attorney ()

Client Name: Frank Houseton Type of Case: Divorce

Amnt Paid: Cash: Check: Debit Card: Credit Card:
Copy attached Receipt copy attached

ATTORNEY FEE []
Retainer []
CHARGED: \$ 1,320.⁰⁰

Costs, Expenses, &
Filing Fees
CHARGED: \$ 495

Amount PAID by Client TODAY:

for ATTORNEY FEE /
OR Retainer \$ 820

Credit: \$ 500
BALANCE OWED:

for ATTORNEY FEE / Retainer \$ 0

Amount PAID by Client TODAY:

for Costs, Expenses
& Filing Fees: \$ 495

Credit \$ 0
BALANCE OWED:

for Costs, Expenses
& Filing Fees: \$ 0

RECEIVED BY: Jayme Elli
Signature

Date: 12/13/16

Signer Print name: Jayme Ellison

**THE
COHN
LAW FIRM**

291 Germantown Bend Cove
Cordova (Memphis), TN 38018
(901) 757-5557
Fax: (901)757-5535
e-mail: info@cohnlawfirm.com

Mailing Address:
P.O. Box 38413
Memphis, Tennessee 38183-0413

William A. Cohn*

Hillcrest / LBJ Business Center
Suite 111, 12830 Hillcrest
Dallas, Texas 75230
(972) 994-9393

* Admitted in Texas and Tennessee

February 8, 2017

Mr. Frank T. Houseton, Sr.
8696 Haystack Cove
Cordova, TN 38016

RE: Houseton vs. Houseton
Divorce

Dear Mr. Houseton,

It is my understanding that you do not wish to proceed with your divorce.

We will keep your file open pursuant to your communication that you will pursue the divorce in a year or two. We will not charge you additional fees for that incidence.

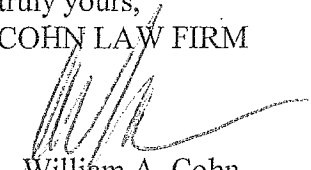
Should you wish for us to close the file, the monies you have paid will be applied to our hourly fee in as such as the nature of the case has changed to a contested case.

An itemization of our charges is enclosed.

Please advise the alternative you choose.

Very truly yours,
THE COHN LAW FIRM

By:


William A. Cohn
WAC/jf
Enclosure

COHN LAW FIRM

291 Germantown Bend Cove
Cordova (Memphis), TN 38018
(901) 757-5557
Fax: (901)757-5535
e-mail: info@cohnlawfirm.com

Mailing Address:
P.O. Box 38413
Memphis, Tennessee 38183-0413

William A. Cohn*

Hillcrest / LBJ Business Center
Suite 111, 12830 Hillcrest
Dallas, Texas 75230
(972) 994-9393

* Admitted in Texas and Tennessee

February 8, 2017

RE: *Houseton vs. Houseton*
Divorce
Our File No.: 16-09-003

STATEMENT:

<u>DATE</u>	<u>WORK DONE</u>	<u>BILLED HOURS</u>
09-07-16	Legal Research: Real Property Legal Description	.30
09-07-16	C&P of Complaint for Divorce	1.10
09-07-16	C&P of Social Security Affidavit	.20
09-07-16	C&P of Marital Dissolution Agreement	1.70
09-07-16	C&P of Health Insurance Notice	.20
09-07-16	C&P of Permanent Parenting Plan	1.20
09-07-16	C&P of Divorce Certificate	.20
09-07-16	C&P of Quitclaim Deed	.30
09-16-16	C&P of letter to Client for omitted information	.20
12-01-16	Office Consultation with Client	.40
12-13-16	Tel Conf w/Client Re: Wife's name	.10
12-14-16	Tel Conf w/Client Re: Wife's name	.10
01-16-17	Office Conference: Wife in Office to sign	.20
02-02-17	Office Consultation with Client	.70
<hr/>		
Total Hours		6.90
 6.90 Hours @ \$275.00 per hour =		 \$ 1,897.00

**THE
COHN
LAW FIRM**

291 Germantown Bend Cove
Cordova (Memphis), TN 38018
901 -757-5557

DIVORCE
INFORMATION ABOUT FEES & COSTS EFFECTIVE May 20, 2015

A. IT WILL TAKE AT LEAST TWENTY-ONE (21) DAYS FOR YOUR PAPERS TO BE TYPED AND READY TO SIGN

*Work will NOT begin until ALL necessary information is provided by you to this law firm.

*Suit will NOT be FILED until ALL is paid.

*To check the status of your uncontested divorce, please ask for our Divorce Paralegal.

*Please do NOT call prior to 21 days- additional calls incur additional charges!

B. DO NOT MAKE ANY WEDDING ARRANGEMENTS UNTIL AFTER YOUR DIVORCE IS FINAL! (**30 days after** the Judge **signs** the Final Decree.)

C. You must promptly provide this law firm with all updated information.

We recommend that you **NOT leave town until after your divorce trial or final hearing.*

D. If you retain us for a **particular type** of divorce, and you change the type of divorce, whether it is your fault or someone else's (other than ours), **you** will be responsible for the entire NEW fee. For example, if you retain us to represent you in an *Irreconcilable Differences* Divorce, and your spouse **will not sign** the Agreement that we typed, and you wish to then **serve** him or her a complaint for divorce, you will be responsible for the **ENTIRE NEW** fee required for an original uncontested divorce with service of process **and** for the **ENTIRE** ID Divorce.

THERE ARE TWO TYPES OF DIVORCE In Tennessee:

1. UNCONTESTED DIVORCE

Costs & Expenses:

\$495.00* for all (ID or on grounds) uncontested divorces

~~**PLUS \$ 75.00 Publication fee (if needed)**~~

(*Includes filing fees, check handling fee, photocopying, and some court costs).
(Does **NOT** include Attorney fees)

IF THE PRICES THAT YOU ARE TOLD DIFFER FROM THE PRICES HERE IN WRITING, YOU SHOULD REQUEST THE AMOUNT OF THE FEES IN WRITING FROM MANAGEMENT.

++++ PLUS +++++ PLUS ++++++ PLUS +++++ ATTORNEY FEES

ISSUES OF INTEREST-

A) DEFAULT JUDGMENT AND PUBLICATION

Default Judgments and publication **REQUIRE** a **WITNESS** at the Final Hearing.

B) ADDITIONAL COURT COSTS

The Court will send a bill for any additional Court costs incurred. If you receive this bill, you must pay it. The balance, if any, is to be paid by you.

C) FAILURE TO SIGN PAPERS IN 30 DAYS

If both spouses have not signed the agreement, or one of the spouses has not returned the agreement signed within 30 days, we will **close our file**. To **re-open** the file, even on the 31st day, there is an *additional* fee of \$150.00 **THERE ARE NO EXCEPTIONS**. Any new work such as changing 'no fault' to 'fault' or 'grounds' will require a *new original fee in full*. Because of the competitive rates that we offer and because of the actual time that we expend (approximate times: initial consultation 0.50; composition and preparation of complaint 0.70, and of the marital dissolution agreement 1.70; total value of \$565.50), there will be **NO REFUNDS** of *any* fees paid for an uncontested divorce.

D) REAL ESTATE

Whether you are selling the real estate which you own or whether one spouse is conveying the real estate to the other spouse; or whether the real estate is joint (marital) property or one spouse's (separate) property; the judges require that the *real property* be **addressed in** the *marital dissolution agreement*. If we include it and, if necessary, compose a quitclaim deed for the leaving spouse to sign, it will not be necessary for you to *hunt down* your spouse if you *later* need the spouse to sign a quitclaim deed when you are trying to *sell* the house. We used to have many occasions where in order to save the small additional fee, the spouse keeping the house instructed us not to place the real estate in the marital dissolution agreement. Most of the time the house was owned by that person before the marriage. Later, when the house is to be sold, the leaving spouse cannot be located or refuses to sign the quitclaim deed which the buyer's title company wants before it will issue title insurance to the proposed buyer of the real estate. The judges now want ALL property - real property and personal property- addressed in the divorce.

Remember, the **increase in value** of **separate** property (*not* the value at the time of the marriage) is **marital** property. A spouse needs to be *divested* of that interest- even the increase in value of the property- because all property that is jointly owned *remains* jointly owned *after* the divorce *unless* the marital dissolution agreement specifically divides or addresses the property.

E) REQUIREMENTS AND PROCEDURES

The **simple uncontested divorce** is for couples who have **ALL issues settled and agreed upon**. You will meet with an attorney to answer any questions you might have. We will give you a packet to complete which includes statistical information and worksheets- 1) for the division of assets and debts and support in a marital dissolution agreement; and / or 2) for all issues related to the children in the Permanent Parenting Plan- to resolve all pertinent issues. You are to complete the packet, submit it to us *along with* your check in full. We will type it, and the couple will sign it. We will then file it with the Court and have a hearing set. The *party filing* will have to *appear* in Court. The Judge will then approve the Marital Dissolution Agreement and sign the Final Decree of Divorce which we prepare.

You must wait 60 days (without children) and 90 days (with children) from the date of the filing of the **Complaint** with the Court Clerk to have your final hearing. **This is applicable ONLY for UNcontested divorces on the grounds of irreconcilable differences when a marital dissolution agreement (AND Permanent Parenting Plan when there are children) has been signed by both parties.**

In an uncontested divorce, your complaint for divorce will not be filed with the Court Clerk until **BOTH** the Marital Dissolution Agreement AND the Permanent Parenting Plan have been **SIGNED** by **BOTH** you AND your spouse.

If there is a child or children, **BOTH** parents **MUST attend** a seminar on 'Understanding children in a divorce.' The Court will **NOT** grant the divorce until the attendance certificates are filed with the Court Clerk, and we will **NOT** set the case for final hearing until you have given **BOTH** of the attendance certificates to our office so that we can file the attendance certificates.

Because there is a 180 day time *limit* from the day the marital dissolution agreement is **signed** until the time we can hold a hearing, we must have payment in full at the time of the filing of the divorce. We **cannot** extend the hearing date to allow collection of the fees. If we extended the hearing date in order to allow us to collect all the attorney fees, then **the time would run** and we would have to file a **new divorce** lawsuit or file a **new marital dissolution agreement**. The initial lawsuit would be **dismissed**.

Court appearances after one appearance for a final hearing and negotiation are billed additionally in the amount of \$250.00 each. If the delay is **our** fault, you will **not** be billed..

CONTESTED Divorce

Expenses and Filing Fees: \$1,500.00 *Deposit*

*You are responsible for all expenses such as deposition costs, court costs, mediation fees, and filing fees, in addition to expenses for reasonable required out of county travel.

PLUS

AND

Attorney Fees:

- 1) \$5,000.00 to Hourly fees: pay the hourly charge of the attorney.
\$10,000.00 **retainer** to be credited against hourly fee of \$275.00 per hour; billing on a monthly basis for all work, including telephone calls, performed by the attorney. This amount is negotiable and can be adjusted based upon need.

**includes filing fees, check handling fee, administrative fees, & service of process fees.

OR 2) **FLAT FEES:**

- A) Our *******SPECIAL Payment PROGRAM:*******

\$ 3,000.00 Retainer **++++ PLUS +++++ PLUS +++**
+++ PLUS +++++

30 post dated checks of \$200.00 dated the first of each month
Starting the next full month after the retainer is paid.

Each check will be deposited on the first of each month for 30 months. This is a non refundable flat fee.

Any missed payment - check is returned - is a directive to the Attorney to withdraw as counsel from the case.

- B) Our Flat fee Schedule:
- \$5,750.00 Covers all attorney fees (unless court orders spouse to pay additional amount to attorney).
No children; Assets limited to house, house accessories, cars, and retirement plans.

 - \$7,750.00 Covers all attorney fees (unless court orders spouse to pay additional amount to attorney).
WITH children; Assets limited to house, house accessories, cars, and retirement plans.

 - \$10,500.00 Covers all attorney fees (unless court orders spouse to pay additional amount to attorney).
No children; Assets in excess of above but with net value of \$1,000,000.00 or less..

 - \$14,500.00 Covers all attorney fees (unless court orders spouse to pay additional amount to attorney).
WITH children; Assets in excess of above but with net value of \$1,000,000.00 or less..

 - \$22,500.00 Covers all attorney fees (unless court orders spouse to pay additional amount to attorney).
No children; Assets in excess of above but with net value of OVER \$1,000,000.00...

 - \$25,000.00 Covers all attorney fees (unless court orders spouse to pay additional amount to attorney).
WITH children; Assets in excess of above but with net value of OVER \$1,000,000.00..

GENERAL Information

Your presence for an appointment to discuss divorce indicates that you can no longer live with your spouse. We encourage you to attempt to reconcile your marriage with your spouse. However, our job is not that of a mediator or counselor to reconcile your marriage. Our job is to protect your interests and to not only obtain divorce should you so want, but to obtain the best possible terms of settlement or agreement or division of marital assets.

We recommend during this traumatic time that you speak with a clinical psychologist or psychiatrist. These professionals are Ph.D.'s or M.D.'s who are trained to help you determine what you want to do. We do not recommend any particular psychologist.

I. UNCONTESTED DIVORCE

An *uncontested* divorce means that all issues have been settled between the parties. It means that all questions concerning the children or all questions concerning any debts, etc. have been resolved. It means that there is no issue about which to have a hearing or trial. If you have any issue that is open (such as the amount of child support, or the amount of alimony, or when visitation will occur), then you have a contested divorce. An uncontested divorce is where you communicate the information necessary to complete a marital dissolution agreement to us and the agreement is signed by both parties, and the grounds are irreconcilable differences (no fault); or where the spouse will **not file any answer**, and there is **no** marital dissolution agreement, you can obtain a divorce on inappropriate marital conduct, abandonment and non support, desertion, or absence from the home for two years, without the need of any hearing or trial, *except* for the final hearing to hear **your witness** and grant the divorce.

If you reconcile with your spouse, or you fail to show in Court, your divorce lawsuit will be dismissed.

If you have a divorce where you must call a lawyer and ask him various questions about various issues after retaining the lawyer, or where terms of the marital dissolution agreement must be negotiated, then you do not have an uncontested divorce.

II. SIMPLE Divorce

A '*simple*' means the *very basic* divorce- **no additional** work performed by the attorney. Real estate deeds, obtaining real estate legal descriptions, parenting plans, qualified domestic relations orders for splitting retirements **are additional** work and the divorce is *no longer* simple.

III. PUBLICATION

If you have called all of the relatives and friends that you know, and cannot find your spouse, then we can serve the spouse by publication. However, you must have made **diligent** inquiry to find him or her. When service of process is by publication, you cannot get child support, custody, or division of marital property litigated. You can only receive a divorce.

IV. CONTESTED DIVORCE

Conversely, a contested divorce has issues to resolve. In a contested divorce the lawyer gets paid by the hour for the amount of work that he does. There is no way to know what amount the divorce will ultimately cost. If there is not a lot of discovery and litigation to be done, then costs and attorney fees will be minimal. If there is a lot of discovery and litigation and trial work to be done, then costs and attorney fees will be substantial. Attorney fees may run only \$2,500.00, or they may run \$25,000.00. The only thing a lawyer has to sell is his time. The time billed covers not only an income for the lawyer, but also an amount to pay office expenses. We will attempt to posture your case for settlement. This means being prepared and getting a substantial amount of work done. In that way, we will be speaking from a position of strength to discuss settlement. Otherwise, we will be speaking from a position of weakness, not knowing what the opposition has, wants, or will do. If we cannot settle the case after being prepared, then we will be ready to try the case.

We do NOT recommend that you leave town while your divorce is pending.

V. RESPONSIBILITY FOR PAYMENT OF ATTORNEY FEES

Our contract is between our client and ourselves. We look to you for the payment of our attorney fees. We know that some months there may be a higher billing for work during that month than others. We do not expect each billing to be paid in full, but we do expect a

good faith effort to make some payment towards it.

We will try to obtain a Court order ordering your spouse to pay your attorney fees or a substantial portion of them if that is possible. However, the ultimate liability for our fees rests with you, the client.

VI. PROCEDURES

A person filing for a divorce in Tennessee must be a resident of Tennessee for the 6 months before that person files for divorce.

A Complaint (lawsuit) is filed. In a contested divorce we attempt to obtain various injunctions prohibiting a spouse from dissipation or removal of assets and liquidation of other assets. We also attempt to enjoin a spouse from harassment and other such actions. In certain circumstances, we can have a husband removed from the marital residence, or custody of the children awarded. However, generally a hearing must be held on possession of the marital residence and custody of the children. Soon thereafter, we hold a hearing for various matters such as custody and possession of the marital residence, and also for temporary support for the spouse.

Sometimes mediation is ordered by the Court. This is a settlement conference.

Depositions of the parties usually are held after that and then certain other discovery methods such as request for production of documents, written questions to the other party, appraisal and inventory of safe deposit boxes and other assets, and various other procedures are done.

Finally after all of the information is analyzed, preparation is made for trial and a trial is held. Witnesses testify, and these witnesses can include psychologists for custody matters, private investigators for grounds for divorce or custody matters, accountants, friends, and relatives. Obviously the final disposition of all of the assets, liabilities, and support is ordered by the judge at the trial.

A Final Decree of Divorce is then entered and you are then divorced. Either party has 30 days to appeal to the Court of Appeals.

VII. CUSTODY

Memphis is in the middle of the Bible Belt. Fundamentalist religion greatly affects rulings of the judges, even though they would never admit it. Therefore, you can expect the vast majority of rulings to favor the mother in custody proceedings. That may not be proper under the United States Constitution, but that is the way the rulings go. Under the new law starting January 1, 2001, there is no longer any designation of custody. There is only the specific times to which each party is assigned either voluntarily or involuntarily in a Parenting Plan. There is a primary residential parent, however.

VIII. VISITATION

Visitation with children under the new law starting January 1, 2001 must now be **specific**. There are *no* more *general* periods such as "reasonable" or "liberal." These periods are either chosen by the parties by agreement or assigned by the Court in a Parenting Plan.

IX. SUPPORT PAYMENTS

Any *order* for the payment of support is effective immediately after the order is signed by the judge, and the *full* amount ordered must be paid even if the award is appealed.

Support can be ordered as *spousal* support (alimony), child support, or both. It is

usually awarded by the Divorce Referee in a Temporary Support Hearing soon after the divorce commences. It is based on each party's income, expenses, assets, and needs. The payee oftentimes does not get what he/she wants, and the payor often times thinks he/she is paying too much. The amount of *child support* is based on a *formula* which takes into account both parents' incomes and also takes into consideration the cost of healthcare and day care for the child and the amount of visitation exercised. *Child support must* be paid if the *formula* so determines. BOTH parties must carry life insurance with the child as an irrevocable beneficiary. The amount of *spousal support* (alimony) is usually an amount needed to maintain a marital asset, such as the marital residence, so that it will not be foreclosed or lost pending the trial of the divorce, and is in addition to child support.

From our experience, if you can show to the Court or Divorce Referee that there has been or will be trouble in obtaining support payments, a wage assignment can be entered. A wage assignment is a payroll deduction of your support payment. It is paid to the State of Tennessee who then distributes it to you, less the nominal Clerk's fee.

Alimony is based, principally, on *need and ability to pay*. The legislature has mandated that the alimony be principally rehabilitative, meaning that the economically disadvantaged spouse is to receive an amount of alimony for a limited time to help that spouse finish an education, resume a career, or start a career. However, our Courts have legislated on their own by imposing another type of alimony by their "interpretation" of the law. Basically, this type is where there is a long term marriage, the economically disadvantaged spouse is not at fault in the divorce, and the Courts feel that such person should be given an amount of alimony to restore he or she as near to the standard of living he or she enjoyed while they were married. This may be for a period of years or for life.

Child support is not income to the receiver, nor is it deductible to the payor. Alimony is income to the receiver, and is deductible on the Federal Income Tax of the payor.

X. LOCATION OF CHILDREN

The children should be kept in the same county where the parents resided with the children pending a determination by the Court.

After the divorce, **a spouse who wishes to move out of state** must merely **give written notice 90 days before the move**. The non-custodial spouse can then apply to the Court for relief. The standard by which the Court must decide is: "What is in the best interest of the child?" Of great importance in deciding is: where is the "extended family"? The extended family consists of grandparents, uncles, aunts, cousins, etc., and the Court should keep the children in this county if the "extended family" is located here. Other circumstances may affect the Court's decision, but a competent judge will make that issue paramount.

A party who has been awarded custody of the children may temporarily take the children anywhere, unless a parenting plan provides otherwise. Absent any restrictions, a party exercising visitation rights may temporarily take the children anywhere within the time allowed for the party's visitation.

XI. DIVISION OF PROPERTY

Each party is allowed to retain their respective **separate** property. However, the Court does have the power to award any property of one spouse to the other spouse at any time; even after quitclaim deeds have been exchanged. This is to allow the Court to equitably divide the property and fairly award support.

Property acquired during the marriage is marital property, and is joint property even though one spouse did not work and did not contribute monetarily to the purchase. The Court considers the contribution of a homemaker equal to that of the working spouse.

The **increase in value** of **separate** property during the marriage can be **marital**

property. The original value is still separate property, but if one spouse can show that that spouse aided in the increase in value or performed functions which preserved or aided the increase in value, then the increase itself is marital property.

Any Order of the state court *in a divorce* regarding division of assets or property, division of debts, or any kind of support, is **NOT** dischargeable in **BANKRUPTCY**.

XII. INJUNCTIONS:

Injunctions can be obtained for various matters, including prevention of dissipation of assets, possession of property, and prevention of harm and/or harassment. Certain Injunctions are automatically in effect when a divorce is filed. The remedy for violation is to petition the Court to hold the person in violation of the Injunction in contempt of Court.

XIII. PROTECTIVE ORDERS

A Protective Order is a more effective and efficient injunction, and should be obtained from the General Sessions Court *before* a divorce complaint is filed. It can be obtained in a contested divorce after the divorce is filed, but it then must be obtained in the divorce court.

Once a protective order preventing harm or harassment is obtained, one need only call the police if the threatening spouse comes around. Once shown a copy of the Court's Protective Order, the police should stop the threatening spouse's activity or arrest the threatening spouse.

XIV. COURT APPEARANCES

Do **NOT** be late. If you are Late, the Court may not grant you a hearing on that day and you will incur **additional** attorney fees for re scheduling. BE EARLY.

When you appear in Court, dress conservatively and maturely. A coat and tie are preferred for men, and a dress is preferred for women. Court is not the place for show. Do not over-dress. Keep jewelry and furs to a minimum.

You do not want the Judge *to dislike you*. Do **NOT** wear: shorts, blue jeans, tank tops, sandals, big jewelry, large key rings, sleeveless shirts, or T shirts. Do **NOT** bring papers or files, unless you are in a trial requiring those for evidence. **DO** wear: shirts with a collar and long sleeve shirts- cover up the tatoos.

ALWAYS TELL THE TRUTH. You cannot forget the truth. You do not want us to spend time defending you that we could be spending pursuing your interests.

Sample QUESTIONS AT AN **UNCONTESTED** HEARING:

- 1) State your full name.
- 2) Are you married to the defendant? Answer: yes
- 3) Were you a RESIDENT of Shelby County, Tennessee for the 6 months prior to the filing of your complaint for divorce? Answer: yes
- 4) Does the Marital Dissolution Agreement make a fair and equitable division of you and your husband's property and debts? Answer: YES

- 5) Does the Permanent Parenting Plan make fair and adequate provisions for the care and maintenance of your minor children? Answer: YES
- 6) Has notice been given to your spouse that the health insurance ends upon the signing of the Final Decree by the Judge? Answer: YES
- 7) Do you understand that a creditor to whom you & your husband owe a joint debt is not a party to this divorce & can sue you if your spouse does not pay the debt even though the spouse is ordered to do so in the divorce? Answer: YES
- 6) Do Irreconcilable Differences exist in your marriage? Answer: YES

If you answer NO to any of these questions, your divorce will NOT be granted and you probably will incur additional attorney fees.

Sample Questions for Witnesses: (Where grounds for divorce must be proven):

- 1) Describe what conduct by the defendant that you observed which you considered inappropriate marital conduct?

XV. THE COHN LAW FIRM

Our firm has substantial experience in divorce matters. We represent both husbands and wives. We do **NOT** represent *both* parties in an ***UNcontested*** divorce. We represent *only* the party that comes to us for representation.

Our hourly fees cover any and all activities in which we engage, including telephone calls. Our hourly rates are \$275.00 and \$250.00 per hour. We will bill you much less for ministerial functions, like filing a document in the Court Clerk's Office as this can be done by our law clerk. However, we must still pay our law clerk and paralegal, as we must pay our other expenses, and we therefore must charge you for this activity. We know that you have many bills facing you in this traumatic time. However, you would not want to wait on your paycheck, and we very much prefer not to wait on ours. We expect to be at the top of your list when meeting your obligations. We will work with you, but we expect at least some payment on your obligation to us each and every month in which a balance is due.

We welcome your inquiries. Please feel free to call us or come see us with your questions. If you prefer to come by, please make an appointment.

THE COHN LAW FIRM - (901) 757-5557

Since 1978

Court locations for Shelby County, Tennessee:

Chancery.....3rd floor, west corridor, all divisions

Circuit.....2nd floor, west corridor, Division 1 & 5
.....2nd floor, east corridor, Division 8
.....2nd floor, south corridor, Divisions 2 & 9
.....2nd floor, north corridor, Divisions 6 & 7
.....3rd floor, north corridor, Divisions 3 & 4

Divorce Referee:..... 3rd floor, east corridor

All Courts which try divorce cases are located in:

.....Old Courthouse, between Washington and Adams, and
.....between 2nd and 3rd streets

Although various lawyers in our firm have been certified at times in the past in various areas of the law, none of our lawyers are presently certified by the State of Tennessee Commission on Specialization in the fields of Family Law, Divorce, Custody, and Support.

COPY

QUITCLAIM DEED
For Divorce

Know all men by these presents, that *Lilian Gaudelupe Houseton*, for and in consideration of and pursuant to a decree of divorce, order of the Court, or marital dissolution agreement or property settlement agreement in a divorce pending in Circuit/Chancery Court of Shelby County, Tennessee, in cause No. _____, do/does hereby bargain, sell, remise, release, quitclaim and convey unto *Frank Tyrone Houseton, Sr.*, all of my right, title, and interest in and to the following described real property located in Shelby County, in the state of Tennessee, to wit:

Lot 29, Phase 1, Sixth Addition, Riverwood Farms Subdivision, as shown of record in plat book 138, page 94, in the Register's Office of Shelby County, Tennessee, to which reference is hereby made for a more particular description;

This property is the same property obtained by the grantor by deed registered in Instrument # 06079114, in the Register's Office of Shelby County, Tennessee.

IN TESTIMONY WHEREOF, I/We have executed this instrument this the _____ day of _____, 20__

Lilian Gaudelupe Houseton

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a notary public in and for said state and county, duly commissioned and qualified, personally appeared *Lilian Gaudelupe Houseton*, to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that said person(s) executed the same as said person's/persons' free act and deed.

WITNESS my hand and Notarial Seal at office this _____ day of _____, 20__.

My Commission Expires:

Notary Public

No affirmation of value is needed pursuant to TCA 67-409 (a)(3)(E) as the actual consideration for this transfer is a Final Decree of Divorce or Marital Dissolution Agreement pursuant to a Divorce.

Parcel ID #: 0965010D000160

Property Address:

8696 Haystack Cove
Cordova, TN 38016

Mail tax bills to Owner at:

Frank T. Houseton, Sr.
8696 Haystack Cove
Cordova, TN 38016

THIS INSTRUMENT PREPARED BY
AND RETURN TO:

William A. Cohn, Attorney
THE COHN LAW FIRM
291 Germantown Bend Cove
Cordova, TN 38018
901/757-5557

I, or we, hereby swear or affirm that, to the best of affiant's knowledge, information, and belief, the actual consideration for this transfer or value of the property transferred, whichever is greater, is LOVE AND AFFECTION AND \$10.00, which is equal to or greater than the amount which the property would command at a fair and voluntary sale.

Affiant

Sworn to and subscribed before me this _____ day of _____, 2017.

My Commission expires:

Notary Public

COPY

IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

FRANK TYRONE HOuseton, SR.,
Plaintiff,

vs.

Docket No.
Division

LILIAN GUADELUPe HOuseton,
Defendant.

MARITAL DISSOLUTION AGREEMENT

This agreement made and executed on this date by and between Frank Tyrone Houseton, Sr., Plaintiff, party of the first part, hereinafter referred to as "Husband," and Lilian Guadelupe Houseton, Defendant, party of the second part, hereinafter referred to as "Wife," in Shelby County, Tennessee:

WTNESSETH:

WHEREAS, the parties hereto are husband and wife; and

WHEREAS, irreconcilable differences have arisen between the parties, and the parties are contemplating a divorce; and

WHEREAS, the parties desire by this agreement to finalize all claims for alimony, custody, child support and maintenance, to divide property, both real and personal, owned by them; and

WHEREAS, it is the desire of the parties hereto that this agreement be reduced to writing and incorporated as part of any decree of divorce which may be entered in the above styled cause;

NOW, THEREFORE, for the reasons set forth above and in consideration of mutual covenants and promises of the parties hereto, it is covenanted, agreed and promised by each party

hereto as follows:

1. That all personal property of the parties not hereinafter mentioned be divided between the parties as such property was at the time of this agreement;

2. That the each party shall be responsible for the balance due and owing on all his or her own debts incurred during the term of the parties' marriage before the date of their final separation; should either party be compelled to pay any debt contracted or incurred by the other party or which should be paid by the other party pursuant to the terms of this Agreement, the party for whose benefit such payment is made agrees to indemnify and hold the other party harmless from any and all liability on such indebtedness and to reimburse the other party to the full extent of the amount paid by the other party, including any interest and legal expense paid by the other party either in defending the claim of the creditor or otherwise.

3. That the parties agree that no alimony will be paid by either party;

4. That the Husband shall pay the attorney fee to The Cohn Law Firm and Court costs incurred in this proceeding; that the Wife shall reimburse the Husband for one-half of the attorney fees and Court costs;

5. That the Husband shall have possession of real property and all of its improvements located at 8696 Haystack Cove, Cordova, Tennessee 38016, until the later of graduation of their son, Frank from high school or the date that said son turns 18 years old; that the house will then be sold and the net proceeds will be split ~~after the husband receives credit for the house notes paid after the~~ filing of this divorce; with said real property being more particularly described as follows:

Lot 29, Phase 1, Sixth Addition, Riverwood Farms Subdivision,
as shown of record in Plat Book 138, Page 94, in the Register's
Office of Shelby County, Tennessee, to which reference is hereby

*The property should remain in both name until
the sale and split proceeds in HALF*

made for a more particular description;

This property is the same property obtained by the grantor by deed registered in Instrument No. 06079114, in the Register's Office of Shelby County, Tennessee.

That the party with possession of the above property shall be responsible for payment of any indebtedness thereon; and that said party agrees to indemnify and hold the other party harmless from any and all liability on such indebtedness;

6. That all right, title and interest of the Wife in and to a 2000 Toyota Solara and 1991 Lexus be divested out of the Wife and into the Husband; that all right, title, and interest of the Husband in and to a 2006 Nissan SUV be divested out of the Husband and into the Wife; that each party assumes the payment of any indebtedness of any vehicle or other personal property with which each representative party is vested; and that each party agrees to indemnify and hold the other party harmless from any and all liability on such indebtedness;

7. That the First Tennessee joint savings account be divested out of the Husband and into the Wife;

8. That all right, title, and interest of the household goods, appliances, and furniture owned by the parties has already been divided to the mutual satisfaction of both parties;

9. That each party is awarded possession of their respective retirement plans and investments;

10. That each of the parties hereto shall assume full and exclusive liability for any liability and all debts and obligations whatsoever that he or she has incurred after the time of separation which are not otherwise provided for herein; That the parties herein shall not contract at

any time or times in the name of the other, or in any way subject the other to liability for any debts for which the contracting party might in any way become liable;

11. Both parties are hereby notified under T.C.A. §36-4-134 that this agreement does not necessarily affect the ability of a creditor to proceed against a party or a party's property, even though the party is not responsible under the terms of the decree for an account, any debt associated with an account or any debt; and both parties are hereby notified that it may be in their best interest to cancel, close or freeze any jointly held accounts;

12. That the parties acknowledge that neither party currently carries health insurance on the other, and both parties acknowledge that no notice is needed and waive any further notice under T.C.A. §56-7-2366;

13. That the parties hereto do hereby represent that each of them has read the foregoing agreement, that each of them fully understands that each and every condition thereof, and that each of them has been advised by an attorney of his or her own choice; that each party acknowledges that The Cohn Law Firm represents the Husband only in this proceeding; that this agreement is intended to settle fully and finally the property rights between the parties; that the parties hereby release each other from any and all claims arising out of their marital relationship upon approval of this property settlement by the Court; and that this document may be filed in a divorce action and fully incorporated by reference in any final decree entered therein upon the Court's approval;

14. That the parties hereby declare that there has been no fraud or collusion in the procurement of this agreement.

15. That the parties agree to sign whatever documents are required or needed to be signed to effectuate this agreement.

16. That in the event that any litigation ensues concerning any of the terms of this Agreement at any time, then the prevailing party shall have the attorney fees incurred by said prevailing party in said litigation paid by the losing party;

17. That the parties hereby expressly waive any and all rights which they have to and under the Federal law commonly known as the "Servicemembers' Civil Relief Act" and express herein to the Court their desire to submit to the Court's jurisdiction. The parties further state that neither is in any division of the Armed Services of the United States of America at the time of this agreement.

18. The party who is the defendant in the above styled cause of action, pursuant to TCA 36-4-103(a), hereby and by her signature below acknowledges that she is aware that a divorce action will be filed or has been filed in Tennessee, waives service of process of the original complaint in this proceeding and further waives her right to file an Answer to the Complaint, and further agrees to allow the signing of this Marital Dissolution Agreement act as service of process, and the filing of this agreement constitutes her general appearance before the Court. It is understood and agreed that the waiver in this paragraph is valid and operative only for 180 days from the date on which the last party signs this Marital Dissolution Agreement.

19. The Bankruptcy Code 11 USC §101 et seq revisions of 2005 made non dischargeable all responsibilities for payments which are ordered in a divorce decree. The parties acknowledge that they understand that they cannot discharge any obligations herein in Bankruptcy.

IN WITNESS WHEREOF, the parties have hereunto signed their names.

Frank T. Houseton
Frank Tyrone Houseton, Sr., Plaintiff

Date: 1-10-17

STATE OF TENNESSEE

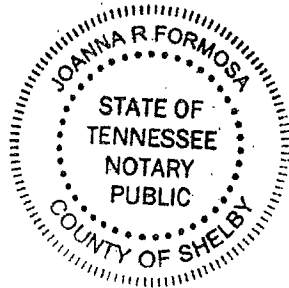
COUNTY OF SHELBY

On this 10th day of January, 2017, before me, a notary public in and for the state and county noted above, duly qualified and commissioned, personally appeared Lilian Guadelupe Houseton, to me known to be the person in and who executed the foregoing instrument as free act and deed for the purposes herein contained.

Joanna R. Formosa
Notary Public

My Commission Expires:

04/25/19



Lilian Guadelupe Houseton, Defendant

Date: _____

STATE OF TENNESSEE

COUNTY OF SHELBY

On this ____ day of _____, 2017, before me, a notary public in and for the state and county noted above, duly qualified and commissioned, personally appeared Lilian Guadelupe Houseton, to me known to be the person in and who executed the foregoing instrument as free act and deed for the purposes herein contained.

My Commission Expires:

Notary Public

COPY

STATE OF TENNESSEE	COURT <i>(Must be completed)</i>	SHELBY COUNTY <i>(Must be completed)</i>
PERMANENT PARENTING PLAN ORDER <input type="checkbox"/> PROPOSED <input checked="" type="checkbox"/> AGREED <input type="checkbox"/> ORDERED BY THE COURT		FILE NO. _____ DIVISION _____
PLAINTIFF <i>(Name: First, Middle, Last)</i> FRANK TYRONE HOUSETON, SR. <input type="checkbox"/> Mother <input checked="" type="checkbox"/> Father	DEFENDANT <i>(Name: First, Middle, Last)</i> <i>Guadalupe</i> LILIAN GAUDELUPE-HOuseton <input checked="" type="checkbox"/> Mother <input type="checkbox"/> Father	

The mother and father will behave with each other and each child so as to provide a loving, stable, consistent and nurturing relationship with the child even though they are divorced. They will not speak badly of each other or the members of the family of the other parent. They will encourage each child to continue to love the other parent and be comfortable in both families.

This plan is a new plan.
 modifies an existing Parenting Plan dated Type Date .
 modifies an existing Order dated Type Date.

Child's Name	Date of Birth
FRANK TYRONE HOUSETON, JR.	05/05/2001

I. RESIDENTIAL PARENTING SCHEDULE

A. RESIDENTIAL TIME WITH EACH PARENT

The Primary Residential Parent is Father, Frank Tyrone Houseton, Sr. *both parents*

Under the schedule set forth below, each parent will spend the following number of days with the children:

Mother 182.5 days Father 182.5 days.

B. DAY-TO-DAY SCHEDULE

The mother father shall have responsibility for the care of the child or children except at the following times when the other parent shall have responsibility:

From Friday at 6:00 p.m. to Friday at 6:00 p.m.

every week every other week other: _____.

The other parent shall also have responsibility for the care of the child or children at the additional parenting times specified below:

From _____ to _____

every week every other week other: _____.

This parenting schedule begins _____ or date of the Court's Order.

C. HOLIDAY SCHEDULE AND OTHER SCHOOL FREE DAYS

Indicate if child or children will be with parent in ODD or EVEN numbered years or EVERY year:

	MOTHER	FATHER
New Year's Day	_____	_____
Martin Luther King Day	_____	_____
Presidents' Day	_____	_____
Easter Day (unless otherwise coinciding with Spring Vacation)	_____	_____
Passover Day (unless otherwise coinciding with Spring Vacation)	_____	_____
Mother's Day	Every	_____
Memorial Day (if no school)	_____	_____
Father's Day	_____	Every
July 4 th	_____	_____
Labor Day	_____	_____
Halloween	_____	_____
Thanksgiving Day & Friday	_____	_____
Children's Birthdays	_____	_____
Other School-Free Days	_____	_____
Mother's Birthday	Every	None
Father's Birthday	None	Every
Other: Enter Any Other Special Days	_____	_____

A holiday shall begin at 6:00 p.m. on the night preceding the holiday and end at 6:00 p.m. the night of the holiday, unless otherwise noted here _____.

D. FALL VACATION (If applicable)

The day to day schedule shall apply except as follows _____ beginning _____.

E. WINTER (CHRISTMAS) VACATION

The mother father shall have the child or children for the first period from the day and time school is dismissed until December 25_ at noon a.m. p.m. in odd-numbered years in even-numbered years every year. The other parent will have the child or children for the second period from the day and time indicated above until 6:00 p.m. on the evening before school resumes. The parties shall alternate the first and second periods each year.

Other agreement of the parents: _____

F. SPRING VACATION (If applicable)

The day-to-day schedule shall apply except as follows _____ beginning _____.

G. SUMMER VACATION

The day-to-day schedule shall apply except as follows: _____ beginning _____.
Is written notice required? Yes No. If so, _____ number of days.

H. TRANSPORTATION ARRANGEMENTS

The place of meeting for the exchange of the child or children shall be Father's residence.
Payment of long distance transportation costs (if applicable): mother father both equally.

Other arrangements: _____

If a parent does not possess a valid driver's license, he or she must make reasonable transportation arrangements to protect the child or children while in the care of that parent.

I. SUPERVISION OF PARENTING TIME (If applicable)

Check if applicable

Supervised parenting time shall apply during the day-to-day schedule as follows:

- Place: _____
- Person or organization supervising: _____
- Responsibility for cost, if any: mother father both equally.

J. OTHER

The following special provisions apply:

II. DECISION-MAKING

A. DAY-TO-DAY DECISIONS

Each parent shall make decisions regarding the day-to-day care of a child while the child is residing with that parent, including any emergency decisions affecting the health or safety of a child.

B. MAJOR DECISIONS

Major decisions regarding each child shall be made as follows:

- | | | | |
|----------------------------|---------------------------------|---------------------------------|---|
| Educational decisions | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input checked="" type="checkbox"/> joint |
| Non-emergency health care | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input checked="" type="checkbox"/> joint |
| Religious upbringing | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input checked="" type="checkbox"/> joint |
| Extracurricular activities | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input checked="" type="checkbox"/> joint |
| Tie Breaker | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input type="checkbox"/> joint |

III. FINANCIAL SUPPORT

A. CHILD SUPPORT

Father's gross monthly income is \$ 1,990.00.

Mother's gross monthly income is \$ 2,100.00.

1. The final child support order is as follows:
a. The mother father shall pay to the other parent as regular child support the sum of \$9.00 weekly monthly twice per month every two weeks. **The Child Support Worksheet shall be attached to this Order as an Exhibit.***

If this is a deviation from the Child Support Guidelines, explain why: _____

2. Retroactive Support: A judgment is hereby awarded in the amount of \$_____ to mother father against the child support payor representing retroactive support required under Section 1240-2-4.06 of the D.H.S. Income Shares Child Support Guidelines dating from _____ which shall be paid (including pre/post judgment interest) at the rate of \$_____ per week month twice per month every two weeks until the judgment is paid in full.

3. Payments shall begin on the _____ day of _____, 20_____.

This support shall be paid:

- directly to the other parent.
 to the Central Child Support Receipting Unit, P. O. Box 305200, Nashville, Tennessee 37229, and sent from there to the other parent at:_____.
A Wage Assignment Order is attached to this Parenting Plan
 by direct deposit to the other parent at _____ Bank for deposit in account no. _____.
 income assignment not required; Explanation:_____
 other:_____.

The parents acknowledge that court approval must be obtained before child support can be reduced or modified.

*Child Support Worksheet can be found on DHS website at <http://www.state.tn.us/humanserv/is/isdocuments.html> or at your local child support offices.

B. FEDERAL INCOME TAX EXEMPTION*¹

The mother father is the parent receiving child support.

The Mother shall claim the following children: Frank Tyrone Houseton, Jr.

The Father shall claim the following children: Frank Tyrone Houseton, Jr.

The mother father may claim the exemptions for the child or children so long as child support payments are current by the claiming parent on January 15 of the year when the return is due. The exemptions may be claimed in: alternate years starting 2017 each year other: The Mother may claim in even numbered years and Father may claim in odd numbered years.

The mother father will furnish IRS Form 8332 to the parent entitled to the exemption by February 15 of the year the tax return is due.

*NOTE: The child support schedule assumptions in the guidelines (1240-2-4-.03 (6)(b)) assume that the parent receiving the child support will get the tax exemptions for the child.

C. PROOF OF INCOME AND WORK-RELATED CHILD CARE EXPENSES

Each parent shall send proof of income to the other parent for the prior calendar year as follows:

- IRS Forms W-2 and 1099 shall be sent to the other parent on or before February 15.
- A copy of his or her federal income tax return shall be sent to the other parent on or before April 15 or any later date when it is due because of an extension of time for filing.
- The completed form required by the Department of Human Services shall be sent to the Department on or before the date the federal income tax return is due by the parent paying child support. *This requirement applies only if a parent is receiving benefits from the Department for a child.*

The parent paying work-related child care expenses shall send proof of expenses to the other parent for the prior calendar year and an estimate for the next calendar year, on or before February 15.

D. HEALTH AND DENTAL INSURANCE

Reasonable health insurance on the child or children will be:

- maintained by the mother
- maintained by the father
- maintained by both

Proof of continuing coverage shall be furnished to the other parent annually or as coverage changes. The parent maintaining coverage shall authorize the other parent to consult with the insurance carrier regarding the coverage in effect.

Uncovered reasonable and necessary medical expenses, which may include but is not limited to, deductibles or co-payments, eyeglasses, contact lens, routine annual physicals, and counseling will be paid by mother father pro rata in accordance with their incomes. After insurance has paid its portion, the parent receiving the bill will send it to the other parent within ten days. The other parent will pay his or her share within 30 days of receipt of the bill.

If available through work, the mother father shall maintain dental, orthodontic, and optical insurance on the minor child or children.

E. LIFE INSURANCE

If agreed upon by the parties, the mother father both shall insure his/her own life in the minimum amount of \$100,000.00 by whole life or term insurance. Until the child support obligation has been completed, each policy shall name the child/children as sole irrevocable primary beneficiary, with: the other parent other _____, as trustee for the benefit of the child(ren), to serve without bond or accounting.

IV. PRIMARY RESIDENTIAL PARENT (CUSTODIAN) FOR OTHER LEGAL PURPOSES

The child or children are scheduled to reside the majority of the time with the mother father. This parent is designated as the primary residential parent also known as the custodian, **SOLELY** for purposes of any other applicable state and federal laws. If the parents are listed in Section II as joint decision-makers, then, for purposes of obtaining health or other insurance, they shall be considered to be joint custodians. THIS

DESIGNATION DOES NOT AFFECT EITHER PARENT'S RIGHTS OR RESPONSIBILITIES UNDER THIS PARENTING PLAN.

V. DISAGREEMENTS OR MODIFICATION OF PLAN

Should the parents disagree about this Parenting Plan or wish to modify it, they must make a good faith effort to resolve the issue by the process selected below before returning to Court. *Except for financial support issues including child support, health and dental insurance, uncovered medical and dental expenses, and life insurance*, disputes must be submitted to:

- Mediation by a neutral party chosen by the parents or the Court.
- Arbitration by a neutral party selected by parents or the Court.
- The Court DUE TO ORDER OF PROTECTION OR RESTRICTIONS.

The costs of this process may be determined by the alternative dispute process or may be assessed by the Court based upon the incomes of the parents. It must be commenced by notifying the other parent and the Court by written request certified mail other: _____

In the dispute resolution process:

- A. Preference shall be given to carrying out this Parenting Plan.
- B. The parents shall use the process to resolve disputes relating to implementation of the Plan.
- C. A written record shall be prepared of any agreement reached, and it shall be provided to each parent.
- D. If the Court finds that a parent willfully failed to appear without good reason, the Court, upon motion, may award attorney fees and financial sanctions to the prevailing parent.

VI. RIGHTS OF PARENTS

Under T.C.A. § 36-6-101 of Tennessee law, both parents are entitled to the following rights:

- (1) The right to unimpeded telephone conversations with the child at least twice a week at reasonable times and for reasonable durations. The parent exercising parenting time shall furnish the other parent with a telephone number where the child may be reached at the days and time specified in a parenting plan or other court order or, where days and times are not specified, at reasonable times;
- (2) The right to send mail to the child which the other parent shall not destroy, deface, open or censor. The parent exercising parenting time shall deliver all letters, packages and other material sent to the child by the other parent as soon as received and shall not interfere with their delivery in any way, unless otherwise provided by law or court order;
- (3) The right to receive notice and relevant information as soon as practicable but within twenty-four (24) hours of any hospitalization, major illness or injury, or death of the child. The parent exercising parenting time when such event occurs shall notify the other parent of the event and shall provide all relevant healthcare providers with the contact information for the other parent;

- (4) The right to receive directly from the child's school any educational records customarily made available to parents. Upon request from one parent, the parent enrolling the child in school shall provide to the other parent as soon as available each academic year the name, address, telephone number and other contact information for the school. In the case of children who are being homeschooled, the parent providing the homeschooling shall advise the other parent of this fact along with the contact information of any sponsoring entity or other entity involved in the child's education, including access to any individual student records or grades available online. The school or homeschooling entity shall be responsible, upon request, to provide to each parent records customarily made available to parents. The school may require a written request which includes a current mailing address and may further require payment of the reasonable costs of duplicating such records. These records include copies of the child's report cards, attendance records, names of teachers, class schedules, and standardized test scores;
- (5) Unless otherwise provided by law, the right to receive copies of the child's medical, health or other treatment records directly from the treating physician or healthcare provider. Upon request from one parent, the parent who has arranged for such treatment or health care shall provide to the other parent the name, address, telephone number and other contact information of the physician or healthcare provider. The keeper of the records may require a written request including a current mailing address and may further require payment of the reasonable costs of duplicating such records. No person who receives the mailing address of a requesting parent as a result of this requirement shall provide such address to the other parent or a third person;
- (6) The right to be free of unwarranted derogatory remarks made about such parent or such parent's family by the other parent to or in the presence of the child;
- (7) The right to be given at least forty-eight (48) hours notice, whenever possible, of all extracurricular school, athletic, church activities and other activities as to which parental participation or observation would be appropriate, and the opportunity to participate in or observe them. The parent who has enrolled the child in each such activity shall advise the other parent of the activity and provide contact information for the person responsible for its scheduling so that the other parent may make arrangements to participate or observe whenever possible, unless otherwise provided by law or court order;
- (8) The right to receive from the other parent, in the event the other parent leaves the state with the minor child or children for more than forty-eight (48) hours, an itinerary which shall include the planned dates of departure and return, the intended destinations and mode of travel and telephone numbers. The parent traveling with the child or children shall provide this information to the other parent so as to give that parent reasonable notice; and
- (9) The right to access and participation in the child's education on the same bases that are provided to all parents including the right of access to the child during lunch and other school activities; provided, that the participation or access is

legal and reasonable; however, access must not interfere with the school's day-to-day operations or with the child's educational schedule.

VII. NOTICE REGARDING PARENTAL RELOCATION

The Tennessee statute (T.C.A. § 36-6-108) which governs the notice to be given in connection with the relocation of a parent reads in pertinent part as follows:

After custody or co-parenting has been established by the entry of a permanent parenting plan or final order, if a parent who is spending intervals of time with a child desires to relocate outside the state or more than fifty (50) miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail. Unless excused by the court for exigent circumstances, the notice shall be mailed not later than sixty (60) days prior to the move. The notice shall contain the following:

- (1) Statement of intent to move;
- (2) Location of proposed new residence;
- (3) Reasons for proposed relocation; and
- (4) Statement that the other parent may file a petition in opposition to the move within thirty (30) days of receipt of the notice.

VIII. PARENT EDUCATION CLASS

This requirement has been fulfilled by both parents mother father neither.

Failure to attend the parent education class within 60 days of this order is punishable by contempt.

Under penalty of perjury, we declare that this plan has been proposed in good faith and is in the best interest of each minor child and that the statements herein and on the attached child support worksheets are true and correct. (A notary public is required if this is a proposed plan by one parent rather than one agreed by both parents.)

Mother Date and Place Signed

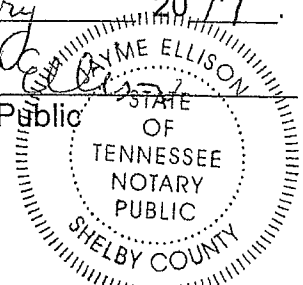
Sworn to and subscribed before me this _____ day of _____, 20_____.

My commission expires: _____ Notary Public

Frank H. Hovatt _____ 1-24-17 Memphis TN
Father Date and Place Signed

Sworn to and subscribed before me this 24th day of January, 2017.

My commission expires: ~~SEPTEMBER 03, 2018~~
MY COMMISSION EXPIRES

Jayne Ellison
Notary Public


APPROVED FOR ENTRY:

Attorney for Mother

Address

Address

Phone and BPR Number

WILLIAM A. COHN, The Cohn Law Firm

Attorney for Father

291 Germantown Bend Cove

Address

Cordova, TN 38018

Address

901-757-5557/TN Supreme Ct No. 5873

Phone and BPR Number

Note: The judge or chancellor may sign below or, instead, sign a Final Decree or a separate Order incorporating this plan.

COURT COSTS (If applicable)

Court costs, if any, are taxed as follows:

_____.

It is so ORDERED this the _____ day of _____, _____.

Judge or Chancellor

State of Tennessee - Child Support Worksheet

Part I. Identification

Indicate the status of each parent or caretaker by placing an "X" in the appropriate column	Name of Mother:	LILIAN GAUDELUPE HOUSETON	PRP	ARP	SPLIT
	Name of Father:	FRANK TYRONE HOUSETON, SR	X	X	
	Name of non-parent Caretaker:				
	TCSSES case #:				
	Docket #:				
	Court name:				

Name(s) of Child(ren)	Date of Birth	Days with Mother	Days with Father	Days with Caretaker
FRANK TYRONE HOUSETON,	05/05/2001	182.5	182.5	

Part II. Adjusted Gross Income

	Mother / Column A	Father / Column B	Nonparent Caretaker \ Column C
1 Monthly Gross Income	\$ 2100.00	\$ 1990.00	
1a Federal Benefit for child	+ 0.00	+ 0.00	
1b Self-employment tax paid	- 0.00	- 0.00	
1c Subtotal	\$ 2100.00	\$ 1990.00	
1d Credit for in-home children	- 0.00	- 0.00	
1e Credit for not-in-home children	- 0.00	- 0.00	
2 Adjusted Gross Income (AGI)	\$ 2100.00	\$ 1990.00	
2a Combined Adjusted Gross Income	\$ 4090.00		
3 Percentage Share of Income (PI)	51 %	49 %	

Part III. Parents' Share of BCSO

4 BCSO allotted to primary parent's household	\$ 756.00	\$ 0.00	\$ 0.00
4a Share of BCSO owed to primary parent	\$ 0.00	\$ 370.44	
5 Each parent's average parenting time	N/A	182.5	
6 Parenting time adjustment	\$ N/A	\$ -385.56	
7 Adjusted BCSO	\$ 15.12	\$ 0.00	

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Part IV. Additional Expenses

	Mother / Column A	Father / Column B	Nonparent Caretaker / Column C
8a Children's portion of health insurance premium	\$ 50.00	\$ 0.00	\$ 0.00
8b Recurring uninsured medical expenses	\$ 0.00	\$ 0.00	\$ 0.00
8c Work-related childcare	\$ 0.00	\$ 0.00	\$ 0.00
9 Total additional expenses	\$ 50.00	\$ 0.00	\$ 0.00
10 Share of additional expenses owed	\$ 0.00	\$ 24.50	
11 Adjusted Support Obligation (ASO)	\$ 15.12	\$ 24.50	

Part V. Presumptive Child Support Order

	OBLIGATION	
12 Presumptive Child Support Order (PCSO)	\$ 0.00	\$ 9.00

* Enter the difference between the greater and smaller numbers from Line 11 except in non-parent caretaker situations.

Low Income? N (N=15% Y=7.5%)
 Current Order Flat %? N (N/Y)

Modification of Current Child Support Order	13a Current child support order amount for the payor parent	\$ 0.00	\$ 0.00
	13b Amount required for significant variance to exist	\$ 0.00	\$ 0.00
	13c Actual variance between current and presumptive child support orders	\$ 0.00	\$ 0.00

Part VI. Deviations and FCSO

Deviations must be substantiated by written findings in the Child Support Order	14 Deviations (Specify):	\$ 0.00	\$ 0.00
---	--------------------------	---------	---------

15 Final Child Support Order (FCSO)	\$ 0.00	\$ 9.00
16 FCSO adjusted for Federal benefit, Line 1a, Obligor's column	\$ 0.00	\$ 9.00

State of Tennessee - Credit Worksheet

Part I. Identification

		PRP	ARP	SPLIT
Indicate the status of each parent or caretaker by placing an "X" in the appropriate column	Name of Mother:	X		
	Name of Father:		X	
	Name of non-parent Caretaker:			
	TCSSES case #:			
	Docket #:			
	Court name:			

Part II. Additional Children

If a parent is claiming more than five children on line 3 or line 7, use the Additional Credit sheet to list information for each child.

Mother	Father
--------	--------

Parent Income Information

1 Applicable gross income for credit worksheet	\$ 2100.00	\$ 1990.00
---	------------	------------

In-Home Children 2 Below, list qualified children living in the parent's home (if none, skip to line 7):

Name(s) of Child(ren) for Mother	Date of Birth	Name(s) of Child(ren) for Father	Date of Birth

3 Number of qualified children living in the parent's home	# 0	# 0
4 Theoretical child support order (this parent's income on CS Schedule for number of children from line 3)	\$ 0.00	\$ 0.00
5 75% of theoretical child support order from line 4	\$ 0.00	\$ 0.00

Not-In-Home-Children 6 Below, list qualified children not living in the parent's home:

Name(s) of Child(ren) for Mother	Date of Birth	Name(s) of Child(ren) for Father	Date of Birth

7 Number of qualified children not living in the parent's home	# 0	# 0
8 Average documented monetary support over last 12 months	\$ 0.00	\$ 0.00
9 Theoretical child support order (this parent's income on CS Schedule for number of children from line 7)	\$ 0.00	\$ 0.00
10a 75% of theoretical child support order from line 9	\$ 0.00	\$ 0.00
10b Allowable credit for not-in-home children	\$ 0.00	\$ 0.00

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Other Children (Continued from Credit Worksheet)

In- Home Children Below, list additional qualified children living in the parent's home:

Name(s) of Child(ren) for Mother	Date of Birth	Name(s) of Child(ren) for Father	Date of Birth

Not-In- Home Children Below, list additional qualified children not living in the parent's home:

Name(s) of Child(ren) for Mother	Date of Birth	Name(s) of Child(ren) for Father	Date of Birth

```

ISSS - Income Shares Summary Screen
DECSSXXX      _      Inquire      Add      Update      00:00:00
XXXXXXXX      CSES - INCOME SHARES SUMMARY SCREEN (ISSS)      00-00-0000

CASE ID      TYPE      X / X      STATUS A      CLASS XXX /      ? / ?
NCP      XXXXXXXXXXXXXXXX      ID 000000000      RTD      XX      OFFICE 000
CP      XXXXXXXXXXXXXXXX      ID 000000000      RTD      XX      USERID XXXXXXXX
DOCKET      # OF CHILDREN FOR THIS ORDER      1      NOTEPAD N
+
PARENTING TYPE ST - STANDARD PARENTING      WORKSHEET DATE      01/19/2017
MORE +
PI MOTHER 51%      PI FATHER 49%      MOTHER      FATHER      NP CTAKER
0      182.5
EACH PARENT'S AVERAGE PARENTING TIME
GROSS INCOME SUBTOTAL      LOWINCOME N (Y/N)      2100.00      1990.00
CREDIT FOR CHILDREN      0.00      0.00
CHILDREN'S PORTION INS      50.00      0.00      0.00
RECURRING MEDICAL      0.00      0.00      0.00
(P / N / B)
CHILDCARE      0.00      0.00      0.00
PCSO      0.00      9.00
DEVIATION 0.00      SSA BENEFIT 0.00
FCSO 9.00      OBLIGEE CHANGE (Y/N)      SV Y (Y/N)

AA539 - 1 : Successful INQUIRE.
COMMAND ==>

1 = HELP 3 = EXIT 4 = PROMPT 5 = CLER 6 = NOTE 7 = BKWD 8 = FRWD 11 = ORDR 12 = ISCS 13 = ANRF
    
```

ISCS - Income Shares Children Screen

O/C	Name	DOB	IN Home	PRP/ARP
-----	------	-----	---------	---------

O FRANK TYRONE HOUSETON, JR

05/05/2001

1



BOARD OF PROFESSIONAL RESPONSIBILITY
of the
SUPREME COURT OF TENNESSEE

SANDY L. GARRETT
CHIEF DISCIPLINARY COUNSEL
KRISANN HODGES
DEPUTY CHIEF DISCIPLINARY COUNSEL
BEVERLY P. SHARPE
DIRECTOR OF CONSUMER ASSISTANCE
LAURA L. CHASTAIN
ETHICS COUNSEL

10 CADILLAC DRIVE, SUITE 220
BRENTWOOD, TENNESSEE 37027
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(800) 486-5714
FAX: (615) 367-2480
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KEVIN D. BALKWILL
STEVEN J. CHRISTOPHER
ALAN D. JOHNSON
WILLIAM C. MOODY
M. PRESTON SHIPP
EILEEN BURKHALTER SMITH
A. RUSSELL WILLIS
DISCIPLINARY COUNSEL

March 15, 2017

CONFIDENTIAL

Frank Houseton
8696 Haystack Cove
Cordova, TN 38016-6192

Re: File No. 51469-9-KB
Respondent: William Allan Cohn, #005873

Dear Mr. Houseton:

Upon receipt of your complaint, we notified the attorney and asked for a response to the allegations. A copy of the attorney's response dated March 11, 2017, is enclosed.

Your written reply to the statements contained in the attorney's response within ten (10) days of your receipt of this letter is necessary. Failure to timely respond may affect the disposition of your complaint.

Sincerely,

A handwritten signature in black ink that reads "Kevin D. Balkwill".

Kevin D. Balkwill
Disciplinary Counsel
(615) 695-0943

KDB:jv
Enclosure

Exhibit B

THE COHN LAW FIRM _____

William A. Cohn*

291 Germantown Bend Cove
Cordova (Memphis), TN 38018
(901) 757-5557
Fax (901) 757-5535
Web site: www.cohnlawfirm.com
e mail: info@cohnlawfirm.com

Hillcrest/LBJ Business Ctr.
Suite 111, 12830 Hillcrest
Dallas, Texas 75230
(972) 994-9393

* licensed in Tennessee and Texas

March 11, 2017

By FAX to 615-367-2480 and by e mail to ethics@tbpr.org

Board of Professional Responsibility
ATTENTION: . Balkwill, Counsel
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

RE: Complainant: Frank Houscton, Sr.
CAP# 51469-9 KB

FAX RECEIVED

MAR 13 2017

8:45 AM

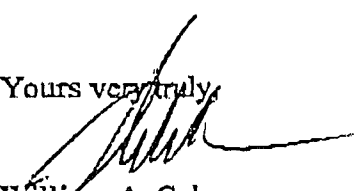
BOARD OF PROFESSIONAL RESPONSIBILITY
SUPREME COURT OF TENNESSEE

Dear Balkwill:

- 1) The Complaint is an absolute lie and the documents that you forwarded to me clearly demonstrate that if you had bothered to read them.
- 2) Complainant came to my office. He wanted a divorce. He had a minor child. He was given the information sheet and *told* that he *had to include* his child. He was explained the costs, expenses, and fees to file both an agreed divorce and a default divorce.
(See circled items on Information Sheet which you forwarded).
(Also See circled Section E "Requirements and Procedures" on Information Sheet which you forwarded).
All of our documents clearly give notice and explain and support all of our procedures, charges, and policies, and all of same are appropriate. We have complete disclosure, had you bothered to read it. The same is on the internet.
- 3) His *wife* would *not* sign. She wanted changes to the Permanent Parenting Plan. He came to the office and it was *reiterated* what was required to proceed.
- 4) He later came in and advised that he would proceed at a later date and that he wanted his money back..
- 5) Since he changed the nature of the representation and the contract, we sent him a list of our time on a quantum meruit basis (hourly), which is the appropriate way to address a change in the terms of the contract.. That amount exceeded what he had paid us. In a cover letter, we so advised and stated that we would not charge him additionally, nor try to collect the overage which he had incurred. (See letter that you forwarded).

- 6) He came back in and created a scene, most saliently stating that he had instructed me not to include the child in the divorce. I instructed him that he HAD been instructed that the divorce HAD to have the child included by state law. He called me a liar. I pointed to the documents which had been discussed and advised him that I would never have agreed to leave out the child. He again called me a liar. I told him that I am not going to argue with him, that he is not going to impugn my ability and integrity, and that he was leave my office immediately. He continued to argue on the way out and I stood up and went up to him and told him to get out of my office. I never bumped him at all. He's lucky that I didn't deck him. I was ready to do so.
- 7) As he left the office, he stated that he should never have told me about the child, which tells you about his credibility.
- 8) He then left the office and then filed this false complaint.
- 9) I am surprised that you allowed such a false claim to be processed when the very evidence that you have clearly shows the falsity of the claim. You really need to spend more time in the office and do your job adequately, as you did not in this case.

Yours very truly,



William A. Cohn
WAC/s



BOARD OF PROFESSIONAL RESPONSIBILITY
of the
SUPREME COURT OF TENNESSEE

SANDY L. GARRETT
CHIEF DISCIPLINARY COUNSEL
KRISANN HODGES
DEPUTY CHIEF DISCIPLINARY COUNSEL
BEVERLY P. SHARPE
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A. RUSSELL WILLIS
DISCIPLINARY COUNSEL

March 27, 2017

CONFIDENTIAL

William Allan Cohn, #005873
291 Germantown Bend Cove
Cordova, TN 38018-7238

Re: File No. 51469-9-KB
Complainant: Frank Houseton

Dear Mr. Cohn:

Enclosed is a copy of Mr. Houseton's most recent correspondence, dated March 21, 2017, for your response within ten (10) days of your receipt of this letter. If you feel no response is necessary, then indicate that in writing within ten (10) days.

Sincerely,

A handwritten signature in black ink that reads "Kevin D. Balkwill".

Kevin D. Balkwill
Disciplinary Counsel
(615) 695-0943

KDB:jv
Enclosure

Exhibit C

RECEIVED

MAR 23 2017

BOARD OF PROFESSIONAL
REGULATORS

3-21-17

Re: File No. 31469-9-KB
Respondent William Allan Cohn
#005812

I FRANK HOUSETON went to Mr Cohn office, The frist thing I said to him was, Me and my wife had TALK IT over And we would get A divorce, but THAT we would not put my son in it, because we would be liveing in the same house UNTILL he get 18. And off to college, Like his s/ster did, then we would seal the house, And go our own ways.

If he had told me THAT, I could not do it THAT way, I would have left.

No he told me to put down some money And the I would have to pay it ALL befor he could get the divores, So I put down 500⁰⁰ And came back later and paid 1300⁰⁰ Thinking I am getting A divorce, without my son in it.

When I see what he had his secretary, had worn up, I was still think it was the way to do it.

But when my wife went in they told her to sign the House over to me, No they was NOT the way I would it.

This is ALL TRUE. I wil TAKE ANY Polygraph Test

I went back in And Ask him why, He put my son in it he SAID THAT IS THE LAW, conin if he had told me That the first Time, This All would not have happen He got my \$1800 ~~32~~ And I do not have A divorce.

Then he said he would give me a divorce, in Two years. for free

When I went back in the last Time I seat down, He said that, any more work that he did I would have to pay him, I said no I paid you, Then he jump over me hallowing get out THAT I Am not going to impugn his ability and integrity.

I got up and started out of his office he came up behind me fast, when I turn He put up All Ten finger And push me in the upper chest. I told him do not put your hand on me Again, Then I left I did go to the police, they told me to call your office I Am A -Ordination Deacon-Baptist - 1994 I do not created a scene or call no one A liar

I pray for Mr Cohn

PS I Am 74 And do not know the Law on divorce, Now I
or 120012 017

Frank
Cohn



BOARD OF PROFESSIONAL RESPONSIBILITY
of the
SUPREME COURT OF TENNESSEE

SANDY L. GARRETT
CHIEF DISCIPLINARY COUNSEL
KRISANN HODGES
DEPUTY CHIEF DISCIPLINARY COUNSEL
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A. RUSSELL WILLIS
DISCIPLINARY COUNSEL

April 6, 2017

CONFIDENTIAL

Frank Houseton
8696 Haystack Cove
Cordova, TN 38016-6192

Re: File No. 51469-9-KB
Respondent: William Allan Cohn, #005873

Dear Mr. Houseton:

Enclosed is a copy of Mr. Cohn's most recent correspondence, dated April 3, 2017, for your response within ten (10) days of your receipt of this letter. If you feel no response is necessary, then indicate that in writing within ten (10) days.

Sincerely,

A handwritten signature in black ink that reads "Kevin D. Balkwill".

Kevin D. Balkwill
Disciplinary Counsel
(615) 695-0943

KDB:jv
Enclosure

Exhibit D

THE COHN LAW FIRM

William A. Cohn*

291 Germantown Bend Cove
Cordova (Memphis), TN 38018
(901) 757-5557
Fax (901) 757-5535
Web site: www.cohnlawfirm.com
e mail: info@cohnlawfirm.com

Hillcrest/LBJ Business Ctr.
Suite 111, 12830 Hillcrest
Dallas, Texas 75230
(972) 994-9393

* licensed in Tennessee and Texas

April 3, 2017

By FAX to 615-367-2480 and by e mail to ethics@fbpr.org

Board of Professional Responsibility
ATTENTION: . Balkwill, Counsel
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

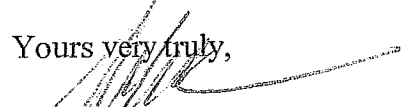
RE: Complainant: Frank Houseton, Sr.
CAP# 51469-9 KB

RECEIVED
APR 06 2017
BOARD OF PROFESSIONAL
RESPONSIBILITY

Dear Balkwill:

- 1) Anytime someone says that they are something in the Church to justify their position, it is clear that they are lying. I have handled many cases where church officials were lying.
- 2) It is an absolute lie that I told him to give me any money. I told him the same thing I tell every other divorce. I show them on my Information Sheet exactly what the costs are and for what he is paying . We disclose everything. You can see from the Information Sheet *which he submitted* where *I circled exactly* for what he was paying . *He knew* that he was paying for a child. I never tell anyone to give me money. I tell them that when they get ready, they can drop a payment off and we will begin work. I tell them, as I did him, that the balance must be paid before we will file it, and I always tell them "so that we will have money to pay to the Court Clerk."(See circled items on Information Sheet which you forwarded).
- 3) I never touched him. I did get up and face him face to face. I did tell him to get out of my office. I actually controlled myself pretty well. I am not going to tolerate such unfounded accusations in my office, and his clear intent was to convince other people in my office that he was being mistreated. Those people are going to hear the truth, not just what he wants to make up. My next step would have been to call the police.
- 4) You can see why his wife wants a divorce.

Yours very truly,


William A. Cohn



BOARD OF PROFESSIONAL RESPONSIBILITY
of the
SUPREME COURT OF TENNESSEE

SANDY L. GARRETT
CHIEF DISCIPLINARY COUNSEL
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A. RUSSELL WILLIS
DISCIPLINARY COUNSEL

April 18, 2017

CONFIDENTIAL

William Allan Cohn, #005873
291 Germantown Bend Cove
Cordova, TN 38018-7238

Re: File No. 51469-9-KB
Complainant: Frank Houseton

Dear Mr. Cohn:

Enclosed is a copy of Mr. Houseton's most recent correspondence, dated April 11, 2017, for your response within ten (10) days of your receipt of this letter. If you feel no response is necessary, then indicate that in writing within ten (10) days.

Sincerely,

A handwritten signature in black ink that reads "Kevin D. Balkwill".

Kevin D. Balkwill
Disciplinary Counsel
(615) 695-0943

KDB:jv
Enclosure

Exhibit E

4-11-17

Board of professional responsibility REF#51469-9-KB

Once again when I first went to see MR William Cohn I told him that my wife and I have agreed to get a divorce but wish to remain in the same household until our son turned 18 years of age and that I did not want my son involved however at that time he did not inform me that couldn't be done that way by law, instead he proceeded writing his notes and ask me to bring my wife and child birthdates and ss numbers we never did discuss a total he ask for money down I paid \$500 next visit I made to his office his secretary ask for the remaining balance of \$1300 I ask for what she said that's what you owe by that time he have written all the contracts with so that we never discuss only then he lets me that by law it couldn't be done with the child involved a quitclaim deed for my wife to sign the house to me was never discuss, for me to have custody of my son and my wife just have visitation of our son was never discuss, for my wife to paid child support was never discuss and of course when my wife see this she is not going to sign and then I go back to him to change things he want more money but I don't want to paid anymore and because he was doing things his own way. MR COHN is the attorney he knows the law so he should have told me the legal and nonlegal parts of the matter that was ALL I EXPECTED. EVERYTHING I SAID IS TRUE I WOULD TAKE A POLYGRAPH TEST ANYTIME WILL HE? I have a pacemaker when he push me on my chest he could possibly disrupted my leads that could be verify by my cardiologist DR CLARO DIAZ 901-382-0397.

Frank J. Houette

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APR 17 2017
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RESPONSIBILITY



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A. RUSSELL WILLIS
DISCIPLINARY COUNSEL

April 18, 2017

CONFIDENTIAL.

William Allan Cohn, #005873
291 Germantown Bend Cove
Cordova, TN 38018-7238

Re: File No. 51469-9-KB
Complainant: Frank Houseton

Dear Mr. Cohn:

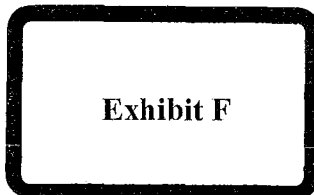
Enclosed is a copy of Mr. Houseton's most recent correspondence, dated April 11, 2017, for your response within ten (10) days of your receipt of this letter. If you feel no response is necessary, then indicate that in writing within ten (10) days.

Sincerely,

Kevin D. Balkwill
Disciplinary Counsel
(615) 695-0943

KDB:jv
Enclosure

*I REST ON MY
PRIOR RESPONSES*



FAX RECEIVED

APR 27 2017

1:00 (EB)

BOARD OF PROFESSIONAL RESPONSIBILITY
SUPREME COURT OF TENNESSEE



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SUPREME COURT OF TENNESSEE

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EILEEN BURKHALTER SMITH
A. RUSSELL WILLIS
DISCIPLINARY COUNSEL

October 5, 2017

CONFIDENTIAL

William Allan Cohn, #5873
291 Germantown Bend Cove
Cordova, TN 38018-7238

Re: File No. 51469-9-KB
Complainant: Frank Houseton

Dear Mr. Cohn:

Please provide me with a copy of your written retainer agreement with Mr. Houseton. If you did not enter into a written agreement signed by Mr. Houseton, please advise whether your fees were placed into your trust account and provide supporting documentation.

Also, if you did not have a written retainer agreement signed by Mr. Houseton, what authority did you have to itemize your time at the rate of \$275.00 per hour?

Please respond within ten (10) days of your receipt of this letter.

Sincerely,

Kevin D. Balkwill
Disciplinary Counsel
(615) 695-0943

KDB:kmlh

10/11/17
SEE ATTACHED.
MARKINGS WERE MADE WHILE
EXPLAINING CONTRACT TO CLIENT BEFORE
SIGNING. AS IS USUAL PRACTICE. IF CLIENT
BREACHES CONTRACT, WE
PROCEED ON
QUANTUM MERUIT.

FAX RECEIVED

OCT 11 2017

BOARD OF PROFESSIONAL RESPONSIBILITY
SUPREME COURT OF TENNESSEE

7135A

Exhibit G



**THE
COHN
LAW FIRM**

1000 Department of Social Services
 4000 N. Central Expressway
 Raleigh, NC 27609
 Telephone: 919.733.7337

Divorce

THERE ARE TWO TYPES OF DIVORCE.

1) UNCONTESTED DIVORCE

COSTS:

\$495.00* for Irreconcilable Difference (no fault) or other grounds divorce with no children
 Uncontested Divorce

\$495.00* for all other divorce with children Uncontested Divorces

(*Includes filing fees, check handling fee, photocopying, and some court costs)

PLUS: Publication fee (if needed): \$75.00 PLUS

FEES:

**\$695.00 simple: One office consultation; 1MDA; 1 Court appearance; no children; no real property;
 no retirement;**

Each additional consultation is \$150.00 payable in ADVANCE,

**Each real estate inclusion is an additional \$125.00 for each piece of property. This includes a
 recording fee of \$25 to the Registrar.**

Children require an additional \$500.00.

Divorce by Publication or by Default Judgment is an additional \$450.00.

**Composition and entry with the Court of Qualified Domestic Relations Orders (QDRO's) for
 division of retirement plans are an additional \$750.00.**

**For divorces to be typed and ready to sign prior to (before) 10 days, is an additional charge of
 \$950.00.**

**Paralegal and secretarial time which is not typing or intimately related to the above will be billed at
 the rate of \$100.00 per hour. Clerk time not intimately related to the above will be \$50.00 per hour.**

*******Additional Court appearances are an additional \$250.00 per appearance, PAID IN ADVANCE
 (if YOU miss your hearing). If it is rescheduled by us or the court, or its our fault it is not heard,
 there is NO additional charge.*******

!!! IMPORTANT !!!

****Attorney fees for uncontested divorces plus the filing fee must be paid in full before any papers for the divorce will be typed. We accept Master Card, Visa, Discover, and American Express.****

A. IT WILL TAKE APPROXIMATELY TWENTY-ONE (21) DAYS FOR YOUR PAPERS TO BE TYPED AND READY TO SIGN!

Work will **NOT** begin until **ALL** necessary information and fees are provide **BY YOU** to this law firm.

[To check the status of your uncontested divorce, please ask for our Divorce Paralegal.]

[Please do not call prior to 21 days - additional calls and time incurs additional charges.]

B. DO NOT MAKE ANY WEDDING ARRANGEMENTS UNTIL AFTER YOUR DIVORCE IS FINAL!

[We cannot control the Court's procedures. The divorce is final thirty (30) days after the Judge signs the Final Decree.]

C. You must **PROMPTLY** provide this law firm with all updated information.

[We recommend that you **DO NOT** leave town during the pendency of your divorce proceedings.]

D. If you retain us for a particular type of divorce, and you change the type of the divorce, whether it is your fault or someone else's (other than ours), you will be responsible for the **ENTIRE** new fee. For example, if you retain us to represent you in an Irreconcilable Differences Divorce, and your spouse will not sign the Agreement that we typed, and you wish to serve him or her a complaint for divorce, you will be responsible for the **ENTIRE** fee required for an original uncontested divorce with service of process.

Call 901-757-5557 for a free appointment to discuss your situation.

DEFAULT JUDGEMENTS AND PUBLICATION

Default Judgments and Publication require a witness at the Final Hearing.

ADDITIONAL COURT COSTS

The Court will send a bill for any additional Court costs incurred. If you receive this bill, you must pay it. The balance, if any, is to be paid by you.

FAILURE TO SIGN IN PERSON IN 30 DAYS

If both spouses have not signed the agreement, or one of the spouses has not returned the agreement signed within 30 days, we will close our file. To re-open the file, even on the 31st day, there is an additional fee of \$150.00. **THERE ARE NO EXCEPTIONS.** Any new work such as changing 'no fault' to 'fault' or 'grounds' will require a new original fee in full. Because of the competitive rates that we offer and because of the actual time that we expend (approximate times: initial consultation 0.50; composition and preparation of complaint 0.70, and of the marital dissolution agreement 1.70; total value of \$565.50), there will be **NO REFUNDS** of any fees paid for an uncontested divorce.

REAL ESTATE

Whether you are selling the real estate which you own or whether one spouse is conveying the

real estate to the other spouse; whether the real estate is joint (marital) property or one spouse's (separate) property, we recommend that the real property be part of the marital dissolution agreement. If we include it and, if necessary, compose a quitclaim deed for the leaving spouse to sign, it will not be necessary for you to hunt down your spouse if you later need the spouse to sign the quitclaim deed when you are trying to sell the house. We have many occasions where in order to save the small additional fee, the spouse keeping the house instructs us to place the real estate in the marital dissolution agreement. Most of the time the house was owned by that person before the marriage. Later, when the house is to be sold, the leaving spouse cannot be located or refuses to sign the quitclaim deed which the buyer's title company wants before it will issue title insurance to the proposed buyer of the real estate. Remember, the increase in value of separate property (not the value at the time of the marriage) is marital property. A leaving spouse needs to be divested of that interest because all property that is jointly owned remains jointly owned after the divorce unless the marital dissolution agreement specifically divides the property.

REQUIREMENT AND PROCEDURES

The simple uncontested divorce is for couples who have ALL issues settled and agreed upon. You will meet with an attorney to answer any questions you might have. We will give you a packet to complete which includes statistical information and a worksheet to resolve all pertinent issues. You are to complete the packet, submit it to us along with your check in full. We will type it, and the couple will sign it. We will then file it with the Court and have a hearing set. The party filing will have to appear in Court. The Judge will then approve the Marital Dissolution Agreement and sign the Final Decree of Divorce which we prepare.

Call 901-757-5557 for a free appointment to discuss your situation.

IMPORTANT

* * Attorney fees for uncontested divorces plus the filing fee must be paid in full before any papers for the divorce will be typed. We accept Master Card, Visa, Discover, and American Express.* *

You must wait 60 days (without children) and 90 days (with children) from the date of the filing of the Complaint to have your final hearing. This is applicable **ONLY** for uncontested divorces on the grounds of irreconcilable differences when a marital dissolution agreement has been signed by both parties.

In an uncontested divorce, your complaint for divorce will not be filed with the court clerk until **BOTH** Marital Dissolution Agreement **AND** the permanent Parenting Plan have been **SIGNED** by **BOTH** you **AND** your spouse.

If there is a child or children, both parents **MUST** attend a seminar on 'Understanding children in a divorce.' The court will **NOT** grant the divorce until the attendance certificates are filed with the Court Clerk, and we will **NOT** set the case for final hearing until you have given **BOTH** of the attendance certificates to our office so that we can file the attendance certificates.

Because there is a 180 day time limit from the day the marital dissolution agreement is signed until the time we can hold a hearing, we must have payment in full at the time of the filing of the divorce. We cannot extend the hearing date to allow collection of the fees. If we extended the hearing date in order to allow us to collect all the attorney fees, then the time would run and we would have to file a new divorce lawsuit or file a new marital dissolution agreement. The initial lawsuit would be dismissed.

Court appearances after one appearance for a final hearing and negotiation are billed additionally in the amount of \$250.00 each.

Talk to another attorney and talk to us.

Judge the difference.

2) CONTESTED DIVORCE

COSTS: Filing Fees of \$550.00**

PLUS:

\$5,000.00 to \$10,000 retainer to be credited against hourly fee of \$250.00 per hour; billing on a monthly basis for all work, including telephone calls, performed by the attorney. This amount is negotiable and can be adjusted based upon need.

**includes filing fees, check handling fee, & cost bond.

Call 901-757-5557 for a free appointment to discuss your situation.

GENERAL INFORMATION

Your presence for an appointment to discuss divorce indicates that you can no longer live with your spouse. We encourage you to attempt to reconcile your marriage with your spouse. However, our job is not that of a mediator or counselor to reconcile your marriage. Our job is to protect your interests and to not only obtain divorce should you so want, but to obtain the best possible terms of settlement or agreement or division of marital assets.

We recommend during this traumatic time that you speak with a clinical psychologist or psychiatrist. These professionals are Ph.D.'s or M.D.'s who are trained to help you determine what you want to do. We do not recommend any particular psychologist.

I. UNCONTESTED DIVORCE

An uncontested divorce means that all issues have been settled between the parties. It means that all questions concerning the children or all questions concerning any debts, etc. have been resolved. It means that there is no issue about which to have a hearing or trial. If you have any issue that is open (such as the amount of child support, or the amount of alimony, or when visitation will occur), then you have a contested divorce. An uncontested divorce is where you communicate the information necessary to complete a marital dissolution agreement to us and

the agreement is signed by both parties, and the grounds are irreconcilable differences (no fault); or where the spouse will not file any answer, and there is no marital dissolution agreement, you can obtain a divorce on inappropriate marital conduct, abandonment and non support, desertion, or absence from the home for two years, without the need of any hearing or trial except for the final hearing to hear your witness and grant the divorce.

If you reconcile with your spouse, or fail to show in Court, your divorce lawsuit will be dismissed. If you have a divorce where you must call a lawyer and ask him various questions about various issues after retaining the lawyer, or where terms of the marital dissolution agreement must be negotiated, then you do not have an uncontested divorce.

Call 901-757-5557 for a free appointment to discuss your situation.

II. SIMPLE DIVORCE

A 'simple' divorce means the very basic divorce - no additional work performed by the attorney. Real estate deeds, obtaining legal descriptions, parenting plans, qualified domestic relations orders for splitting retirements are additional work and the divorce is no longer simple.

III. PUBLICATION

If you have called all of the relatives and friends that you know, and cannot find your spouse, then we can serve the spouse by publication. However, you must have made diligent inquiry to find him or her. When service of process is by publication, you cannot get child support, custody, or division of marital property litigated. You can only receive a divorce.

Talk to another attorney and talk to us.

Judge the difference.

IV. CONTESTED DIVORCE

Conversely, a contested divorce has issues to resolve. In a contested divorce the lawyer gets paid by the hour for the amount of work that he does. There is no way to know what amount the divorce will ultimately cost. If there is not a lot of discovery and litigation to be done, then costs and attorney fees will be minimal. If there is a lot of discovery and litigation and trial work to be done, then costs and attorney fees will be substantial. Attorney fees may run only \$2,500.00, or they may run \$25,000.00. The only thing a lawyer has to sell is his time. The time billed covers not only an income for the lawyer, but also an amount to pay office expenses. We will attempt to posture your case for settlement. This means being prepared and getting a substantial amount of work done. In that way, we will be speaking from a position of strength to discuss settlement. Otherwise, we will be speaking from a position of weakness, not knowing what the opposition has, wants, or will do. If we cannot settle the case after being prepared, then we will be ready to try the case.

V. RESPONSIBILITY FOR PAYMENT OF ATTORNEY FEES

Our contract is between our client and ourselves. We look to you for the payment of our attorney fees. We know that some months there may be a higher billing for work during that month than others. We do not expect each billing to be paid in full, but we do expect a good faith effort to make some payment towards it.

We will try to obtain a Court order ordering your spouse to pay your attorney fees or a substantial portion of them if that is possible. However, the ultimate liability for our fees rests with you, the client.

VI. PROCEDURES

A person filing for a divorce in Tennessee must be a resident of Tennessee for the 6 months before that person files for divorce.

A Complaint (lawsuit) is filed. In a contested divorce we attempt to obtain various injunctions prohibiting a spouse from dissipation or removal of assets and liquidation of other assets. We also attempt to enjoin a spouse from harassment and other such actions. In certain circumstances, we can have a husband removed from the marital residence, or custody of the children awarded. However, generally a hearing must be held on possession of the marital residence and custody of the children. Soon thereafter, we hold a hearing for various matters such as custody and possession of the marital residence, and also for temporary support for the spouse.

Sometimes mediation is ordered by the court. This is a settlement conference.

Depositions of the parties usually are held after that and then certain other discovery methods such as request for production of documents, written questions to the other party, appraisal and inventory of safe deposit boxes and other assets, and various other procedures are done.

Finally after all of the information is analyzed, preparation is made for trial and a trial is held.

Witnesses testify, and these witnesses can include psychologists for custody matters, private investigators for grounds for divorce or custody matters, accountants, friends, and relatives.

Obviously the final disposition of all of the assets, liabilities, and support is ordered by the judge at the trial.

A Final Decree of Divorce is then entered and you are then divorced. Either party has 30 days to appeal to the Court of Appeals.

VII. CUSTODY

Memphis is in the middle of the Bible Belt. Fundamentalist religion greatly affects rulings of many of the judges, even though they would never admit it. Therefore, you can expect the vast majority of rulings to favor the mother in custody proceedings. That may not be proper under the United States Constitution, but that is the way the rulings go. Under the new law instituted January 1, 2001, there is no longer any designation of custody. There is only the specific times to which each party is assigned either voluntarily or involuntarily in a Parenting Plan.

VIII. VISITATION

Visitation with children under the new law instituted January 1, 2001 must now be specific. There are no more general periods such as "reasonable" or "liberal." These periods are either chosen by the parties by agreement or assigned by the Court in a Parenting Plan.

Call 901-757-5557 for a free appointment to discuss your situation.

IX. SUPPORT PAYMENTS

Any order for the payment of support is effective immediately after the order is signed by the judge, and the full amount ordered must be paid even if the award is appealed.

Support can be ordered as spousal support (alimony), child support, or both. It is usually awarded by the Divorce Referee in a Temporary Support Hearing soon after the divorce commences. It is based on each party's income, expenses, assets, and needs. The payee oftentimes does not get what he/she wants, and the payor often times thinks he/she is paying too much. The amount of child support is based on a formula which takes into account both parents' incomes and also takes into consideration the cost of healthcare and day care for the child and the amount of visitation exercised. Child support must be paid in the formula so determined. BOTH parties must carry life insurance with the child as an irrevocable beneficiary. The amount of spousal support is usually an amount needed to maintain a marital asset, such as the marital residence, so that it will not be foreclosed, or lost, pending the trial of the divorce and is in addition to child support.

From our experience, if you can show to the Court or Divorce Referee that there has been or will be trouble in obtaining support payments, a wage assignment can be entered. A wage assignment is a payroll deduction of your support payment. It is paid to the Court Clerk who then distributes it to you, less the nominal Clerk's fee.

Alimony is based, principally, on need and ability to pay. The legislature has mandated that the alimony be principally rehabilitative, meaning that the economically disadvantaged spouse is to receive an amount of alimony for a limited time to help that spouse finish an education, resume a career, or start a career. However, our Courts have legislated on their own by imposing another type of alimony by their "interpretation" of the law. Basically, this type is where there is a long term marriage, the economically disadvantaged spouse is not given an amount of alimony to restore he or she as near to the standard of living he or she enjoyed while they were married. This may be for a period of years or for life.

Child support is not income to the receiver, nor is it deductible to the payor. Alimony is income to the receiver, and is deductible on the Federal Income Tax of the payor.

X. LOCATION OF CHILDREN

The children should be kept in the same city where the parents resided with the children pending a determination by the Court.

The 1987 Tennessee Supreme Court case of *Seessel v. Seessel* (yes, it was one of the supermarket *Seessel's*) stated that after a spouse obtains custody of a minor child after entry of a divorce

decree, that spouse must apply to the Court for permission to remove the children out of the Court's jurisdiction (out of the county). That was later reversed by a statute passed by the legislature. Now, a spouse who wishes to move out of state must merely give written notice 90 days before the move. The non-custodial spouse can then apply to the Court for relief. The standard by which the Court must decide is: "What is in the best interest of the child?" Of great importance in deciding is: where is the "extended family"? The extended family consists of grandparents, uncles, aunts, cousins, etc., and the Court should keep the children in this county if the "extended family" is located here. Other circumstances may affect the Court's decision, but a competent judge will make that issue paramount.

A party who has been awarded custody of the children may temporarily take the children anywhere, unless a parenting plan provides otherwise. Absent any restrictions, a party exercising visitation rights may temporarily take the children anywhere within the time allowed for the party's visitation.

Call 901-757-5557 for a free appointment to discuss your situation.

XI. DIVISION OF PROPERTY

Each party is allowed to retain their respective separate property. However, the Court does have the power to award any property of one spouse to the other spouse at any time; even after quitclaim deeds have been exchanged. This is to allow the Court to equitably divide the property and fairly award support.

Property acquired during the marriage is marital property, and is joint property even though one spouse did not work and did not contribute monetarily to the purchase. The Court considers the contribution of a homemaker equal to that of the working spouse.

The increase in value of separate property during the marriage can be marital property. The original value is still separate property, but if one spouse can show that that spouse aided in the increase in value or performed functions which preserved or aided the increase in value, then the increase itself is marital property.

XII. ALIMONY

Alimony in Tennessee is principally rehabilitative. If the spouse needs rehabilitation, such as time to finish an education, or time to train and/or to re-enter the job market, the Court can and will order payment of an amount of support for a period of time, usually one to five years. This is in addition to child support.

The Court can still also order alimony based on fault. This is not favored in light of the legislature's strong statement of intent that alimony should be rehabilitative. However, upon good cause shown, alimony based on fault can still be awarded.

Alimony is principally based on need and ability to pay.

XIII. INJUNCTIONS

Injunctions can be obtained in various matters, including prevention of dissipation of assets, possession of property, and prevention of harm and/or harassment. The remedy for violation is to petition the Court to hold the person in violation of the Injunction in contempt of Court.

XIV. PROTECTIVE ORDERS

A Protective Order is a more effective and efficient injunction, and should be obtained before a divorce complaint is filed. It can be obtained in the divorce court.

Once a protective order preventing harm or harassment is obtained, one need only call the police if the threatening spouse comes around. Once shown a copy of the Court's Protective Order, the police should stop the threatening spouse's activity or arrest the threatening spouse

Call 901-757-5557 for a free appointment to discuss your situation.

XV. THE COHN LAW FIRM

Our firm has substantial experience in divorce matters. We represent both husbands and wives. We do NOT represent both parties in an UNcontested divorce. We represent only the party that comes to us for representation.

Our hourly fees cover any and all activities in which we engage, including telephone calls. Our hourly rate is \$250.00 per hour and \$225.00 per hour. We will bill you much less for ministerial functions, like filing a document in the Court Clerk's Office as this can be done by our law clerk. However, we must still pay our law clerk and paralegal, as we must pay our other expenses, and we therefore must charge you for this activity. We know that you have many bills facing you in this traumatic time. However, you would not want to wait on your paycheck, and we very much prefer not to wait on ours. We expect to be at the top of your list when meeting your obligations. We will work with you, but we expect at least some payment on your obligation to us each and every month in which a balance is due.

We welcome your inquiries. Please feel free to call us or come see us with your questions. If you prefer to come by, please make an appointment.

Talk to another attorney and talk to us.

Judge the difference.

THE COHN LAW FIRM - (901) 757-5557

William A. Cohn

Court locations for Shelby County, Tennessee:

Chancery: 3rd floor, west corridor, all divisions

Circuit: 2nd floor, west corridor, Division 1 & 5

2nd floor, east corridor, Division 8

2nd floor, south corridor, Divisions 2 & 9

2nd floor, north corridor, Divisions 6 & 7

3rd floor, north corridor, Divisions 3 & 4

Divorce Referee: 3rd floor, east corridor

All Courts which try divorce cases are located in:

Old Courthouse, between Washington and Adams, and between 2nd and 3rd streets

Although various lawyers in our firm have been certified at various times in the past in various areas of the law, none of our lawyers are presently certified in the State of Tennessee Commission on Specialization in the fields of Family Law, Divorce, Custody, and Support.

Call 901-757-5557 for a free appointment to discuss your situation.


Main Office:

291 Germantown Bend Cove,


Cordova (Memphis), TN 38018

Telephone: 901-757-5557

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 [Facebook](#)

https://www.facebook.com/search/295827507263382/local_search?surface=tyah

 [Google +](#)

<https://plus.google.com/101187372845870809574>



BOARD OF PROFESSIONAL RESPONSIBILITY
of the
SUPREME COURT OF TENNESSEE

SANDY L. GARRETT
CHIEF DISCIPLINARY COUNSEL
KRISANN HODGES
DEPUTY CHIEF DISCIPLINARY COUNSEL
BEVERLY P. SHARPE
DIRECTOR OF CONSUMER ASSISTANCE
LAURA L. CHASTAIN
ETHICS COUNSEL

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STEVEN J. CHRISTOPHER
ALAN D. JOHNSON
WILLIAM C. MOODY
M. PRESTON SHIPP
EILEEN BURKHALTER SMITH
A. RUSSELL WILLIS
DISCIPLINARY COUNSEL

November 8, 2017

CONFIDENTIAL

William Allan Cohn, #5873
291 Germantown Bend Cove
Cordova, TN 38018-7238

Re: File No. 51469-9-KB
Complainant: Frank Houseton

Dear Mr. Cohn:

On December 13, 2016, your office provided a client receipt to Mr. Houseton indicating he had paid \$495.00 for costs, expenses, and filing fees.

1. Were those funds deposited into your trust account?
2. I did not see any costs on your billing statement dated February 8, 2017. Were those costs returned to Mr. Houseton when the representation concluded?
3. If not, what authority did you have to retain such funds?

Please respond within ten (10) days of your receipt of this letter.

Sincerely,

Kevin D. Balkwill
Disciplinary Counsel
(615) 695-0943

KDB:kmh

Exhibit H

THE COHN LAW FIRM

William A. Cohn*

291 Germantown Bend Cove
Cordova (Memphis), TN 38018
(901) 757-5557
Fax (901) 757-5535
Web site: www.cohnlawfirm.com
e mail: info@cohnlawfirm.com

Hillcrest/LBJ Business Ctr.
Suite 111, 12830 Hillcrest
Dallas, Texas 75230
(972) 994-9393

* licensed in Tennessee and Texas

November 10, 2017

By FAX to 615-367-2480 and by e mail to ethics@tbpr.org

Board of Professional Responsibility
ATTENTION: . Balkwill, Counsel
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

RE: Complainant: Frank Houseton, Sr.
CAP# 51469-9 KB

Dear Balkwill:

Your letter is insulting. Not only is it frivolous, but it looks self serving. Are you trying to dig up something so that you can brag how many lawyers that you disciplined? That's a disgrace and only harms the legal profession.

So far, you have wasted everyone's time and cost the complainant money. You have a copy of our written contract which clearly states that once a case becomes contested- which is defined in the contract- it's by the hour. Your conduct has furthered Mr. Houseton's contested representation.

Of course we deposited the money in a trust account. That 's a ridiculous question. You have no proof otherwise. If he charged it or used a debit card, it is deposited directly to our trust account and the attorney fee part is then paid to our operating account. Who do you think that your talking to? I've had as many as 6 lawyers working for me in the past. Which brings up an analogous point- I would bet that you have no pending cases against any lawyer in a firm with 10 or more lawyers, like those guys are perfect. You spend your time bullying sole proprietors. You should be proud of yourself. And I have never been sued in 40 years for malpractice. All I have received are the ridiculous letters from your office which have always been baseless.

As to the representation being concluded, it is not. Many times we have clients react violently when their spouse will not agree to their terms. They first blame us. Then they talk to other lawyers or experienced friends and find out that it is their anger should be addressed at their spouse and not at us. Then they come back and we finish the divorce, whether contested or uncontested.

However, you have unduly misrepresented to Mr. Houston that he has a case when you have all of the documents which clearly show how baseless his accusations are. You have furthered his problems instead of helping him see the error of his ways and help him solve them. You are antithesis to what a lawyer is supposed to be and to do. And all of this is so that you can brag how you are like an internal affairs department. That is disgusting.

Our contract clearly allows us to charge for all contested time that is related to his divorce.

Page 1 of 2

FAX RECEIVED

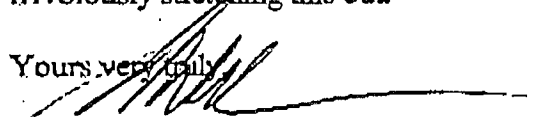
NOV 13 2017

BOARD OF PROFESSIONAL RESPONSIBILITY
SUPREME COURT OF TENNESSEE

912520

If he continues to breach the contract, and our representation is terminated after your case is over, we will return the funds to him if there is no balance. If there is a balance, we will implement either the contract or quantum meruit or both, and will use the funds to fund that debit, just as a landlord would use the deposit. Perhaps he should look to you for reimbursement because of your incompetence in frivolously stretching this out.

Yours very truly,


William A. Cohn



BOARD OF PROFESSIONAL RESPONSIBILITY
of the
SUPREME COURT OF TENNESSEE

SANDY L. GARRETT
CHIEF DISCIPLINARY COUNSEL
KRISANN HODGES
DEPUTY CHIEF DISCIPLINARY COUNSEL
BEVERLY P. SHARPE
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WILLIAM C. MOODY
M. PRESTON SHIPP
EILEEN BURKHALTER SMITH
A. RUSSELL WILLIS
DISCIPLINARY COUNSEL

November 13, 2017

CONFIDENTIAL

William Allan Cohn, #5873
291 Germantown Bend Cove
Cordova, TN 38018-7238

Re: File No. 51469-9-KB
Complainant: Frank Houseton

Dear Mr. Cohn:

Is Mr. Houseton's \$495.00 cost retainer still held in your trust account?

If so, why haven't such funds been returned to Mr. Houseton?

If you allege that the representation is ongoing, how do you reconcile that with subsection 2(C) regarding Failure to Sign Papers in 30 Days under your Contested Divorce provision? Additionally, it appears that Mr. Houseton was divorced in Shelby County Circuit Court Case No. CT-002759-17 by Final Decree entered October 18, 2017.

Shouldn't those costs be returned to Mr. Houseton absent any consent by Mr. Houseton that you could retain such funds? That position, however, appears to be contrary to his complaint against you.

Please respond within ten (10) days of your receipt of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Kevin D. Balkwill".

Kevin D. Balkwill
Disciplinary Counsel
(615) 695-0943

KDB:kmh

Exhibit I



BOARD OF PROFESSIONAL RESPONSIBILITY
of the
SUPREME COURT OF TENNESSEE

SANDY L. GARRETT
CHIEF DISCIPLINARY COUNSEL
KRISANN HODGES
DEPUTY CHIEF DISCIPLINARY COUNSEL
BEVERLY P. SHARPE
DIRECTOR OF CONSUMER ASSISTANCE
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A. RUSSELL WILLIS
DISCIPLINARY COUNSEL

November 13, 2017

CONFIDENTIAL

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Please respond within ten (10) days of your receipt of this letter.

Sincerely,

Kevin D. Balkwill

Kevin D. Balkwill
Disciplinary Counsel
(615) 695-0943

KDB:kmh

FAX RECEIVED

NOV 21 2017

BOARD OF PROFESSIONAL RESPONSIBILITY
SUPREME COURT OF TENNESSEE

7:45A
CL

PLEASE READ THE CONTRACT WHICH YOU REQUESTED IT CALLS FOR ANY COSTS, ETC. HELD BY US TO BE CREDITED FOR MONIES OWED WHICH IN ANY WAY DIVORCES TO THE WE HAVE OVER 3 HOURS ON A TO YOU ON A BASELESS CLAIM (ONSORE) BEING OFFSET.

**THE
COHN
LAW FIRM**

**CONTRACT FOR ATTORNEY
REPRESENTATION FOR
UNCONTESTED DIVORCE**

I appoint THE COHN LAW FIRM, Attorneys at Law, a sole proprietorship, to act as my representative in connection with my *divorce* action against LILIAN Housman whether or not presently pending in Court. I authorize my representative to make or give a request or notice; present or elicit evidence; obtain information; and receive any notice in connection with my divorce action against said above mentioned party wholly in my stead.

I understand and agree that I have retained THE COHN LAW FIRM, Attorneys at Law, a sole proprietorship, under the following contractual terms:

I agree to pay a retainer of \$ 1,370⁰⁰ + \$450⁰⁰, which is *non-refundable*, plus filing fees and expenses. I understand that this is less than the *hourly fee* would be for the services of an uncontested divorce.

I understand that the above fee represents payment for a specific type of *uncontested* divorce. This **includes** ONE composition and preparation of ONE Marital Dissolution Agreement for a simple ID (irreconcilable differences) divorce This does **NOT** include *negotiation* of terms of the agreement, **NOR** does it include *any revisions* of the Marital Dissolution Agreement composed by THE COHN LAW FIRM. **Any and all** revisions and negotiations shall be considered as comprising a *contested* divorce and shall be **billed** to the client on an *hourly basis* as a *contested* matter. Fees for ALL uncontested divorces **include** a Complaint, Summons, Divorce Certificate, the Court's Cost sheet, and a Final Decree of Divorce.

I understand that should *at any time*, **any** issue of my divorce **not be in agreement** by both parties (whether custody, alimony, child support, property division, property possession, etc.), then my divorce is to be considered as a *contested* divorce, whether or not a Marital Dissolution Agreement is reached. I understand and agree that I will be **charged** for all time that my attorneys incur relating to my divorce, including but not limited to, Court appearances and travel time, composition and preparation of documents, **all consultations**, whether in person or by phone, **all conferences**, and I agree to pay paralegal and secretarial time at \$100.00 per hour, and clerical time at \$50.00 per hour. *Minimum billing for revisions or negotiations* is one hour. I understand that I will pay my attorney **\$275.00 per hour** (*minimum billing increment of 0.20 hours* will include charges for travel time and composition and preparation of documents) which will be credited against any retainer paid. While my case is pending in or out of Court, whether or not a complaint has been filed, I will pay all expenses, including but not limited to: depositions, investigative reports, and photocopies. I will pay attorney *fees if at any time* I am requested to do so. I understand that I will be billed monthly and agree to pay said statement *balances* monthly *when presented*. I further understand and agree that *I am responsible* for my attorney fees and that any Court ordered payment of fees by my spouse for my attorney will be *credited to my account* if a balance remains unpaid by me, or refunded to me if already paid by me. I authorize my attorney to sign and deposit any collection costs, interest from due date, and attorney fees incurred in the collection of any amounts of which I am in default, and I agree and **WAIVE ALL RIGHTS TO ARBITRATION** concerning the above agreement and any attorney fees incurred. The default date shall be the first day of the month following the mailing of a billing to the client and for which no payment is received after said billing is mailed by the above law firm.

I have received from my attorneys the "Information About Divorce Fees & Costs" pamphlet.

By: [Signature] Date: 9/6/14 [Signature]
Attorney Client's Signature

THE COHN LAW FIRM _____

William A. Cohn*

291 Germantown Bend Cove
Cordova (Memphis), TN 38018
(901) 757-5557
Fax (901) 757-5535
Web site: www.cohnlawfirm.com
e mail: info@cohnlawfirm.com

Hillcrest/LBJ Business Ctr.
Suite 111, 12830 Hillcrest
Dallas, Texas 75230
(972) 994-9393

* licensed in Tennessee and Texas

March 19, 2018

By FAX to 615-367-2480 and by e mail to ethics@tbpr.org

Board of Professional Responsibility
ATTENTION: . Balkwill, Counsel
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

RE: Complainant: Frank Houseton, Sr.
CAP# 51469-9 KB

Dear Balkwill:

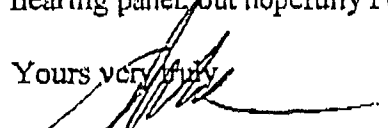
Your letter is insulting. Not only is it frivolous, but it is prima facie evidence of Age Discrimination. I have read the Rules of Professional Conduct, and they do not say anything about me using funds on deposit to pay my bill. They also do say that "...a lawyer may seek reimbursement [from the Trust Account] for the cost of services performed in house, such as copying or for other expenses incurred in house, such as telephone charges..." Further, they also say that a written agreement must be considered. Clearly, your actions are intended to coerce me to retire.

I believe that I can show a pattern along with my past litigation with your office and the decision to stop the CLE exemption at age 65, that your Commission and the CLE Commission are engaged in what you think is getting better suited people as lawyers by bringing frivolous claims against older lawyers and thus in fact engaging in Age Discrimination. I intend to pursue that avenue in Federal Court after we finish litigating this.

I don't like being bullied and threatened which you are doing by threatening me with the payment of your fees over the repayment of \$450.00 when I had a written contract allowing me to do so. Perhaps you will consider payment in Federal Court of an Age Discrimination Claim.

I am not agreeing to your frivolous offer. Let's litigate again. Maybe you can rig the hearing panel, but hopefully I can overcome that like I did last time you filed a frivolous claim.

Yours very truly


William A. Cohn
WAC/s

FAX RECEIVED

MAR 20 2018

BOARD OF PROFESSIONAL RESPONSIBILITY
SUPREME COURT OF TENNESSEE

Exhibit J

8/25/18
CL

THE COHN LAW FIRM _____

William A. Cohn*

291 Germantown Bend Cove
Cordova (Memphis), TN 38018
(901) 757-5557
Fax (901) 757-5535
Web site: www.cohnlawfirm.com
e mail: info@cohnlawfirm.com

Hillcrest/LBJ Business Ctr.
Suite 111, 12830 Hillcrest
Dallas, Texas 75230
(972) 994-9393

* licensed in Tennessee and Texas

March 23, 2018

By FAX to 615-367-2480 and by e mail to ethics@tbpr.org

Board of Professional Responsibility
ATTENTION: . Balkwill, Counsel
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

RE: Complainant: Frank Houseton, Sr.
CAP# 51469-9 KB

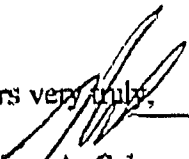
Dear Balkwill:

Before you purge yourself or have one of your attorneys purge themselves, you should note that your allegation that we collected court costs and did not return them is false.

If you do your research, you will see that our receipt, our website, and our printed information handouts clearly delineate that we are collecting a deposit to be used for any expenses, costs, or court costs, including but not limited to court costs. It is not solely court costs.

There is no implication, nor can it be inferred, that the deposit is to be used only for court costs. Clearly, it would be used only for court costs if sufficient funds are left in the deposit.

We have reviewed our billing, and issued a clarification to Mr. Houseton of the application of the deposit pursuant to our contract and to the Disciplinary Rules which clearly state that we can take those funds for payment of expenses. (See Rule 1.5, Comment).

Yours very truly,

William A. Cohn
WAC/s

FAX RECEIVED

MAR 26 2018

BOARD OF PROFESSIONAL RESPONSIBILITY
SUPREME COURT OF TENNESSEE

7145A
CL

THE COHN LAW FIRM

291 Germantown Bend Cove
Cordova, Tennessee 38018

Phone: (901) 757-5557

Fax: (901) 757-5535

Dallas, Texas Phone: (972) 994-9393

Mailing Address:
P.O. Box 38413
Memphis, Tennessee 38183-0413

CLIENT RECEIPT OF PAYMENT

William A. Cohn, Attorney (✓)

Client Name: Frank Houston Type of Case: Vis. Div - ID

Amnt Paid: Cash: _____ Check: _____ Debit Card: Credit Card: _____
Copy attached _____ Receipt copy attached _____

ATTORNEY FEE Retainer
CHARGED: \$ 1,320⁰⁰

Costs, Expenses, & Filing Fees
CHARGED: \$ 495⁰⁰

Amount PAID by Client TODAY:
for ATTORNEY FEE / OR Retainer \$ 500⁰⁰

Amount PAID by Client TODAY:
for Costs, Expenses & Filing Fees: \$ _____

Credit: \$ _____
BALANCE OWED:

Credit \$ _____
BALANCE OWED:

for ATTORNEY FEE / Retainer \$ 820⁰⁰

for Costs, Expenses & Filing Fees: \$ 495⁰⁰

RECEIVED BY: [Signature]
Signature

Date: 9/6/16

Signer Print name: Cohn

**THE
COHN
LAW FIRM**

**CONTRACT FOR ATTORNEY
REPRESENTATION FOR
UNCONTESTED DIVORCE**

I appoint THE COHN LAW FIRM, Attorneys at Law, a sole proprietorship, to act as my representative in connection with my *divorce* action against LILIAN Housen whether or not presently pending in Court. I authorize my representative to make or give a request or notice; present or elicit evidence; obtain information; and receive any notice in connection with my divorce action against said above mentioned party wholly in my stead.

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I agree to pay a retainer of \$ 1,370⁰⁰ ^{+ \$450⁰⁰}, which is *non-refundable*, plus filing fees and expenses. I *understand* that this is *less* than the *hourly fee* would be for the services of an uncontested divorce.

I understand that the above fee represents payment for a specific type of *uncontested* divorce. This **includes** ONE composition and preparation of ONE Marital Dissolution Agreement for a simple ID (irreconcilable differences) divorce. This does **NOT** include *negotiation* of terms of the agreement, **NOR** does it include *any revisions* of the Marital Dissolution Agreement composed by THE COHN LAW FIRM. **Any and all revisions and negotiations** shall be considered as comprising a *contested* divorce and shall be billed to the client on an *hourly basis* as a *contested* matter. Fees for ALL uncontested divorces include a Complaint, Summons, Divorce Certificate, the Court's Cost sheet, and a Final Decree of Divorce.

I understand that should *at any time*, **any** issue of my divorce *not be in agreement* by both parties (whether custody, alimony, child support, property division, property possession, etc.), then my divorce is to be considered as a *contested* divorce, whether or not a Marital Dissolution Agreement is reached. I understand and agree that I will be *charged* for **all** time that my attorneys incur relating to my divorce, including but not limited to, Court appearances and travel time, composition and preparation of documents, **all consultations**, whether in person or by phone, **all conferences**, and I agree to pay paralegal and secretarial time at \$100.00 per hour, and clerical time at \$50.00 per hour. *Minimum billing for revisions or negotiations* is one hour. I understand that I will pay my attorney **\$275.00 per hour** (*minimum billing increment of 0.20 hours* will include charges for travel time and composition and preparation of documents) which will be credited against any retainer paid. While my case is pending in or out of Court, whether or not a complaint has been filed, I will pay **all expenses**, including but not limited to: depositions, investigative reports, and photocopies. I will pay *attorney fees if at any time I am requested to do so*. I understand that I will be billed monthly and agree to pay said statement *balances* monthly *when presented*. I further understand and agree that I am *responsible* for my attorney fees and that any Court ordered payment of fees by my spouse for my attorney will be *credited to my account* if a balance remains unpaid by me, or refunded to me if already paid by me. I **authorize** my attorney to sign and deposit any collection costs, interest from due date, and attorney fees incurred in the collection of any amounts of which I am in default, and I agree and **WAIVE ALL RIGHTS TO ARBITRATION** concerning the above agreement and any attorney fees incurred. The default date shall be the first day of the month following the mailing of a billing to the client and for which no payment is received after said billing is mailed by the above law firm.

I have received from my attorneys the "Information About Divorce Fees & Costs" pamphlet.

By: [Signature] Date: 2/6/14 [Signature]
Attorney Client's Signature

**BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

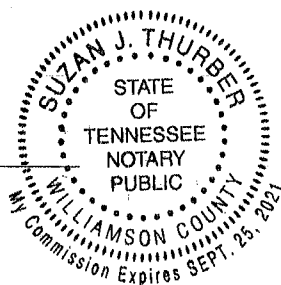
I, Rita Webb, Executive Secretary of said Board, do hereby certify that the attached is a true, accurate, and complete copy of Petition for Discipline, IN RE: William Allan Cohn, BPR Docket No. 2018-2875-9-AJ, filed June 5, 2018, of record now on file in our office.

In Testimony Whereof, I have hereunto set my hand at Nashville, on this 28th day of May, 2020.



Rita Webb
Executive Secretary

Sworn to and subscribed before me,
this 28th day of May, 2020.


NOTARY PUBLIC

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BOARD OF PROFESSIONAL
RESPONSIBILITY

[Signature]
EXEC. SEC.

IN DISCIPLINARY DISTRICT IX
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

IN RE: WILLIAM ALLAN COHN,
BPR No. 005873, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Shelby County)

DOCKET NO. 2018-2875-9-AJ

JUDGMENT OF THE HEARING PANEL

The Board of Professional Responsibility of the Supreme Court of Tennessee ("Board") filed a Petition for Discipline against the Respondent, William Allan Cohn, alleging a violation of Rules 1.15(c) and 8.4 (a) of the Tennessee Rules of Professional Conduct. The undersigned Hearing Panel, Sean Antone Hunt (Chair), Kimbrough Mullins and Buckner Wellford, held an evidentiary hearing in this matter on April 10, 2019. At the beginning of this hearing, the Hearing Panel confirmed that all outstanding motions upon which the Hearing Panel had not already ruled, were either withdrawn or moot, including but not limited to Respondent's Motion In Limine and Respondent's Motion to Strike Complainant's Affidavit.

After hearing the testimony, considering argument of counsel and considering the entire record, the Hearing Panel finds as follows:

FINDINGS OF FACT

1. The Board received a complaint from Frank Houseton ("Houseton") alleging violations by the Respondent of the rules of professional responsibility arising out of the Respondent's representation of Houseton in an uncontested divorce.
2. On September 6, 2016, the Respondent was retained by Houseton on a flat fee of \$1320.00 representing the Respondent's fees for attorney services only. It is undisputed that this fee represented a base attorney's fee for the uncontested divorce in the amount of \$695.00, plus an additional fee for children being involved of \$500.00 and another additional fee for real estate



being involved of \$125.00, making a total of \$1320.00. The contract signed by Houseton provides that “[f]ees for ALL uncontested divorces include a Complaint, Summons, Divorce Certificate, the Court’s Cost sheet, and a Final Decree of Divorce.”

3. The Respondent also collected a fee of \$495.00 for “Costs, Expenses & Filing Fees.” The contract signed by Houseton is silent on what constitutes “costs, expenses & filing fees” and those terms are only used on the Respondent’s “Client Receipt of Payment” form. However, Respondent provided Houseton an information sheet entitled “INFORMATION ABOUT FEES & COSTS EFFECTIVE May 20, 2015” which discusses “Costs & Expenses” for uncontested divorces. That sheet indicates that “costs & expenses” require the client to pay a separate fee of \$495.00 and “includes filing fees, check handling fee, photocopying, and some court costs.”

4. Houseton paid these fees in two separate installments the last of which occurred on December 13, 2016. Houseton paid \$500 for costs and expenses.

5. The contract signed by Houseton provides that should at any time, any issue of the divorce not be in agreement by both parties, then the divorce will be considered a contested divorce and that Houseton, as the client, agrees that he will be charged “for all time that my attorneys incur relating to my divorce, including but not limited to, Court appearances and travel time, composition and preparation of documents, all consultations, whether in person or by phone, all conferences, and I agree to pay paralegal and secretarial time at \$100.00 per hour, and clerical time at \$50.00 per hour.”

6. Respondent prepared the appropriate paperwork for an uncontested divorce and presented the paperwork to Houseton’s wife for signature in January 2017. It is undisputed that Houseton’s wife refused to sign this paperwork.

7. The disagreement between Respondent and Houseton began here. Houseton maintains that he instructed the Respondent to prepare the uncontested divorce paperwork in such a way to exclude his son. Houseton maintains that Respondent never told him that there was a legal requirement that an agreed permanent parenting plan pertaining to Houseton’s minor son

would be required by law to obtain the divorce. Houseton alleges that if he had known this, he would not have paid the retainer for the uncontested divorce.

8. Respondent maintains that he told Houseton that his minor son had to be included in the paperwork and that he prepared the paperwork pursuant to the provisions and specifications that Houseton requested. In fact, the proposed permanent parenting plan prepared by Respondent for the uncontested divorce provides for equal parenting time and a negligible child support payment in an effort to satisfy the requirements of the Court and also meet the requests of Houseton. Moreover, as indicated above, the flat fee charged by Respondent specifically includes a payment of \$500.00 because children are involved.

9. Houseton testified that when he went to Respondent to get the divorce, he told Respondent that he and his wife wanted to get a divorce at that time. The parties' son was 15 years old and still in school. Houseton wanted his son to stay with both of them in the same house until his son finished school. At that time, Houseton and his wife would sell the house and presumably move away from each other. Even though they would still continue to live together with their son, Houseton was adamant that he wanted a divorce immediately and asked the Respondent to prepare the divorce in such a way that his son was not involved with the divorce.

10. Houseton testified that his wife didn't sign the paperwork because the paperwork was not what they agreed upon. Again, Houseton maintained that he and his wife were adamant that they did not want their son involved with the divorce. The paperwork, which did mention visitation time and child support, according to Houseton, did not comply with what Houseton asked the Respondent to do.

11. Houseton testified that after his wife refused to sign the paperwork, he returned to the Respondent's office to discuss the paperwork. Houseton maintains that the Respondent told him that if he did anything else, he would have to charge Houseton for a contested divorce. Houseton testified that Respondent jumped up, accused Houseton of questioning his integrity and told him to get out of his office.

12. Houseton, apparently, wanted the return of his retainer from the Respondent.

13. Respondent testified that he disagreed with the testimony of Houseton about the last interaction between them. Respondent testified that after their last interaction with Houseton, he still thought they could have an ongoing relationship. He admitted that he did yell at Houseton stating that he did "call him out on it."

14. After this confrontation, Respondent sent Houseton a letter dated February 8, 2017 where he purported to tell Houseton that they will "keep your file open pursuant to your communication that you will pursue the divorce in a year or two. We will not charge you additional fees for that incidence." The letter also stated, however, that "[s]hould you wish for us to close the file, the monies you have paid will be applied to our hourly fee in as such as the nature of the case has changed to a contested case. An itemization of our charges is enclosed. Please advise the alternative you choose." The letter attached an invoice dated February 8, 2017 for work spanning from September 7, 2016 through and including February 2, 2017 and totaled 6.90 hours. The invoice showed a total balance of \$1897.00. No payments or credits were shown on this invoice.

15. After Houseton filed his complaint with the Board, Respondent maintains he found out that Houseton had retained another attorney and obtained his divorce. At this time, Respondent was still holding the \$495 retainer in his trust account that Houseton paid for "costs & expenses." Upon learning that Houseton had retained another attorney, Respondent closed his file and sent Houseton a letter dated March 8, 2018 indicating "we have reviewed our billing and made changes to delineate certain items. A copy is enclosed." Respondent included a new invoice, dated March 16, 2018, with the title "Expenses per Contract" which included 5.0 hours of secretarial time at \$100 per hour and photocopies at \$0.25 per copy for a total of expenses of \$507.00.

16. This new invoice included alleged expenses dating all the way back to January 12, 2017 through and including March 23, 2018. However, the itemized expenses charged to Houseton and dated after February 8, 2017 are all secretarial time associated with "Billing Statement of Attorneys Hours," or something similar. This invoice included 1.2 hours of secretarial time for creating a billing statement of attorneys hours and a letter to the client with the billing statement on February 18, 2017; 1.1 hours of secretarial time for creating a billing

statement of expenses and a letter to the client with the billing statement on March 7, 2018 and March 8, 2018; 0.2 hours of secretarial time for review of status of the file on October 11, 2017; 0.3 hours of secretarial time for changing account on billing system to close file on March 10, 2018; and 0.3 hours of secretarial time for maintenance of contents of file on March 23, 2018. This secretarial time entries do not appear to pertain to work done on the contested divorce, but rather are charges for secretarial time to do internal firm bookkeeping.

17. Pursuant to this invoice, Respondent transferred the \$495.00 being held in his trust account for "Costs & Expenses" for payment of this invoice.

18. Notably, the March 16, 2018 invoice contains six (6) entries for secretarial time for creation of two apparently separate billing statements: three (3) time entries for an invoice created on February 18, 2017 and reportedly sent by letter on that date; and three (3) time entries for an invoice created on March 7, 2018 and reportedly sent by letter on March 8 of 2018. However, only two billing statements were presented at the hearing, i.e., the invoice dated February 8, 2017 and the invoice dated March 16, 2018, the latter of which included, remarkably, expense time from March 23, 2018. No invoices dated on or about February 18, 2017 nor March 8, 2018 were offered by the Respondent to justify this secretarial time.

19. Respondent agrees that no filing fees, check handling fees or court costs were incurred in this case. Further, other than 28 pages of photocopying mentioned on the March 16, 2018 invoice, totaling \$7.00, no other photocopying expenses were incurred either. Instead, respondent maintains that his secretarial time constitutes an expense chargeable against the "Costs & Expenses" retainer paid by Houseton.

CONCLUSIONS OF LAW

The issue before the Hearing Panel, as framed by the parties, is whether or not the provisions of RPC 1.15(c) are violated by Respondent's failure to return the "Costs & Expenses" retainer of \$500.00 paid by Houseton pursuant to the contract and application over a year later of that retainer to satisfy a new invoice of secretarial time violates the provisions of RPC 1.15(c). That Rule provides, in pertinent part, as follows:

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

TN R S CT Rule 8, RPC 1.15. Since the Respondent withdrew the funds to satisfy a new invoice for secretarial time, the inquiry under this rule is whether or not the subject funds allocated for “Costs & Expenses” constitute expenses incurred. The resolution of this issue, necessarily, turns upon a reasonable construction of the Respondent’s contract and attendant documents.

There is no dispute that the “Client Receipt of Payment” provided by the Respondent’s office to Houseton on September 6, 2016 (Exhibit 2) and on December 13, 2016 (Exhibit 3) describes the retainer payment of \$495 as being for “Costs, Expenses & Filing Fees.” The Terms “Costs” and “Filing Fees” are not defined anywhere within the contract documents. Therefore, using their normal and customary definitions, it is not possible to equate the invoice for secretarial time with the usual and customary understanding of either “Costs” or “Filing Fees” which are normally thought of as court costs incurred either before or after the filing of pleadings with the court. Indeed, the Respondent does not argue that the subject secretarial time constitutes either costs or filing fees. Instead, Respondent maintains that the secretarial time invoiced on March 16, 2018 constitutes “Expenses” that are reasonably chargeable to the “Costs & Expenses” retainer.

I.

Before we reach that inquiry, it is necessary to determine if the “Costs & Expenses” retainer paid by Houseton could be applied, under the contract and under the Rules of Professional Conduct to satisfy any and all obligations of the client to the Respondent. In other words, under a concept similar to cross collateralization, can the Respondent apply any and all retainers, no matter how they are allocated by the contract, to satisfy the client’s obligations to the Respondent.

There are no cases that specifically interpret the provisions of RPC 1.15(c). A normal reading of that language indicates that it contemplates the withdrawal by a lawyer of funds paid in advance for either “fees” earned or “expenses” incurred. The provision itself does not seem to

limit the lawyer to utilization of those funds for either legal fees or expenses based upon how they were denominated when paid. However, in this regard the Tennessee Supreme Court has provided us some guidance. In the case of *Board of Professional Responsibility v. Reguli*, 489 S.W.3d 408 (Tenn. 2015), the Supreme Court was faced with a similar issue when a client complained that a lawyer failed to return the unearned portions of a \$10,000 retainer fee. Our Supreme Court stated:

The term “retainer” is often used to describe three variations of fee arrangements. See Douglas R. Richmond, *Understanding Retainers and Flat Fees*, 34 J. Legal Prof. 113, 114–18 (2009). One type of retainer is the general retainer, sometimes called a “true” or “classic” retainer. *Id.* at 114. This fee merely ensures a lawyer's availability to a client. *Id.* at 114–15. The client must pay the lawyer additional fees for actual legal services performed by the lawyer should the client wish to employ the lawyer for a particular matter. *Id.* at 115. The Tennessee Rules of Professional Conduct recognize that general retainer fees are earned upon receipt, assuming the lawyer remains available to serve the client. Tenn. Sup.Ct. R. 8, RPC 1.5 cmt. 4a. Because this fee is earned upon receipt, the fee should not be placed in a client trust account, as the fee becomes the lawyer's property. See Tenn. Sup.Ct. R. 8, RPC 1.15 cmt. 10. Another type of retainer is the “advance fee retainer,” which “is a present payment to a lawyer as compensation for the provision of specified legal services in the future.” Richmond, *supra*, at 118. This fee is intended to compensate the lawyer for *all* work to be done on a matter, and is more commonly known as a “fixed” or “flat” fee. *Id.* (emphasis added). This fee is also earned upon receipt, assuming the lawyer is available to perform the services. Tenn. Sup.Ct. R. 8, RPC 1.5 cmt. 4a. Accordingly, an earned fixed fee should not be placed in a client trust account. Tenn. Sup.Ct. R. 8, RPC 1.15 cmt. 10. A remaining retainer fee is the “security retainer,” which “is intended to secure the client's payment of fees for future services that the lawyer is expected to perform.” Richmond, *supra*, at 116. A “lawyer who collects a security retainer draws it down pursuant to an agreed hourly rate as the lawyer earns the fees by performing legal services for the client.” *Id.* at 117. Retainer funds paid pursuant to a security retainer agreement “remain the client's property until the lawyer applies them to charges for services that are actually performed.” *Id.* Thus, a lawyer must initially place such fees into a client trust account and only withdraw the fees as the lawyer earns them. Tenn. Sup.Ct. R. 8, RPC 1.15 cmt. 10. Any portion of such a fee not earned by the lawyer upon termination of the lawyer's representation must be returned to the client pursuant to RPC 1.16(d)(6). See also Tenn.

Sup.Ct. R. 8, RPC 1.5 cmt. 4; Tenn. Sup.Ct. R. 8, RPC 1.15 cmt. 10.

Bd. of Prof'l Responsibility v. Reguli, 489 S.W.3d 408, 421–22 (Tenn. 2015) (citations original). Thus, our Supreme Court has recognized three types of retainer fees: (1) a true retainer which is paid only for the availability of the lawyer and earned by the lawyer upon payment; (2) fixed or flat fee retainer which as payment intended to compensate the lawyer for all work to be done and also is earned by the lawyer upon payment; and (3) a security retainer which is intended to secure the client's payment of fees for future services and therefore remains the property of the client until the lawyer applies them to charges for services that are actually performed.

In this case, the Respondent's contract states "I agree to pay a retainer of \$1320.00, which is non-refundable, plus filing fees and expenses." Therefore, it is clear that the amount of \$1320.00 constituted a fixed or flat fee retainer for the Respondent's legal services. The remaining funds, i.e., \$495.00 were then a security retainer intended to secure the client's payment of "filing fees and expenses" as those items are incurred. Thus, it is reasonable to conclude that the parties anticipated that any and all legal services would be performed for the nonrefundable flat fee of \$1320.00 and that the security retainer of \$495.00 would only be utilized for items constituting "filing fees and expenses." It does not appear that the parties contemplated the security retainer of \$495 could be utilized for any and all obligations of the client to the Respondent.

In fact, the Respondent's explanation sheet (Exhibit 7) on the second page states as follows:

If both spouses have not signed the agreement, or one of the spouses has not returned the agreement signed within 30 days, *we will close our file*. To *re-open* the file, even on the 31st day, there is an *additional* fee of \$150.00 **THERE ARE NO EXCEPTIONS**. Any new work such as changing 'no fault' to 'fault' or 'grounds' will require a *new original fee in full*.

Because there would be no costs or filing fees¹ involved if both spouses have not signed the agreement, it is apparent that the parties anticipated that if the uncontested divorce were

¹ Although there is a possibility that the expenses incurred by the Respondent's office would exceed \$495 without regard to filing fees or court costs, we note that where the parties have not signed the divorce paperwork, the

converted into a contested divorce a new retainer for legal fees would be expected to be paid by the client. There is no indication that the security retainer of \$495 would be utilized to pay these fees. In fact, the contract is completely silent on that point.

Utilizing the canon of contract construction that a contract may be determined to be ambiguous if it is "susceptible to more than one reasonable interpretation," *see Dog House Investments, LLC v. Teal Properties, Inc.*, 448 S.W.3d 905, 913 (Tenn. Ct. App. 2014), we find that the contract upon this point is ambiguous and subject to both interpretations. Tennessee courts adhere to the general rule that ambiguities in a contract are construed against the drafter. *Ralph v. Pipkin*, 183 S.W.3d 362, 367 (Tenn.Ct.App.2005) (citation omitted). Here, that construction would go against the Respondent. Therefore, we find that the contract contemplated that the security retainer of \$495 could only be utilized for "Costs, Expenses & Filing Fees."²

II.

Having found that the security retainer of \$495 could only be used for "Costs, Expenses & Filing Fees," we now turn to the inquiry of whether the secretarial fees charged by the Respondent were properly chargeable as "Costs, Expenses & Filing Fees" as indicated by the Respondent's contract. Of course, if the charges are properly chargeable as costs, expenses and filing fees, then the Respondent's use of the security retainer for that purpose is properly allowable under the provisions of RPC 1.15(c). On the other hand, if they are not properly chargeable as costs, expenses and filing fees, then the Respondent would be in violation of RPC 1.15(c) since such funds are only to be withdrawn by the lawyer as the fees are earned or expenses incurred.

Respondent admits that the secretarial time does not constitute costs and filing fees as mentioned above. Thus, the inquiry is whether or not the secretarial time constitutes expenses under the contract. Here, again, the contract is silent as to what constitutes expenses. Respondent

likelihood that the expenses would exceed \$495 is remote.

² We note that the contract documents utilize three different phrases to describe this security retainer. The contract signed by Houseton describes this as "filing fees and expenses." *See* Exhibit 1. The Client Receipt of Payment describes this as "Costs, Expenses & Filing Fees." *See* Exhibits 1 & 2. And, the Document Entitled Information about Fees & Cost-Effective May 20, 2015 describes this fee as "Costs & Expenses." We conclude that these are all referring to the exact same thing as the latter document indicates that these include "filing fees, check handling fee, photocopy, and some court costs." *See* Exhibit 7.

points out that his contract provides "I understand and agree that I will be charged for all time that my attorneys incur relating to my divorce, including but not limited to, Court appearances and travel time, composition and preparation of documents, all consultations, whether in person or by phone, all conferences, and I agreed to pay paralegal and secretarial time at \$100.00 per hour, and clerical time at \$50.00 per hour." Respondent argues that this provision provides that his secretarial time is appropriately charged as an expense. We disagree.

First, the Respondent's contract documents include the Information about Fees & Costs Effective May 20, 2015 sheet which is the only document that lists items that are anticipated to be treated as "Costs & Expenses." In that regard it provides that "Costs & Expenses" "includes filing fees, check handling fee, photocopying, and some court costs." It also indicates specifically that "Costs & Expenses" "does not include Attorney fees." As indicated above, Respondent admits that Houseton incurred no filing fees, check handling fees, court costs or photocopying beyond the 28 copies listed on the second invoice. Thus, this provision does not support the Respondent's argument that secretarial time is included as a cost and expense.

Second, the language to which the Respondent refers appears to be addressing attorney's fees and other professional fees rather than expenses. In that regard, the subject language specifically states that the client will be responsible for "all time that my attorneys incur relating to my divorce... and I agree to pay paralegal and secretarial time at \$100.00 per hour..." Here, when the entire sentence is read together, it is clear that the sentence is referring to professional fees and services provided by the Respondent's office. In concept, this is similar to the canon of statutory construction that dictates that "when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed." *State v. Marshall*, 319 S.W.3d 558, 561 (Tenn. 2010) (*ejusdem generis* limits the breadth of the general phrase so that neither the general phrase nor the specific terms are inoperative). Here, in the first part of the sentence, the class of items discussed are legal fees or attorney's fees which makes the secretarial time and paralegal time similar in class.

Moreover, when asked, the Respondent admitted that he did not pay his secretary \$100 per hour. As a result, it is clear that the \$100 per hour fee charged to Houseton includes some

element of profit for the Respondent which makes the secretarial time a profit center for the Respondent rather than an expense.

Finally, the Respondent's contract also includes the following provision: "I will pay all expenses, including but not limited to: depositions, investigative reports, and photocopies." We believe that this language implicates a familiar canon of both contractual and statutory construction: *expressio unius est exclusio alterius*. That canon means that to mention one thing in a contract or a statute is to exclude others things of the same kind which are not mentioned. *In re Estate of Davis*, 308 S.W.3d 832, 841 (Tenn.2010); *Kampert v. Valley Farmers Co-op.*, No. M200902360COAR10CV, 2010 WL 4117146, at *5 (Tenn. Ct. App. Oct. 19, 2010). In the subject language, the Respondent's contract provides a list of items as examples of expenses that does not include secretarial time.

As a result, we conclude that the secretarial time invoiced by the Respondent was not properly chargeable against the security retainer for "Costs & Expenses." Thus, the Respondent's withdrawal of those funds was improper under the provisions of RPC 1.15(c) as the expenses had not been incurred.

III.

Our final task, after having determined that the Respondent's actions in withdrawing the funds being held as Costs & Expenses to satisfy an invoice for secretarial time, we must now determine the appropriate sanction for violation of RPC 1.15(c) in this case. Section 15.4 of Rule 9 of the Rules of the Supreme Court states, in pertinent part, as follows:

In determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions.

The Board points to ABA standard 4 for imposing lawyer sanctions. This standard, in pertinent part, provides as follows:

4.1 FAILURE TO PRESERVE THE CLIENT'S PROPERTY

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

* * *

4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

4.13 Reprimand (Public Censure) is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

Based upon these standards, suspension is generally appropriate when a lawyer knowingly or intentionally violates the rule and a reprimand is appropriate when the lawyer is negligent in dealing with the client's property and thereby violates the rule. Here, we believe that the appropriate sanction is a public censure. This is due in part to the Respondent's reasonable belief that his contract allowed him to charge the secretarial time against the security retainer.

However, we are cognizant of the fact that, as pointed out by the Board, the second invoice which the Respondent prepared and submitted over a year after the Respondent's last interaction with Houseton does raise some red flags. First, it appears to be more than coincidental that the amount of the second invoice is approximately the same amount as the security retainer for costs & expenses. Likewise, it does cause us some concern that the invoice which is dated March 16, 2018 purports to include time from March 23, 2018. Moreover, the entire invoice appears to be secretarial time associated with preparing invoices to be submitted to Houseton where only two such invoices were submitted, i.e., the first one and the one dated March 16, 2018. In other words, the Respondent attempted to charge Houseton fees for creating the second invoice which essentially itemizes the fees for its own creation.

Further, we note that the following aggravating factors, as set forth in Section 9.2 of the ABA Standards for Imposing Lawyer Sanctions, are present in this case:

- Prior disciplinary offenses;
- Substantial experience in the practice of law; and
- Indifference to making restitution.

We don't find any mitigating factors that are present in this case.

Upon consideration of all of the circumstances and the appropriate standards, we believe that the Respondent's actions are best characterized as negligent in dealing with Houseton's property and in violating RPC 1.15(c) as indicated by Section 4.13. Thus, we believe that the appropriate sanction, pursuant to Rule 9, Section 15.4 of Tennessee Supreme Court Rules, is a public censure as defined by Rule 9, Section 12.4. Additionally, we find it appropriate to order restitution in the amount of \$495 to be made to Houseton by Respondent.

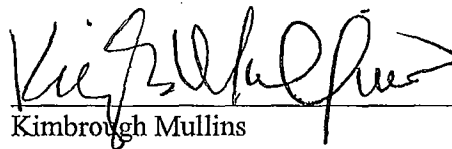
It is therefore **ORDERED, ADJUDGED AND DECREED** that the Respondent, being found to have violated the provisions of RPC 1.15(c) and 8.4 (a), receive a public censure for this violation and is further ordered to refund Houseton his security retainer of \$495.00. Any and all other outstanding motions or issues are denied as moot.

THIS JUDGMENT MAY BE APPEALED PURSUANT TO §33 OF RULE 9 OF THE TENNESSEE SUPREME COURT RULES BY FILING WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF THE HEARING PANEL'S JUDGMENT A PETITION FOR REVIEW IN THE CIRCUIT OR CHANCERY COURT OF THE COUNTY IN WHICH THE OFFICE OF THE RESPONDENT OR PETITIONING ATTORNEY WAS LOCATED AT THE TIME THE CHARGES WERE FILED WITH THE BOARD.

ENTERED on this the 8th day of May, 2019.



Sean Antone Hunt, Chair



Kimbrough Mullins

Buckner Wellford
Buckner Wellford

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, William A. Cohn, 291 Germantown Bend Cove, Cordova, TN 38018, via U.S. First Class Mail, and hand-delivered to Alan Johnson, Disciplinary Counsel, on this the 8th day of May, 2019.



Rita Webb
Executive Secretary

NOTICE

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.

**BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

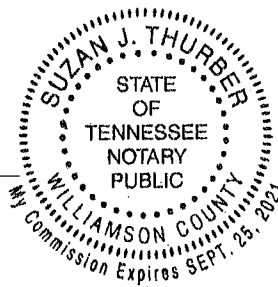
I, Rita Webb, Executive Secretary of said Board, do hereby certify that the attached is a true, accurate, and complete copy of Judgment of the Hearing Panel, IN RE: William Allan Cohn, BPR Docket No. 2018-2875-9-AJ, filed May 8, 2019, of record now on file in our office.

In Testimony Whereof, I have hereunto set my hand at Nashville, on this 28th day of May, 2020.



Rita Webb
Executive Secretary

Sworn to and subscribed before me,
this 28th day of May, 2020.


NOTARY PUBLIC

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
10/22/2019
Clerk of the
Appellate Courts

IN RE: WILLIAM ALLAN COHN, BPR #005873
An Attorney Licensed to Practice Law in Tennessee
(Shelby County)

No. M2019-01855-SC-BAR-BP
BOPR No. 2018-2875-9-AJ

ORDER OF ENFORCEMENT

This matter is before the Court upon a Petition for Discipline filed by the Board of Professional Responsibility (“Board”) against William Allan Cohn on June 5, 2018; upon Mr. Cohn’s Motion of Respondent to Dismiss Petition filed on June 26, 2018; upon Mr. Cohn’s Answer to Petition for Discipline filed June 29, 2018; upon the Board’s Response to Motion to Dismiss filed August 30, 2018; upon the Hearing Panel’s Order Denying Respondent’s Motion to Dismiss entered October 2, 2018; upon Mr. Cohn’s Motion and Memorandum in Support of Respondent’s Motion for Summary Judgment filed November 15, 2018; upon the Board’s Response to Motion for Summary Judgment filed on December 21, 2018; upon argument before the Hearing Panel on January 17, 2019 on Respondent’s Motion for Summary Judgment; upon the Hearing Panel’s Order Denying Respondent’s Motion for Summary Judgment entered February 1, 2019; upon the final hearing conducted on April 10, 2019; upon the Judgment of the Hearing Panel entered May 8, 2019; upon service of the Judgment of the Hearing Panel on Mr. Cohn by the Executive Secretary for the Board on May 8, 2019; upon the Board’s Application for Assessment of Costs filed May 9, 2019; upon Mr. Cohn’s objection to the Board’s Application for Assessment of Costs filed on filed on May 13, 2019; upon Agreed Order for Assessment of Costs entered by the Hearing Panel on July 9, 2019; upon service of the Agreed Order for Assessment of Costs on Mr. Cohn by the Executive Secretary for the Board on July 9, 2019; upon consideration and approval by the Board on June 14, 2019; upon expiration of the appeal period with no appeal taken; and upon the entire record in this cause.

From all of which the Court approves the Order of the Hearing Panel and adopts the Hearing Panel’s Order as the Court’s Order.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT THAT:

EXHIBIT
3

(1) Pursuant to Tenn. Sup. Ct. R. 9, § 12.4, William Allan Cohn, is hereby publicly censured.

(2) Pursuant to Tenn. Sup. Ct. R. 9, § 12.7, Mr. Cohn shall pay restitution to Frank Houseton in the amount of \$495.00 no later than thirty (30) days from entry of this Order of Enforcement.

(3) Pursuant to Tenn. Sup. Ct. R. 9, § 31.3(d), Mr. Cohn shall pay to the Board of Professional Responsibility the expenses and costs of this matter in the amount of \$1,093.25 and shall pay to the Clerk of this Court the costs incurred herein, within ninety (90) days of the entry of this Order, for all of which execution may issue if necessary.

(4) The Board of Professional Responsibility shall cause notice of this discipline to be published as required by Tenn. Sup. Ct. R. 9, § 28.11.

(5) Pursuant to Tenn. Sup. Ct. R. 9, § 28.1, this Order shall be effective upon entry.

PER CURIAM

I, James M. Hivner, Clerk, hereby certify that
this is a true and exact copy of the original
Order
filed in the cause.

This 13 day of March, 2020
CLERK OF COURT

By: Sherry Tyler D.C.

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

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INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. 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 chair or, in the Chair’s absence, the member elected by BODA to serve as vice-chair.
- (c) “Classification” is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “BODA Clerk” is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “CDC” is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.
- (f) “Commission” is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- (g) “Executive Director” is the executive director of BODA.
- (h) “Panel” is any three-member grouping of BODA under TRDP 7.05.
- (i) “Party” is a Complainant, a Respondent, or the Commission.
- (j) “TDRPC” is the Texas Disciplinary Rules of Professional Conduct.
- (k) “TRAP” is the Texas Rules of Appellate Procedure.
- (l) “TRCP” is the Texas Rules of Civil Procedure.
- (m) “TRDP” is the Texas Rules of Disciplinary Procedure.
- (n) “TRE” is the Texas Rules of Evidence.

Rule 1.02. General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 [17.01] applies to the enforcement of a judgment of BODA.

Rule 1.03. Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04. Appointment of Panels

- (a) BODA may consider any matter or motion by panel,

except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

- (b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05. Filing of Pleadings, Motions, and Other Papers

- (a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

- (1) Email Address. The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

- (2) Timely Filing. Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

- (3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

- (4) Exceptions.

- (i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

- (ii) The following documents must not be filed electronically:

- a) documents that are filed under seal or subject to a pending motion to seal; and

- b) documents to which access is otherwise restricted by court order.

- (iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

- (5) Format. An electronically filed document must:

- (i) be in text-searchable portable document format (PDF);
- (ii) be directly converted to PDF rather than scanned, if possible; and
- (iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

- (1) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
- (2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06. Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and 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. To establish service by certified mail, the return receipt must contain the Respondent’s signature.

Rule 1.07. Hearing Setting and Notice

(a) **Original Petitions.** In any kind of case initiated by the CDC’s filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the

request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08. Time to Answer

The Respondent may file an answer at any time, 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 1.09. Pretrial Procedure

(a) Motions.

(1) Generally. To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must 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. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) For Extension of Time. All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

- (i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (ii) if an appeal has been perfected, the date when the appeal was perfected;
- (iii) the original deadline for filing the item in question;
- (iv) the length of time requested for the extension;
- (v) the number of extensions of time that have been granted previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

- (1) marked;
- (2) indexed with the title or description of the item offered as an exhibit; and
- (3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10. Decisions

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

- (1) as required by the TRDP; and
- (2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11. Board of Disciplinary Appeals Opinions

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must 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 BODA 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.

Rule 1.12. BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is 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, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13. Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14. Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15. Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

II. ETHICAL CONSIDERATIONS

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

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on 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) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction

Rule 2.03. Disqualification and Recusal of BODA Members

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

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02. Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and

all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21 [2.20].

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21 [2.20].

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24 [2.23], the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02. Record on Appeal

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

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

(c) Responsibility for Filing Record.

(1) Clerk's Record.

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

- a) a notice of appeal has been filed;
- b) a party has requested that all or part of the reporter's record be prepared; and
- c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) Preparation of Clerk's Record.

(1) To prepare the clerk's record, the evidentiary panel clerk must:

- (i) gather the documents designated by the parties'

written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

(f) **Preparation of the Reporter's Record.**

(1) The appellant, at or before the time prescribed for

perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise

(6¹) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.

(h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

(i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

¹ So in original.

Rule 4.03. Time to File Record

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless

a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or 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 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of 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 a 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) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

(c) Extension of Time to File the Reporter's Record.

When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

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

Rule 4.04. Copies of the Record

The record may 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 a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05. Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) **Appellee's Filing Date.** Appellee's brief must be filed

within 30 days after the appellant's brief is filed.

(c) Contents. Briefs must 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 indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;
- (3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;
- (4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;
- (5) a statement, without argument, of the basis of BODA's jurisdiction;
- (6) a statement of the issues presented for review or points of error on which the appeal is predicated;
- (7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;
- (8) the argument and authorities;
- (9) conclusion and prayer for relief;
- (10) a certificate of service; and
- (11) an appendix of record excerpts pertinent to the issues presented for review.

(d) Length of Briefs; Contents Included and Excluded.

In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

(e) Amendment or Supplementation. BODA has discretion to grant leave to amend or supplement briefs.

(f) Failure of the Appellant 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;

(2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or

(3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06. Oral Argument

(a) Request. A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

(b) Right to Oral Argument. A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

- (1) the appeal is frivolous;
- (2) the dispositive issue or issues have been authoritatively decided;
- (3) the facts and legal arguments are adequately presented in the briefs and record; or
- (4) the decisional process would not be significantly aided by oral argument.

(c) Time Allowed. Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

Rule 4.07. Decision and Judgment

(a) Decision. BODA may do any of the following:

- (1) affirm in whole or in part the decision of the evidentiary panel;
- (2) modify the panel's findings and affirm the findings as modified;
- (3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or
- (4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:

- (i) the panel that entered the findings; or
- (ii) 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) Mandate. In every appeal, the BODA Clerk must issue a mandate in accordance with BODA’s judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08. Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27 [2.26]. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09. 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.

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

(a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23 [2.22].

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23 [2.22], the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

Rule 5.02. Hearing

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

Rule 6.02. Interlocutory Suspension

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA must suspend the Respondent’s license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA’s next available hearing date.

(2) If the criminal sentence is not fully probated:

- (i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or
- (ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent’s license.

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. The petition must 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 certified copy of the order or judgment rendered against the Respondent.

Rule 7.02. Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

Rule 7.03. Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice 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.

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

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

(b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

(c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.

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

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

Rule 8.02. Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06.

(b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.

(c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

Rule 8.03. Discovery

(a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

(b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) **Motion.** The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) **Report.** The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

(c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

Rule 8.04. Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC 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 petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

(b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

Rule 8.06. Hearing

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 must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07. Notice of Decision

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

Rule 8.08. Confidentiality

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

IX. 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. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include 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 must 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 make all or any part of the record of the proceeding confidential.

Rule 9.02. Discovery

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

Rule 9.03. Physical or Mental Examinations

(a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.

(b) The petitioner must 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 must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

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

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her 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 other orders necessary to protect the public and the petitioner's potential clients.

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

(a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.