

SUPREME COURT OF LOUISIANA

IN RE: CONFIDENTIAL PARTY

DOCKET NO.: _____

JOINT MEMORANDUM IN SUPPORT OF CONSENT DISCIPLINE

MAY IT PLEASE THE COURT, this Joint Memorandum in Support of Consent Discipline is filed in these proceedings by the OFFICE OF THE DISCIPLINARY COUNSEL, through the undersigned Deputy Disciplinary Counsel, and Respondent, **DAVID W. GRONER** (Bar Roll No. 06349), personally, and through his attorney, Homer Ed Barousse, Jr., to this Honorable Court as follows:

I.

Prior to the filing of Formal Charges in connection with this matter, the Respondent expressed a desire to resolve this matter by way of Consent Discipline. Therefore, Respondent, his attorney and the Office of Disciplinary Counsel tender the attached Joint Petition for Consent Discipline and Joint Stipulation of Facts, pursuant to Rule XIX, Section 20 (as amended), of the Louisiana Supreme Court Rules.

II.

The parties' stipulation of facts and rule violations is fully contained within the Joint Stipulation of Facts accompanying this memorandum and are more fully reflected in the various exhibits submitted herewith. However, for ease of consideration, a brief summary of operative facts and rule violations is contained below.

III.

In connection with his office's representation of [REDACTED], the Respondent's associate, April Deflice, mistakenly filed a Petition for Damages in a Parish of improper venue. The defendants promptly filed a Motion to Dismiss on the basis of prescription. Prior to the Court's ruling on the Motion to Dismiss, April Deflice, following consultations with the

Respondent, met with the [REDACTED] and eventually issued to them two checks on behalf of David Groner, PLC totaling \$1,500.

In addition to the checks, which contained the notation "Full & Final Settlement," the [REDACTED] were also asked to execute Release Agreements that released all claims against the defendants to the injury claim, as well as April Defelice and David Groner, PLC. The [REDACTED] claim that they believed that the checks were issued to them in settlement of their claims against the defendants and that they were not advised of the potential malpractice issues until several months after the checks were given to them. With regard to the claims of [REDACTED], David Groner, PLC failed to obtain a written contingency fee agreement in connection with their representation of him in this matter.

Rule 1.4(a)(3) requires a lawyer keep the client informed about the status of the matter. In the underlying matter, the Respondent failed to notify the clients that the original lawsuit had been filed in the wrong Parish and the potential malpractice associated with this action. It was not until September of 2007 that the Respondent finally advised the [REDACTED] of the potential malpractice issues, some eight months after the payment to the [REDACTED] and after they filed a complaint with the Office of the Disciplinary Counsel. The Respondent's omissions in this regard violated Rule 1.4(a)(3) of the Rules of Professional Conduct.

Rule 1.5(c) instructs that, a lawyer is to provide a contingency fee agreement in writing. As noted above, neither the Respondent nor his Associate obtained a written contingency fee agreement from in connection with their representation of [REDACTED].

Rule 1.8(h) states that a lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith. The language in the Release Agreement signed by the [REDACTED] clearly states that they were releasing David Groner, PLC and April Petry Defelice from "any and all past, present, and/or future claims, actions, demands, rights, damages, causes of action and rights of action whatsoever, known and

unknown, anticipated and unanticipated, to which Appearers may be entitled due to the pursuit of the claims mentioned above.” Since it is admitted that the [REDACTED] did not receive independent legal advice before signing the Release Agreement, the document purporting to release the Respondent from “any and all past, present, and/or future claims” was in violation of this Rule.

Rule 8.4(c) states that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation. By issuing payment to the [REDACTED] with the notation “Full and Final Settlement” and obtaining a Release Agreement containing a release for all claims against the Respondent, the actions of the Respondent suggest an attempt to settle the [REDACTED] malpractice claims, without their being fully advised as to the nature of the agreement and the potential ramifications associated with their executing the agreement. At a minimum, there was a misrepresentation as to the true nature of the January 18, 2007 transaction between the [REDACTED], Ms. Defelice and David Groner, PLC.

IV.

The Respondent and the Office of Disciplinary Counsel agree that the Respondent has violated duties owed to clients and the profession. It is further agreed that the Respondent’s mental state was knowing.

V.

The Respondent and the Office of Disciplinary Counsel stipulate that the following aggravating and mitigating factors are present:

Aggravating

- (a) Prior disciplinary record, in that the Respondent has a Admonition on his record from 1999 for violating Rule 3.4(c) and 8.4(a) of the Rules of Professional Conduct.
- (i) Substantial experience in the practice of law

Mitigating

- (c) full and free disclosure and a cooperative attitude

VI.

Instances of knowing failure to inform a client of a potential malpractice claim have resulted in periods of both actual and deferred suspensions, conditioned upon periods of probation and the

types of special conditions proposed here. The Respondent and the Office of Disciplinary Counsel suggest that the following cases are illustrative:

- (1) *In re: Hammond*, 2001-0318 (La. 6/29/01); 789 So.2d 1259. The Respondent failed to timely file suit on behalf of his client and then failed to communicate with the client concerning the status of the case. The client was forced to obtain new counsel to pursue a legal malpractice claim against the Respondent. As a result of his actions, this Court imposed a 4 month suspension, fully deferred and 2 years supervised probation;
- (2) *In re: Bruscato*, 99-0287 (La. 6/4/99); 743 So.2d 645. The Respondent filed suit after the running of the prescriptive period. In subsequent conversations with the clients, the Respondent failed to advise the clients of the prescription problems and the resulting dismissal of their case. By failing to properly advise the clients, the Respondent received a 60 day suspension;
- (3) *In re: Jackson*, 2002-2764 (La. 4/9/03); 842 So.2d 359. The Respondent was consulted by a client after the client's prior attorney withdrew from a medical malpractice case following the decision of the medical review panel. The Respondent failed to file suit on behalf of the client with the applicable period following the review panel's decision. Due to the Respondent's prior disciplinary record this Court suspended the Respondent for 6 months, with 3 months deferred. In addition, the Respondent received one year probation and was required to attend the LSBA's Ethics School; and
- (4) *In re: Southall*, 97-3221 (La. 5/8/98); 710 So.2d 245. Respondent failed to file suit on behalf of her clients within the applicable prescriptive period. When the clients finally learned of this fact, they attempted to contact the Respondent, without success; ultimately retaining other counsel to file a malpractice claim against the Respondent. This Court felt that the Respondent was more concerned about securing her legal fee rather than protecting the interests of her clients and suspended the Respondent for a year and a day, with 6 months deferred, and one year supervised probation.

Collectively, these cases demonstrate that the discipline to which the Respondent and the Office of Disciplinary Counsel have agreed is within the range of sanctions established by the Court for similar misconduct.

VII.

The Respondent and the Office of Disciplinary Counsel respectfully suggest that a fully-deferred suspension of six (6) months, conditioned upon a one-year period of probation, along with the special conditions set forth in paragraph 1 of the accompanying petition for consent discipline, will serve the public, uphold the standards of the profession, deter others from engaging in misconduct, and impose appropriate discipline on the Respondent.

RESPECTFULLY SUBMITTED:

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A handwritten signature in dark ink, appearing to read "Homer Ed Barousse, Jr.", written over a horizontal line.

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