

SUPREME COURT OF LOUISIANA

IN RE: CONFIDENTIAL PARTY

DOCKET NO. _____

(ODC 0032767)

**JOINT PETITION FOR CONSENT DISCIPLINE
PURSUANT TO RULE XIX, SECTION 20**

NOW INTO THESE PROCEEDINGS come the Office of the Disciplinary Counsel (ODC), through undersigned Deputy Disciplinary Counsel, and Respondent, **ELBERT L. GUILLORY** (Bar Roll No. 17622), who jointly move the Louisiana Supreme Court for consent discipline in the above-captioned proceeding on the following grounds:

I.

Respondent was born on June 24, 1944.

II.

Respondent was admitted to the practice of law in the State of Louisiana on October 10, 1986, and assigned Louisiana Bar Roll Number 17622.

III.

On February 2, 2015, the ODC received a complaint from Trudy Richard Clark, on behalf of her son David Gerald Richard, II. An investigation was opened and the matter was assigned complaint number ODC 0032767.

IV.

All relevant facts pertaining to ODC 0032767 are set forth in the Joint Stipulation of Facts accompanying this petition and, by reference, incorporated herein. The heartland of Respondent's misconduct is that he neglected a client's legal matter.

V.

In exchange for the stated discipline being imposed, Respondent conditionally admits to having knowingly violated Rule 1.3 which states that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

VI.

Respondent has consented to the imposition of discipline freely and voluntarily. He has not been the subject of coercion or duress, and he is fully aware of the implications of submitting to consent discipline.

VII.

Respondent consents because he knows that if charges predicated upon the matters under investigation were filed, or if the matter was prosecuted, Respondent could not successfully defend against the charges.

VIII.

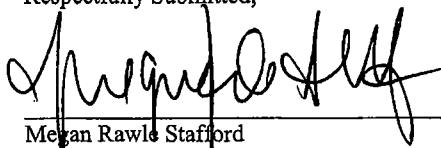
Pursuant to Rule XIX, Section 20, Respondent and the Office of Disciplinary Counsel jointly propose the following sanction as appropriate discipline for the admitted misconduct in this matter:

PUBLIC REPRIMAND

In addition, Respondent shall be responsible for all costs and expenses associated with these disciplinary proceedings. *See* La. S. Ct. Rules, Rule XIX, § 10.1.

WHEREFORE, the Office of Disciplinary Counsel and Respondent, **ELBERT L. GUILLORY**, jointly pray that the Louisiana Supreme Court favorably consider and approve this Joint Petition for Consent Discipline and render a finding that the discipline appropriate to address this matter is a public reprimand and order to pay all costs and expenses associated with these disciplinary proceedings.

Respectfully Submitted,



Megan Rawle Stafford
Bar Roll No. 32642
Deputy Disciplinary Counsel
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Telephone: (225) 293-3900



Elbert L. Guillory
Respondent
(Bar Roll No. 17622)
633 E. Landry Street
Opelousas, LA 70570

SUPREME COURT OF LOUISIANA

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**JOINT MEMORANDUM IN SUPPORT OF JOINT
MOTION FOR CONSENT DISCIPLINE**

MAY IT PLEASE THE COURT, in accordance with Louisiana Supreme Court Rule XIX, Section 20, the Office of Disciplinary Counsel (ODC), through undersigned Deputy Disciplinary Counsel, and Respondent, **ELBERT L. GUILLORY** (Bar Roll No. 17622), submit this Joint Memorandum in Support of Joint Motion for Consent Discipline.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Respondent was born on June 24, 1944. He was admitted to the practice of law in the State of Louisiana on October 10, 1986.

Trudy Richard Clark filed a complaint with the Office of the Disciplinary Counsel on behalf of her son, David Gerald Richard, II. For several years, Ms. Clark has been attempting to secure social security benefits on behalf of Mr. Richard, who suffered a traumatic brain injury in an automobile accident when he was fourteen years old. To this end, Ms. Clark retained Respondent's services.

On October 28, 2015, Respondent appeared at the Office of the Disciplinary Counsel and rendered his sworn statement relative to this matter. Respondent acknowledged that he did not file the appeal within the sixty-day period within which it was to have been filed. He asserts that he attempted to file an untimely appeal request; however, Social Security has no record of any appeal. He acknowledges that he failed to follow-up with the Social Security Administration after allegedly sending the untimely appeal request.

SANCTION ANALYSIS

The *ABA Standards for Imposing Lawyer Sanctions* provide: "In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors: (a) the duty

violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating facts."

In violating Rule 1.3, the undersigned agree that in accordance with the ABA Standards, Appendix 1, Respondent violated duties owed to his client. (Standard 4).

The *ABA Standards* define three mental states. Did the lawyer act intentionally, knowingly, or negligently? "Intent" is the conscious objective or purpose to accomplish a particular result. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

Under *ABA Standards*, Standard 4.42 provides that reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. The parties agree and the applicable standards support that public reprimand is an appropriate sanction in this matter.

The parties stipulate that there are no aggravating factors in this matter. As to mitigating factors, the parties stipulate to the presence of the following mitigating factor, as set forth in *ABA Standards* 9.32, respectively: full and free disclosure to the disciplinary board or cooperative proceedings.

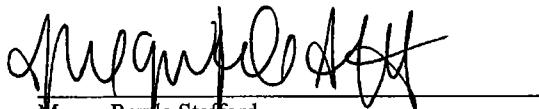
In factually similar cases, the Louisiana Supreme Court has found a suspension appropriate in the following cases: *In re Post*, 2008-1678 (La. 11/10/08), 993 So. 2d 1207 (wherein a public reprimand was ordered after the Respondent failed to file an answer, reconventional demand or any other pleadings on behalf of his client in a real estate dispute. He also failed to follow-up with a succession issue that arose in the case. Respondent also failed to promptly remit unearned fees); *In re Brown*, 2007-0995 (La. 10/17/07), 967 So. 2d 482, (wherein a public reprimand was ordered when a Respondent failed to properly ensure service of the petition upon defendant, and otherwise neglected a client's legal matter for over nine years. The court noted that under a totality of the circumstances, that the matter would be more appropriately considered in a civil malpractice action rather than a disciplinary proceeding).

Based upon the foregoing, Disciplinary Counsel and the Respondent respectfully suggest that the appropriate discipline herein is:

PUBLIC REPRIMAND

In addition, Respondent is to pay all costs and expenses associated with this matter. *See* La. S. Ct. Rules, Rule XIX, § 10.1. The jointly recommended discipline will support the disciplinary goals of maintaining high standards of conduct, protecting the public, preserving the integrity of the profession, and deterring future misconduct. *Louisiana State Bar Association v. Reis*, 513 So. 2d 1173, 1177-78 (La. 1987).

Respectfully Submitted,



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JOINT STIPULATION OF FACTS

NOW INTO THESE PROCEEDINGS comes the Office of Disciplinary Counsel (ODC), through undersigned Deputy Disciplinary Counsel, and Respondent, **ELBERT L. GUILLORY**, represented by counsel, who stipulate to the following facts in conjunction with the Joint Petition for Consent Discipline.

1.

Respondent was born on June 24, 1944.

2.

Respondent was admitted to the practice of law in the State of Louisiana on October 10, 1986 and was assigned bar roll number 17622.

3.

On February 2, 2015, the ODC received a complaint from Trudy Richard Clark on behalf of her son, David Gerald Richard, II. Ms. Clark retained Respondent to file an appeal of a November 27, 2013 denial of social security benefits she was attempting to secure on behalf of Mr. Richard. An appeal was to be filed within sixty days of the November 27, 2013 denial. On January 21, 2014, Ms. Clark went to Respondent's office and executed the required release form in order for Respondent to file the appeal. Despite being hired to do so, Respondent failed to timely file an appeal on behalf of Mr. Richard.

3.

On October 28, 2015, Respondent appeared at the Office of the Disciplinary Counsel and rendered his sworn statement relative to this matter. Respondent acknowledged that he did not file the appeal within the sixty-day period within which it was to have been filed. He asserts that he

attempted to file an untimely appeal request; however, Social Security has no record of any appeal. He acknowledges that he failed to follow-up with the Social Security Administration after allegedly sending the untimely appeal request.

4.

Respondent conditionally admits that he failed to file the appeal within the sixty-day delay period and failed to follow-up on the purported untimely appeal request, and that such failures constitute a violation of Rule 1.3 of the Rules of Professional Conduct.

5.

In an effort to bring about a final, appropriate resolution to this disciplinary matter, Respondent, in agreement with the Office of Disciplinary Counsel, submits the accompanying Joint Motion for Consent Discipline, seeking imposition of a public reprimand. In addition, Respondent shall be responsible for all costs and expenses associated with this matter. *See La. S. Ct. Rules, Rule XIX, § 10.1.*

9.

Respondent's consent is freely and voluntarily rendered, without coercion or duress. Respondent is fully aware of the implications of submitting the Joint Petition for Consent Discipline.

10.

Respondent consents because he knows that if charges predicated upon the matters under investigation were filed, or if the matter was prosecuted, Respondent could not successfully defend against the charges.

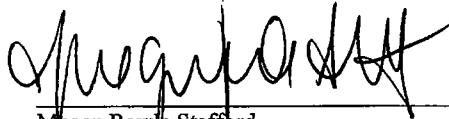
11.

The parties stipulate that there are no aggravating factors in this matter. As to mitigating factors, the parties stipulate to the presence of the following mitigating factor, as set forth in ABA Standards 9.32, respectively: full and free disclosure to the disciplinary board or cooperative proceedings.

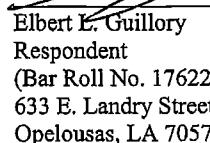
12.

The signatories to this Joint Stipulation of Facts have fully and completely read each of the above-numbered paragraphs in detail and stipulate that they are accurate and truthful in all respects.

Respectfully Submitted,



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WAIVER OF OPPORTUNITY TO WITHDRAW

NOW INTO THESE DISCIPLINARY PROCEEDINGS comes Respondent, **ELBERT L. GUILLORY** (Bar Roll No. 17622), who has joined in the submission of a Joint Petition for Consent Discipline in the above-numbered and entitled cause. As a material consideration for the agreement, consent, and concurrence of the Office of Disciplinary Counsel, Respondent specifically and irrevocably waives any opportunity to withdraw consent prior to the final disposition of these consent proceedings.

RESPECTFULLY SUBMITTED:



Elbert L. Guillory
Respondent
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633 E. Landry Street
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