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

IN THE MATTER OF	§	
JOHN HOLMAN WEIGEL,	§	**CAUSE NO.** 55411
STATE BAR CARD NO. 24013726	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, John Holman Weigel, (hereinafter called "Respondent"), showing as follows:

1. Pursuant to Rules 190.1 and 190.3, Texas Rules of Civil Procedure (TRCP), Petitioner intends discovery in this case to be conducted under the Level II Discovery Control Plan.

2. 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.

3. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at 4300 Bay Area Blvd., Suite 1017, Houston, Texas 77058.

4. On or about April 5, 2012, a Complaint (Exhibit 1) was filed in the Supreme Court of the State of Oklahoma in a matter styled, *State of Oklahoma ex rel. Oklahoma Bar*

Association, Complainant, v. John Holman Weigel, Respondent, OBAD #1910, SCBD #5864.

5. On or about August 21, 2012, an Amended Complaint (Exhibit 2) was filed in the Supreme Court of the State of Oklahoma in a matter styled, *State of Oklahoma ex rel. Oklahoma Bar Association, Complainant, v. John Holman Weigel, Respondent*, OBAD #1910, SCBD #5864.

6. On or about May 6, 2013, a Report of the Trial Panel (Exhibit 3) was filed in the Supreme Court of the State of Oklahoma before the Professional Responsibility Tribunal in a matter styled, *State of Oklahoma ex rel. Oklahoma Bar Association, Complainant, v. John Holman Weigel, Respondent*, OBAD #1910, SCBD #5864.

7. On or about February 4, 2014, an Attorney Disciplinary Proceeding (Exhibit 4) was filed in the Supreme Court of the State of Oklahoma in a matter styled, *State of Oklahoma ex rel. Oklahoma Bar Association, Complainant, v. John Holman Weigel, Respondent*, SCBD 5864, that states in pertinent part as follows:

...Having reviewed the matter *de novo*, we suspend the Respondent from the practice of law for two years...

8. On February 24, 2014, Respondent's Petition for Rehearing (Exhibit 5) was filed in the Supreme Court of the State of Oklahoma in a matter styled *State of Oklahoma ex rel. Oklahoma Bar Association, Complainant, v. John Holman Weigel, Respondent*, SCBD 5864. On March 31, 2014, the Petition for Rehearing was denied (Exhibit 6).

9. The Attorney Disciplinary Proceeding states that in the first complaint, the Bar alleged violation of Rule 8.1(b) of the Oklahoma Rules of Professional Conduct ("ORPC") and Rules 1.3 and 5.2 of the Oklahoma Rules Governing Disciplinary Procedures ("RGDP") for failure to respond to the grievance. In the second complaint, the

Bar alleged violations of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d) and 3.2 of the ORPC and Rule 1.3 of the RGDP, asserting the Respondent accepted a flat fee from the client, which he deposited in his operating account, and then failed to properly communicate with the client or to complete the work necessary to earn the fee. In the third complaint, the Bar alleged violations of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d) and 3.2 of the ORPC and Rule 1.3 of the RGDP, asserting the Respondent accepted a flat fee from the client and deposited the fee in his operating account, failed to properly communicate with the client and failed to competently complete the work necessary to earn the fee. In the fourth complaint, the Bar alleged the Respondent violated Rules 1.1, 1.3, 1.4, 3.2, 8.4(d) of the ORPC and Rule 1.13 of the RGDP, by accepting a flat fee from the client, then failing to properly communicate with the client or to diligently and properly complete the work for which he had been paid. In a fifth complaint, the Bar alleged Respondent's conduct violated Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), 3.2 and 8.4(d) of the ORPC and Rule 1.3 of the RGDP by accepting a flat fee from the client, depositing the fee into his operating account and then failing to properly communicate with the client or to competently complete the work necessary to earn the fee. In a sixth complaint, the Bar alleged conduct in violation of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), 3.2 and 8.4(d) of the ORPC and Rule 1.3 of the RGDP by accepting a flat fee from the client, depositing the fee into his operating account and then failing to properly communicate with the client or to competently complete the work necessary to earn the fee.

Copies of the Complaint, Amended Complaint, Report of the Trial Panel, Attorney Disciplinary Proceeding, Respondent's Petition for Rehearing and Order Denying Petition for Rehearing are attached hereto as Petitioner's Exhibits 1 through 6, 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 6 at the time of hearing of this cause.

10. 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 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 the State of Oklahoma and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Linda A. Acevedo
Chief Disciplinary Counsel

Judith Gres DeBerry
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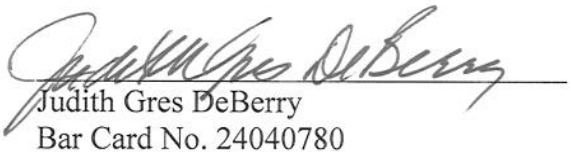

Judith Gres DeBerry
Bar Card No. 24040780
ATTORNEYS FOR PETITIONER

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 John Holman Weigel by personal service.

John Holman Weigel
4300 Bay Area Blvd., Suite 1017
Houston, Texas 77058

Judith Gres DeBerry

Effective July 2009

SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES

Effective July 2009

SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
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SECTION 1: 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 chairperson.

(c) "Classification" is the determination pursuant to TEXAS RULES OF DISCIPLINARY PROCEDURE ("TRDP") 2.10 by the Chief Disciplinary Counsel ("CDC") whether a grievance constitutes a "complaint" or an "inquiry."

(d) "Clerk" is the executive director or other person appointed by BODA to assume all duties normally performed by the clerk of a court.

(e) "Executive Director" is the executive director of BODA.

(f) "Panel" is any three-member grouping of BODA.

(g) "Party" is a complainant, respondent, or the CDC.

Rule 1.02 General Powers

Pursuant to TRDP 7.08J, BODA shall have and exercise all the powers of either a trial court or appellate court, as the case may be, in hearing and determining disciplinary proceedings; except that BODA judgments and orders shall be enforced in accordance with TRDP 15.03.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TEXAS RULES OF CIVIL PROCEDURE ("TRCP"), TEXAS RULES OF APPELLATE PROCEDURE ("TRAP"), and TEXAS RULES OF EVIDENCE ("TRE") apply to all disciplinary matters before BODA, except appeals from classification decisions, which are governed by Section 3 of these Internal Rules.

Rule 1.04 Appointment of Panels

(a) BODA may consider any matter or motion through appointment of a panel, except as specified in subpart (b) of this Rule. The chair may delegate appointment of panels for any BODA action to the executive director. Decisions shall be by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting *en banc*. Nothing

contained in these rules shall be construed to give a party the right to be heard by BODA sitting *en banc*.

(b) Any disciplinary matter naming a BODA member as respondent shall be considered by BODA sitting *en banc*.

Rule 1.05 Record Retention

Records of appeals from classification decisions shall be retained by the BODA clerk for a period of at least three (3) years from the date of disposition. Records of other disciplinary matters shall be retained for a period of at least five (5) years from the date of final judgment, or for at least one (1) year after the date a suspension or disbarment ends, whichever is later.

Rule 1.06 Trial Briefs

In any disciplinary proceeding before BODA, all trial briefs and memoranda must be filed with the clerk no later than ten (10) days before the hearing, except upon leave of BODA.

Rule 1.07 Service

In any disciplinary proceeding before BODA initiated by service of a petition upon the respondent, service shall be by personal service, certified mail with return receipt requested and delivery restricted to respondent as addressee only, or in any other manner permitted by applicable rule(s) and authorized by BODA that is 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. The CDC may serve a petition by certified mail itself without the appointment of a private process server. To establish service by certified or registered mail, the return receipt must contain the respondent's signature.

Rule 1.08 Publication

The office of the CDC shall publish these rules as part of the TDRPC and TRDP and notify each respondent in a compulsory discipline, reciprocal discipline, revocation of probation, or disability matter filed with BODA where these rules are available.

Rule 1.09 Photocopying Costs

The clerk of BODA may charge to the requestor a reasonable amount for the reproduction of non-confidential documents filed with BODA. BODA may set a fee for the reproduction of documents. The fee shall include compensation for staff and recovery of actual production costs.

Rule 1.10 Abstracts

BODA may, in its sole discretion, periodically prepare abstracts of inquiries, grievances, or disciplinary proceedings for publication pursuant to Texas Gov't Code § 81.072(b)(3) and Part VI of the TRDP.

Rule 1.11 Hearing Setting and Notice

(a) **Original Petitions**. For any compulsory case, reciprocal case, revocation of probation, or other matter initiated by the CDC filing a petition with BODA, the CDC may contact the BODA clerk for the next regular available hearing date before filing the original petition. The CDC may then include in the petition a hearing notice specifying the date, time, and place of the hearing. The hearing date must be at least thirty (30) days from the date that the petition is served on the respondent, except in the case of a petition to revoke probation.

(b) **Filing without notice**. The CDC may file any matter with BODA without first obtaining a hearing date so long as it thereafter serves notice on the respondent of the date, time, and place of the hearing in accordance with TRCP 21a (or other applicable TRCP) at least thirty (30) days before the hearing date, except in the case of a petition to revoke probation.

(c) **Expedited settings.** If a party desires a hearing on a matter on a date other than the next regular available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. The expedited hearing setting must be at least thirty (30) days from the date of service of the petition, motion or other pleading, except in the case of a petition to revoke probation. BODA may grant or deny a request for an expedited hearing date in its sole discretion.

(d) **Setting notices**. BODA shall notify the parties by first class mail of any hearing date, other than a hearing set on the next regularly available hearing date as noticed in an original petition or motion.

(e) **Announcement docket**. Attorneys and parties appearing before BODA shall check in with the BODA clerk in the courtroom immediately prior to the time docket call is scheduled to begin. The chair will call an announcement docket immediately following the call to order of BODA hearings. Attorneys for each party with a matter on the docket shall appear at that time to give their announcement of readiness, a time estimate for the hearing, and any preliminary motions or matters. The chair will set and announce the order of cases to be heard following the docket announcements.

Rule 1.12 Time to Answer

An answer to any matter pending before BODA may be filed at any time prior to the day of the hearing on the merits 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 1.13 Facsimile and Electronic Filing

(a) Any document required to be filed with BODA may be filed by facsimile transmission with a copy to the BODA clerk by first class mail. A document filed by facsimile will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by facsimile after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day.

(b) Any document required to be filed with BODA may be filed by emailing a copy of the document file to the email address designated by BODA for that purpose with a copy sent to the BODA clerk by first class mail. A document filed by email will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by email after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day. The date and time of receipt shall be determined by the date and time shown on the BODA clerk's email.

(c) It is the responsibility of the party filing a document by facsimile or email to obtain the correct telephone number or email address for BODA and confirm that the document was received by BODA in legible form. Any document which is illegible or which cannot be opened as part of an email attachment by BODA will not be considered received or filed. Parties using facsimile or email filing must still comply with TRCP requirements for signatures.

(d) Papers will not be deemed filed if sent to any individual BODA member or other office or address.

Rule 1.14 Hearing Exhibits

Counsel should provide an original and twelve copies of any document, pleading, exhibit, or other material which the attorney intends to offer or otherwise make available to the BODA members at a hearing and not already filed with BODA prior to the hearing.

Rule 1.15 BODA Work Product and Drafts

Without limiting any exceptions or exemptions from disclosure contained in any other rules or statutes, a document or record of any nature, regardless of electronic or physical form, characteristics, or means of transmission, 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, by BODA staff or interns, or any other person acting on behalf of or at the direction of BODA.

Rule 1.16 BODA Opinions

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

SECTION 2: ETHICAL CONSIDERATIONS

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

(a) No current member of BODA shall represent a party with respect to any disciplinary action or proceeding. No current member of BODA shall testify voluntarily or offer to testify voluntarily on behalf of a party in any disciplinary action or proceeding.

(b) No current BODA member may serve as an expert witness providing opinions regarding 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) All BODA deliberations are confidential and shall not be disclosed by BODA members or staff. Classification appeals files and disability suspension files are confidential pursuant to the TRDP.

(b) If subpoenaed or otherwise compelled by law to testify in any proceeding, members of BODA shall not disclose matters discussed in conference concerning any disciplinary case, unless required to do so by a court of competent jurisdiction. If subpoenaed or otherwise compelled to attend any disciplinary proceeding, including depositions, a member of BODA shall promptly notify the chair of BODA and the CDC.

Rule 2.03 Disqualification and Recusal of BODA Members

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

(b) BODA members may, in addition to recusals pursuant to (a) above, voluntarily recuse themselves from any discussion and voting for any other reason.

(c) Nothing in these rules shall impute disqualification to lawyers who are members of or associated with BODA members' firms from serving on grievance committees or representing parties in disciplinary or legal malpractice cases; however, BODA members shall recuse themselves from any matter in which any lawyer who is a member of or associated with a BODA member's firm represents a party in any disciplinary proceeding or before BODA.

Rule 2.04 Communications with BODA

Correspondence or other communications relative to any matter pending before BODA must be conducted with the clerk and shall not be addressed directly to or conducted with any BODA member.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Appeal

(a) If the grievance filed by the complainant is not classified as a complaint, the CDC shall notify the complainant of his or her rights to appeal as set out in TRDP 2.10 or other applicable rule.

(b) To facilitate the potential filing of an appeal, the CDC shall send the complainant an Appeal Notice form with the classification disposition which shall include, but is not limited to, the docket number of the matter, the time deadline for appealing as set out in TRDP 2.10 or other applicable provision, and information for mailing or faxing the Appeal Notice to BODA.

Rule 3.02 Complaint on Appeal

BODA shall review only the original grievance on appeals from classification decisions. The CDC shall forward a copy of the complete grievance to BODA with supporting documentation as originally filed. BODA shall not consider any supplemental information which was not reviewed as part of the original screening and classification decision.

Rule 3.03 Notice of Disposition

BODA shall mail complainant, respondent, and the CDC written notice of the decision of the appeal by first class mail to the addresses provided BODA by the CDC in the appeal transmittal.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Signing, Filing, and Service

(a) **Signing.** Each brief, motion or other paper filed shall be signed by at least one attorney for the party or by the party *pro se* and shall give the State Bar of Texas identification number, mailing address, telephone number, email address, and telecopier number, if any, of each attorney whose name is signed thereto, or of the party (if applicable).

(b) **Number of Copies.** Each party shall file an original and two (2) copies of all briefs and motions with the clerk. Only one copy of the clerk's record and reporter's record shall be filed.

(c) **Service.** Copies of all papers other than the record filed by any party shall, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 4.02 Computation of Time

(a) **Beginnings of Periods.** The date the chair of the evidentiary panel signs its decision shall constitute the date of notice under TRDP 2.21.

(b) **TRAP Followed.** Computation of time for purposes of this section shall follow TRAP 4.1 and 9.2(b).

Rule 4.03 Record on Appeal

(a) **Contents.** The record on appeal shall consist of a clerk's record and where necessary to the appeal, a reporter's record.

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

(c) **Responsibility for Filing Record.** The custodian of records of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record if a notice of appeal has been filed. The court reporter is responsible for timely filing the reporter's record if a notice of appeal has been filed, the appellant has requested that the reporter's record be prepared, and the party responsible for initiating the appeal has paid the reporter's fee or has made satisfactory arrangements with the reporter. The party initiating the appeal shall pay the cost of preparing the record.

(d) **Clerk's Record.**

(1) Unless otherwise stipulated by the parties, the clerk's record on appeal shall include all papers on file with the evidentiary panel, including, but not limited to, the election letter, all pleadings upon which the hearing was held, the docket sheet, the evidentiary panel's charge, the final hearing order with attachments or exhibits, any findings of fact and conclusions of law, all other pleadings, the judgment or other order(s) appealed from, the notice of decision sent each party, any post-submission pleadings and briefs, and any notice of appeal.

(2) Upon receipt of a copy of the notice of appeal, the custodian of records in the individual CDC office which conducted the evidentiary hearing shall prepare and transmit the clerk's record to BODA If the CDC is unable for any reason to prepare and transmit the clerk's record by the due date, it shall promptly notify BODA and the parties, explain the reason(s) why it cannot be timely filed, and give the date by which it expects the clerk's record can be filed.

(3) The clerk's record should be in the following form:

(i) contain a detailed index identifying each document included in the record, the date of filing, and the page where it first appears;

(ii) arranged in ascending chronological order by document by date of filing or occurrence;

(iii) tabbed with heavy index tabs to show the beginning of each document;

(iv) consecutively numbered in the bottom right-hand corner of the pages;

(v) bound together so that the record will lie flat when opened; and

(vi) contain the custodian's certification that the documents contained in the clerk's record are true and correct copies and are all the documents required to be filed.

(e) **Reporter's Record**. The appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter for the reporter's record, designating the portion of the evidence and other proceedings to be included. A copy of such request shall be filed with the evidentiary panel and BODA and be served on the appellee. The reporter's record shall be certified by the official court reporter.

(f) **Non-Stenographic Recordings.** All testimony and evidence may be recorded at the evidentiary hearing by means other than stenographic recording, including videotape recordings; however, the non-stenographic recording shall not dispense with the requirement of a stenographic transcription of the hearing. In appeals to BODA, the non-stenographic recording must be transcribed and the transcription filed as the reporter's record.

(g) **Other Requests**. At any time before the clerk's record is prepared or within ten (10) days after service of a copy of appellant's request for the reporter's record, any party may request additional portions of the evidence and other proceedings to be included therein.

(h) **Inaccuracies or Defects.** Any inaccuracies in the record may be corrected by an agreement of the parties. Any dispute regarding the reporter's record shall be submitted by BODA to the evidentiary panel for resolution and to conform the reporter's record.

Rule 4.04 Time to File Record

(a) **Timetable**. The clerk's record and reporter's record (including a non-stenographic recording which has been transcribed) shall be filed with the BODA clerk within thirty (30) days after the date the notice of appeal is received by BODA. Failure to file either the clerk's record or the reporter's record within such time shall not affect BODA's jurisdiction, but shall be grounds for BODA exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or to 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 thirty (30) days. The BODA clerk must send a copy of this notice to all the parties and 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 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)(a) appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and

(b) the appellant is not entitled to proceed without payment of costs.

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

Rule 4.05 Copies of the Record

The record shall 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 written request to the clerk and paying copying charges.

Rule 4.06 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within thirty (30) days after the later of the date on which the clerk's record or the reporter's record was timely filed.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within thirty (30) days after the filing of appellant's brief.

(c) **Contents.** Briefs shall 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 with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are

cited. The subject matter of each point or group of points shall be indicated in the table of contents;

(3) a brief general statement of the nature of the cause or offense and the result;

(4) a statement of the points upon which an appeal is predicated or the issues presented for review;

(5) a brief of the argument;

(6) prayer for relief; and,

(7) an appendix consisting of copies of pertinent parts of the record upon which the party relies.

(d) **Length of Briefs.** Briefs shall be typewritten or otherwise legibly printed on letter-size (8½" x 11") paper and shall not exceed fifty (50) pages in length, exclusive of pages containing names and addresses of parties, table of contents, index of authorities, points of error, and any addenda or appendix containing statutes, rules, regulations, etc., except upon leave of BODA.

(e) **Amendment or Supplementation**. Briefs may be amended or supplemented upon leave of BODA.

(f) **Failure 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; or

(2) decline to dismiss the appeal and give further direction to the case as it considers proper.

Rule 4.07 Oral Argument

(a) **Request.** A party desiring oral argument before BODA shall request same in writing and include the request in the notice of appeal or on the front cover of that party's first brief. BODA may grant or deny the request in its sole discretion. If oral argument is granted, the clerk shall notify the parties of the time and place for submission. BODA may also advance cases without oral argument or direct parties on its own initiative to appear and submit oral argument on a case. The parties may agree to submit the case without argument after requesting same.

(b) **Time Allowed.** Each party shall have twenty (20) minutes in which to argue. BODA may, upon request of a party or in its discretion, extend or shorten the time allowed for oral argument.

Rule 4.08 Motions Generally

An application for an order or other relief shall be made by filing a motion with the BODA clerk for same supported by sufficient cause with proof of service on all other parties. The motion shall state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other papers shall 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. BODA may determine a motion before a response is filed.

Rule 4.09 Motions for Extension of Time

(a) **When due.** Any request for extension of time other than to file a brief must be filed with the BODA clerk no later than fifteen (15) days after the last day allowed for filing the item in question.

(b) **Contents.** All motions for extension of time shall be in writing, comply with BODA Internal Procedural Rule 4.08, and specify the following:

(1) the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(2) if the appeal has been perfected, the date when the appeal was perfected;

(3) the original deadline for filing the item in question;

(4) the length of time requested for the extension;

(5) the number of extensions of time which have been granted previously regarding the item in question; and,

(6) the facts relied upon to reasonably explain the need for an extension.

(c) **For Filing Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied upon to reasonably explain the need for an extension must be supported by an affidavit of the court reporter, which shall include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

Rule 4.10 Decision and Judgment

(a) **Decision.** BODA may affirm in whole or in part the decision of the evidentiary panel, modify the panel's finding(s) and affirm the finding(s) as modified, reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered, or reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:

(1) the panel that entered the finding(s); or,

(2) 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) **Notice of Orders and Judgment.** When BODA renders judgment or grants or overrules a motion, the clerk shall give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be marked so as to be returnable to the clerk in case of nondelivery.

(c) **Mandate.** In every case where BODA reverses or otherwise modifies the judgment appealed from, BODA shall issue a mandate in accordance with its judgment and deliver it to the evidentiary panel.

Rule 4.11 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.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

(a) Before filing a motion with BODA seeking to revoke the probation of an attorney who has been sanctioned, the CDC shall contact the BODA clerk to confirm whether the next regular available hearing date will comply with the thirty-day requirement of TRDP. The chair may designate a three-member panel to hear the motion, if necessary, to meet the thirty-day requirement of TRDP 2.23.

(b) Upon filing of the motion, the CDC shall serve the respondent in accordance with TRDP 2.23 with the motion and supporting documents, if any, in accordance with the TRCP and these rules. The CDC shall notify BODA of the date service is obtained on the respondent.

Rule 5.02 Hearing

Within thirty (30) days of service of the motion on the respondent, BODA shall docket and set the matter for a hearing and notify the parties of the time and place for the hearing; however, upon a showing of good cause by a party or upon its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE MATTERS

Rule 6.01 Initiation of Proceeding

Pursuant to TRDP 8.03, the CDC shall file a petition for compulsory discipline with BODA and serve the respondent in accordance with the TRDP and Rule 1.07 above.

Rule 6.02 Notice of Decision

The BODA clerk shall mail a copy of the judgment to the parties within ten (10) days from the date the decision is signed by the chair. Transmittal of the judgment shall include all information required by the TRDP and the Supreme Court.

SECTION 7: RECIPROCAL DISCIPLINE MATTERS

Rule 7.01 Initiation of Proceeding

(a) Pursuant to TRDP 9.01 and 9.02, the CDC shall file a petition for reciprocal discipline with BODA when information is received indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction.

(b) The petition shall 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 copy of the order or judgment, if any, rendered against the respondent. The CDC shall serve the respondent in accordance with Rule 1.07 above.

Rule 7.02 Order to Show Cause

Upon the filing of the petition with BODA, the chair shall immediately issue a show cause order including a hearing setting notice and forward it to the CDC, who shall serve the order on the respondent. The CDC shall notify BODA of the date service is obtained.

Rule 7.03 Attorney's Response

If, on or before the thirtieth day after service of the show cause order and hearing notice by the CDC, the respondent does not file an answer 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 for reciprocal discipline.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

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

(b) Upon receiving an evidentiary panel's finding or the CDC's report that an attorney is believed to be suffering from a disability, the BODA chair shall appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. The BODA clerk shall notify the CDC and respondent that a committee has been appointed and notify the respondent where the procedural rules governing disability proceedings are available.

(c) A respondent notified to appear at a District Disability Committee hearing may, at any time, waive that hearing in writing and enter into an agreed judgment of indefinite disability suspension or probated suspension, provided that the respondent is competent to so waive the hearing. If the respondent is not represented, the waiver shall include a statement by the respondent that he has been advised of his right to have counsel appointed for him and that he waives that right.

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

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

Rule 8.02 Hearing Order

(a) Upon being notified that the District Disability Committee has been appointed by BODA, the CDC shall, within twenty (20) days, file with the BODA clerk and then serve upon the respondent either in person or by certified mail, return receipt requested with delivery restricted to the respondent as addressee with a copy by first class mail, a proposed hearing order containing a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. If service is by certified mail, the return receipt with the respondent's signature must be filed with the BODA clerk.

(b) The respondent shall, within twenty (20) days after receiving the CDC's proposed hearing order, file with the BODA clerk and serve the CDC by certified mail a proposed hearing order including a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. Respondent's failure to timely file the proposed hearing order will not affect the responsibility of the District Disability Committee to issue a final hearing order.

(c) The District Disability Committee chair may adopt either the CDC's proposed hearing order, the respondent's proposed hearing order, or an order of his or her own. The BODA clerk shall prepare the final hearing order at the instruction of the District Disability Committee chair and send to the parties by first class mail. The BODA clerk shall set the final hearing date at the instruction of the chair. The adopted order shall be the final hearing order and shall contain a date, time, and place for the hearing. That order may contain provisions requiring a physical or mental examination of the respondent.

(d) Requests for an extension of time to file the proposed hearing order by either party must be by written motion filed with the BODA clerk.

Rule 8.03 Provisions for Physical or Mental Examinations

(a) Upon motion by the CDC or upon its own motion, the District Disability Committee may order the respondent to submit to a physical and/or mental examination by a qualified health care or mental health care professional. The respondent shall be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination. Any objections(s) to the motion for an exam and request for a hearing shall be filed with the BODA clerk within fifteen (15) days of receipt of the motion.

(b) The examining professional shall file with the BODA clerk his detailed written report setting out findings, including results of all tests made, diagnoses and conclusions, and deliver a copy to the CDC and to the respondent.

(c) Nothing contained herein shall be construed to limit the respondent's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 8.04 Ability to Compel Attendance

The respondent and the CDC may, if they so choose, confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the respondent and the CDC, by requesting a subpoena be issued 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 notice transmitting the CDC's proposed hearing order shall state that the respondent may request appointment of counsel by BODA to represent him or her at the disability hearing.

(b) If the respondent wishes to have counsel appointed pursuant to TRDP Rule 12.02, a written request must be filed with the BODA clerk within sixty (60) days of the date respondent receives the CDC's proposed hearing order. Any request for appointment of counsel after sixty (60) days from the date of receipt of the proposed hearing order must show good cause for the failure to do so timely and that the request is not sought for delay only.

Rule 8.06 Limited Discovery

(a) In the sole discretion of the District Disability Committee, limited discovery is permissible upon a clear showing of good cause and substantial need. The parties seeking discovery must file with the BODA clerk a verified written request for discovery showing good cause and substantial need with the proposed hearing order.

(b) If good cause and substantial need are demonstrated, the District Disability Committee shall by written order permit the discovery, including in the final hearing order limitations or deadlines on the discovery. Such discovery, if any, as may be permitted, must be conducted by methods provided in the TRCP in effect at the time and may upon motion be enforced by a district court of proper jurisdiction.

(c) A decision of a District Disability Committee on a discovery matter may be reviewed only on appeal of the entire case. A reversal of the case may not be based upon the granting or denial of a discovery request without a showing of material unfairness or substantial harm.

Rule 8.07 Hearing

(a) 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 shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the TRE; provided, however, that the admission or exclusion of evidence shall be in the sole discretion of the chair. No ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the TRE.

(b) Such proceedings shall begin and conclude no earlier than thirty (30) days from the date the respondent receives the CDC's proposed hearing order nor later than ninety (90) days from that date; however, failure to do so does not affect the jurisdiction of the District Disability Committee to act. Nothing herein shall be construed to limit the parties' right to request a continuance of the hearing for good cause.

(c) If the Committee is unable for any reason to hold a hearing within ninety (90) days of the date the respondent receives the proposed hearing order, BODA may appoint a new committee to handle the case.

Rule 8.08 Notice of Decision

The District Disability Committee shall certify its finding and any recommendations to BODA which shall issue the final judgment in the matter.

Rule 8.09 Confidentiality

All proceedings before the District Disability Committee are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court.

SECTION 9: 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. All such petitions shall be filed with the BODA clerk. The petitioner shall also serve a copy of the petition on the CDC as set forth in TRDP 12.06. After the petition is filed, the TRCP shall apply except when in conflict with these rules. Service shall be in accordance with the TRDP and these rules.

(b) The petition shall set forth 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 shall 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 seal all or any part of the record of the proceeding.

Rule 9.02 Discovery

The parties shall have sixty (60) days from the date of the filing of the petition for reinstatement in which to conduct discovery. The matter shall be set for a hearing by the BODA clerk on the next available hearing date after the expiration of the sixty (60) days, and the clerk shall so notify the parties of the time and place of the hearing. Nothing contained herein shall preclude either party from requesting a continuance for good cause.

Rule 9.03 Physical or Mental Examinations

(a) BODA may order the petitioner seeking reinstatement to submit to a physical and/or mental examination by a qualified health care or mental health care professional upon written motion of the CDC or its own motion. The petitioner shall be served with a copy of the motion and given at least seven (7) days to respond. BODA may grant or deny the motion with or without a hearing.

(b) The petitioner shall 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 shall deliver to BODA and the parties a copy of a detailed written report setting out findings, including results of all tests made, diagnoses and conclusions.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing contained herein shall be construed to limit the petitioner's right to an examination by a professional of his 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 such other orders as protecting the public and the petitioner's potential clients may require.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT

Rule 10.01 Docketing by the Clerk

(a) All appeals to the Supreme Court from determinations by BODA on a decision of a District Grievance Committee's evidentiary panel concerning the imposition or failure to impose sanctions, appeals from determinations on compulsory discipline, reciprocal discipline, revocations of probation, and disability suspensions will be docketed by the clerk of the Supreme Court in the same manner as petitions for review.

(b) No fee shall be charged by the clerk for filing any appeal from BODA decisions.

(c) The notice of appeal must be filed directly with the clerk of the Supreme Court within fourteen (14) days after receipt of notice of a final determination by BODA. The record must be filed within sixty (60) days after BODA's determination. The appealing party's brief is due thirty (30) days after the record, and the responding party's brief must be filed within thirty (30) days thereafter.

(d) The BODA clerk shall include the information contained in subpart (c) above with transmittal of each final determination to the parties.

Rule 10.02 Appellate Rules to Apply

(a) The TRAP will apply to these appeals to the extent they are relevant. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court's decisions on sanctions, compulsory discipline, reciprocal discipline, revocations of probation, and disability suspension cases will be announced on the Court's orders. Following review by the Court, these appeals will be available for public inspection in the office of the Clerk of the Supreme Court, unless the file or some portion thereof is confidential under the TRDP.

(b) The Court may affirm a decision of BODA by order without written opinion.

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA ex rel. OKLAHOMA BAR ASSOCIATION,	)	
Complainant	)	OBAD # 1910
v.	)	
JOHN HOLMAN WEIGEL,	)	SCBD # 5864
Respondent.	)	

COMPLAINT

State of Oklahoma *ex rel.* Oklahoma Bar Association ("Complainant"), by and through its First Assistant General Counsel Loraine Dillinder Farabow, for its complaint against John Holmon Weigel ("Respondent"), alleges and states:

1. The Respondent is a member of the Oklahoma Bar Association ("OBA") and is licensed to practice law by the Supreme Court of the State of Oklahoma. Respondent was so licensed at all times relevant to this Complaint.

2. To the best knowledge, information, and belief of the Complainant, the Respondent has committed specific acts which constitute professional misconduct in violation of the Oklahoma Rules of Professional Conduct, ("ORPC"), 5 O.S. 2001, Ch. 1, App. 3-A (Supp. 2008), and the Rules Governing Disciplinary Proceedings, ("RGDP"), 5 O.S. 2001, Ch. 1, App. 1-A, and are cause for professional discipline as provided in the RGDP. These standards of conduct, adopted and enforced by the Supreme Court of the State of Oklahoma, provide guidelines by which all attorneys are to practice law in Oklahoma.

4-5-12

Exhibit
1

3. These proceedings are commenced pursuant to Rule 6, RGDP.

4. The official Oklahoma Bar Association roster address of the Respondent is: John Holman Weigel, OBA #18616, 444 E. Medical Center Blvd., Suite 1201, Webster, TX 77598.

COUNT I: THE BOYD GRIEVANCE

5. On October 26, 2009, the OBA received a grievance from Peggy Jean Boyd ("Boyd") regarding Respondent's representation of her son, Roger D. Boyd.

6. The OBA opened Boyd's grievance for informal investigation as IC 09-957. By letter dated November 3, 2009, the OBA advised Respondent of Boyd's grievance and requested he respond within two weeks in writing.

7. Although the OBA's November 3, 2009 letter was mailed to Respondent's official roster address, Respondent wholly failed to respond as required.

8. On November 25, 2009, the OBA mailed Respondent another letter to his official roster address advising him of his failure to respond to Boyd's grievance and requesting he do so within five (5) working days from the date of the letter.

9. Respondent failed to respond to Boyd's grievance as required.

10. By letter dated December 23, 2009 and mailed to Respondent's official roster address, the OBA advised it was now opening Boyd's grievance for formal investigation as DC 09-336 and that he was required to respond, in writing, within twenty (20) days.

11. By letter dated January 8, 2010, Respondent provided his written response to Boyd's grievance and apologized for the delay in his initial response.

12. Respondent's conduct thereby violated the mandatory provisions of Rules 8.1(b), ORPC and Rules 1.3 and 5.2, RGDP, and warrants the imposition of professional

discipline.

COUNT II: THE WHITELEY GRIEVANCE

13. Cody Allen Whiteley ("Whiteley") hired Respondent on July 8, 2009 to represent him in a paternity action pending in Jackson County District Court, Case No. FP-2008-79, *Whiteley v. Bradley*.

14. The contract for services provided for Whiteley to pay a total "flat fee" of $12,000.00 with a $6,000.00 payment due immediately and payments of $1,000.00 to be made thereafter each month until paid in full.

15. Respondent did not have a client trust account at the time Whiteley hired him.

16. On July 8, 2009, Whiteley's mother $6,010.00[1] payment to the"John H. Weigel, Attorney at Law" account, #877914, (hereinafter referred to as "general account") held with the First State Bank of Altus.

17. The day before Whiteley's wire transfer, Respondent's general account balance was $3,341.97 as of July 7, 2009. However, on July 10, 2009, just two days after the $6,000.00 transfer, Respondent's general account was only $4,496.22 despite the fact that he deposited an additional $500.00 into the account on July 9, 2009.

18. By July 15, 2009, Respondent's general account had a balance of only $1,772.13 despite an additional deposit of $650.00 on July 14, 2009.

19. After the deposit of the initial $6,000.00 retainer on Whiteley's behalf, Respondent made numerous electronic disbursements of funds from his general account for personal and business expenses such as:

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[1] It appears there was a $10.00 wire transfer fee applied.

a. On July 10, 2009, a $188.29 debit for Cable One;

b. On July 10, 2009, a $329.99 and a $1,875.00 debit for Capital One;

c. On July 10, 2009, a $915.00 debit for Yellow Book West;

d. On July 10, 2009, a $4,522.52 debit for American Express;

e. On July 13, 2009, a $538.00 debit for PRIVETT SALES;

f. On July 14, 2009, a $824.64 debit for SWBYPS;

g. On July 15, 2009, a $100.00 debit ATM cash withdrawal;

h. On July 16, 2009, a $501.00 debit ATM withdrawal (with $1.00 ATM transaction fee);

I. On July 20, 2009, six debits totaling $165.00 for NF *SERVICES - 877-527-2655 CA (for NiteFlirt, a phone sex & live web cam service);

j. On July 20, 2009, a $100.00 debit ATM cash withdrawal;

k. On July 20, 2009, a $235.00 debit for the State Bar of Texas;

l. On July 21, 2009, a $542.18 wire transfer;

m. On July 21, 2009, a $205.00 debit for USAA;

n. On July 21, 2009, a $443.00 debit for Bank of America;

o. On July 22, 2009, a $20.00 debit for NiteFlirts;

p. On July 23, 2009, a $171.90 debit for Cable One;

q. On July 27, 2009, a $29.00 debit for NiteFlirts;

r. On July 27, 2009, a $50.97 debit for XM Satellite Radio;

s. On July 27, 2009, a $274.88 debit for SWBYPS;

t. On July 27, 2009, a $81.30 debit for Altus Laundry;

u. On July 28, 2009, a $20.00 debit for NiteFlirts;

v. On July 28, 2009, a $36.74 debit for Tres Rios Grill & Cantina;

w. On July 28, 2009, a $199.99 debit for Teligence (a voice-enabled social network with chatlines like Livelinks, Interactive Male, RedHot Dateline, Vibeline, FonoChat, and Lavendar Line).

x. On July 30, 2009, a $219.99 debit for a moneygram;

y. On August 5, 2009, a $1,507.55 debit for American Express;

z. On August 6, 2009, three (3) debits totaling $78.00 for NiteFlirt;

aa. On August 7, 2009, eight (8) debits totaling $313.00 for NiteFlirt; and

bb. On August 7, 2009, a $100.00 debit ATM cash withdrawal;

20. Respondent also disbursed funds from his general account by writing checks for personal and business expenses such as:

a. On July 14, 2009, check #2289 made payable to Wooldridge Appraisals in the amount of $275.00;

b. On July 17, 2009, check #2288 payable to Chris Fields in the amount of $320.00;

c. On July 24, 2009, check #2291 payable to Chris Fields in the amount of $100.00; check #2292 payable to Chris Fields in the amount of $100.00; and check #2293 payable to Chris Fields in the amount of $295.00;

d. On July 28, 2009, a counter check for "Cash" in the amount of $100.00;

e. On July 31, 2009, check #2245 payable to Chris Fields in the amount of $290.00;

f. On July 31, 2009, check #2294 payable to Tom J. Weigel, Jr. In the amount of $500.00 with the memo "Aug 09 Mortgage pymt";

g. On August 3, 2009, check #2295 payable to Kerry Maddy in the amount of $105.00 with the memo "Lawn Care";

h. On August 6, 2009, check #2297 payable to Chris Fields in the amount of $100.00 and check #2298 payable to Chris Fields in the amount of 100.00; and

I. On August 7, 2009, check #2299 payable to Chris Fields in the amount of $245.00.

21. On or about August 12, 2009, Whiteley's mother wrote Respondent a check for an additional $1,000.00 on her son's behalf. Said check was deposited into Respondent's general account on or about August 21, 2009.

22. Following the deposit of the $1,000.00 on Whiteley's behalf, Respondent continued to electronically disburse funds from his general account for personal expenses including numerous debits for NiteFlirts, credit card payments, and Teligence chatlines.

23. Respondent also made three (3) ATM cash withdrawals from different banks on August 24, 2009 totaling $1,500.00.

24. Respondent also continued to disburse funds from the general account by writing checks such as:

a. On August 24, 2009, a counter check for "Cash" in the amount of $1,100.00; and

b. On August 25, 2009, check #2247 payable to Lora Mootz in the amount of $1,000.00 with the memo "retainer refund full/final pymt."

25. On or about August 27, 2009, Respondent met with Cody Whiteley in Texas after Whiteley's mother threatened to stop making further payments to Respondent.

26. After the Texas visit, Respondent failed to timely respond to the Whiteleys' repeated requests for information as to the status of the case or when he would file something on his client's behalf. The Whiteleys made left numerous telephone messages and sent repeated emails to Respondent expressing their concern and frustration that he had taken no action.

27. By September 29, 2009, Respondent's general account had a balance of only $988.90.

28. By certified mail dated November 3, 2009, the Whiteleys advised Respondent his services were terminated. In said letter, they requested Cody's file and a refund.

29. Respondent did not claim the certified mail and failed to respond to Whiteley's request.

30. On or about November 26, 2009, Whiteley filed a grievance with the OBA alleging Respondent's neglect of his legal matter and failure to earn the $7,000.00 paid.

31. By letter dated December 11, 2009, the OBA advised Respondent it was opening Whiteley's grievance for informal investigation as IC 09-1072 and requested he respond within two weeks.

32. In his written response, received by the OBA on January 8, 2010, Respondent stated Whiteley was a "difficult client" and "difficult to communicate with" and advised he had driven to central Texas to meet with Whiteley which involved a twelve (12) hour round trip. Respondent stated Whiteley "lost the will to continue with the case" and had texted advising he no longer wanted Respondent to work on the case. Respondent

claimed he had instructed Whiteley to follow up with a written request, via certified mail, but that Whiteley had failed to do so. Respondent further advised he was "... willing to proceed with the case, withdraw from the case, return documents, or conduct a fair an [sic] equitable accounting for services rendered, or any combination of these. Although the entire point of the flat fee arrangement that Ms. Whiteley agreed to was to eliminate the need for that so that the effort could be spent on the case."

33. Respondent's response to Whiteley's grievance failed to address what he had done with the $7,000.00 entrusted to him by Whiteley's family and specifically, the fact that the $7,000.00 in fees had not been deposited and maintained in a trust account until monies were earned. Respondent also did not provide an accounting of services rendered.

34. On January 15, 2010, the OBA advised Respondent it was opening Whiteley's grievance for formal investigation and that Respondent could provide a supplemental response within twenty (20) days should he choose to do so.

35. By letter dated March 15, 2010, which was emailed and mailed to Respondent, the OBA advised that the Whiteleys did not want him to continue in the case, that they wanted their file returned, and that they wanted a refund. The OBA requested Respondent provide an accounting of the work he performed on Whiteley's behalf and a copy of all work product.

36. On or about March 18, 2010, at the suggestion of the OBA, Respondent opened a client trust account and deposited $1,000.00 into it.

37. The next day, however, Respondent transferred $995.00 from the trust account into his general account.

38. By letter dated March 18, 2010 and received by the OBA on March 22, 2010, Respondent, through his attorney, advised the OBA that Respondent was "not required to open a trust account" and since Respondent contracted with the Whiteleys for a "flat fee" and "actually performed services for the client ... [t]he entire fee has been earned."

39. **In a letter dated August 25, 2010**, the Respondent, through his attorney, advised the Professional Responsibility Commission that Respondent engaged primarily in a criminal defense practice and charged "FLAT FEES, sometimes called 'fixed fees' which are considered earned when paid." Respondent further stated that a fixed fee " is far different from requiring a retainer to bill against on an hourly basis. No matter how long it takes Mr. Weigel, or how much labor is involved, he finishes the assignment. He cannot ask for more fee but, on the other hand, the client cannot ask for a fee reduction."

40. Respondent has not refunded any of the $7,000.00 he received on behalf of Cody Whiteley despite the fact that Respondent failed to file an entry of appearance or draft any pleadings in the case for approximately six (6) months.

41. Respondent's conduct violates the mandatory provisions of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), and 3.2, ORPC and Rule 1.3, RGDP and warrants the imposition of professional discipline.

COUNT III: THE DeLEON GRIEVANCE

42. On or about August 19, 2003, Tomas DeLeon, III, ("DeLeon") was found guilty by a jury and convicted of five counts of lewd molestation in *State v. Tomas DeLeon*, III, Stephens County District Court Case No. CF-2003-149. DeLeon was sentenced to serve sixteen years imprisonment. and his conviction was affirmed on state and federal appeal.

43. In December of 2009, after exhausting all state and federal appeals available, DeLeon's parents sought to consult with an attorney to determine if there were any other remedies available to help their son.

44. On or about January 28, 2010, Mrs. DeLeon spoke with Respondent and advised him of her son's appeals through the state and federal levels and of the fact that she had even mailed a certified letter to Governor Henry asking for his consideration and assistance to no avail.

45. Mrs. DeLeon and even her co-worker spoke to Respondent and expressed their doubts that nothing further could be done in her son's case and the DeLeons' concern that they had spent several thousands of dollars already.

46. Respondent advised them that as an attorney, he could get the Governor to listen. He advised he would call the Governor's office daily and write until they listened to him. Respondent assured the DeLeons he could help their son, even if it meant getting him pardoned, and that he would do it for a flat fee of $5,000.00.

47. Based upon Respondent's assurances and expressed confidence, on January 28, 2010, Mrs. DeLeon wired Respondent $1,000.00 to his general account on her son's behalf.

48. As reflected by his bank records, upon receipt of DeLeon's funds, Respondent continued to electronically disburse funds from his general account for personal and business expenses including numerous debits for NiteFlirt sessions, Pay Pal transactions, and credit card bills.

49. Additionally, on January 30, 2010, Respondent made two ATM cash withdrawals for a total of $600.00.

50. Respondent also continued to disburse funds from his general account by writing checks for personal and business expenses such as the check he wrote on February 8, 2010 payable to "Cash" for $100.00.

51. On February 17, 2010, DeLeon's parents drove from Texas to meet with Respondent at his home in Altus, Oklahoma. Respondent again assured the DeLeon's there were three options available for their son: to seek a pardon, commutation of sentence, or modification of sentence. Respondent told the DeLeons it would take six to eight weeks to do this.

52. As a result of Respondent's assurances that chances for relief for their son were good, the DeLeons paid Respondent an additional $4,000.00 by cashier's check and executed a contract with him. The DeLeons gave Respondent all of their son's legal documents.

53. The contract for services provided for a "flat fee billing" of $5,000.00 and for Respondent to "represent, appear and act for said Client in certain legal matters which are as follows: **All currently available administrative and executive remedies relating to the conviction of Tomas Deleon, III in CF-03-149 in Stephens County, Oklahoma.**"

54. The contract further provided: "**It is specifically agreed that due to the time constraints being placed on the Attorney and the complexity of the case, all fees paid in this matter shall be non-refundable but Attorney acknowledges that no further fees will be required.**"

55. The contract further reflected that the DeLeons had paid Respondent the full $5,000.00 as of the date of its execution.

56. Respondent advised the DeLeons he would mail their son a document to sign that would notify the prison administration Respondent was DeLeon's attorney. Respondent also assured the DeLeons he would call their son and speak to him. Respondent told the DeLeons that if he did not mail the papers, he would go to the prison and meet with their son in person and have him execute the documents at that time.

57. Upon his receipt of the additional $4,000.00 from the DeLeons on February 17, 2010, Respondent also disbursed funds from his general account by writing checks for personal and business expenses such as:

a. On February 17, 2010, a check payable to "Cash" for $1,100.00; and

b. On February 18, 2010, check #2421 payable to Sandy Leans for $120.00 with the memo "For Chris Fields;"

58. Respondent also continued to electronically disburse funds from his general account for personal and business expenses such as:

a. From February 17th through February 23rd , 2010, Respondent's general account had eleven (11) debits for Pay Pal transactions totaling $2,184. 89; two (2) debits for NiteFlirt sessions totaling $58.00; and a $462.19 debit for Allen's Sleep Center in Mangum, Oklahoma;

b. From February 25th through March 29th, 2010, Respondent had fifteen (15) debits for Pay Pal transactions totaling $3,017.53; twenty-one (21) debits for NiteFlirt sessions totaling $730.00; and a $659.91 debit for Rick's Gun Shop; and

c. From March 1st through March 29th, 2010, Respondent made five (5) 5 ATM cash withdrawals totaling $2,500.00.

59. By March 29, 2010, Respondent's general account had a balance of only $506.73.

60. From February 17, 2010 until May 12, 2010, Respondent failed to communicate with his client or Mr. and Mrs. DeLeon.

61. On or about May 12, 2010, DeLeon's mother, Josephine, contacted Respondent. When Respondent answered the telephone, he told Mrs. DeLeon he would have to call her back and said he would do so the next day at 5:00 p.m.

62. Contrary to his statement, Respondent did not telephone Josephine DeLeon on May 12, 2010.

63. From May 13 through May 26, 2010, Mrs. DeLeon repeatedly telephoned Respondent and left numerous messages requesting that he return her call. Respondent failed to do so.

64. On May 26, 2010, Mrs. DeLeon telephoned Respondent from a different phone number in the hopes that Respondent would answer if he did not recognize the incoming telephone number. Respondent answered on the second ring. Mrs. DeLeon asked Respondent why he had not returned her telephone calls. Respondent only told her to call him on the 28th so they could set an appointment to meet on the 29th.

65. On May 28, 2010, Mrs. DeLeon telephoned Respondent as he had instructed her to do. Mrs. DeLeon called Respondent approximately nine (9) times without him answering the telephone or responding to her messages.

66. On June 9, 2010, Mr. and Mrs. DeLeon drove from Paducah, Texas to Respondent's home in Altus, Oklahoma in an attempt to speak to him. When the DeLeons arrived at approximately 7:45 p.m., they observed Respondent's vehicle parked in his driveway. No one answered the door when the DeLeons knocked, however, nor did Respondent answer his home or mobile telephone numbers when the DeLeons called him from their truck parked outside his house.

67. Mrs. DeLeon walked across the street and spoke to one of Respondent's neighbors. The neighbor told Mrs. DeLeon she had seen Respondent at his home for the past hour and a half.

68. The DeLeons left but stopped at a nearby store and telephoned Respondent's home number from the store payphone. Respondent answered on the second ring. When asked why he failed to answer his door minutes earlier, Respondent stated he had just come home.

69. When Mrs. DeLeon told Respondent she had seen his car parked in his driveway and that she had tried calling him on both his home and mobile telephones, Respondent said he must not have heard because he had been asleep.

70. The DeLeons drove back to Respondent's house and spoke to him outside. Mrs. DeLeon asked to see the work Respondent had done on her son's case and reminded him of his promise, when he was paid the additional $4,000.00, that it would only take him six to eight weeks to complete the work needed.

71. Respondent told the DeLeons he would have everything done by June 12, 2010 and agreed to a meet with them at his home at 10:00 a.m. to show them the paperwork.

72. On June 11, 2010, Respondent telephoned Mrs. DeLeon and told her he could not meet with her until 5:00 the next day because he wanted to spend the day with his sister.

73. On June 12, 2010, Respondent provided the DeLeons with three pieces of paper. Two of the pieces of paper consisted of a one and a half page letter addressed to "Dear _____" which referenced "Application for Commutation/Parole Consideration of Tomas Deleon, III." Said "application" had no recipient's name nor any address listed thereon.

74. The third piece of paper was a release Respondent demanded the DeLeons sign releasing him from all obligations and stating he had done all he could for their son.

75. After the DeLeons reviewed the two pages of "work" Respondent had drafted on their son's behalf, they did not feel comfortable signing the release and asked, instead, if they have a copy of it to review.

76. Respondent refused to give the DeLeons a copy of the release if they "[weren't] going to sign it." Respondent told the DeLeons he would have their son's paperwork completed by June 14, 2010 and would mail it to them.

77. As of June 18, 2010, the DeLeons had not received completed paperwork from Respondent. When Mrs. DeLeon telephoned Respondent to inquire, Respondent told her he had mailed it to her, but would put another copy in the mail. Respondent then hung up on her.

78. Mrs. DeLeon immediately telephoned Respondent again and advised him they no longer wanted his services because he had failed to do anything for their son. Mrs. DeLeon requested Respondent return her son's legal documents and that he refund their

money. Respondent again hung up on Mrs. DeLeon.

79. On June 22, 2010, the DeLeons received a copy of the "completed work" Respondent prepared on their son's behalf. It was essentially the same document with a few extra lines added.

80. The DeLeons continued to make requests, even by certified mail on June 30, 2010, that Respondent return their son's files and refund their fee. Respondent did not respond.

81. On July 6, 2010, the OBA received a grievance from the DeLeons against Respondent regarding his handling of their son's legal interests, his failure to earn the $5,000.00 paid, and his refusal to return their son's paperwork.

82. By letter dated July 19, 2010, the OBA advised Respondent it was opening the DeLeon grievance for formal investigation and that he was required to respond.

83. On August 2, 2010, the DeLeons went to Respondent's home to pick up their son's legal documents. They brought a friend with them, Nora Macias, to act as a witness. Respondent did not want Ms. Macias in his office and asked her to wait outside.

84. Inside his office, Respondent advised the DeLeons he had their son's files ready for them, but they needed to sign a paper first. The paper was titled "Receipt and Acknowledgment."

85. The DeLeons did not feel comfortable signing the document after reading it and refused to do so.

86. Respondent then tossed a "Statement of Services Rendered" across his desk at the DeLeons and told them they should be happy he was not going to ask them to pay the $812.50 they still owed him.

87. Eventually, Respondent gave the DeLeons a large box containing their sons records. After the DeLeons arrived at their home in Texas and reviewed the box Respondent had given them, they found what appeared to be cat feces and urine all over their son's legal documents.

88. On August 3, 2010, the DeLeons sued Respondent in small claims court in Jackson County District Court, Case No. SC-2010-252 to recover the monies they paid him that he failed to earn.

89. In his written response to the OBA dated August 9, 2010, Respondent stated DeLeon's case had "been through state and federal appeals for nearly 7 years and the file is voluminous. Also, the chances for relief in this sort of case is remote . . . After explaining all of that to [the DeLeons], them decided to hire me on February 17, 2010 which [sic] the specific provision that all fees would be on a flat fee basis and nonrefundable . . ."

90. In his response, Respondent enclosed a Statement of Services Rendered wherein he claimed to have spent 25.25 hours on the case at $250.00 an hour and thus, had a balance due of $812.50 which he had "waived."

91. On August 25, 2010, the District Court of Jackson County ordered Respondent to pay the DeLeons $2,301.75 in restitution and court costs.

92. On September 3, 2010, Respondent filed a Motion for New Trial and Request for Findings of Fact and Conclusions of Law, and Motion to Vacate. Respondent's motions were motions were denied by the Jackson County District Court on September 24, 2010.

93. Respondent tendered a cashiers check in the amount of $2,301.75 to the DeLeons that same day.

94. Respondent's conduct violates the mandatory provisions of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), ORPC and Rule 1.3, RGDP, and warrants the imposition of professional discipline.

COUNT V: THE OWENS GRIEVANCE

95. On or about April 13, 2010, Michael Owens ("Owens") hired Respondent to represent him in a custody and child support modification in *Owens v. Owens*, Jackson County District Court Case No. FD-2001-34.

96. Between April 13th and June 15th, 2010, Owens paid Respondent a total of $1,900.00.

97. On August 16, 2010, Respondent filed a Motion to Modify Decree of Divorce and an Application for Emergency Ex Parte Order for Custody. A temporary order was entered granting custody to Owens at that time and setting the matter for hearing on August 24, 2010.

98. The August 24, 2010 hearing had to be continued for lack of service on Owens' ex-wife.

99. On September 13, 2010, the Court ordered child support in favor of Owens to be set pursuant to the statutory guidelines and ordered opposing counsel, Tom Talley, to prepare the Order. The Court ordered any further hearing to be set by agreement of the parties.

100. Pursuant to the Court's direction that he prepare the Order, Talley requested necessary documentation from Respondent concerning Owens' income.

101. Respondent repeatedly failed to provide the documentation to Talley and as a result, Owens was required to continue to pay child support pursuant to the former order

in place.

102. Respondent, however, specifically advised Owens to stop paying child support since the minor child was living with Owens. Respondent assured Owens he would contact the Texas Department of Human Services to let them know a new order was being prepared for the Judge's signature.

103. When Owens did as Respondent instructed, the State of Texas began garnishing his wages for $382.32, the original child support amount, plus an extra $50.00 per month due to a $750.00 arrearage.

104. In response to repeated inquiries from Owens and his current wife, Wilma, regarding the delay in filing the new child support order, Respondent made numerous excuses and repeatedly blamed opposing counsel for causing the delay.

105. On January 24, 2011, the OBA received a grievance from Owens against Respondent alleging his neglect and lack of diligence in getting the child support order filed.

106. By letter dated February 14, 2011, the OBA advised Respondent it was opening Owens' grievance for formal investigation and he was required to respond within twenty (20) days.

107. By letter dated March 14, 2011, Respondent responded to Owens' grievance stating the Owens had delayed in providing the documentation Talley requested. Respondent stated he had sent the information to Talley, but "unbeknownst to me, he did not receive them. By the time I found out he did not have them, they were out of date, so I asked for additional data from my client. He refused, and demanded to send them to Tom Talley himself. As of today, he has not sent the most recent income figures to Mr.

Talley. Mr. Talley has prepared a proposed order with the older figures, and will be forwarding the same to me today or tomorrow, pursuant to my conversation with him today."

108. In a letter received by the OBA on April 11, 2011, Wilma Owens responded to Respondent's March 14, 2011 letter, and advised that contrary to Respondent's statements, she had promptly faxed Respondent the financial documentation on at least three (3) occasions. Wilma Owens further advised Respondent had again blamed Talley for the delay and had stated that he might have to compel the order.

109. In April of 2011, Wilma Owens contacted the State of Texas personally and was advised that there was no documentation on file that Respondent had ever called or notified them of the temporary order.

110. On May 9, 2011, Respondent made a supplemental response to the Owens grievance and again blamed Attorney Talley for the delay. Respondent advised he would have a Motion to Settle Journal Entry filed that week and forward a copy to the OBA.

111. On May 16, 2011, the OBA Investigator observed on OSCN that the docket sheet for the Owens case indicated Respondent had not filed the Motion to Settle Journal Entry as he had advised.

112. By email sent that same day at 9:36 a.m., the OBA Investigator advised Respondent of her discovery and that Wilma Owens had informed her they had not heard from Respondent, despite requesting he return their call. The email specifically asked Respondent why there had been delays in communicating with his client and filing the motion.

113. By email sent May 17, 2011 at 4:10 p.m., Respondent advised he had faxed the Motion to the OBA earlier that day and apologized for not filing it as he had previously indicated. Respondent advised he had "pressing family business to attend to out of town."

114. By email sent at 4:56 p.m. on June 8, 2011, the OBA Investigator requested Respondent to communicate with his clients within forty-eight (48) hours as money was now being garnished from Owens' tax refund.

115. In a letter received by the OBA on July 7, 2011, Respondent advised, in part, that:

"1. I have contacted the child support authorities on several occasions on Mr. Owne's [sic] behalf.

2. The issue of what child support is owing will be resolved by the Order regarding the child custody issues. The hearing on that will be conducted soon.

3. At that time the court will decide what is owed either by Mr. Owens or Cherie Owens."

116. When the OBA investigator interviewed Attorney Talley, he advised he did not receive the requested financial information until February 23, 2011.

117. Respondent's conduct violates the mandatory provisions of Rules 1.1, 1.3, 1.4, 3.2, 8.4(d), ORPC, and Rule 1.3, RGDP, warrant the imposition of professional discipline.

WHEREFORE, premises considered, Complainant requests that the Respondent be disciplined as this Court finds equitable and proper, and for such other relief as this Court finds appropriate.

Done at the direction of the Professional Responsibility Commission this the 16th day of March, 2012.

Melissa DeLacerda, Chair
Professional Responsibility Commission

AND

Loraine Dillinder Farabow, OBA #16833
First Assistant General Counsel
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152
405.416.7083(o) 405.416.7007(f)

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 16th day of March, 2012, a true and correct copy of the foregoing Complaint was mailed by certified mail, return receipt requested, to John Holman Weigel, Respondent, 444 E. Medical Center Blvd., Suite 1201, Webster, TX 77598 and by United States Mail, first-class, postage prepaid, mail to: Jack Sterling Dawson, Attorney for Respondent, 100 Park Avenue, Second Floor, Oklahoma City, OK 73102 and F. Douglas Shirley, Chief Master, Professional Responsibility Tribunal, P.O. Box 717, Watonga, OK 73772-0717.

Loraine D. Farabow

I, Michael S. Richie, Clerk of the Appellate Courts of the State of Oklahoma do hereby certify that the above and foregoing is a full, true and complete copy of the Complaint in the above entitled cause, as the same remains on file in my office.

In Witness Whereof I hereunto set my hand and affix the Seal of said Court at Oklahoma City, this 22nd day of Sept 2014.

Clerk

By DKeys DEPUTY

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA ex rel. OKLAHOMA BAR ASSOCIATION,	)	
Complainant	)	OBAD # 1910
v.	)	
JOHN HOLMAN WEIGEL,	)	SCBD # 5864
Respondent.	)	

8-21-12

AMENDED COMPLAINT

State of Oklahoma *ex rel.* Oklahoma Bar Association ("Complainant"), by and through its First Assistant General Counsel Loraine Dillinder Farabow, for its complaint against John Holmon Weigel ("Respondent"), alleges and states:

1. The Respondent is a member of the Oklahoma Bar Association ("OBA") and is licensed to practice law by the Supreme Court of the State of Oklahoma. Respondent was so licensed at all times relevant to this Complaint.

2. To the best knowledge, information, and belief of the Complainant, the Respondent has committed specific acts which constitute professional misconduct in violation of the Oklahoma Rules of Professional Conduct, ("ORPC"), 5 O.S. 2008, Ch. 1, App. 3-A, and the Rules Governing Disciplinary Proceedings, ("RGDP"), 5 O.S. 2001, Ch. 1, App. 1-A, and are cause for professional discipline as provided in the RGDP. These standards of conduct, adopted and enforced by the Supreme Court of the State of Oklahoma, provide guidelines by which all attorneys are to practice law in Oklahoma.

3. These proceedings are commenced pursuant to Rule 6, RGDP.

Exhibit
2

4. The official Oklahoma Bar Association roster address of the Respondent is: John Holman Weigel, OBA #18616, 444 E. Medical Center Blvd., Suite 1201, Webster, TX 77598.

COUNT I: THE BOYD GRIEVANCE

5. On October 26, 2009, the OBA received a grievance from Peggy Jean Boyd ("Boyd") regarding Respondent's representation of her son, Roger D. Boyd.

6. The OBA opened Boyd's grievance for informal investigation as IC 09-957. By letter dated November 3, 2009, the OBA advised Respondent of Boyd's grievance and requested he respond within two weeks in writing.

7. Although the OBA's November 3, 2009 letter was mailed to Respondent's official roster address, Respondent wholly failed to respond as required.

8. On November 25, 2009, the OBA mailed Respondent another letter to his official roster address advising him of his failure to respond to Boyd's grievance and requesting he do so within five (5) working days from the date of the letter.

9. Respondent failed to respond to Boyd's grievance as required.

10. By letter dated December 23, 2009 and mailed to Respondent's official roster address, the OBA advised it was now opening Boyd's grievance for formal investigation as DC 09-336 and that he was required to respond, in writing, within twenty (20) days.

11. By letter dated January 8, 2010, Respondent provided his written response to Boyd's grievance and apologized for the delay in his initial response.

12. Respondent's conduct thereby violated the mandatory provisions of Rules 8.1(b), ORPC and Rules 1.3 and 5.2, RGDP, and warrants the imposition of professional discipline.

COUNT II: THE WHITELEY GRIEVANCE

13. Cody Allen Whiteley ("Whiteley") hired Respondent on July 8, 2009 to represent him in a paternity action pending in Jackson County District Court, Case No. FP-2008-79, *Whiteley v. Bradley*.

14. The contract for services provided for Whiteley to pay a total "flat fee" of $12,000.00 with a $6,000.00 payment due immediately and payments of $1,000.00 to be made thereafter each month until paid in full.

15. Respondent did not have a client trust account at the time Whiteley hired him.

16. On July 8, 2009, Whiteley's mother $6,010.00[1] payment to the"John H. Weigel, Attorney at Law" account, #877914, (hereinafter referred to as "general account") held with the First State Bank of Altus.

17. The day before Whiteley's wire transfer, Respondent's general account balance was $3,341.97 as of July 7, 2009. However, on July 10, 2009, just two days after the $6,000.00 transfer, Respondent's general account was only $4,496.22 despite the fact that he deposited an additional $500.00 into the account on July 9, 2009.

18. By July 15, 2009, Respondent's general account had a balance of only $1,772.13 despite an additional deposit of $650.00 on July 14, 2009.

19. After the deposit of the initial $6,000.00 retainer on Whiteley's behalf, Respondent made numerous electronic disbursements of funds from his general account for personal and business expenses such as:

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[1] It appears there was a $10.00 wire transfer fee applied.

a. On July 10, 2009, a $188.29 debit for Cable One;

b. On July 10, 2009, a $329.99 and a $1,875.00 debit for Capital One;

c. On July 10, 2009, a $915.00 debit for Yellow Book West;

d. On July 10, 2009, a $4,522.52 debit for American Express;

e. On July 13, 2009, a $538.00 debit for PRIVETT SALES;

f. On July 14, 2009, a $824.64 debit for SWBYPS;

g. On July 15, 2009, a $100.00 debit ATM cash withdrawal;

h. On July 16, 2009, a $501.00 debit ATM withdrawal (with $1.00 ATM transaction fee);

I. On July 20, 2009, six debits totaling $165.00 for NF *SERVICES - 877-527-2655 CA (for NiteFlirt, a phone sex & live web cam service);

j. On July 20, 2009, a $100.00 debit ATM cash withdrawal;

k. On July 20, 2009, a $235.00 debit for the State Bar of Texas;

l. On July 21, 2009, a $542.18 wire transfer;

m. On July 21, 2009, a $205.00 debit for USAA;

n. On July 21, 2009, a $443.00 debit for Bank of America;

o. On July 22, 2009, a $20.00 debit for NiteFlirts;

p. On July 23, 2009, a $171.90 debit for Cable One;

q. On July 27, 2009, a $29.00 debit for NiteFlirts;

r. On July 27, 2009, a $50.97 debit for XM Satellite Radio;

s. On July 27, 2009, a $274.88 debit for SWBYPS;

t. On July 27, 2009, a $81.30 debit for Altus Laundry;

u. On July 28, 2009, a $20.00 debit for NiteFlirts;

v. On July 28, 2009, a $36.74 debit for Tres Rios Grill & Cantina;

w. On July 28, 2009, a $199.99 debit for Teligence (a voice-enabled social network with chatlines like Livelinks, Interactive Male, RedHot Dateline, Vibeline, FonoChat, and Lavendar Line).

x. On July 30, 2009, a $219.99 debit for a moneygram;

y. On August 5, 2009, a $1,507.55 debit for American Express;

z. On August 6, 2009, three (3) debits totaling $78.00 for NiteFlirt;

aa. On August 7, 2009, eight (8) debits totaling $313.00 for NiteFlirt; and

bb. On August 7, 2009, a $100.00 debit ATM cash withdrawal;

20. Respondent also disbursed funds from his general account by writing checks for personal and business expenses such as:

a. On July 14, 2009, check #2289 made payable to Wooldridge Appraisals in the amount of $275.00;

b. On July 17, 2009, check #2288 payable to Chris Fields in the amount of $320.00;

c. On July 24, 2009, check #2291 payable to Chris Fields in the amount of $100.00; check #2292 payable to Chris Fields in the amount of $100.00; and check #2293 payable to Chris Fields in the amount of $295.00;

d. On July 28, 2009, a counter check for "Cash" in the amount of $100.00;

e. On July 31, 2009, check #2245 payable to Chris Fields in the amount of $290.00;

f. On July 31, 2009, check #2294 payable to Tom J. Weigel, Jr. In the amount of $500.00 with the memo "Aug 09 Mortgage pymt";

g. On August 3, 2009, check #2295 payable to Kerry Maddy in the amount of $105.00 with the memo "Lawn Care";

h. On August 6, 2009, check #2297 payable to Chris Fields in the amount of $100.00 and check #2298 payable to Chris Fields in the amount of 100.00; and

I. On August 7, 2009, check #2299 payable to Chris Fields in the amount of $245.00.

21. On or about August 12, 2009, Whiteley's mother wrote Respondent a check for an additional $1,000.00 on her son's behalf. Said check was deposited into Respondent's general account on or about August 21, 2009.

22. Following the deposit of the $1,000.00 on Whiteley's behalf, Respondent continued to electronically disburse funds from his general account for personal expenses including numerous debits for NiteFlirts, credit card payments, and Teligence chatlines.

23. Respondent also made three (3) ATM cash withdrawals from different banks on August 24, 2009 totaling $1,500.00.

24. Respondent also continued to disburse funds from the general account by writing checks such as:

a. On August 24, 2009, a counter check for "Cash" in the amount of $1,100.00; and

b. On August 25, 2009, check #2247 payable to Lora Mootz in the amount of $1,000.00 with the memo "retainer refund full/final pymt."

25. On or about August 27, 2009, Respondent met with Cody Whiteley in Texas after Whiteley's mother threatened to stop making further payments to Respondent.

26. After the Texas visit, Respondent failed to timely respond to the Whiteleys' repeated requests for information as to the status of the case or when he would file something on his client's behalf. The Whiteleys left numerous telephone messages and sent repeated emails to Respondent expressing their concern and frustration that he had taken no action.

27. By September 29, 2009, Respondent's general account had a balance of only $988.90.

28. By certified mail dated November 3, 2009, the Whiteleys advised Respondent his services were terminated. In said letter, they requested Cody's file and a refund.

29. Respondent did not claim the certified mail and failed to respond to Whiteley's request.

30. On or about November 26, 2009, Whiteley filed a grievance with the OBA alleging Respondent's neglect of his legal matter and failure to earn the $7,000.00 paid.

31. By letter dated December 11, 2009, the OBA advised Respondent it was opening Whiteley's grievance for informal investigation as IC 09-1072 and requested he respond within two weeks.

32. In his written response, received by the OBA on January 8, 2010, Respondent stated Whiteley was a "difficult client" and "difficult to communicate with" and advised he had driven to central Texas to meet with Whiteley which involved a twelve (12) hour round trip. Respondent stated Whiteley "lost the will to continue with the case" and had texted advising he no longer wanted Respondent to work on the case. Respondent

claimed he had instructed Whiteley to follow up with a written request, via certified mail, but that Whiteley had failed to do so. Respondent further advised he was "... willing to proceed with the case, withdraw from the case, return documents, or conduct a fair an [sic] equitable accounting for services rendered, or any combination of these. Although the entire point of the flat fee arrangement that Ms. Whiteley agreed to was to eliminate the need for that so that the effort could be spent on the case."

33. Respondent's response to Whiteley's grievance failed to address what he had done with the $7,000.00 entrusted to him by Whiteley's family and specifically, the fact that the $7,000.00 in fees had not been deposited and maintained in a trust account until monies were earned. Respondent also did not provide an accounting of services rendered.

34. On January 15, 2010, the OBA advised Respondent it was opening Whiteley's grievance for formal investigation and that Respondent could provide a supplemental response within twenty (20) days should he choose to do so.

35. By letter dated March 15, 2010, which was emailed and mailed to Respondent, the OBA advised that the Whiteleys did not want him to continue in the case, that they wanted their file returned, and that they wanted a refund. The OBA requested Respondent provide an accounting of the work he performed on Whiteley's behalf and a copy of all work product.

36. On or about March 18, 2010, per the advice of the OBA[2], Respondent opened a client trust account and deposited $1,000.00 into it.

37. The next day, however, Respondent transferred $995.00 from the trust

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[2] The OBA had advised Respondent that retainer and flat fees initially be deposited into his trust account and thereafter disbursed ***as he earned them***.

38. By letter dated March 18, 2010 and received by the OBA on March 22, 2010, Respondent, through his attorney, advised the OBA that Respondent was "not required to open a trust account" and since Respondent contracted with the Whiteleys for a "flat fee" and "actually performed services for the client ... [t]he entire fee has been earned."

39. **In a letter dated August 25, 2010**, the Respondent, through his attorney, advised the Professional Responsibility Commission that Respondent engaged primarily in a criminal defense practice and charged "FLAT FEES, sometimes called 'fixed fees' which are considered earned when paid." Respondent further stated that a fixed fee " is far different from requiring a retainer to bill against on an hourly basis. No matter how long it takes Mr. Weigel, or how much labor is involved, he finishes the assignment. He cannot ask for more fee but, on the other hand, the client cannot ask for a fee reduction."

40. Respondent has not refunded any of the $7,000.00 he received on behalf of Cody Whiteley despite the fact that Respondent failed to file an entry of appearance or draft any pleadings in the case for approximately six (6) months.

41. Respondent's conduct violates the mandatory provisions of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), and 3.2, ORPC and Rule 1.3, RGDP and warrants the imposition of professional discipline.

COUNT III: THE DeLEON GRIEVANCE

42. On or about August 19, 2003, Tomas DeLeon, III, ("DeLeon") was found guilty by a jury and convicted of five counts of lewd molestation in *State v. Tomas DeLeon*, III, Stephens County District Court Case No. CF-2003-149. DeLeon was sentenced to serve sixteen years imprisonment and his conviction was affirmed on state and federal appeal.

43. In December of 2009, after exhausting all state and federal appeals available, DeLeon's parents sought to consult with an attorney to determine if there were any other remedies available to help their son.

44. On or about January 28, 2010, Mrs. DeLeon spoke with Respondent and advised him of her son's appeals through the state and federal levels and of the fact that she had even mailed a certified letter to Governor Henry asking for his consideration and assistance to no avail.

45. Mrs. DeLeon and even her co-worker spoke to Respondent and expressed their doubts that nothing further could be done in her son's case and the DeLeons' concern that they had spent several thousands of dollars already.

46. Respondent advised them that as an attorney, he could get the Governor to listen. He advised he would call the Governor's office daily and write until they listened to him. Respondent assured the DeLeons he could help their son, even if it meant getting him pardoned, and that he would do it for a flat fee of $5,000.00.

47. Based upon Respondent's assurances and expressed confidence, on January 28, 2010, Mrs. DeLeon wired Respondent $1,000.00 to his general account on her son's behalf.

48. As reflected by his bank records, upon receipt of DeLeon's funds, Respondent continued to electronically disburse funds from his general account for personal and business expenses including numerous debits for NiteFlirt sessions, Pay Pal transactions, and credit card bills.

49. Additionally, on January 30, 2010, Respondent made two ATM cash withdrawals for a total of $600.00.

50. Respondent also continued to disburse funds from his general account by writing checks for personal and business expenses such as the check he wrote on February 8, 2010 payable to "Cash" for $100.00.

51. On February 17, 2010, DeLeon's parents drove from Texas to meet with Respondent at his home in Altus, Oklahoma. Respondent again assured the DeLeon's there were three options available for their son: to seek a pardon, commutation of sentence, or modification of sentence. Respondent told the DeLeons it would take six to eight weeks to do this.

52. As a result of Respondent's assurances that chances for relief for their son were good, the DeLeons paid Respondent an additional $4,000.00 by cashier's check and executed a contract with him. The DeLeons gave Respondent all of their son's legal documents.

53. The contract for services provided for a "flat fee billing" of $5,000.00 and for Respondent to "represent, appear and act for said Client in certain legal matters which are as follows: **All currently available administrative and executive remedies relating to the conviction of Tomas Deleon, III in CF-03-149 in Stephens County, Oklahoma.**"

54. The contract further provided: "**It is specifically agreed that due to the time constraints being placed on the Attorney and the complexity of the case, all fees paid in this matter shall be non-refundable but Attorney acknowledges that no further fees will be required.**"

55. The contract further reflected that the DeLeons had paid Respondent the full $5,000.00 as of the date of its execution.

56. Respondent advised the DeLeons he would mail their son a document to sign that would notify the prison administration Respondent was DeLeon's attorney. Respondent also assured the DeLeons he would call their son and speak to him. Respondent told the DeLeons that if he did not mail the papers, he would go to the prison and meet with their son in person and have him execute the documents at that time.

57. Upon his receipt of the additional $4,000.00 from the DeLeons on February 17, 2010, Respondent also disbursed funds from his general account by writing checks for personal and business expenses such as:

a. On February 17, 2010, a check payable to "Cash" for $1,100.00; and

b. On February 18, 2010, check #2421 payable to Sandy Leans for $120.00 with the memo "For Chris Fields;"

58. Respondent also continued to electronically disburse funds from his general account for personal and business expenses such as:

a. From February 17th through February 23rd , 2010, Respondent's general account had eleven (11) debits for Pay Pal transactions totaling $2,184. 89; two (2) debits for NiteFlirt sessions totaling $58.00; and a $462.19 debit for Allen's Sleep Center in Mangum, Oklahoma;

b. From February 25th through March 29th, 2010, Respondent had fifteen (15) debits for Pay Pal transactions totaling $3,017.53; twenty-one (21) debits for NiteFlirt sessions totaling $730.00; and a $659.91 debit for Rick's Gun Shop; and

c. From March 1st through March 29th, 2010, Respondent made five (5) 5 ATM cash withdrawals totaling $2,500.00.

59. By March 29, 2010, Respondent's general account had a balance of only $506.73.

60. From February 17, 2010 until May 12, 2010, Respondent failed to communicate with his client or Mr. and Mrs. DeLeon.

61. On or about May 12, 2010, DeLeon's mother, Josephine, contacted Respondent. When Respondent answered the telephone, he told Mrs. DeLeon he would have to call her back and said he would do so the next day at 5:00 p.m.

62. Contrary to his statement, Respondent did not telephone Josephine DeLeon on May 12, 2010.

63. From May 13 through May 26, 2010, Mrs. DeLeon repeatedly telephoned Respondent and left numerous messages requesting that he return her call. Respondent failed to do so.

64. On May 26, 2010, Mrs. DeLeon telephoned Respondent from a different phone number in the hopes that Respondent would answer if he did not recognize the incoming telephone number. Respondent answered on the second ring. Mrs. DeLeon asked Respondent why he had not returned her telephone calls. Respondent only told her to call him on the 28th so they could set an appointment to meet on the 29th.

65. On May 28, 2010, Mrs. DeLeon telephoned Respondent as he had instructed her to do. Mrs. DeLeon called Respondent approximately nine (9) times without him answering the telephone or responding to her messages.

66. On June 9, 2010, Mr. and Mrs. DeLeon drove from Paducah, Texas to Respondent's home in Altus, Oklahoma in an attempt to speak to him. When the DeLeons arrived at approximately 7:45 p.m., they observed Respondent's vehicle parked in his driveway. No one answered the door when the DeLeons knocked, however, nor did Respondent answer his home or mobile telephone numbers when the DeLeons called him from their truck parked outside his house.

67. Mrs. DeLeon walked across the street and spoke to one of Respondent's neighbors. The neighbor told Mrs. DeLeon she had seen Respondent at his home for the past hour and a half.

68. The DeLeons left Respondent's home and stopped at a nearby store and telephoned Respondent's home number from the store payphone. Respondent answered on the second ring. When asked why he failed to answer his door minutes earlier, Respondent stated he had just come home.

69. When Mrs. DeLeon told Respondent she had seen his car parked in his driveway and that she had tried calling him on both his home and mobile telephones, Respondent said he must not have heard because he had been asleep.

70. The DeLeons drove back to Respondent's house and spoke to him outside. Mrs. DeLeon asked to see the work Respondent had done on her son's case and reminded him of his promise, when he was paid the additional $4,000.00, that it would only take him six to eight weeks to complete the work needed.

71. Respondent told the DeLeons he would have everything done by June 12, 2010 and agreed to a meet with them at his home at 10:00 a.m. to show them the paperwork.

72. On June 11, 2010, Respondent telephoned Mrs. DeLeon and told her he could not meet with her until 5:00 the next day because he wanted to spend the day with his sister.

73. On June 12, 2010, Respondent provided the DeLeons with three pieces of paper. Two of the pieces of paper consisted of a one and a half page letter addressed to "Dear _____" which referenced "Application for Commutation/Parole Consideration of Tomas Deleon, III." Said "application" had no recipient's name nor any address listed thereon.

74. The third piece of paper was a release Respondent demanded the DeLeons sign releasing him from all obligations and stating he had done all he could for their son.

75. After the DeLeons reviewed the two pages of "work" Respondent had drafted on their son's behalf, they did not feel comfortable signing the release and asked, instead, if they have a copy of it to review.

76. Respondent refused to give the DeLeons a copy of the release if they "[weren't] going to sign it." Respondent told the DeLeons he would have their son's paperwork completed by June 14, 2010 and would mail it to them.

77. As of June 18, 2010, the DeLeons had not received completed paperwork from Respondent. When Mrs. DeLeon telephoned Respondent to inquire, Respondent told her he had mailed it to her, but would put another copy in the mail. Respondent then hung up on her.

78. Mrs. DeLeon immediately telephoned Respondent again and advised him they no longer wanted his services because he had failed to do anything for their son. Mrs. DeLeon requested Respondent return her son's legal documents and that he refund their

money. Respondent again hung up on Mrs. DeLeon.

79. On June 22, 2010, the DeLeons received a copy of the "completed work" Respondent prepared on their son's behalf. It was essentially the same document with a few extra lines added.

80. The DeLeons continued to make requests, even by certified mail on June 30, 2010, that Respondent return their son's files and refund their fee. Respondent did not respond.

81. On July 6, 2010, the OBA received a grievance from the DeLeons against Respondent regarding his handling of their son's legal interests, his failure to earn the $5,000.00 paid, and his refusal to return their son's paperwork.

82. By letter dated July 19, 2010, the OBA advised Respondent it was opening the DeLeon grievance for formal investigation and that he was required to respond.

83. On August 2, 2010, the DeLeons went to Respondent's home to pick up their son's legal documents. They brought a friend with them, Nora Macias, to act as a witness. Respondent did not want Ms. Macias in his office and asked her to wait outside.

84. Inside his office, Respondent advised the DeLeons he had their son's files ready for them, but they needed to sign a paper first. The paper was titled "Receipt and Acknowledgment."

85. The DeLeons did not feel comfortable signing the document after reading it and refused to do so.

86. Respondent then tossed a "Statement of Services Rendered" across his desk at the DeLeons and told them they should be happy he was not going to ask them to pay the $812.50 they still owed him.

87. Eventually, Respondent gave the DeLeons a large box containing their son's records. After the DeLeons arrived at their home in Texas and reviewed the box Respondent had given them, they found what appeared to be cat feces and urine all over their son's legal documents.

88. On August 3, 2010, the DeLeons sued Respondent in small claims court in Jackson County District Court, Case No. SC-2010-252 to recover the monies they paid him that he failed to earn.

89. In his written response to the OBA dated August 9, 2010, Respondent stated DeLeon's case had "been through state and federal appeals for nearly 7 years and the file is voluminous. Also, the chances for relief in this sort of case is remote . . . After explaining all of that to [the DeLeons], them decided to hire me on February 17, 2010 which [sic] the specific provision that all fees would be on a flat fee basis and nonrefundable . . ."

90. In his response, Respondent enclosed a Statement of Services Rendered wherein he claimed to have spent 25.25 hours on the case at $250.00 an hour and thus, had a balance due of $812.50 which he had "waived."

91. On August 25, 2010, the District Court of Jackson County ordered Respondent to pay the DeLeons $2,301.75 in restitution and court costs.

92. On September 3, 2010, Respondent filed a Motion for New Trial and Request for Findings of Fact and Conclusions of Law, and Motion to Vacate. Respondent's motions were denied by the Jackson County District Court on September 24, 2010.

93. Respondent tendered a cashiers check in the amount of $2,301.75 to the DeLeons that same day.

94. Respondent's conduct violates the mandatory provisions of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), ORPC and Rule 1.3, RGDP, and warrants the imposition of professional discipline.

COUNT IV: THE OWENS GRIEVANCE

95. On or about April 13, 2010, Michael Owens ("Owens") hired Respondent to represent him in a custody and child support modification in *Owens v. Owens*, Jackson County District Court Case No. FD-2001-34.

96. Between April 13th and June 15th, 2010, Owens paid Respondent a total of $1,900.00.

97. On August 16, 2010, Respondent filed a Motion to Modify Decree of Divorce and an Application for Emergency Ex Parte Order for Custody. A temporary order was entered granting custody to Owens at that time and setting the matter for hearing on August 24, 2010.

98. The August 24, 2010 hearing had to be continued for lack of service on Owens' ex-wife.

99. On September 13, 2010, the Court ordered child support in favor of Owens to be set pursuant to the statutory guidelines and ordered opposing counsel, Tom Talley, to prepare the Order. The Court ordered any further hearing to be set by agreement of the parties.

100. Pursuant to the Court's direction that he prepare the Order, Talley requested necessary documentation from Respondent concerning Owens' income.

101. Respondent repeatedly failed to provide the documentation to Talley and as a result, Owens was required to continue to pay child support pursuant to the former order

in place.

102. Respondent, however, specifically advised Owens to stop paying child support since the minor child was living with Owens. Respondent assured Owens he would contact the Texas Department of Human Services to let them know a new order was being prepared for the Judge's signature.

103. When Owens did as Respondent instructed, the State of Texas began garnishing his wages for $382.32, the original child support amount, plus an extra $50.00 per month due to a $750.00 arrearage.

104. In response to repeated inquiries from Owens and his current wife, Wilma, regarding the delay in filing the new child support order, Respondent made numerous excuses and repeatedly blamed opposing counsel for causing the delay.

105. On January 24, 2011, the OBA received a grievance from Owens against Respondent alleging his neglect and lack of diligence in getting the child support order filed.

106. By letter dated February 14, 2011, the OBA advised Respondent it was opening Owens' grievance for formal investigation and he was required to respond within twenty (20) days.

107. By letter dated March 14, 2011, Respondent responded to Owens' grievance stating the Owens had delayed in providing the documentation Talley requested. Respondent stated he had sent the information to Talley, but "unbeknownst to me, he did not receive them. By the time I found out he did not have them, they were out of date, so I asked for additional data from my client. He refused, and demanded to send them to Tom Talley himself. As of today, he has not sent the most recent income figures to Mr.

Talley. Mr. Talley has prepared a proposed order with the older figures, and will be forwarding the same to me today or tomorrow, pursuant to my conversation with him today."

108. In a letter received by the OBA on April 11, 2011, Wilma Owens responded to Respondent's March 14, 2011 letter, and advised that contrary to Respondent's statements, she had promptly faxed Respondent the financial documentation on at least three (3) occasions. Wilma Owens further advised Respondent had again blamed Talley for the delay and had stated that he might have to compel the order.

109. In April of 2011, Wilma Owens contacted the State of Texas personally and was advised that there was no documentation on file that Respondent had ever called or notified them of the temporary order.

110. On May 9, 2011, Respondent made a supplemental response to the Owens grievance and again blamed Attorney Talley for the delay. Respondent advised he would have a Motion to Settle Journal Entry filed that week and forward a copy to the OBA.

111. On May 16, 2011, the OBA Investigator observed on OSCN that the docket sheet for the Owens case indicated Respondent had not filed the Motion to Settle Journal Entry as he had advised.

112. By email sent that same day at 9:36 a.m., the OBA Investigator advised Respondent of her discovery and that Wilma Owens had informed her they had not heard from Respondent, despite requesting he return their call. The email specifically asked Respondent why there had been delays in communicating with his client and filing the motion.

113. By email sent May 17, 2011 at 4:10 p.m., Respondent advised he had faxed the Motion to the OBA earlier that day and apologized for not filing it as he had previously indicated. Respondent advised he had "pressing family business to attend to out of town."

114. By email sent at 4:56 p.m. on June 8, 2011, the OBA Investigator requested Respondent to communicate with his clients within forty-eight (48) hours as money was now being garnished from Owens' tax refund.

115. In a letter received by the OBA on July 7, 2011, Respondent advised, in part, that:

"1. I have contacted the child support authorities on several occasions on Mr. Owne's [sic] behalf.

2. The issue of what child support is owing will be resolved by the Order regarding the child custody issues. The hearing on that will be conducted soon.

3. At that time the court will decide what is owed either by Mr. Owens or Cherie Owens."

116. When the OBA investigator interviewed Attorney Talley, he advised he did not receive the requested financial information until February 23, 2011.

117. Respondent's conduct violates the mandatory provisions of Rules 1.1, 1.3, 1.4, 3.2, 8.4(d), ORPC, and Rule 1.3, RGDP, and warrants the imposition of professional discipline.

COUNT V: THE LARA GRIEVANCE

118. In May of 2011, Respondent was hired to represent Jose Lara ("Lara") in a custody and child support modification matter in Harmon County, Oklahoma.

119. Respondent was paid a total of Two Thousand, Three Hundred Dollars

($2,300.00) by Lara and deposited those fees into his general account as opposed to his trust account[3].

120. Respondent attended an initial child support hearing on November 14, 2011, but thereafter failed to file any pleadings in either matter and failed to communicate with or keep his client apprised of the status of his legal matters.

121. Lara, who lived down the street from Respondent, made several attempts to contact Respondent by telephone and even stopped by Respondent's home, unannounced, in an effort to find out the status of his case and get Respondent to work on his behalf.

122. In early 2012, Respondent moved to Texas and ceased communicating with Lara altogether.

123. On May 16, 2012, the OBA received a grievance from Lara against Respondent alleging neglect of his legal matters, failure to return his file, and failure to return his fee so Lara could hire another attorney.

124. On May 18, 2012, the OBA advised Respondent of Lara's grievance and requested Respondent respond to the allegations.

125. On June 7, 2012, the OBA received a response from Respondent wherein he advised the custody matter was prepared and "ready for filing" and that he had scheduled a meeting with Lara for June 11, 2012.

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[3] On or about March 16, 2010, the OBA advised Respondent he should open a client trust account and deposit client fees and safekeep those funds until his fees were earned. As previously alleged, at the advice of the OBA, Respondent opened a client trust account on March 18, 2010 by depositing $1,000.00. The next day, however, Respondent transferred $995.00 from the trust account into his general account.

126. By email transmission on June 11, 2012, the OBA requested Respondent provide Lara with a copy of his complete client file and an accounting of time worked on Lara's cases by June 25, 2012.

127. When Lara and Respondent met on June 11, 2012, Respondent insisted on speaking with Lara alone. Lara terminated Respondent's services and requested Respondent give him his complete file and a refund of unearned fees. Respondent attempted to get Lara to agree to withdraw his complaint with the OBA, but eventually provided Lara with a check in the amount of One Thousand, Three Hundred Dollars ($1,300.00).

128. On June 28, 2012, the OBA received a response from Respondent to Lara's grievance. In his response, Respondent enclosed an incomplete copy of Lara's file, an accounting, and a copy of the check he had written to Lara from the account of "Ann Weigel or John Weigel" dated June 11, 2012 in the $1,300.00. The memo portion of the check noted "retainer refund."

129. Despite the fact that Respondent never filed any pleading on Lara's behalf, he estimated in the accounting that he had performed Three Thousand, Two Hundred Sixty Dollars ($3,260.00) in legal services. Respondent's accounting noted the $1,300.00 refund to Lara and that, with regard to the Two Thousand, Two Hundred Sixty Dollars ($2,260.00) "balance due," stated "Balance waived for Client goodwill."

130. As of the date of this filing, Respondent has not returned all of Lara's documents including Lara's pleadings from Lara's divorce and income tax statements.

131. Respondent's conduct violates the mandatory provisions of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), 3.2, 8.4(d), ORPC, and Rule 1.3, RGDP, and warrants the

imposition of professional discipline.

COUNT VI: THE WILLIAMS GRIEVANCE

132. Priscilla Williams ("Williams) was incarcerated in June of 2010 when her husband filed for divorce and custody of their minor child. A decree of dissolution of marriage was filed in Harmon County Case No. FD-2010-11 on or about June 11, 2010.

133. In or about November of 2010, Williams hired Respondent for a flat fee of Two Thousand, Five Hundred Dollars ($2,500.00) to represent her in the matter. Williams' mother paid Respondent Eight Hundred Dollars ($800.00) in cash and wired the remainder of the fee into Respondent's general account per his instructions.

134. Williams and her husband reconciled shortly afterwards and she began attempting to contact Respondent to advise him that his services would no longer be needed.

135. Unable to get Respondent to return her telephone calls, Williams left him a message terminating his services and requesting a refund. Respondent failed to communicate with his client or refund the flat fee.

136. On or about January 5, 2011, Williams and her husband had their divorce decree vacated on the grounds of their reconciliation.

137. Williams continued to telephone Respondent and left repeated messages requesting he communicate with her and refund her fees.

138. In late 2011, after Respondent's repeated failure to respond, Williams left him a telephone message advising him that she was going to file a grievance against him with the OBA. Respondent returned Williams' call and requested she meet with him to discuss the matter.

139. Williams, her husband, and their child went to Respondent's office, but Respondent insisted that they speak privately. Respondent asked Williams to sign a document purporting to waive any legal claim against him and agreeing not to contact the OBA.

140. Williams did not want to sign the paper and Respondent told her if she did not sign it, he would not refund her money.

141. Williams refused to sign the paper and as she was leaving, he told her would keep her money in the event she needed legal services in the future.

142. Shortly thereafter, Williams was again incarcerated in February of 2012.

143. She was served with a petition for divorce on April 19, 2012 and lacking funds to hire another attorney, she contacted Respondent to see if he would represent her as he had stated.

144. Respondent said he would represent Williams and asked her to email him with the details of the issues presented. Respondent advised Williams he would also speak with opposing counsel.

145. Williams emailed Respondent the requested information and Respondent wrote back asking her five questions.

146. Williams responded to Respondent's questions, but Respondent ceased communicating with her.

147. On May 28, 2012, Williams blocked her telephone information and telephoned Respondent anonymously. Respondent answered her call and advised Williams he would only represent her if she agreed to an uncontested divorce and the terms offered by her husband's attorney.

148. Williams refused and demanded a refund. Respondent told Williams he would only give her a partial refund, if any.

149. Williams proceeded in her divorce matter *pro se* at trial on July 31, 2012 because she did not have the funds to hire an attorney and lost custody of her child.

150. Opposing counsel, Attorney James Moore, advised the OBA that Respondent never contacted him on behalf of Mrs. Williams and confirmed Mrs. Williams had represented herself *pro se* at trial.

151. As of the date of this filing, Respondent has not provided an accounting nor refund of unearned fees to Williams or her mother.

152. Respondent's conduct violates the mandatory provisions of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), 3.2, 8.4(d), ORPC, and Rule 1.3, RGDP, and warrants the imposition of professional discipline.

WHEREFORE, premises considered, Complainant requests that the Respondent be disciplined as this Court finds equitable and proper, and for such other relief as this Court finds appropriate.

Done at the direction of the Professional Responsibility Commission this the 21st day of August, 2012.

Melissa DeLacerda

Melissa DeLacerda, Chair
Professional Responsibility Commission

AND

Loraine Dillinder Farabow, OBA #16833
First Assistant General Counsel
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152
405.416.7083(o) 405.416.7007(f)

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 21st day of August, 2012, a true and correct copy of the foregoing Amended Complaint was mailed by certified mail, return receipt requested, to John Holman Weigel, Respondent, 444 E. Medical Center Blvd., Suite 1201, Webster, TX 77598 and by United States Mail, first-class, postage prepaid, mail to: Kelli M. Masters, PRT Presiding Master, 100 N. Broadway, Suite 1700, Oklahoma City, OK 73102; Lorenzo Collins, PRT Lawyer Member, P.O. Box 1781, Ardmore, OK 73402-1781; John Thompson, PRT Lay Member, 1701 Guilford Lane, Nichols Hills, OK 73120; and Jack Sterling Dawson, Attorney for Respondent, 100 Park Avenue, Second Floor, Oklahoma City, OK 73102.

Loraine D. Farabow

I, Michael S. Richie, Clerk of the Appellate Courts of the State of Oklahoma do hereby certify that the above and foregoing is a full, true and complete copy of the Amended Complaint in the above entitled cause, as the same remains on file in my office.

In Witness Whereof I hereunto set my hand and affix the Seal of said Court at Oklahoma City, this 22nd day of Sept 2014.

Clerk

By Okeys
DEPUTY

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
BEFORE THE PROFESSIONAL RESPONSIBILITY TRIBUNAL

STATE OF OKLAHOMA ex rel. OKLAHOMA BAR ASSOCIATION,	)	
Complainant	)	OBAD #1910
v.	)	SCBD #5864
JOHN HOLMAN WEIGEL,	)	
Respondent.	)	

REPORT OF THE TRIAL PANEL

This matter came on before the Professional Responsibility Tribunal for evidentiary hearing on November 2, 2012, and continued o November 20, 2012, and February 28, 2013. Complainant, the State of Oklahoma, ex l. Oklahoma Bar Association (the "Bar" or "Complainant"), appeared by and throu s attorneys of record, Loraine Dillinder Farabow and Debbie Maddox. Resp nt John Holman Weigel ("Weigel" or "Respondent") appeared in person and b d through his attorney of record, Jack Sterling Dawson. The parties submitted Joint Stipulations to the Professional Responsibility Tribunal. The Tribunal heard sworn testimony of the following witnesses: Cody Whiteley (via telephone); Carol Whiteley (via telephone); Josephine DeLeon; Thomas Talley; Wilma Owens (via telephone); Michael Owens (via telephone); Stephen Jones, attorney; Mack Martin, attorney; John Hunsucker, attorney; Jose Lara (via telephone); Priscilla Fletcher (via telephone); John Weigel, Respondent; Krystal Willis; Sommer Robbins (via telephone); James Moore (via telephone); Diana Fletcher (via telephone), and Ann Marie Weigel, wife of the Respondent.

Exhibit
3

The Tribunal admitted Exhibits 1-136 offered jointly by the parties. During cross-examination of Stephen Jones, Ms. Maddox presented Mr. Jones with a copy of Title 21, Section 13.1 of the Oklahoma Statutes and designated it as Exhibit 137. It does not appear from the record that this exhibit was formally offered and admitted, but there was no objection made by Mr. Dawson. Further, Respondent agreed during Ms. Farabow's redirect examination of him to produce relevant medical records concerning his claims of bipolar disorder, and executed a medical release after consulting with his attorney. Said records were produced as joint Exhibit 138 pursuant to a protective order subsequent to the completion of the hearing. During Mr. Dawson's cross examination of Respondent, he offered a copy of the Annotated Model Rules of Professional Conduct as Respondent's Exhibit 1, and the same was admitted.

The Tribunal, having reviewed the Amended Complaint, Answer to Amended Complaint and the exhibits, having heard the testimony of witnesses and after reviewing all of the evidence, submits this Report.

STATEMENT OF PROCEEDINGS

The Bar filed a formal Complaint against the Respondent under Rule 6.1 of the Rules Governing Disciplinary Proceedings alleging professional misconduct. The Complaint and Answer were filed with the Clerk of the Supreme Court on April 5, 2012. On August 21, 2012 the Bar filed an Amended Complaint, alleging six (6) counts of professional misconduct against Respondent. Respondent filed his Answer to Amended Complaint on September 10, 2012.

At the hearing on the matter, which began November 2, 2012, and continued on November 20, 2012, and February 28, 2013, the parties submitted their Joint Stipulations as Exhibit 4, and presented evidence supporting their respective positions. Complainant submitted that Respondent committed specific acts in violation of the Oklahoma Rules of Professional Conduct ("ORPC") 5 O.S. 2008, Ch. 1, App. 3-A, and the Rules Governing Disciplinary Proceedings ("RGDP"), 5 O.S. 2001, Ch. 1, App. 1-A. In Count I: the Boyd grievance, the Complainant submitted that Respondent failed to timely respond to the grievance in violation of Rules 8.1(b) of the ORPC, and Rules 1.3 and 5.2 of the RGDP. Respondent admits that he did not respond to the grievance until a formal investigation was opened, but claims that his conduct did not violate any rules of professional conduct as set forth in the ORPC or RGDP.

In Count II: the Whiteley grievance, the Bar alleged that Respondent violated Rules 1.1, 1.3, 1.4. 1.5, 1.15, 1.16(d) and 3.2 of the ORPC and Rule 1.3 of the RGDP by accepting a flat fee from a client and depositing the same in Respondent's operating account but failing to properly communicate with the client or competently complete the work necessary to earn said fee. The Bar presented witnesses and documentary evidence to support these allegations. Respondent admitted he accepted the flat fee but claims that the fee was earned at the time of payment, and that his conduct did not violate any rules of professional conduct.

In Count III: the DeLeon grievance, the Bar alleged that Respondent violated Rules 1.1, 1.3, 1.4. 1.5, 1.15, 1.16(d) of the ORPC and Rule 1.3 of the RGDP by accepting a flat fee from a client and depositing the same in Respondent's operating account but failing to

properly communicate with the client or competently complete the work necessary to earn said fee. The Bar presented witnesses and documentary evidence to support these allegations. Respondent again admitted that he accepted the flat fee but claims the fee was earned at the time of payment, and that his conduct in representing the client did not violate any rules of professional conduct

In Count IV: the Owens grievance, the Bar alleged that Respondent violated Rules 1.1, 1.3, 1.4, 3.2, 8.4(d) of the ORPC and Rule 1.3 of the RGDP by failing to properly communicate with the client and failing to diligently and properly complete for work for which Respondent was paid. The Bar presented witnesses and documentary evidence to support these allegations. Respondent denied that his conduct violated any rules of professional conduct.

In Count V: the Lara grievance, the Bar alleged that Respondent violated Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), 3.2, 8.4(d) of the ORPC and Rule 1.3 of the RGDP by accepting a flat fee from a client and depositing the same in Respondent's operating account but failing to properly communicate with the client or competently complete the work necessary to earn said fee. The Bar also alleged that Respondent failed to return Mr. Lara's complete file to him upon termination. The Bar presented witnesses and documentary evidence to support these allegations. Respondent denied that his conduct violated any rules of professional conduct.

In Count VI: the Williams grievance, the Bar alleged that Respondent violated Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), 3.2, 8.4(d) of the ORPC and Rule 1.3 of the RGDP by accepting a flat fee from a client and depositing the same in Respondent's operating

account but failing to properly communicate with the client or competently complete the work necessary to earn said fee. The Bar presented witnesses and documentary evidence to support these allegations. Respondent denied that his conduct violated any rules of professional conduct.

FINDINGS AND ANALYSIS

After hearing sworn testimony of the witnesses, reviewing the exhibits offered and admitted, and also considering the trial brief submitted by Respondent, the Trial Panel unanimously agrees that Respondent has committed specific acts which constitute professional misconduct in violation of ORPC and RGDP. Specifically, the Trial Panel found that John Holman Weigel's misconduct violates the mandatory provisions of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), 3.2, 8.1 and 8.4(d) of the ORPC, and Rules 1.3 and 5.2 of the RGDP.

The Trial Panel finds by clear and convincing evidence that Respondent accepted and retained flat fees for work he did not complete. In the instances presented by the Bar in each of the six counts against Respondent, Mr. Weigel repeatedly failed to communicate with clients in an appropriate manner, and failed to competently and timely perform the work for which he was hired. He further failed to timely respond to the Boyd grievance, neglected matters, acted in a dilatory manner, failed to communicate, failed to keep and maintain a client trust account for unearned fees advanced and failed to return portions of clients' documents and unearned fees upon termination. The Trial Panel finds by clear and convincing evidence that Respondent's actions constitute professional misconduct and warrant the imposition of professional discipline.

The Trial Panel is not persuaded by the Respondent's argument that flat fees are earned upon receipt. Respondent presented a Trial Brief to the Panel, which relies largely upon Ethics Opinion 317. That opinion, however, recognizes that all fees must be earned and must be reasonable. Lawyers in the private sector that hold unearned fees advanced by clients or third parties must keep and maintain a trust account, and are required to return any unearned portions of flat fees, pursuant to ORPC Rule 1.5. The opinion recognized that some jurisdictions (not Oklahoma) have found that flat fees, under certain circumstances, may be considered earned when paid. In making such a determination, courts would consider whether the flat fee was fully explained in a written agreement, whether the arrangement contained specifics regarding the scope and/or time frame of representation, and whether the fee is reasonable.

Respondent failed to timely respond in the Boyd grievance. In the six counts against him, written fee agreements existed only in the Whiteley and DeLeon matters, and only one contained a clause that specified that the fee was non-refundable (the DeLeon grievance). In all but the Boyd grievance, Respondent neglected matters, acted in a dilatory manner, failed to communicate, failed to properly hold property of clients, failed to perform work for which he was paid, and failed to return either all or part of unearned fees. Such conduct clearly constitutes professional misconduct.

DISCIPLINE MITIGATION

Respondent's professional misconduct undoubtedly warrants discipline. The Respondent is also entitled to a review of any factors that might mitigate his discipline. In the Joint Stipulations presented to the Trial Panel, the parties agree and stipulate that

Respondent was admitted to practice law in Oklahoma on the 21st day of April, 2000 and has never before been disciplined for professional misconduct.

Respondent testified during the hearing that he had been diagnosed with bi-polar disorder in 2002, and that he had suffered with related symptoms since 1992. He testified that this disorder did not render him incapable of practicing law pursuant to Rule 10 or the RGDP, but only created difficulty in his law practice. Following the hearing, Respondent produced medical records indicating that he had been treated through counseling and medication for this disorder from 2008 through 2009. Prior to his testimony at the hearing, Respondent had never informed the Bar of his diagnosis.

While evidence of mental or physical conditions may be presented as mitigating factors for assessing a practitioner's culpability, there must be a causal relationship between the conditions and the professional misconduct. *State ex rel. Oklahoma Bar Association v. McCoy*, 2010 OK 67, ¶25. Such a disability will not immunize one from disciplinary measures but may serve to reduce the actor's ethical culpability. *Id.*

The Panel considered the evidence presented by Respondent concerning his health, but finds that it does not measurably reduce his ethical culpability.

CONCLUSION

Under the facts presented in this proceeding, and based upon the Court's previous decisions, the Trial Panel hereby recommends that the Respondent be suspended from the practice of law for a period of six (6) months, and should be ordered to refund all unearned fees to the appropriate clients in an amount to be determined by the Court. Respondent should also be required to pay the costs of these proceedings within ninety (90) days of the

Court's action, and should further be required to participate in the OBA's Management Assistance Program.

ALL TRIAL PANEL MEMBERS CONCUR.

Dated May 6, 2013.

Kelli M. Masters, OBA #18588
PRT Presiding Master

Lorenzo Collins, OBA #1808
PRT Lawyer Member

CERTIFICATE OF SERVICE

The undersigned certifies that on May 6, 2013, I caused to be mailed a true and correct copy of the above and foregoing instrument to:

Loraine Farabow
Assistant General Counsel
Oklahoma Bar Association
1901 N. Lincoln Blvd.
P.O. Box 53036
Oklahoma City, OK 73152

Kelli M. Masters
100 N. Broadway, Ste. 1700
Oklahoma City, OK 73102
TRIAL PANEL PRESIDING MASTER

Lorenzo Thurmond Collins
16 Stanley SW, P.O. Box 1781
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TRIAL PANEL LAWYER MEMBER

Jack Dawson
210 Park Avenue, Suite 2550
Oklahoma City, OK 73102
ATTORNEY FOR RESPONDENT

595835/52313

I, Michael S. Richie, Clerk of the Appellate Courts of the State of Oklahoma do hereby certify that the above and foregoing is a full, true and complete copy of the Report of the Trial Panel in the above entitled cause, as the same remains on file in my office.

In Witness Whereof I hereunto set my hand and affix the Seal of said Court at Oklahoma City, this 23rd day of Sept 2014.

Clerk

By D Keys
DEPUTY

2014 OK 4

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA ex rel. OKLAHOMA BAR ASSOCIATION,	)	
Complainant,	)	
v.	)	SCBD 5864
	)	FOR OFFICIAL
	)	PUBLICATION
JOHN HOLMAN WEIGEL,	)	
Respondent.	)	

ATTORNEY DISCIPLINARY PROCEEDING

¶0 The Oklahoma Bar Association filed a Rule 6 proceeding against the Respondent, John Holman Weigel, alleging violations of the Oklahoma Rules of Professional Conduct and the Rules Governing Disciplinary Proceedings. A formal hearing was held before a trial panel of the Professional Responsibility Tribunal, which recommended to the Court that Respondent be suspended from the practice of law for six (6) months. The Complainant recommended suspension for two years and one day. Having reviewed the matter *de novo*, we suspend the Respondent from the practice of law for two years.

RESPONDENT SUSPENDED FOR TWO YEARS AND ORDERED TO PAY COSTS.

Loraine Dillinder Farabow, First Assistant General Counsel, **OKLAHOMA BAR ASSOCIATION**, Oklahoma City, Oklahoma, for the Complainant.

Jack S. Dawson, **MILLER DOLLARHIDE, P.C.**, Oklahoma City, Oklahoma, for the Respondent.

Exhibit
4

EDMONDSON, J.

¶1 The Oklahoma Bar Association (Bar) filed on August 21, 2012, an amended formal complaint pursuant to Rule 6.1, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2011, ch. 1, app. 1-A, against John Holman Weigel (Respondent), alleging six (6) counts of professional misconduct in violation of the Oklahoma Rules of Professional Conduct, 5 O.S. 2011, Ch. 1, app. 3-A, (ORPC) and the RGDP. The parties filed Joint Stipulations, but the Respondent denies the stipulated conduct violated any rules of professional conduct or disciplinary procedure and contends professional discipline is not warranted. The allegations set out below are taken from the stipulated facts.

COUNT I - The Boyd Grievance

¶2 The Bar received a grievance from Peggy Jean Boyd on October 26, 2009, regarding the Respondent's representation of her son, Roger D. Boyd. The Bar opened Boyd's grievance for informal investigation and by letter dated November 3, 2009, advised the Respondent of the grievance and requested a response in writing within two weeks. No response was received and the Bar on November 25, 2009, mailed another letter to the Respondent at his official roster address, advising him of his failure to respond to the Boyd grievance and requesting that he do so within five (5) working days from the date of the letter. The Respondent did not respond. By

letter of December 23, 2009, the Bar advised it was opening Boyd's grievance for formal investigation and informed the Respondent he was required to respond in writing within twenty (20) days. He responded by letter dated January 8, 2010, and apologized for the delay in his initial response. The Bar alleged violation of Rule 8.1(b) of the ORPC and Rules 1.3 and 5.2 of the RGDP for failure to respond to the Boyd grievance.

COUNT II - The Whiteley Grievance

¶3 On July 8, 2009, Cody Alan Whiteley hired the Respondent to represent him in a paternity action pending in Jackson County, Oklahoma. The contract provided that Whiteley would pay a "flat fee" of $12, 000.00, with $6,000.00 due immediately, then payments of $1,000.00 per month until paid in full. The Respondent did not have a trust account. At Respondent's specific request, Whiteley's mother wired $6,000.00 to the Respondent's account with the First State Bank of Altus on July 8, 2009, and then wrote the Respondent a check for $1,000.00 on August 12, 2009, which was deposited into the same account. After the $6,000.00 deposit, the Respondent made numerous disbursements of funds from the general account for personal and business expenses.

¶4 On August 27, 2009, the Respondent met with Cody Whiteley in Texas after Whiteley's mother threatened to stop making any further payments and sought to

remove herself as Cody's guarantor. The Respondent admits meeting with Whitely but denies it was under threat. The Whiteleys left numerous telephone messages and sent repeated emails expressing their concern that no action had been taken. The Respondent failed to timely respond to their repeated requests about the status of the case. By certified mail dated November 3, 2009, the Whiteleys terminated the Respondent and requested a refund and return of Cody's file. The Respondent did not claim the certified mailing and did not respond to the Whiteleys' request. The Respondent did not provide the Whiteleys with an accounting and he denies that a refund was requested. On November 26, 2009, Cody Whiteley filed a grievance with the Bar alleging neglect of his legal matter and failure to earn the $7,000.00 paid.

¶5 The Bar alleged violations of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d) and 3.2 of the ORPC and Rule 1.3 of the RGDP, asserting the Respondent accepted a flat fee from the client, which he deposited in his operating account, and then failed to properly communicate with the client or to complete the work necessary to earn the fee. The Respondent claimed Whiteley was a difficult client who was hard to communicate with. After the Bar requested him to provide an accounting of the work performed on Whiteley's behalf and a copy of all work product, Weigel responded, by letter from his attorney, asserting the contract was for a flat fee and he earned the entire fee. He admitted he did not have a trust account, but argued he was not

required to maintain one because the fee was earned when paid.

COUNT III - The DeLeon Grievance

¶6 Tomas DeLeon, III, was convicted on August 19, 2003, in Stephens County District Court, of five counts of lewd molestation. He was sentenced to serve sixteen years imprisonment and his conviction was affirmed on state and federal appeals. DeLeon's mother spoke with the Respondent on January 28, 2010, to see whether anything further could be done in her son's case. The Respondent assured her he could help, even if it meant getting a pardon, and the fee would be $5,000.00. Mrs. DeLeon wired $1,000.00 to Respondent's general account. On February 17, 2010, DeLeon's parents drove from Texas to meet with the Respondent in Altus, at which time he stated three options were available: to seek a pardon, to seek a commutation of the sentence, or to seek a modification of the sentence. He advised them it would take six or eight weeks for him to seek the desired result. The Respondent denies he assured them a result.

¶7 The DeLeons would testify they paid the Respondent an additional $4,000.000 by cashier's check, executed a contract with him and turned over their son's legal papers to him. The contract provided for a flat fee of $5,000.00 for the Respondent to represent, appear and act for his client on all currently available administrative and executive remedies relating to his conviction in CF-03-149 in Stephens County,

Oklahoma. It provided that all fees were nonrefundable due to time constraints on the attorney and the complexity of the case, but no further fees would be required under the contract. The Respondent told the DeLeons he would notify the prison of his representation and he would call and speak to Tomas. He would either take the necessary documents to the prison or mail them for Tomas to execute. From February 17, 2010, until May 12, 2010, the Respondent did not communicate with Tomas or with the DeLeons. On May 12, 2012, the Respondent answered the phone and told Mrs. DeLeon he would call her the next day at 5:00 p.m. He did not call and Mrs. DeLeon repeatedly left messages requesting that he contact her.

¶8 On May 26, 2010, Mrs. DeLeon called from a different phone number and the Respondent answered, but told her to call the next day to make an appointment. The next day, Mrs. DeLeon telephoned the Respondent approximately nine times without getting an answer. On June 9 the DeLeons drove to Respondent's home/office in Altus and repeatedly rang the doorbell, but the Respondent did not answer. They called from a nearby payphone and when the Respondent answered he said he had just come home. When she said his car was parked in the driveway when they came by, he said he had been asleep. They drove back to his home and talked to him outside, asking to see the work he had done. The Respondent told them he would have everything done by June 12, 2010, and arranged to meet with them at 10:00 a.m.

that day at his home to show them the paperwork.

¶9 On June 12, he gave the DeLeons a one and one-half page letter addressed to "Dear _____," with no name or address listed. This was purportedly an "Application for Commutation/Parole Consideration of Tomas DeLeon, III." He told them that he had done all he could for their son and demanded they sign a paper releasing him from all obligations. They refused and asked for a copy of the release, but the Respondent refused to give them a copy if they weren't going to sign it. He told them he would have their son's paperwork completed by June 14, 2010, and would mail it to them. Mrs. DeLeon did not receive any paperwork and when she contacted the Respondent he said he had mailed it. He said he would put another copy in the mail and he then hung up on her. Mrs. DeLeon immediately called back and advised the Respondent they no longer wanted his services. She requested return of her son's legal documents and a refund of their money. The Respondent again hung up on her.

¶10 On June 22, 2010, the Respondent gave them the same letter, with a few extra lines added. He did not return the files or make any refund. On July 6, 2010, the DeLeons filed a grievance and the Bar advised the Respondent of the investigation. On August 2, 2010, the DeLeons went to the Respondent's home to pick up their sons's legal documents. He refused to give them the files unless they signed a

"Receipt and Acknowledgment." They refused to sign and the Respondent then presented them with a "Statement of Services Rendered" which reflected they owed him an additional $812.50, although he said he was not going to ask them to pay it. The DeLeons would testify the Respondent gave them a large box containing their son's records which appeared to have cat feces and urine on them.

¶11 In his response to the Bar dated August 9, 2010, the Respondent stated he had explained to the DeLeons at the outset that the chances for relief were remote because the case had been through state and federal appeals for nearly seven years and the file was voluminous. He states the DeLeons decided to hire him on February 17, 2010, with the specific provision that all fees would be on a flat flee basis and were nonrefundable. The response enclosed a "Statement of Services Rendered" which stated that he spent 25.25 hours on the case at a rate of $250.00 per hour.

¶12 The DeLeons sued the Respondent in Jackson County District Court, and on August 25, 2010, the court ordered the Respondent to pay them $2,301.75 in restitution and court costs. Respondent gave them a cashier's check for that amount as a settlement of the matter. The Bar alleged violations of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d) and 3.2 of the ORPC and Rule 1.3 of the RGDP, asserting the Respondent accepted a flat fee from the client and deposited the fee in his operating account, failed to properly communicate with the client and failed to competently

complete the work necessary to earn the fee. The Respondent admitted he accepted a flat fee but he claimed the fee was earned at the time of payment.

COUNT IV - The Owens Grievance

¶13 In Count IV, the Bar alleged the Respondent violated Rules 1.1, 1.3, 1.4, 3.2, 8.4(d) of the ORPC and Rule 1.13 of the RGDP, by accepting a flat fee from the client, then failing to properly communicate with the client or to diligently and properly complete the work for which he had been paid. On April 13, 2010, Michael Owens hired the Respondent to represent him in Case No. FD-2001-32, a custody and child support modification matter in the District Court of Jackson County. Owens paid the Respondent $1,900.00 between April 13 and June 15, 2010. The Respondent filed a motion to modify the decree of divorce and an application for an emergency *ex parte* custody order. A temporary order granted custody to Owens and set the matter for hearing on August 24, 2010. On September, 13, 2010, the court ordered child support in Owens' favor and directed opposing counsel, Talley, to prepare the order. Talley requested necessary information concerning Owens' income, but the Respondent never provided the documents. As a result, Owens was required to continue to pay child support under the former court order. Owens stated the Respondent advised him to stop paying child support since the child was living with him and stated he would contact the Texas Department of Human Services to let

them know that a new order was being prepared. Owens stopped paying and the State of Texas began to garnish his wages in the amount of the original child support, plus an additional $50.00 per month because of an arrearage of $750.00 When contacted, the Respondent made excuses and blamed opposing counsel for causing the delay in filing the order.

¶14 Owens filed a grievance against the Respondent on January 24, 2011, alleging neglect and lack of diligence getting the order filed. The Respondent blamed Owens and Talley for the delay. He stated he had sent the information to Talley but it was not received, so he was required to obtain updated information from Owens. Wilma Owens responded she had promptly faxed the financial documentation to the Respondent on at least three (3) occasions. She contacted the State of Texas and was advised there was no documentation that the Respondent had ever notified them of the temporary order. The Respondent advised he would file a Motion to Settle Journal Entry and forward a copy to the Bar. He did not do so and continued to blame Talley. He advised the Bar that he had contacted the Texas child support authorities on several occasions on Owens' behalf.

COUNT V - The Lara Grievance

¶15 In Count V, the Bar alleged Respondent's conduct violated Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), 3.2 and 8.4(d) of the ORPC and Rule 1.3 of the RGDP by

accepting a flat fee from the client, depositing the fee into his operating account and then failing to properly communicate with the client or to competently complete the work necessary to earn the fee. Jose Lara hired the Respondent in May of 2011 to represent him in a custody and child support modification in Harmon County, Oklahoma. He paid the Respondent a total of $2,300.00, which the Respondent deposited into his general account. The Respondent attended an initial child support hearing on November 14, 2011, but never filed any pleadings in either matter and failed to communicate with Lara as to the status of his legal matters. Lara was the Respondent's neighbor and made several attempts by telephone and visiting Respondent's home unannounced in an effort to discover the status of his case.

¶16 In early 2012, the Respondent moved to Texas and ceased communications with Lara. On May 16, 2012, Lara filed a grievance against the Respondent, alleging neglect of his legal matters, failure to return his file and failure to return his fee so that he could hire another attorney. In his response to the Bar, the Respondent advised he had the custody matter prepared and ready to file and that he scheduled a meeting with Lara for June 11, 2012. At that meeting, Lara terminated representation by the Respondent and requested a return of his file and unearned fees. The Respondent provided Lara with a check for $1,300.00. The Respondent filed a response with the Bar on June 28, 2012, in which he enclosed a copy of part of

Lara's file and an accounting in which he estimated he had performed $3,260.00 in legal services for Lara. He included a photocopy of the refund to Lara, and stated he would regard the $2,260.00 balance due as waived for client goodwill.

COUNT VI - the Williams Grievance

¶17 In Count VI, the Bar alleged conduct in violation of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), 3.2 and 8.4(d) of the ORPC and Rule 1.3 of the RGDP by accepting a flat fee from the client, depositing the fee into his operating account and then failing to properly communicate with the client or to competently complete the work necessary to earn the fee. Priscilla Williams was incarcerated when her husband filed for divorce and custody of their minor child. A decree of dissolution of marriage was filed in Harmon County District Court Case No. FD-2010-11. In November 2010, she hired the Respondent for a flat fee of $2,500.00, which was paid by her mother. The parties reconciled shortly thereafter and Williams attempted to contact the Respondent on numerous occasions to tell him his services were no longer needed. Finally, Williams left a message terminating his services and requesting a refund. The Respondent did not communicate with her and he did not refund the fee. The parties had their divorce decree vacated on January 5, 2011, and Williams continued to leave messages with the Respondent to contact her and refund her fee. In late 2011, Williams left a message telling the Respondent she was going to file a

grievance with the OBA. The Respondent returned her call and asked to meet to discuss the matter. At the meeting, the Respondent asked Williams to sign a document waiving any legal claim against him and agreeing not to contact the OBA. Williams refused to sign the paper and the Respondent told her he would keep her money in the event she needed legal services in the future.

¶18 Williams was again incarcerated in February 2012 and her husband sued her for divorce on April 19, 2012. She contacted the Respondent to represent her. He said he would and asked her to e-mail details of the issues presented. Williams e-mailed the requested information and then again responded to five more questions asked by the Respondent. He stopped communicating with her and on May 28, 2012, Williams blocked her telephone number and phoned the Respondent. The Respondent answered and advised that he would represent her only if she agreed to an uncontested divorce on the terms offered by the husband's attorney. She refused and demanded a refund. He said he would give only a partial refund, if any. Williams appeared pro se at trial in her divorce on July 31, 2012, at which time she lost custody of her child. Opposing counsel advised the Bar the Respondent never contacted him on behalf of Mrs. Williams. The Respondent did not provide an accounting or a refund of the $2,500.00 to Williams or her mother.

¶19 These matters were presented to the Professional Responsibility Tribunal

(PRT) on November 2, 2012, November 20, 2012, and February 28, 2013, the Respondent appearing in person and by his attorney of record. Ultimately, the PRT found the Bar established by clear and convincing evidence the Respondent committed specific acts constituting professional misconduct in violation of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), 3.2, 8.1 and 8.4(d) of the ORPC,[1] and Rules 1.3

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[1]Rule 1.1 provides that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation; Rule 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client; Rule 1.4 provides that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, and that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; Rule 1.5 provides that a lawyer shall not make an agreement for, charge or collect an unreasonable fee or unreasonable amount for expenses; Rule 1.15. Oklahoma Rules of Professional Conduct - Safekeeping Property

> (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyers own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated or elsewhere with the written consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
>
> (b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
>
> (c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be

(continued...)

and 5.2 of the RGDP.[2] It now recommends the Respondent be suspended from the practice of law for six months. The Bar argues the appropriate discipline is suspension for two years and one day, which would be tantamount to disbarment and would require the Respondent to apply for reinstatement of his license to practice law. The Respondent says his conduct warrants nothing more severe than a reprimand.

STANDARD OF REVIEW

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[1](...continued)
separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

Rule 1.16(d) provides that upon termination of representation the lawyer shall take steps to protect a client's interests, such as giving reasonable notice to the client, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expenses that has not been earned or incurred; Rules 3.2 provides that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. Rule 8.1 concerns maintaining the integrity of the profession and provides that in a disciplinary matter, a lawyer should not knowingly fail to respond to a lawful demand for information from a disciplinary authority. Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

[2]**Rule 1.3. Discipline for Act Contrary to Prescribed Standards of Conduct.**
The commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all. Conviction in a criminal proceeding is not a condition precedent to the imposition of discipline.

Rule 5.2 provides that the failure of a lawyer to answer within twenty (20) days after service of a grievance shall be grounds for discipline.

¶20 In bar disciplinary proceedings, this Court exercises exclusive original jurisdiction as a licensing court, not as a reviewing tribunal. *State ex rel. Oklahoma Bar Ass'n v. Berger, 2008 OK 91* ¶12, *202 P.3d 822.* It is our responsibility to examine the record and assess the credibility and weight of the evidence in order to determine whether it clearly and convincingly establishes professional misconduct by the attorney and, if so, what the appropriate discipline, if any, should be. *State ex rel. Oklahoma Bar Ass'n v. Stutsman, 1999 OK 62, 990 P.2d 854, 858.* Our review is *de novo* and we are not bound by the recommendations of the PRT. *State ex rel. Oklahoma Bar Ass'n v. Todd, 1992 OK 81, 833 P.2d 260, 261.*

¶21 As for failure to respond to the Bar's requests for information, the Respondent argues the rules do not require a response to an informal complaint from the Bar within two weeks. We have held that a lawyer's obligation to respond to an OBA grievance is mandatory and failure to respond is a violation of the RGDP which forms a basis for discipline. *State ex rel. Okla. Bar Ass'n v. Stow, 1998 OK 105, ¶12, 975 P.2d 869; State ex rel. Okla. Bar Ass'n v. Spadafora, 1998 OK 28, ¶ 32, 957 P.2d 114, 119.* The Bar established by clear and convincing evidence that the Respondent failed to respond to the grievance filed in the Boyd matter until a formal proceeding was instigated.

¶22 The Respondent maintains his fees were earned in each instance. He says

he spent many hours meeting with clients and reviewing their files and that he also traveled to meet with certain clients. He says he expended time on each client's legal matter and his fees were reasonable. He argues that he was not required to maintain a trust account because the fixed fees he charged were earned upon receipt and thus could not be deposited in a trust account. He relies upon OBA Ethics Opinion No. 317, adopted December 13, 2002, for support. That opinion addressed availability fees, fixed fees and hourly fees designated as a nonrefundable retainer. The use of the term "nonrefundable retainer" to represent an advance payment of fees for hours of legal services that the attorney will perform in the future is impermissible. Such fees may be designated as fixed fees, but cannot impair a client's rights under Rule 1.16(d). The fees are not "nonrefundable" because if the attorney withdraws or is terminated before completing the work, the attorney must refund the unearned portion of the advance.[3]

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[3]The ethics opinion noted that fixed fees paid in advance are intended to cover a specified amount of work estimated by the attorney for a particular matter. Clients often prefer fees determined in advance to be a specified sum because it allows the client to know in advance just how much the total cost for legal services will be, permitting the client to budget based on a fixed sum rather than face potentially unlimited hourly fees that may exceed the client's ability to pay. The opinion notes that in some situations a flat fee may be determined based on an attorney's "towering reputation" for making a civil case vanish just by agreeing to the representation, or resolving a criminal matter with a few telephone calls. *Having obtained the desired result*, the attorney is entitled to keep the fee. Even if the result is not particularly successful, if the fee is reasonable, the terms have been adequately explained to the client in the fee contract and *the services agreed upon have been performed,* the lawyer ordinarily will not be required to refund any of the fee to the client (emphasis added).

¶23 In *McQueen, Rains & Tresch, LLP v. CITGO Pet. Corp., 2008 OK 66, 195 P.3d 35*, we discussed nonrefundable retainer fees and related provisions in attorney/client contracts that have been upheld in other jurisdictions. The common factors were: the fees set out were reasonable; the contract was negotiated with a sophisticated client and the retainer agreement contained an agreement by the client to compensate the lawyer if the client terminates the relationship; the contract is in writing with a clear statement of the consequences of the provisions; where the attorney, in entering the contract, has changed positions or incurred expenses to meet the needs of the client or where the client's desire to have a particular attorney as a representative necessitates an immediate commitment at the risk to the attorney of forgoing or losing other potential business. *Id.* Contracts between attorneys and their clients regarding compensation stand on the same footing as any other contract and are upheld unless contrary to law, oppressive, fraudulent or the fee is obviously disproportionate to the services rendered. Rule 1.5 prohibits an attorney from making an agreement for an unreasonable fee. Comment 4 to Rule 1.5 states that a demand for advance payment may be made by the lawyer, but that any unearned portion of the collected fee must be returned.

¶24 The Respondent had fee contracts in the Whiteley and DeLeon matters The Whiteley contract provided that the Respondent would be paid $12,000.00 as a

retainer, with payments of $1,000.00 per month to be paid after an initial payment of $6000.000. The Whiteleys paid the Respondent $7,000.00. The contract did not provide for a nonrefundable fee nor did it state that the fees were deemed earned upon receipt. The Respondent did not file any pleadings or other paperwork with regard to the case, not even an entry of appearance. His testimony was that "it was in the planning stages." The Respondent did not keep contemporaneous records, nor did he make written notes of contact with his client. There is no documentary evidence to support the Respondent's testimony that he was waiting on the client for further instruction, or that the client had agreed all pleadings would be filed simultaneously. The testimony reflects otherwise. The Respondent did not provide an accounting and he did not refund any of the $7,000.00 paid him. When the Bar requested an accounting, the Respondent produced, after several months, one he had created from memory.

¶25 The DeLeon contract provided for a nonrefundable flat fee. The Respondent believes he earned his $5,000.00 fee although he admits only one hour of the 23.25 hours billed was spent drafting a cover letter to the Oklahoma Pardon Board (sic) members. From February 17 to May 12, there were no communications with the clients. Twelve of the 23.25 hours were spent reviewing the extensive file and creating a compilation of it. The DeLeons obtained a small claims judgment against

him in the amount of $2,301.75, which he agreed to pay in settlement.

¶26 The Bar proved by clear and convincing evidence the Respondent took fees from clients and did not complete the work for which he was hired. A violation of Rule 1.15(a) is established by the Respondent's failure to hold his clients' property separate from his own property. An advance fee retainer requires that the property of the client must be segregated until it is earned. *State ex rel. Okla. Bar Ass'n v. Sheridan, 2003 OK 80, 84 P.3d 710, 717.* The Respondent deposited client funds in his operating account, in violation of Rule 1.15. The Respondent's bank records reflect that after he deposited the client funds, cash withdrawals were made and checks were drawn on the account almost immediately for personal items. The Respondent failed to account for or return fees upon demand by clients. He failed to provide adequate representation and to act with reasonable diligence in representing his clients. He failed to keep the clients reasonably informed and he failed to promptly comply with reasonable requests for information from them. The Respondent's conduct violates Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d), 3.2, 8.1 and 8.4(d), ORPC and Rules 1.3 and 5.2 RGDP.

¶27 Violation of the Oklahoma Rules of Professional Conduct and Rules Governing Disciplinary Procedure warrants the imposition of professional discipline. It is the duty of this Court to determine the appropriate level of discipline to be

imposed, based on the facts and circumstances of the case. In determining the appropriate discipline, we look to the level of discipline imposed in other cases. The amount of discipline imposed has depended upon the unique factors in each case. Misuse of trust funds has resulted in the most severe discipline of disbarment.[4]

¶28 In *State ex rel. Okla. Bar Ass'n v. Perkins, 1988 OK 65, 765 P.2d 825,* failure to promptly repay client funds upon request, coupled with other misuses of client fund, mitigating circumstances absent, resulted in disbarment. A failure to account for or deliver money to the client upon demand may constitute a conversion. Funds belonging partly to a client and in part to the lawyer must be deposited in the lawyer's trust account. The portion belonging to the lawyer may be withdrawn when due unless the right of the lawyer to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved. *Id.* Mr. Weigel, in the present matter, did not maintain a trust account until the Bar advised him that he was required to have one. Client funds were deposited in his

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[4]Disbarment was deemed the appropriate level of discipline for trust fund misuse in *State ex rel. Okla. Bar Ass'n v. Young, 2007 OK 92, 175 P.3d 371.* Young was charged in two counts of misconduct. Young used his trust account as an operating account and as a personal account and admitted misuse of his trust account and violation of the rules. He failed to competently represent and earn the fees charged and he failed to keep the client reasonably informed. He obtained permission from a medical center to endorse the settlement check on its behalf. He did not pay the medical center and did not return their calls. The check that he subsequently wrote from his trust account was returned for insufficient funds.

general account because he believed those fees to be earned when paid.

¶29 In *State ex rel. Okla. Bar Assn's v. Schraeder, 2002 OK 51, 51 P.3d 570*, a thirty-day suspension was deemed appropriate for the attorney's failure to promptly respond to the Bar's investigative inquiries, lack of concern for clients' economic interests as evidenced by refusing to promptly account for and restore unearned portions of fees for almost three years and disregard of his client's right to know status of case. Schraeder insisted that he filed no briefs or pleadings because he was waiting to receive pertinent information from the client's family in order to proceed with his criminal appeal. He did not respond to a letter requesting a detailed accounting and a refund of the unearned portion of the $2,800.00 fee because he believed that he had earned the fee by researching the various issues in the appeal, speaking to members of the client's family on several occasions and traveling twice to visit his client at the Adult Detention Center in Tulsa. Schraeder admitted that his conduct violated Rules 1.4, 1.5, 1.15(b), 1.16(b)(2) and (d), Rule 8.4(a) ORPC and Rule 1.3 RGDP. Schraeder offered in mitigation that he had not been previously disciplined and that he suffered from "burnout syndrome." We noted that his actions caused no grave economic harm. Schraeder acknowledged and accepted responsibility for his professional derelictions and, although his responses were dilatory during the initial investigative stages, they were characterized by candor and

cooperation during the latter stages and in the PRT proceedings. We took the mitigating factors into account in fashioning the appropriate measure of discipline at suspension for thirty (30) days.

¶30 In *State ex rel. Okla. Bar Ass'n v. Sheridan, 2003 OK 80, 84 P.3d 710,* the attorney was suspended for six months for violations similar to those alleged against the Respondent. Sheridan deposited the client's money in his operating account. Rule 1.16 and 1.15(b) require a lawyer not only to refund advance fees not earned but to do so in a timely manner. Many of the allegations against Sheridan came as a result of his failure to supervise an employee. Sheridan's primary faults were deemed to be neglect of clients, not following through with his responsibilities to his clients, mishandling his clients' money, not refunding unearned fees and not communicating with the Bar.

¶31 A three-year suspension was deemed appropriate in *State ex rel. Okla. Bar Ass'n v. Stow, 1998 OK 105, 975 P.2d 869,* for conversion of client funds where the attorney used a client's funds for his own use and refused to account for or deliver funds of a client upon demand. Additionally, he did not respond to several requests for accounting made by the Bar; when he did respond, the accounts were unsatisfactory. In *State ex rel. Okla. Bar Ass'n v. Reynolds, 2012 OK 95, 289 P.3d 1283*, the attorney was suspended for two years and one day on five counts of neglect

of cases, failing to keep clients informed of the status of their cases, collecting and retaining fees for which little or no services were provided and failure to respond to the grievances. At the time, Reynolds stood suspended for failure to complete the MCLE requirements. Reynolds admitted that she basically abandoned all of her pending cases in October 2010. She testified that she had problems with depression, but the trial panel found there were no mitigating factors presented.

¶32 In the present matter, the Respondent was admitted to the practice of law in Oklahoma on April 21, 2000, and has not been previously disciplined. At the hearing before the PRT, the Respondent for the first time offered in mitigation that he has suffered from bipolar disorder since 2002. He was treated through counseling and with medication from 2008 to 2009. The Respondent testified that the disorder did not render him incapable of practicing law, but only created difficulties in his law practice. The Respondent's counsel advised the trial panel that "Rule 10 is not an issue here whatsoever." Tr. 2-28-13 p. 492.[5] A disability does not immunize one from disciplinary measures and there must be shown a causal relationship between the condition and the professional misconduct. *State ex rel. Okla. Bar Ass'n v. McCoy,*

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[5]**Rule 10, RGDP**

10.2. Suspension.
Whenever it has been determined that a lawyer is personally incapable of practicing law, his license to practice shall be suspended until reinstated by order of this Court.

2010 OK 67, ¶25, 240 P.3d 675. The Respondent did not raise Rule 10 as a defense and we have not considered factors involved in a Rule 10 proceeding. *State ex rel Okla. Bar Ass'n v. Young, 2007 OK 92, ¶39, 175 P.3d 371.*

¶33 The Respondent does not express remorse for the difficulties he caused to his clients, nor does he admit he did anything wrong. He admitted he could have "handled things better," but he does not believe his conduct forms a basis for discipline. He denies any wrongdoing and denies he violated any of the rules of professional conduct or disciplinary proceedings. Even after being ordered by a court to refund $2,301.75 to the DeLeons, the Respondent still believes the entire fee was earned. We find the circumstances warrant the Respondent's suspension from the practice of law in Oklahoma for a period of two years. The Respondent actively avoided answering or establishing contact with his clients and he engaged in a pattern of behavior that was detrimental to them.

¶34 The Bar has filed an application to assess costs against the Respondent in the amount of $4,892.00, which includes $85.70 for lunch provided to the PRT. This Court does not find it appropriate to assess as costs the amount the members of the PRT spent on lunch during the three days of the hearing. *State ex rel. Okla. Bar Ass'n v. Wilcox, 2014 OK 1, ¶ 57, ___ P.3d ___.* The amount of $85.70 is deleted and the Respondent is ordered to pay costs of the proceeding in the amount of

$4,806.30 within ninety (90) days of the date the opinion becomes final.

RESPONDENT SUSPENDED FOR TWO YEARS AND ORDERED TO PAY COSTS.

¶35 COLBERT, C.J., REIF, V.C.J., KAUGER, WINCHESTER, EDMONDSON, GURICH, JJ. - Concur

¶36 WATT, TAYLOR and COMBS, JJ., - Dissent

TAYLOR, J., with whom WATT and COMBS, JJ., join, dissenting.
" I would impose suspension for two years and one day."

I, Michael S. Richie, Clerk of the Appellate Courts of the State of Oklahoma do hereby certify that the above and foregoing is a full, true and complete copy of the Opin - Atty Disc Proc in the above entitled cause, as the same remains on file in my office.

In Witness Whereof I hereunto set my hand and affix the Seal of said Court at Oklahoma City, this 6 day of Aug 17.

Clerk

By Akeys DEPUTY

ORIGINAL

IN THE SUPREME COURT OF STATE OF OKLAHOMA

STATE OF OKLAHOMA *ex rel.*, OKLAHOMA BAR ASSOCIATION Complainant,	)	
v.	)	SCBD #5864
JOHN HOLMAN WEIGEL, Respondent.	)	

RESPONDENT'S PETITION FOR REHEARING

INTRODUCTION

"With all due respect"[1] the Court's opinion leaves Mr. Weigel, other members of the bar, and your author confused and uncertain regarding how to handle fixed fees which are agreed to be earned when paid. Mr. Weigel accepts, and is humbled by, the Court's discipline. He vows to use his two-year suspension as a time of reflection and study, so he may return to the profession as a better lawyer. However he, along with other lawyers who charge earned-when-paid-fixed-fees, and your author, are unsure how to proceed. Pursuant to Rule 11.7, Rules Governing Disciplinary Proceedings, Respondent requests a rehearing for the purpose of clarification.

The issue is: Where to Deposit Earned-When-Paid-Fixed-Fees. And, if such must be deposited in a client trust account, how does the lawyer calculate when and what portion belongs to the lawyer and must be withdrawn.

The Court's opinion cites with approval Ethics Opinion No. 317 of the Oklahoma Bar

[1] A phrase generally regarded by judges as a harbinger of something, indeed, slightly disrespectful, but in this case truly intended to be respectful.

2-24-14

Exhibit 5

Association, adopted on December 13, 2002, copyrighted by the Oklahoma Bar Association in 2010 and introduced in this record as CEX30. That opinion teaches us that it is proper for a lawyer and a client to agree to fixed fee that is considered earned when paid. That opinion points out that some jurisdictions have determined that since the lawyer and client have agreed that the lawyer has earned the fee when it is paid, that the fee must be deposited in the lawyers general account and not in the clients trust fund.

Remembering that this Court cited the Ethics Opinion with the approval, does the Court approve or disapprove of that portion which advises lawyers that earned-when-paid-fixed-fees should not be commingled with fees of other clients?

If the Court decides that earn-when-paid-fixed-fees must be deposited in the client trust fund account, how does the lawyer determine when and how much must be withdrawn? We ask this question because the portion earned, i.e. that portion belonging to the lawyer, must not be commingled with the clients' money.

The Court's opinion cites with approval *McQueen, Rains & Tresch, LLP v. CITGO Pet. Corp.*, 2008 OK 66, 195 P.3d 35. That opinion reaffirms the ruling in *White v. American Law Book Co.*, 1924 OK 123, 233 P.426, with this quote:

> "The White Court held that if the attorney was discharged without fault and was prevented from fully performing by the client, he was entitled to his fee and to the contract."

See paragraph 16, P. 42. The lawyer's later termination might trigger a civil dispute, but not an ethical dispute related to the fee. However this doctrine seems to be contradicted by the last sentence in paragraph 22 of the Weigel opinion which reads

"The fees are not 'non-refundable' because if the attorney withdraws or is

terminated before completing the work, the attorney must refund the unearned portion of the advance."

So, the Court's opinion quotes the White Court's holding with approval but then seems to overrule it, making it the lawyer's ethical duty to refund a portion of the fee regardless of fault.

These are the issues that perplex Mr. Weigel, and the thousand or so Oklahoma lawyers who charge fixed fees and who do not keep track of their hours. These issues perplex your author who has tried to advise other lawyers subsequent to the opinion; and who has tried unsuccessfully to draft a form contract that lawyers could safely use in light of the decision in Mr. Weigel's case.

We need clear direction from the Court. Mr. Weigel is making plans for his suspension, but we request clear direction on how he must operate his office when he returns to practice.

IF FLAT FEES ARE EARNED UPON RECEIPT CAN THEY BE PLACED IN AN ATTORNEY'S TRUST ACCOUNT

A copy of Ethics Opinion No. 317 of the Oklahoma Bar Association, adopted on December 13, 2002 and copyrighted by the Oklahoma Bar Association in 2010 is a part of CEX 30. As the Ethics Opinion points out, on page 2, that fee can be earned when paid. If so, it belongs to the lawyer. It should not be commingled with clients' funds. The opinion says this: "A number of jurisdictions that have addressed flat fees determined they are earned when paid and, therefore, must be deposited into the attorney's operating account." Non-Refundable Retainer Agreements, OK Adv. Op. 317, § 2 (Dec. 13, 2002) (citations omitted).

The Annotated Model Rules of Professional Conduct, 6th Edition, published by the

American Bar Association discusses how to treat advanced payments or flat fees. "However, two types of advance payment are the lawyer's property upon receipt. . . . Flat fees, paid in advance for a legal matter and whose amount does not depend upon the amount of lawyer's time spent on the matter, are also the lawyer's property upon receipt." (Emphasis added.) AMERICAN BAR ASSOCIATION, ANNOTATED MODEL RULES OF PROF'L CONDUCT 233 (6th ed. 2007) (citing *In re Kendall*, 804 N.E.2d 1152 (Ind. 2004); Rothrock, *The Forgotten Flat Fee: Whose Money Is It and Where Should It Be Deposited?*, 1 Fla. Coastal L.J. 293 (1999)).

State ex rel. Okla. Bar Ass'n v. Sheridan, 2003 OK 80, ¶ 34, 84 P.3d 710,717 (emphasis added), does state that "[b]ecause an advance fee ***retainer*** remains the client's property until it is earned, it must be segregated." Though this is true, a distinction must be made between retainers to be charged against and earned-when-paid-fixed-fees. "Retainers" are usually charged against by the hour. Mr. Weigel charged an earned-when-paid-fixed-fee, which, as discussed above, is earned upon receipt and must ***not*** be deposited into a trust account.

The clarification requested on rehearing is on the very issue isolated in *In Re Sather*, 3 P.3d 403 (Colo. 2000).

> **When a client pays an attorney before the attorney provides legal services, the crucial issue becomes whether funds are "earned on receipt" and may be treated as the attorney's property, or whether the fees are unearned, in which case the funds must be segregated in a trust account** under Colo. RPC 1.15.

Id. at 410 (emphasis added).

IF PLACED IN THE TRUST ACCOUNT, WHEN CAN/MUST A PORTION BE WITHDRAWN AND HOW MUCH CAN/MUST BE WITHDRAWN?

The answer to this question is not theoretical. Practically speaking, how would

lawyers withdraw any certain amount? The answer means a lot to lawyers.

Three prominent Oklahoma lawyers testified on behalf of Mr. Weigel at the hearing on this matter, Mr. Stephen Jones, Mr. Mack Martin, and Mr. John Hunsucker. Tr. Vol. I, p. 161-249. They each explained why it is impractical for a lawyer to bill against earned-when-paid-fixed-fees. Clients get an immediate benefit by hiring these lawyers on these terms. What part of the fee is then earned at the instant of payment?

Mr. Jones testified that in most criminal defense cases he charges a "set fee" or a "flat fee" and that those fees are "almost always placed in the operating account." Tr. Vol. I, p. 165, l. 19 - p. 166, l. 21. Mr. Jones testified that although sometimes the number of hours put into a case is a factor, there is no way to accurately calculate how much of a fee to return by looking at hours alone. Tr. Vol. I, p. 172, ll. 19-23. Mr. Jones pointed out the following difficulties with putting a fixed fee in a trust account and drawing out portions as work is done: (1) how to figure worth of availability, (2) how to figure worth of reputation, (3) how to figure the worth of other intangibles. Tr. Vol. I, p. 175, ll. 7-12; p. 176, ll. 13-16; p. 181, ll. 11-20. Mr. Jones was not aware of any criminal defense lawyer in Oklahoma who puts a flat fee in his or her trust account and then tries to account for intangibles, e.g., towering reputation, etc., at the end of every month. Tr. Vol. I, p. 180, ll. 18-23; p. 181, l. 10. Mr. Jones testified that any formula to calculate the intangibles that go into setting a criminal defense fee on a month-to-month basis would be arbitrary and subjective. Tr. Vol. 1, p. 181, ll. 11-20.

Mr. Martin testified that he practices solely criminal defense and that he typically charges fixed fees which he collects up front. Tr. Vol. I, p. 218, ll. 4-6 and 10-16; p. 219, ll.

21-22. When he collects those fixed fees, he deposits them in his operating account. Tr. Vol. I, p. 219, ll.1-7. Mr. Martin is not aware of any formula to calculate which portion of his fee would be appropriate to take out of a trust account every month for the intangibles of his reputation and experience. Tr. Vol. 1, p. 219, l. 24 - p. 220, l. 5.

Mr. Hunsucker also charges fixed fees and does not deposit them in a trust account. Tr. Vol. I, p. 246, ll. 15-16; p. 248, ll. 3-6. Mr. Hunsucker testified that his is a large volume firm. Vol. 1, p. 247, ll. 12-13. If he has a busy week where he would have to work nights and weekends in order to take on another case, he will quote a higher than normal fee. Tr. Vol. 1, p. 248, ll. 12-20. What part of the fee, then, is his when paid? It would not be fair to make him pay it all back at the whim of the client because he has had to turn down other clients.

As shown by Mr. Jones's, Mr. Martin's, and Mr. Hunsucker's testimony, some of the reasons that it is impractical for a lawyer to bill against earned-when-paid-fixed-fees are (1) part of the fee is based on the lawyer's reputation, so how much does a lawyer charge for that?; (2) sometimes the result is a "no file" or early dismissal which pleases the client immensely. So, when and how much money does one take out when that occurs?; (3) sometimes the matter is settled by one visit to the DA's office, and a great plea agreement is reached. What happens if the client suddenly fires that lawyer and gets a newcomer to finish the bureaucratic part of the job?; (4) sometimes lawyers have much time to fill up and price their service at a lower level, but sometimes they have little time and price their services at a higher level. What happens if the client wants to change lawyers and the lawyer cannot fill the time set aside for that file?

In the case of *McQueen, Rains and Tresh, LLP v. Citgo Petroleum Corp.*, 2008 OK 66, 195 P.3d 35, the law firm contracted for a liquidated damage clause in their attorney fee contract. *Id.* ¶ 8, 195 P.3d at 39. If the law firm was terminated early, it received liquidated damages. *Id.* This Court found that even a liquidated damage clause in a fixed fee, fixed term retainer agreement between a law firm and a client was not per se unenforceable under case law or the Rules of Professional Conduct. *Id.* ¶¶ 1, 29, 195 P.3d at 37, 45.

In *McQueen, supra* this Court noted that "[a]n attorney, like any other individual, may contract with a client regarding compensation" and that those contracts "stand on the same footing as any other contract between persons competent to contract." *Id.* ¶ 33, 195 P.3d at 46. This Court held that courts should be reluctant to disturb attorney fee arrangements which were freely entered into by knowledgeable and competent parties. *Id.* ¶ 37, 195 P.3d at 47. This court recognized that "in most cases, the right of a client to discharge an attorney should take precedence over the attorney's ability to collect a contractually fixed fee." *Id.* ¶ 26, 195 P.3d at 43. But that problem is not resolved by a disciplinary proceeding. It is beyond question, it seems to us, that a client can always discharge a lawyer for cause or not. However, if the lawyer is discharged not-for-cause, the lawyer should be able to keep the agreed fee. If the lawyer causes the discharge, the lawyer should pay some of the fee back to the client. ***But again, let us remember that is a civil court matter and not a disciplinary issue***. *White v. American Law Book Co.*, 1924 OK 123, 233 P. 426, was cited in the *McQueen* case with approval with this comment "The *White* court held that if the attorney was discharged without fault and prevented from fully performing by the client, he was entitled to his fee under the contract." *McQueen*, 2008 OK 6, ¶ 16, 195 P.3d at 41.

CONCLUSION

Mr. Weigel does not complain about the Court's decision to discipline him. He is on his way to redemption. He does request the Court to give him, and others, more clear direction on whether an earned-when-paid-fixed-fee is to be deposited in client trust. If so, some direction regarding how the lawyer's portion can be withdrawn would also be welcomed.

Respectfully submitted,

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ATTORNEY FOR RESPONDENT

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 24th day of February, 2014, a true and correct copy of the foregoing document was mailed by first-class mail to:

Loraine Dillinder Farabow, OBA #16833
First Assistant General Counsel
Oklahoma Bar Association
1901 N. Lincoln, P.O. Box 53036
Oklahoma City, OK 73152
Telephone: (405) 416-7007
ATTORNEY FOR COMPLAINANT

Malin MacMillan

I, Michael S. Richie, Clerk of the Appellate Courts of the State of Oklahoma do hereby certify that the above and foregoing is a full, true and complete copy of the Respondent's Pet for Cert in the above entitled cause, as the same remains on file in my office.

In Witness Whereof I hereunto set my hand and affix the Seal of said Court at Oklahoma City, this 23rd day of Sept 2014.

Clerk

By A Keys
DEPUTY

FILED
SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA

MAR 3 1 2014

MICHAEL S. RICHIE
CLERK

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MONDAY, MARCH 31, 2014

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:

SCBD 5864 State of Oklahoma, ex rel Oklahoma Bar Association v. John Holman Weigel
Petition for Rehearing denied.
ALL JUSTICES CONCUR.

Tom Colbert

CHIEF JUSTICE

Rec'd (date) 3-31-14
Posted
Mailed
Distrib
Publish ___ yes ___ no

Exhibit
1

I, Michael S. Richie, Clerk of the Appellate Courts of the State of Oklahoma do hereby certify that the above and foregoing is a full, true and complete copy of the Order Denying Rehe in the above entitled cause, as the same remains on file in my office.

In Witness Whereof I hereunto set my hand and affix the Seal of said Court at Oklahoma City, this 22nd day of Sept 2014.

Clerk

By A Keys
DEPUTY