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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30829

[DATE STAMP]
United States Court of Appeals
Fifth Circuit
FILED
March 10, 2025
Lyle W. Cayce
Clerk

Clifford Osborne; Deborah Olsen,
Plaintiffs—Appellees,

versus

Kevin Belton,
Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:20-CV-208

Before Elrod, *Chief Judge*, and Oldham and Wilson, *Circuit Judges.*

Per Curiam:

Plaintiffs–Appellees Clifford Osborne and

Deborah Olsen sued their former landlord, Defendant–Appellant Kevin Belton, for disability discrimination and retaliation under the Fair Housing Act (FHA), 42 U.S.C. § 3601 *et seq.*, and the Louisiana Equal Housing Opportunity Act (LEHOA), La. Rev. Stat. § 51:2601 *et seq.* (2024). After the district court granted Plaintiffs' motion for summary judgment, Belton moved under Federal Rule of Civil Procedure 60(b) for relief from the judgment, and the district court denied the motion. Belton then moved under Federal Rule of Civil Procedure 59(e) for reconsideration of the denial of his Rule 60(b) motion, and the district court denied that motion as well. Belton appealed to this court.

Because Belton has not shown that the district court abused its discretion in denying his Rule 60(b) motion, we AFFIRM.

I

A

Osborne and Olsen leased a single-family home owned by Belton in 2018. At first, according to Osborne, Belton allowed them to keep a dog at the property temporarily, as an exception to the lease's no-pets policy. Soon after, though, Belton told Osborne that the dog was no longer allowed on the property and that they could only keep it in a neighboring yard. He also informed them that he would commence eviction proceedings if the dog remained on the property. The dispute escalated to the point where, on one occasion, Belton took the dog from the property's yard, drove it

to a neighboring town, and abandoned it there.

In September 2018, Osborne's physician, Dr. Dirk Rainwater, provided Osborne with a letter stating his "professional opinion that [Osborne] would benefit from a service dog due to being mentally challenged" and, as a result, suffering from anxiety and depression. Osborne repeatedly attempted to give Belton the letter, but Belton refused to accept it.

Shortly thereafter, Belton filed a petition of eviction against Osborne and Olsen in a Louisiana justice of the peace court. The court granted the petition in October 2018, and Osborne and Olsen were evicted.

B

In early 2020, Osborne and Olsen sued Belton in federal district court for disability discrimination under both the FHA and its Louisiana equivalent, the LEHOA. After more than two years of litigation, Osborne and Olsen moved for summary judgment on all claims. Belton did not file an opposing brief. The district court granted the motion on August 3, 2022.

On August 2, 2023—just one day shy of a year after the grant of summary judgment—Belton moved under Rule 60(b) to set aside the judgment. The district court denied the motion on October 5, 2023. Twenty-eight days later, Belton moved under Rule 59(e) for reconsideration of the district court's denial of his Rule 60(b) motion. Belton's Rule 59(e) motion reiterated the same arguments he had made in his

Rule 60(b) motion, and the district court similarly denied the Rule 59(e) motion. This appeal followed.

II

Because this case comes to us in an unusual procedural posture, we begin by determining the appropriate scope of appellate review. In particular, we consider which of the district court decisions discussed in the parties' briefs—the grant of summary judgment, the order denying Belton's Rule 60(b) motion, and the order denying Belton's Rule 59(e) motion—we have jurisdiction to review.

We conclude that we may properly review only the order denying Belton's Rule 60(b) motion. Given that our caselaw does not make plain the reasoning that compels this conclusion, and so that we may provide guidance for future similar cases, we lay that reasoning out here.

A

First, we consider whether these three district court decisions are within the scope of the notice of appeal, concluding that all of them are.

1

Federal Rule of Appellate Procedure 3(c)(5), which was added in 2021, states: "In a civil case, a notice of appeal encompasses the final judgment . . . if the notice designates: . . . (B) an order described in Rule 4(a)(4)(A)." Federal Rule of Appellate Procedure

4(a)(4)(A), in turn, refers to post-judgment orders in the district court under, *inter alia*, Rule 59 and Rule 60. Consequently, an appealing party's designation in his notice of appeal that he is appealing an order denying his post-judgment motion causes the notice of appeal to encompass the underlying judgment.

In the context of this case, this means that Belton's notice of appeal, which designates that he is appealing the district court's order denying his Rule 59(e) motion, should be read to also encompass the underlying grant of summary judgment, which is the final judgment in this case.

2

But this case has an additional feature: the district court issued an order denying Belton's Rule 60(b) motion between the date of its grant of summary judgment and the date it denied Belton's Rule 59(e) motion. Accordingly, we must consider whether Belton's notice of appeal also encompasses that order.

We conclude that any order disposing of a post-judgment motion prior to the specific post-judgment order designated in the notice of appeal should also be construed as included in the notice of appeal. Federal Rule of Appellate Procedure 3(c)(5) was added to "reduce the unintended loss of appellate rights" caused by courts that applied the *expressio unius* principle to notices of appeal that mentioned only a post-judgment motion and thereby reviewed only the specific post-judgment order listed. *See* Fed. R. App. P. 3, advisory committee's note to 2021 amendment. It remedied this

problem by adding to this provision a mirror image of the merger rule, which teaches that "an appeal from a final judgment permits review of all rulings that led up to the judgment." *Id.* (commenting on a different provision). While the general merger rule looks backward from the final judgment, encompassing all interlocutory orders, Federal Rule of Appellate Procedure 3(c)(5) looks forward from the final judgment, encompassing all post-judgment orders up to and including the order designated in the notice of appeal.

Moreover, Federal Rule of Appellate Procedure 3(c)(6) states that an "appellant may designate only part of a judgment or appealable order by expressly stating that the notice of appeal is so limited" and that "[w]ithout such an express statement, specific designations do not limit the scope of the notice of appeal." This intimates that the default rule is that related orders are within the scope of the notice of appeal.

Finally, we "treat[] notices of appeal relatively liberally 'where the intent to appeal an unmentioned or mislabeled ruling is apparent and there is no prejudice to the adverse party.'" *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 808 (5th Cir. 2012) (quoting *C.A. May Marine Supply Co. v. Brunswick Corp.*, 649 F.2d 1049, 1056 (5th Cir. July 1981)). This is because "[t]he purpose of the notice of appeal is to provide sufficient notice to the appellees and the courts of the issues on appeal." *Id.*

Consequently, we hold that if a party designates

a post-judgment order in his notice of appeal, any orders disposing of post-judgment motions between the time of the underlying judgment and the specific post-judgment order designated in the notice of appeal should be construed as being included in the notice of appeal. This means that, in this case, we must construe Belton's notice of appeal as also including the district court's order denying his Rule 60(b) motion.

* * *

In sum, we conclude that all three district court decisions plausibly at issue in this case—the grant of summary judgment, the order denying Belton's Rule 60(b) motion, and the order denying Belton's Rule 59(e) motion—are within the scope of his notice of appeal.

B

Second, we consider whether the notice of appeal was timely as to each of the three decisions properly within its scope.

A party seeking review of a district court's final judgment or order has multiple avenues by which to seek relief, each with its own time constraints. One option is to appeal to the court of appeals by filing a notice of appeal within 30 days after entry of the judgment or order. Fed. R. App. P. 4(a)(1)(A). In the alternative, a party can move for one of several limited forms of review performed by the district court itself. For example, the party can move under Rule 59(e) to alter or amend the judgment within 28 days of entry of

the judgment. Another district-court option is to move under Rule 60(b) for relief from the judgment or order, which must be done within a "reasonable time," usually no more than a year after entry of the judgment or order. Fed. R. Civ. P. 60(c)(1). Importantly, if a party files one of these two motions in the district court "within the time allowed by those rules," "the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion." Fed. R. App. P. 4(a)(4)(A).

"In a civil action, a timely notice of appeal is a jurisdictional requirement," meaning that the court of appeals cannot review the case absent the timely filing of a notice of appeal for the judgment or order complained of. *United States v. McDaniels*, 907 F.3d 366, 370 (5th Cir. 2018) (citing *Bowles v. Russell*, 551 U.S. 205, 214 (2007)).

In this case, the notice of appeal was untimely as to the district court's grant of summary judgment. Thirty days passed after the entry of summary judgment, and Belton filed no notice of appeal. Although Belton filed a Rule 60(b) motion in the district court within the time allowed, Federal Rule of Appellate Procedure 4(a)(4)(A)'s exception to the general 30-day rule for filing a notice of appeal does not apply. This is because, to reset the notice of appeal deadline via a Rule 60(b) motion, the Rule 60(b) motion must be filed "within the time allowed for filing a motion under Rule 59"—i.e., 28 days after entry of the judgment. *See* Fed. R. App. P. 4(a)(4)(A)(vi). Here, Belton filed his Rule 60(b) motion 355 days after entry of the judgment, meaning that the notice of appeal

deadline for the summary judgment order was not reset. We therefore do not have jurisdiction to review the district court's underlying grant of summary judgment. *McDaniels*, 907 F.3d at 370.

The notice of appeal was timely, however, as to the order denying the Rule 60(b) motion. The 30-day shot clock to file a notice of appeal of this order began at the time the order was filed. But this clock resets if the party files another post-judgment motion challenging it within the time allowed by that rule. *See* Fed. R. App. P. 4(a)(4)(A). Here, because Belton moved under Rule 59(e) for reconsideration of the order denying his Rule 60(b) motion within the appropriate time to file a Rule 59(e) motion—i.e., within 28 days of entry of the order—the 30-day shot clock for appealing the district court's order denying the Rule 60(b) reset. It began to run anew on the day the district court ruled on the Rule 59(e) motion. Because Belton filed his notice of appeal within 30 days of the district court's ruling on his Rule 59(e) motion, his notice of appeal of the order denying his Rule 60(b) motion is timely.

Finally, the notice of appeal was also timely as to the order denying Belton's Rule 59(e) motion because it was filed within 30 days of that order's entry. Fed. R. App. P. 4 (a)(1)(A).

* * *

In sum, we conclude that Belton's notice of appeal was timely as to both the order denying his Rule 60(b) motion and the order denying his Rule 59(e) motion.

His notice of appeal was untimely, however, as to the grant of summary judgment, so we do not have jurisdiction to review it.

C

Third, we consider whether the decisions timely appealed in the notice of appeal are otherwise reviewable under 28 U.S.C. § 1291.

The courts of appeals "have jurisdiction of appeals from all final decisions of the district courts of the United States." 28 U.S.C. § 1291. An order denying a Rule 60(b) motion is such a "final decision." *See* 15B Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 3916 n.32 (2d ed.) (citing, *inter alia*, *Taylor v. Johnson*, 257 F.3d 470, 474–75 (5th Cir. 2001), and *Wilson v. Thompson*, 638 F.2d 801, 803 (5th Cir. Unit B Mar. 1981)). An order denying a Rule 59(e) motion, however, is not treated the same way. When a party appeals an order denying a Rule 59(e) motion, "the ruling on the Rule 59(e) motion merges with the prior determination, so that the reviewing court takes up only one judgment." *Banister v. Davis*, 590 U.S. 504, 509 (2020). "The court thus addresses any attack on the Rule 59(e) ruling as part of its review of the underlying decision." *Id.*

In this case, it is thus appropriate for us to review only the order denying Belton's Rule 60(b) motion. The Rule 60(b) motion is a "final decision" of the district court. Because the underlying judgment attacked by Belton's Rule 59(e) motion is the district court's order denying the Rule 60(b) motion, the order deciding the

Rule 59(e) motion merges with it.

III

We now consider whether the district court abused its discretion in denying Belton's Rule 60(b) motion. We hold that it did not, and we therefore deny Belton relief from the judgment.

A

We review a district court's denial of a Rule 60(b) motion for abuse of discretion. *See Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998). A district court abuses its discretion "if it: (1) relies on clearly erroneous factual findings; (2) relies on erroneous conclusions of law; or (3) misapplies the law to the facts." *In re Chamber of Com. of the U.S.*, 105 F.4th 297, 311 (5th Cir. 2024) (quoting *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 310 (5th Cir. 2008) (en banc)).

B

Under Rule 60(b), a court may relieve a party from a final judgment for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). The burden of establishing at least one of the grounds for Rule 60(b) relief is on the movant. *See Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 173 (5th Cir. 1990), *abrogated on other grounds by Little v. Liquid Air Corp.*, 37 F.3d 1069 (5th Cir. 1994) (en banc).

C

We hold that the district court did not abuse its discretion in denying Belton's Rule 60(b) motion because Belton did not establish that he was entitled to relief on any of the available grounds.

Belton did not establish that he was entitled to relief on account of inadvertence or excusable neglect of his former attorney. While allegations of abandonment by an attorney fall under Rule 60(b)(1), "[g]ross carelessness is not enough" to establish entitlement to relief, nor is "[i]gnorance of the rules

[or] ignorance of the law." *Pryor v. U.S. Postal Serv.*, 769 F.2d 281, 287 (5th Cir. 1985) (quoting 11 Wright & Miller, Federal Practice & Procedure § 2858). Moreover, "[a] party has a duty of diligence to inquire about the status of a case; Rule 60(b) relief will only be afforded in *Edward H. Bohlin Co. v. Banning Co.*, 6 F.3d 350, 357 (5th Cir. 1993) (quoting *Pryor*, 769 F.2d at 287). Furthermore, the record contained ample evidence by which the district court could have concluded that Belton's former attorney neither had abandoned him nor was unfit to practice.

Belton's argument that he was entitled to relief based on newly discovered evidence—namely, his affidavit detailing his personal observations of Osborne, which was offered for the first time in connection with his Rule 60(b) motion—also failed. succeed on a motion for relief from judgment based on newly discovered evidence, our law provides that a movant must demonstrate: (1) that it exercised due diligence in obtaining the information; and (2) that the evidence is material and controlling and clearly would have produced a different result if present before the original judgment." *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 639 (5th Cir. 2005) (alteration in original) (quoting *Goldstein v. MCI WorldCom*, 340 F.3d 238, 257 (5th Cir. 2003)). Belton had the opportunity to introduce this evidence during discovery and at the summary judgment stage yet failed to do so. Accordingly, it was not "newly discovered," and Belton did not exercise the requisite due diligence in presenting it to the court.

Belton also did not establish the existence of

fraud. The district court properly deemed admitted the statements contained in the Requests for Admission served on Belton on January 24, 2022, because Belton failed to respond within 30 days. *See* Fed. R. Civ. P. 36(a)(3) ("A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney."). No "fraud" was involved in their admission. Neither was Dr. Rainwater's letter improper summary judgment evidence and therefore a "fraud." The letter, accompanied by a signed declaration from Osborne, constituted one of the many types of evidence with which a party can support a summary judgment motion. *See* Fed. R. Civ. P. 56(c)(1)(A) ("A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: citing to particular parts of materials in the record, including . . . documents . . . [and] affidavits or declarations. . . ."). It therefore cannot be considered a fraud.

Belton's argument that the district court's grant of summary judgment constituted a void judgment because the district court lacked both subject matter jurisdiction and personal jurisdiction over him was similarly unavailing. As to subject matter jurisdiction, Belton contended that he was exempt from the FHA and LEHOA's antidiscrimination provisions because he owned three or fewer single-family rental properties, none of which had federal mortgages, grants, or other subsidies. But as other circuits have recognized, an FHA exemption is an affirmative defense and has "no bearing on jurisdiction." *E.g.*,

United States v. Space Hunters, Inc., 429 F.3d 416, 425 (2d Cir. 2005). Belton also challenged the court's personal jurisdiction over him, contending that he never received service of process and that his prior attorney's waiver of service of process was ineffective. But because Belton filed a Rule 12 pre-answer motion that did not raise the issue of personal jurisdiction, he forfeited this challenge. *Golden v. Cox Furniture Mfg. Co.*, 683 F.2d 115, 118 (5th Cir. 1982); *Cruson v. Jackson Nat'l Life Ins. Co.*, 954 F.3d 240, 249 (5th Cir. 2020); Fed. R. Civ. P. 12(g)(2), 12(h)(1)(A).

Last, Belton did not establish that any of Rule 60(b)'s provisions should apply to his *res judicata* claim. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010) ("Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard."); *Yesh Music v. Lakewood Church*, 727 F.3d 356, 363 (5th Cir. 2013) (movant is entitled to relief under Rule 60(b)(6) only if he can show "extraordinary circumstances" justifying relief); *ABC Asphalt, Inc. v. Credit All. Corp.*, 56 F.3d 1384, 1384 (5th Cir. 1993) (movant must show that the underlying judgment was "manifestly injust" to be entitled to relief under Rule 60(b)(6)).

Accordingly, we cannot say that the district court "base[d] its decision on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Meadowbriar Home for Child., Inc. v. Gunn*, 81 F.3d 521, 535 (5th Cir. 1996) (quoting *Esmark Apparel, Inc. v. James*, 10 F.3d 1156, 1163 (5th Cir. 1994)). We

therefore hold that the district court did not abuse its discretion in denying Belton's Rule 60(b) motion, and we AFFIRM.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CLIFFORD OSBORNE ET AL

VERSUS

KEVIN BELTON

CASE NO. 3:20-CV-00208
JUDGE TERRY A. DOUGHTY
MAG. JUDGE KAYLA D. MCCLUSKY

ORDER

Pending before the Court is Defendant Kevin Belton's FRCP Rule 59 Motion for Reconsideration of Court's Denial of Defendant Kevin Belton's Motion for USCS FRCP Rule 60 Relief from Summary Judgment [Doc. No. 85].

While there is no motion for reconsideration *per se,* there is a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e). The Fifth Circuit has explained that a Rule 59(e) motion "calls into question the correctness of a judgment," but "is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered," or were offered, "before the entry of judgment." *Templet v. HydroChem, Inc.*, 367 F.3d 473, 478-79 (5th Cir. 2004)

(citations and internal quotation marks omitted). The Court has considered the Motion for Reconsideration and finds no reason to alter or amend its Ruling. Accordingly,

IT IS ORDERED that Kevin Belton's FRCP Rule 59 Motion for Reconsideration of Court's Denial of Defendant Kevin Belton's Motion for USCS FRCP Rule 60 Relief from Summary Judgment [Doc. No. 85] is **DENIED**.

MONROE, LOUISIANA, this 3rd day of November 2023.

/s/
Terry A. Doughty
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CLIFFORD OSBORNE ET AL

VERSUS

KEVIN BELTON

CASE NO. 3:20-CV-00208
JUDGE TERRY A. DOUGHTY
MAG. JUDGE KAYLA D. MCCLUSKY

MEMORANDUM RULING

Pending before the Court is a Motion for USCS FRCP Rule 60 Relief from Summary Judgment [Doc. No. 80] filed by Defendant Kevin Belton ("Belton"). Plaintiffs Clifford Osborne III ("Osborne") and Deborah Olsen (collectively, "Plaintiffs") filed an Opposition to Defendant's Rule 60 Motion to Set Aside Judgment [Doc. No. 82]. Belton has filed a reply [Doc. No. 83].

For the following reasons, the Motion is **DENIED**.

I. BACKGROUND AND PROCEDURAL HISTORY

Plaintiffs filed a Complaint[1] in this Court on February 17, 2020, alleging that Defendant Belton violated the Fair Housing Act ("FHA") and the Louisiana Equal Housing Opportunity Act. Specifically, Mr. Osborne argued that Belton discriminated against him on the basis of his disability by his refusal to allow Mr. Osborne's emotional support dog to "stay with" Plaintiffs at the property they leased from Belton.[2] Plaintiffs also asserted that Belton retaliated against them for exercising their rights under the FHA and the Louisiana Equal Housing Opportunity Act by evicting Mr. Osborne and his dog from the property at issue.[3]

On March 7, 2018, Mr. Osborne entered into a lease with Belton for the property at 223 Talbot Street in Jonesboro, Louisiana.[4] According to Mr. Osborne, during the time he was signing the lease, he informed Belton that he had a disability and kept a dog as an assistance animal.[5] Mr. Osborne states that Belton had no problem with Mr. Osborne keeping the dog on the property.[6]

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[1] [Doc. No. 1]

[2] [Doc. No. 48]

[3] [Id.]

[4] [Id.]

[5] [Id.]

[6] [Id.]

Then, approximately one month later, Mr. Osborne asserted that Belton told him he could no longer keep the dog at the property, but he could keep the dog in a neighboring yard.[7] Mr. Osborne stated that as a result of this, his disability worsened, and he was required to frequently visit his dog at the neighboring property. Specifically, "he had to periodically visit his dog in order to manage his symptoms."[8] Sometime after this, though, Mr. Osborne alleged that Belton "forcibly" removed his dog from the property and relocated it to a neighboring town.[9]

In an effort to have his dog on his property, Mr. Osborne's physician wrote a letter on September 11, 2018, attesting to Mr. Osborne's need to have his emotional support dog with him in order to properly take care of his disability.[10] Mr. Osborne attempted to show the letter to Belton on multiple occasions, but Belton allegedly refused to read it. Belton then filed a petition for eviction on October 1, 2018, and on October 4, 2018, Mr. Osborne was evicted on the basis of violating the no-pets policy.

After Mr. Osborne filed his Complaint, Belton failed to timely appear. Mr. Osborne then filed a

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[7] [Id.]

[8] [Id., p. 2]

[9] [Id.]

[10] [Doc. No. 13-2]

Motion for Entry of Default against Belton.[11] The Clerk of Court entered default as to Belton on June 22, 2020.[12] On June 29, 2021, Mr. Osborne filed a Motion for Default Judgment[13] against Belton. Belton moved to set aside the default on July 21, 2021.[14] Belton's motion was granted on July 22, 2021.[15] Belton filed a Motion to Dismiss for Failure to State a Claim,[16] and the Court denied that Motion.[17]

Mr. Osborne served Belton with requests for admission, requests for production of documents, and interrogatories on January 24, 2022. Belton failed to respond by February 23, 2022, as required by the Federal Rules of Civil Procedure. Belton responded on March 4, 2022. By this point, the Court determined that the requests for admission were automatically deemed admitted, due to Belton's untimely response.

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[11] [Doc. No. 10]

[12] [Doc. No. 11]

[13] [Doc. No. 13]

[14] [Doc. No. 18]

[15] [Doc. No. 22]

[16] [Doc. Nos. 25, 26]

[17] [Doc. No. 35]

The deadline for discovery was May 23, 2022.[18] Discovery requests were to be served at least thirty days prior to the deadline to allow sufficient time for responses. Belton served discovery requests at 11:00 p.m. on May 23, 2022—the day of the discovery completion deadline. Plaintiffs objected to the requests in their entirety as untimely.

Plaintiffs filed a Motion for Summary Judgment[19] on June 28, 2022. The Motion was unopposed. The Court granted[20] the Motion on August 3, 2022, and it found in favor of Plaintiffs. It also ordered that Plaintiffs file a motion to enforce the judgment against Belton with specific demands within thirty days of the Memorandum Ruling and Judgment.

On September 20, 2022, the Court issued a Memorandum Ruling[21] and Judgment[22] granting in part and denying in part Plaintiffs' Motion to Enforce Judgment. The Court granted $29,991.80 in attorney's fees, $50,000.00 in compensatory damages, and $10,000 in punitive damages in favor of Plaintiffs. On January 10, 2023, Plaintiffs filed a Motion for Writ of

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[18] [Doc. No. 39]

[19] [Doc. No. 48]

[20] [Doc. Nos. 50, 51]

[21] [Doc. No. 56]

[22] [Doc. No. 57

Execution,[23] which was granted by the Court on January 12, 2023.[24] The writ of execution was issued[25] on that same day, and it was returned executed[26] on February 7, 2023.

Magistrate Judge McClusky had a judgment debtor exam via zoom with all parties on June 14, 2023.[27] The instant Motion was filed on August 2, 2023.[28] In that Motion, Belton argues that the claim filed by Plaintiffs "tracks substantially in detail to an eviction proceeding between these same parties which occurred sixteen (16) months earlier in a Jonesboro, Jackson Parish, Louisiana Justice of the Peace Court, before Judge Sharon Satcher, Justice of the Peace for Ward 4, District E, Jackson Parish, Louisiana."[29] According to Belton, during that hearing Mr. Osborne accused him of much of the same issues presented in the case at bar. However, Belton claims that Mr. Osborne "spiced up" his pleading before the Court by claiming that Belton threatened him, called him

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[23] [Doc. No. 65]

[24] [Doc. No. 67]

[25] [Doc. No. 68]

[26] [Doc. No. 69]

[27] [Doc. No. 79]

[28] [Doc. No. 80]

[29] [Doc. No. 80-1, p.7]

names, and kidnapped his dog.[30] Belton states that Mr. Osborne was handed a judgment of eviction because he failed to pay his rent and had multiple dogs on the property in violation of the rental agreement, which prohibited pets.[31] Belton ultimately claims that no appeal or motion for new trial was taken from the judgment of eviction, resulting in a final judgment between the parties.[32]

The issues are briefed, and the Court is prepared to rule.

II. LAW AND ANALYSIS

A. FRCP 60 Relief from a Judgment or Order

Federal Rule of Civil Procedure 60(b) reads:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect;

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[30] [Id., p.8]

[31] [Id.]

[32] [Id.]

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time--and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality.* The motion does not affect the judgment's finality or suspend its operation.

The purpose of rule 60(b) is to delineate the circumstances when relief is available from the

operation of final judgments, whether they are entered by default or otherwise. *Seven Elves, Inc. v. Eskenazi,* 635 F.2d 396, 401 (5th Cir. 1981). The rule attempts to strike a balance between two conflicting goals, the finality of judgments and the command of the court to do justice. *Id.* Thus, "although the desideratum of finality is an important goal, the justice-function of the courts demands that it must yield, in appropriate circumstances, to the equities of the particular case in order that the judgment might reflect the true merits of the cause." *Id.* On the one hand, then, rule 60(b) is to be liberally construed to do substantial justice, *Laguna Royalty Co. v. Marsh,* 350 F.2d 817, 823 (5th Cir.1965), but at the same time "[t]his is not to say that final judgments should be lightly reopened." *Seven Elves,* 635 F.2d at 401.

The decision concerning a motion to vacate a final judgment pursuant to rule 60(b) is directed to the sound discretion of the district court and will only be reversed if there is an abuse of that discretion. *Roberts v. Rehoboth Pharmacy, Inc.,* 574 F.2d 846, 847 (5th Cir. 1978). "It is not enough that the granting of relief might have been permissible, or even warranted—denial must have been so *unwarranted* as to constitute an abuse of discretion." *Seven Elves,* 635 F.2d at 402 (emphasis in original). Since, however, a trial on the merits is favored over a truncated proceeding, *Azzopardi v. Ocean Drilling & Exploration Co.,* 742 F.2d 890, 895 (5th Cir. 1984), where denial of relief precludes a full examination of the merits of the case, a slight abuse of discretion may justify reversal. *Seven Elves,* 635 F.2d at 402.

Belton argues that he is entitled to relief afforded him under FRCP 60(b)(4). Belton argues a multitude of reasons entitling him to relief under this rule. Namely, he asserts that (1) the Judgment granting the Motion for Summary Judgment was based upon fraudulent information and inadmissible documentary evidence used to establish subject matter jurisdiction; (2) Belton was never served with the original Complaint or any of the pleadings filed by Plaintiffs; (3) Belton did not know that proceedings were filed against him, including the Judgment taken against him; (4) and the Court lacks personal jurisdiction over Belton. Belton claims that he has suffered from a failure of due process, resulting in the filing of this Motion.

Plaintiffs oppose Belton's motion and argue that he is not entitled to relief under any of the factors under rule 60. In sum, Plaintiffs argue that Belton is not entitled to any of the exceptions under rule 60 that would allow him relief from this Court's judgment. The Court agrees with Plaintiffs, and it finds that Defendant was unable to show the Court why he was entitled to relief under rule 60.

1. 60(b)(1) Mistake, inadvertence, surprise, or excusable neglect

Defendant asserts that he is entitled to relief under rule 60(b)(1) because he had no knowledge of Plaintiffs' claims or that there was a judgment entered against him. This argument is without merit. Belton attempts to strengthen this argument by alluding that there is no personal jurisdiction by the Court over him

because he was never served with the Complaint in this suit. The record of this matter clearly indicates that Belton was served. Whether actually or by constructive notice, the answer remains the same. Belton hired an attorney who appeared in the case and waived service on his behalf. On September 7, 2021, Defendant Kevin Belton, through his assigned attorney Paul Hattaway, filed an Answer[33] to Plaintiffs' Complaint with a jury demand. Belton also claims that he had no knowledge that a default judgment had been entered against him even though before the Answer was filed, he filed a Motion to Set Aside Default and a Motion to Dismiss for Failure to State a Claim.[34] There was clear notice in this case, and the Court has personal jurisdiction over Belton.

Belton also claims that he was not served with the Court's Memorandum Ruling and Judgment on the Motion for Summary Judgment or the Judgment awarding damages to Plaintiffs. This argument vexes the Court, and it will not entertain this claim when it is clear that Defendant was aware of a suit filed against him from at least September 7, 2021.

Any claims Belton attempts to make under rule 60(b)(1) are unfounded here. If there were mistakes made, those mistakes were not made by opposing counsel or by the Court. If there were surprises, the surprises were not the result of a public record that

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[33] [Doc. No. 30]

[34] [Doc. Nos. 18, 25]

Defendant and his counsel could easily access. If there were any evidence of inadvertence here, that could only be explained by Defendant's hired representation. And finally, the claim that Defendant's original attorney was mentally ill does not meet the requirements for excusable neglect here.

Belton is not entitled to relief under rule 60(b)(1).

2. Rule 60(b) (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)

Belton argues that he is entitled to relief under rule 60(b)(2) because of newly discovered evidence, i.e., an Affidavit[35] of Belton's from July 1, 2023. Essentially, the Affidavit alleges that Osborne is not disabled under the definition of the Americans with Disabilities Act.

The Court will not consider this Affidavit to be "newly discovered evidence" for two reasons. The first is that Defendant had his opportunity to introduce this evidence. The record clearly reflects that Belton produced discovery responses, and he further had the same allowance offered all parties to respond to the Motion for Summary Judgment in a timely manner. Secondly, if this Court were to allow this Defendant to introduce such an Affidavit so late in the proceeding,

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[35] [Doc. No. 80-5]

then the Court would find it wholly unfair to the rest of the parties with unfavorable judgments who felt that they could not introduce "relevant" evidence. It would also diminish the purpose of rule 60 because this evidence was not newly discovered as Defendant alleges "Plaintiff had worked for the Defendant for a period of time and the pair had known each other since their grammar school days[.]"[36]

Belton is not entitled to relief under rule 60(b)(2).

3. Rule 60(b)(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party

In support of his argument that he is entitled to relief under rule 60(b)(3), Belton asserts that Osborne's note from his doctor[37] in the Motion for Summary Judgment is fraudulent because it does not say that Osborne is disabled. The Court finds that the letter cannot be defined as fraud, misrepresentation, or misconduct by an opposing party under rule 60(b)(3), and Belton is not entitled to relief under this subsection.

4. Rule60(b)(4) the judgment is void

Belton ultimately argues that the final judgment

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[36] [Doc. No. 80-1, p. 4]

[37] [Doc. No. 13-9]

issued by the Court is procedurally and substantively void for a number of reasons. Procedurally, Belton argues that the Court lacks both subject matter and personal jurisdiction over the claims and parties here and that Plaintiffs' claims are barred by res judicata. Substantively, Belton argues that the judgment entered against him is invalid because the contents of Plaintiffs' requests for admissions were not validly admitted; because Dr. Rainwater's letter was not validly admitted and should not have been considered by the Court; and because Defendant's first hired attorney, Paul Hattaway, was mentally ill unable to properly defend the suit.

The Court will analyze each of these below.

a. Procedural

I. Subject Matter Jurisdiction

The argument that the Court lacks both subject matter jurisdiction fails for the following reasons. First, the Court has subject matter jurisdiction over this claim. The claim arises under federal law, and pursuant to 28 U.S.C. § 1331, this Court has federal question jurisdiction over the claim.[38] The Fair Housing Act is a federal statute that prohibits housing discrimination. Belton's arguments for exemptions under the FHA are not met here, either. This Court

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[38] "The district Court shall have original jurisdiction of all civil actions **arising under** the Constitution, laws, or treatises of the United States."

has subject matter jurisdiction over this claim, and it will not entertain Belton's attempts to argue otherwise.

ii. Personal Jurisdiction

The Court also has personal jurisdiction over this matter. Belton attempts to allude personal jurisdiction by claiming that he was never served with the Complaint in this suit. The record of this matter clearly indicates that Belton was served, whether actually or by constructive notice, the answer remains the same. Belton hired an attorney who appeared in the case and waived service on his behalf. On September 7, 2021, Defendant Kevin Belton, through his assigned attorney Paul Hattaway, filed an Answer[39] to Plaintiffs' Complaint with a jury demand. Additionally, before the Answer was filed, Belton filed a Motion to Set Aside Default and a Motion to Dismiss for Failure to State a claim.[40] There was clear notice in this case, and the Court has personal jurisdiction over Belton. This argument is meritless, and Belton is not entitled to relief under this theory.

iii. Res Judicata

Belton also argues that he is entitled to relief because Plaintiffs' claims are barred by res judicata due to a Judgment of Eviction that was entered in

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[39] [Doc. No. 30]

[40] [Doc. Nos. 18, 25]

Jonesboro, Louisiana, before Justice of the Peace Judge Sharon Satcher. Plaintiffs argue that while the eviction hearing raised evidence of the need for Osborne's reasonable accommodations as an affirmative defense, there was no final judgment to his allegations of a denial of his reasonable accommodation under the FHA nor was there a final judgment on whether the eviction was retaliation for making the request under the FHA.

The Court agrees with Plaintiffs. There is no evidence indicating that Plaintiffs' FHA or retaliation claims are barred by a judgment of eviction because the eviction proceedings were completely unrelated to the merits of the claims made by Osborne in these proceedings.

b. Substantive

I. Requests for Admissions

Belton next argues that the Judgment of the Court is substantively invalid because the Court invalidly admitted the contents of Plaintiffs' requests for admissions. The Court properly applied FRCP 36(a)(3) to this case. Belton failed to timely file his response to the requests, and the Court appropriately applied the law and deemed the requests admitted. The Court will not entertain these arguments again as it has previously decided on this issue.[41]

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[41] [Doc. No. 50]

ii. Dr. Rainwater's Letter

Belton argues that the Court improperly considered evidence in its Ruling and Judgment when it considered Dr. Rainwater's letter/exhibit attached to Plaintiffs' Motion. Specifically, he asserts that the letter was inadmissible under FRCP 56(c)(1)(A). Rule 56 states that assertions of a lack of dispute as to material fact can be supported by "depositions, documents...affidavits or declarations." Fed. R. Civ. P. Rule 56(c)(1)(A). The letter from Dr. Rainwater was a document with a signed declaration from Osborne. The letter was properly before the Court and admissible for purposes of summary judgment. Defendant had his opportunity to object or refute the letter and/or the contents of the letter. That time has passed, and his argument fails.

iii. The Mental State of Paul Hattaway ("Hattaway")

Lastly, Belton asserts that the judgment is substantively invalid because of his former counsel's supposed inability to defend the suit because of mental health problems. The Court was aware of Hattaway's troubles, which he briefed in his Motion to Withdraw Default,[42] but no where within that motion did he mention that this alleged mental health issue would so hinder his ability to properly defend the suit.

The Court cannot assume, based on a party's

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[42] [Doc. No. 19]

failure to respond, that those responses are the fault of someone struggling with mental health. While Belton did hire counsel to represent him, it is his responsibility to ensure that matters such as these are handled. It is not the Court's responsibility, nor opposing party's responsibility, to ensure that a party's hired representation is handling matters.

The Court deems it unnecessary to analyze any of the other grounds under rule 60(b) because Defendant cannot satisfy them, nor has he alleged to have satisfied them. Accordingly, his request for relief under rule 60(b) is denied.

III. CONCLUSION

For the reasons set forth herein,

IT IS ORDERED that Defendant Kevin Belton's Motion for USCS FRCP Rule 60 Relief from Summary Judgment [Doc. No. 80] is **DENIED.**

MONROE, LOUISIANA, this 5th day of October 2023.

/s/
TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CLIFFORD OSBORNE ET AL

VERSUS

KEVIN BELTON

CASE NO. 3:20-CV-00208
JUDGE TERRY A. DOUGHTY
MAG. JUDGE KAYLA D. MCCLUSKY

MEMORANDUM RULING

Pending before the Court is a Motion for Summary Judgment [Doc. No. 48] filed by Plaintiffs Deborah and Clifford Osborne ("Mr. Osborne") (collectively "Plaintiffs"). The Motion is unopposed.

For the following reasons, the Motion is **GRANTED.**

I. BACKGROUND AND PROCEDURAL HISTORY

Plaintiffs filed a Complaint[1] in this Court on

[1] [Doc. No. 1]

February 17, 2020, alleging that Defendant Kevin Belton ("Belton") violated the Fair Housing Act ("FHA") and the Louisiana Equal Housing Opportunity Act. Specifically, Mr. Osborne argues that Belton discriminated against him on the basis of his disability by his refusal to allow Mr. Osborne's emotional support dog to "stay with" Plaintiffs at the property they leased from Belton.[2] Plaintiffs also asserts that Belton retaliated against them for exercising their rights under the FHA and the Louisiana Equal Housing Opportunity Act by evicting Mr. Osborne and his dog from the property at issue.[3]

On March 7, 2018, Mr. Osborne entered into a lease with Belton for the property at 223 Talbot Street in Jonseboro, Louisiana.[4] According to Mr. Osborne, during the time he was signing the lease, he informed Belton that he had a disability and kept a dog as an assistance animal.[5] Mr. Osborne states that Belton had no problem with Mr. Osborne keeping the dog on the property.[6]

Then, approximately one month later, Mr. Osborne asserts that Belton told him he could no

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[2] [Doc. No. 48]

[3] [Id.]

[4] [Id.]

[5] [Id.]

[6] [Id.]

longer keep the dog at the property, but he could keep the dog in a neighboring yard.[7] Mr. Osborne states that as a result of this, his disability worsened, and he was required to frequently visit his dog at the neighboring property. Specifically, "he had to periodically visit his dog in order to manage his symptoms."[8] Some time after this, though, Mr. Osborne alleges that Belton "forcibly" removed his dog from the property and relocated it to a neighboring town.[9]

In an effort to have his dog on his property, Osborne's physician wrote a letter on September 11, 2018, attesting to Osborne's need to have his emotional support dog with him in order to properly take care of his disability.[10] Osborne attempted to show the letter to Belton on multiple occasions, but Belton allegedly refused to read it. Belton then filed a petition for eviction on October 1, 2018, and on October 4, 2018, Osborne was evicted on the basis of violating the no-pets policy.

After Osborne filed his Complaint, Belton failed to timely appear. Osborne then filed a Motion for

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[7] [Id.]

[8] [Id., p. 2]

[9] [Id.]

[10] [Doc. No. 13-2]

Entry of Default against Kevin Belton.[11] The Clerk of Court entered default as to Belton on June 22, 2020.[12] On June 29, 2021, Osborne filed a Motion for Default Judgment[13] against Belton. Belton moved to set aside the default on July 21, 2021.[14] Belton's motion was granted on July 22, 2021.[15] Belton filed a Motion to Dismiss for Failure to State a Claim[16], and the Court denied that Motion.[17]

Osborne served Belton with requests for admission, requests for production of documents, and interrogatories on January 24, 2022. Belton failed to respond by February 23, 2022, as required by the Federal Rules of Civil Procedure. Belton responded on March 4, 2022. By this point, the Court determined that the requests for admission were automatically deemed admitted due to Belton's untimely response.

The discovery completion set for May 23, 2022,

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[11] [Doc. No. 10]

[12] [Doc. No. 11]

[13] [Doc. No. 13]

[14] [Doc. No. 18]

[15] [Doc. No. 22]

[16] [Doc. Nos. 25, 26]

[17] [Doc. No. 35]

has since passed.[18] Discovery requests were to be served at least thirty days prior to the deadline to allow sufficient time for responses. Belton served discovery requests at 11:00 p.m. on May 23, 2022—the day of the discovery completion deadline. Plaintiffs objected to the requests in their entirety as untimely.

Plaintiffs now move for summary judgment on all claims against Defendant arguing that there are no genuine disputes of material fact, and that they are entitled to judgment as a matter of law.

The issues are briefed, and the Court is prepared to rule.

II. LAW AND ANALYSIS

A. Law

Summary judgment shall [be] grant[ed] ... if the movant shows that there is no genuine dispute as to any material fact, and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(A). A fact is "material" if proof of its existence or nonexistence would affect the outcome of the lawsuit under applicable law in this case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine if the evidence is such that a reasonable fact finder could render a verdict for the nonmoving party. *Id.*

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[18] [Doc. No. 39]

If the moving party can meet the initial burden, the burden then shifts to the nonmoving party to establish the existence of a genuine issue of material fact for trial. *Norman v. Apache Corp.*, 19 F.3d 1017, 1023 (5th Cir. 1994). The nonmoving party must show more than some metaphysical doubt as to the material facts. *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). In evaluating the evidence tendered by the parties, the Court must accept the evidence of the nonmovant as credible and draw all justifiable inferences in its favor.

In deciding unopposed summary judgment motions, the Fifth Circuit has noted that a motion for summary judgment cannot be granted simply because there was no opposition. *Hetzel v. Bethlehem Steel Corp.*, 50 F.3d 360, 362 fn.3 (5th Cir. 1995). The movant has the burden to establish the absence of a genuine issue of material fact and, unless it has done so, the court may not grant the motion, irrespective of whether any response was filed. *Powell v. Delaney*, 2001 WL 1910556, at 5-6 (W.D. Tex. June 14, 2001). Nevertheless, if no response to the motion for summary judgment has been filed, the court may find as undisputed the statement of facts in the motion for summary judgment. *Id.* at 1 and n.2; see also *Thompson v. Eason*, 258 F. Supp. 2d 508, 515 (N.D. Tex. 2003) (where no opposition is filed, the nonmovant's unsworn pleadings are not competent summary judgment evidence and movant's evidence may be accepted as undisputed). See also: *UNUM Life Ins. Co. of America v. Long*, 227 F. Supp. 2d 609 (N.D. Tex. 2002) ("Although the court may not enter a 'default' summary judgment, it may accept evidence

submitted by [movant] as undisputed."); *Bookman v. Shubzda*, 945 F. Supp. 999, 1002 (N.D. Tex.) ("A summary judgment nonmovant who does not respond to the motion is relegated to his unsworn pleadings, which do not constitute summary judgment evidence.").

The court has no obligation to "sift through the record in search of evidence" to support the nonmovant's opposition to the motion for summary judgment. *Forsyth v. Barr*, 19 F.3d 1527, 1533 (5th Cir. 1994).

B. Analysis

Plaintiffs assert three arguments for why summary judgment should be granted in their favor. The first is that Belton failed to timely respond to Plaintiffs' requests for admission, so he is deemed to have admitted those statements. The second is that Belton discriminated against Mr. Osborne by refusing to offer reasonable accommodations. The third is that Belton retaliated against Plaintiffs in violation of the FHA and the Louisiana Equal Housing Opportunity Act. Each of these arguments will be analyzed separately.

1. Belton's Failure to Respond to Requests for Admission

Plaintiffs argue that because Belton failed to respond to the requests for admission before the February 23, 2022, deadline, then Belton is deemed to have admitted to the statements and is bound to them

for purposes of summary judgment.

Federal Rule of Civil Procedure 36 allows a party to serve written requests for admission to an opposing party. FED. R. CIV. P. 36(a)(3) states:

> A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

Courts have held that summary judgment is proper when a party fails to respond to requests for admissions under FRCP 36.[19] Under Rule 36(b), "Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission."[20]

Benton failed to make a motion for withdrawal or amendment of his admission. Further, he did not direct answers or object to the matter of the requests for admission within the proper thirty-day time period. If Benton had filed a response or opposition to Plaintiffs' Motion for Summary Judgment as to why he

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[19] *Hulsey v. State of Tex.*, 929 F.2d 168 (5th Cir. 1991).

[20] Fed.R.Civ.P. 36(b); *see Dukes v. South Carolina Ins. Co.*, 770 F.2d 545, 548–49 (5th Cir.1985)

did not submit answers to the requests for admission within the thirty-day allotted time period, perhaps the Court would be more considerate. However, as Benton has not responded, and furthermore he is not *pro se*, the Court sees it reasonable that Benton is deemed to have admitted to the statements made in the requests for admissions and is bound by those statements.

Accordingly, Plaintiffs Motion for Summary Judgment on the fact that Belton's failure to timely respond to the requests for admissions causes them to be deemed admitted is **GRANTED**.

2. Belton's Alleged Discrimination against Mr. Osborne

Plaintiffs next assert that Belton discriminated against Mr. Osborne by refusing to make reasonable accommodations for his disability in violation of the FHA. The FHA prohibits discrimination "against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap."[21] A landlord engages in unlawful discrimination under if the FHA if he or she refuses "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity

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[21] 42 U.S.C. § 3604(f)(2)

to use and enjoy a dwelling."[22] Louisiana mirrors this statute in La. R.S. § 51:2606(A)(6)(c)(ii).

In order to establish a *prima facie* case against Belton for failure to accommodate his disability under the Section 3604(F)(3)(B) of the FHA, Mr. Osborne must have been able to show, at minimum, the following:

> (1) That he suffers from a disability within the meaning of 42 U.S.C. § 3602(h);
>
> (2) That the owner knew of his disability or reasonably should be expected to know of it;
>
> (3) That an accommodation may be necessary to give the resident an equal opportunity to use and enjoy the dwelling;
>
> (4) That the requested accommodation is reasonable; and
>
> (5) The owner refused to make the accommodation.[23]

Each of these will be analyzed individually.

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[22] 42 U.S.C. § 3604(F)(3)(B)

[23] *Overlook Mut. Homes, Inc. v. Spencer*, 666 F.Supp.2d 850, 855 (S.D.Ohio 2009), aff'd, 415 Fed.Appx. 617 (6th Cir.2011) (quoting *DuBois v. Assoc. of Apartment Owners of 2987 Kalakaua*, 453 F.3d 1175, 1179 (9th Cir.2006)).

a. (1) Whether Osborne suffer from a disability within the meaning of 42 U.S.C. § 3602(h)

Title 42 U.S.C. § 3602(h) states:

(h) "Handicap" means, with respect to a person--

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment[.]

The ADA defines the term "disability" in the same way.[24] It is not enough for a party to simply state that he or she "has a disability."[25] Establishing a disability under both the FHA and ADA involves a three-step process.[26] First, the court determines whether the alleged condition is a physical or mental impairment.[27] Second, the court must determine whether the

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[24] 42 U.S.C. § 12102(1)

[25] *Beaumont v. Exxon Corp.*, 02–2322, p. 12 (La.App. 4 Cir. 3/10/04), 868 So.2d 976, 983

[26] *Bragdon v. Abbott,* 524 U.S. 624, 631, 118 U.S. 2196, 141 L.Ed.2d 540 (1998)

[27] *Id.*

impairment affects major life activities.[28] Third, the court must find that the impairment placed a "substantial limit on the major life activity" asserted.[29] "Major life activity" is generally defined to include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working," but is not limited to these tasks.[30]

Mr. Osborne asserts that he suffers from "developmental disabilities, as well as anxiety, depression, and panic attacks stemming from childhood trauma."[31] Mr. Osborne also attached a doctor's note to his motion. Dr. Dirk Rainwater ("Dr. Rainwater") described him in the note as "mentally challenged" and that he "suffers with anxiety and depression."[32] Mr. Osborne states that this disability/impairment affects major life activities because he has an inability to remain calm without the service of his emotional support animal. Mr. Osborne also argues that it is undeniable that he is disabled because Belton is deemed to have admitted that Mr. Osborne is a person with a disability. That logic is

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[28] *Id.*

[29] *Id.*, at 524

[30] 42 U.S.C. § 12102(2)(A).

[31] [Doc. No. 13-2, ¶ 2]

[32] [Doc. No. 48-5]

flawed. The inquiry of whether Mr. Osborne is disabled is with the Court, though, and not in Belton's perception.

The Court finds that Mr. Osborne does suffer from a mental impairment, that being developmental disabilities. The statute provides an exhaustive list of major life activities, including caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working, but it is not limited to only these. Mr. Osborne asserts that his impairment affects major life activities because he is unable to remain calm. The Court will determine for summary judgment purposes that Mr. Osborne is disabled.

b. (2) Whether Belton knew of Mr. Osborne's disability or reasonably should be expected to know of it

Plaintiffs list a number of reasons explaining why Belton knew of Mr. Osborne's disability or reasonably should have been expected to know of it. The first is that Belton acknowledged at the October 4, 2018, eviction hearing that he had received the letter from Dr. Rainwater.[33] Belton's defense to seeing the letter was that it would not have mattered to him whether

[33] In reference to the Eviction Hearing, Plaintiffs Cite an Exhibit G Audio Tape Recording of Petition for Eviction of Clifford Osborne. No such exhibit exists in the record.

he had or had not seen the letter because he has issues with pets.

The Court only sees it necessary to analyze one of those reasons. Plaintiffs assert that by his failure to timely respond to requests for admission, Belton has admitted that Mr. Osborne "informed [Belton] of his disabilities, informed [Belton] that he keeps a dog as an assistance animal, and provided [Belton] with a note from Dr. Rainwater documenting Mr. Osborne's disabilities and his need for animal assistance."[34]

The Court finds that Belton's admissions alone satisfy this prong of the analysis.

c. (3) Was the requested accommodation necessary to give Mr. Osborne an equal opportunity to use and enjoy the dwelling

Plaintiffs must now show that an accommodation was necessary to afford Mr. Osborne an equal opportunity to use and enjoy the dwelling. Courts have held that the "party claiming failure to accommodate under the FHA also bears the burden of showing that the requested accommodation is necessary."[35] The

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[34] [Doc. No. 48-4, ¶¶ 3-5, 8]

[35] *Harmony Haus Westlake, LLC v. Parkstone Prop. Owners Ass'n, Inc.*, 440 F.Supp.3d 654, 664 (W.D. Tex. 2020)(citing *Elderhaven, Inc. v. City of Lubbock, Tex.*, 98 F.3d 175, 178 (5th Cir. 1996)); *Varrecchio v. Friends All. Hous. II, Inc.*, No. 18-8915,

word necessity is often used in much the same manner as a causation requirement. Particularly:

> This requirement is divided into two considerations: is the accommodation necessary and will the accommodation afford equal opportunity to the disabled? In order for a requested accommodation to be necessary, the [aggrieved tenant] must show "a direct linkage between the proposed accommodation and the 'equal opportunity' to be provided to the handicapped person." If the requested accommodation "provides no direct amelioration of a disability's effect," it is not necessary. With respect to the "equal opportunity" requirement, the FHA "does not require accommodations that increase a benefit to a handicapped person above that provided to a nonhandicapped person with respect to matters unrelated to the handicap."[36]

Plaintiffs cite Dr. Rainwater's letter as confirmation that the emotional support animal is necessary for Mr. Osborne to have an equal opportunity to use and enjoy the property at issue. Further, Plaintiffs argue that the necessity of the emotional support animal is even more evinced by Mr. Osborne's reaction when Belton took the dog away

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2018 WL 6510740, at *2 (E.D. La. Dec. 11, 2018).

[36] *Bryant Woods Inn, Inc. v. Howard County, Md.*, 124 F.3d 597, 604 (4th Cir. 1997).

from him. Mr. Osborne asserts that the removal of his dog only exaggerated his disability, and it caused him to be bed ridden and unable to sleep. He claims having a service animal "ameliorates" the effects of his anxiety and depression.[37]

The Court finds that Mr. Osborne's emotional support animal is necessary to give him an equal opportunity to use and enjoy the dwelling.

d. (4) Whether Mr. Osborne's request to have an emotional support animal in the dwelling was reasonable.

"An accommodation is reasonable if it does not cause any undue hardship or fiscal or administrative burden."[38] "[T]he types of animals that can qualify as reasonable accommodations under the FHA include emotional support animals, which need not be individually trained."[39]

The Court finds that Mr. Osborne's request to have his emotional support dog in the rental property was reasonable. There is no evidence provided to the contrary indicating whether the emotional support dog

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[37] [Doc. No. 48-2, p. 14]

[38] *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 729 (1995)

[39] *Overlook Mut. Homes, Inc. v. Spencer*, 666 F. Supp.2d 859, at 861 (S.D. Ohio 2009)

caused any undue hardship or fiscal or administrative burden on Belton.

e. (5) Did Belton refuse to make the accommodation?

It is uncontested that Belton refused to make the accommodation when he removed the emotional support dog from the property.

Accordingly, the Court finds that Plaintiffs have established a *prima facie* case against Belton for his failure to reasonably accommodate Mr. Osborn's disability. Therefore, the Motion for Summary Judgment is **GRANTED** on the reasonable accommodation claim.

3. Retaliation Claims

Plaintiffs next claim asserts that Belton retaliated against Mr. Osborne in violation of the FHA and the Louisiana Equal Housing Opportunity Act. Title 42 U.S.C. § 3617 states:

> It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

The Louisiana Equal Housing Opportunity Act on

retaliation is identical to the FHA language.[40] Retaliation claims brought pursuant to the FHA and the ADA are analyzed under the same standards used for analyzing retaliation claims brought pursuant to Title VII.[41] In order to establish a *prima facie* case of retaliation, the mover must show that "(1) he engaged in an activity that [the FHA] protects; (2) he was subjected to an adverse [action by the defendant]; and (3) a causal connection exists between the protected activity and the adverse ... action."[42] If the plaintiff establishes a *prima facie* case, the burden shifts to the defendant to "articulate a legitimate, nondiscriminatory reason for the challenged ... action."[43] A protected activity includes "oppos[ition] [to] any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter."[44]

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[40] Louisiana Revised Statute 51:§2609

[41] *See Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1287 (11th Cir.1997); *see also Texas v. Crest Asset Management, Inc.*, 85 F.Supp.2d 722 (S.D.Tex.2000).

[42] *LeMaire v. Louisiana Department of Transportation & Development*, 480 F.3d 383, 388 (5th Cir.2007).

[43] *Grimes v. Texas Dept. of Mental Health & Mental Retardation*, 102 F.3d 137, 140 (5th Cir.1996).

[44] 42 U.S.C. § 12203(a)

a. *Prima Facie* case of Retaliation

Plaintiffs assert that Mr. Osborne satisfied the protected activity prong when he made a request on the basis of his disability. The Court agrees. The Court in *Harmony Haus Westlake* held "both requesting a reasonable accommodation and filing a lawsuit in pursuit thereof constitute protected activities."[45]

Plaintiffs have also established that Belton took an adverse action that is causally connected to the protected activities. Defendant even admitted to his actions by his failure to respond to the request for admissions. There is no doubt, though, that Mr. Osborne complained of Belton's forcible taking of his emotional support animal, and then Belton's subsequent eviction action occurred shortly thereafter.

Plaintiffs have established a *prima facie* case of retaliation. Belton has not filed a response, and he, therefore, has established legitimate, nonretaliatory reasons for the adverse action. Accordingly, Plaintiffs' Motion for Summary Judgment on the basis of retaliation is **GRANTED**.

III. CONCLUSION

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[45] *Harmony Haus Westlake, LLC*, 468 F.Supp.3d 800, at 816; *see also Oxford House*, 932 F. Supp. 2d at 700 (citing *Gonzalez v. City of New York*, 354 F. Supp. 2d 327, 340 (S.D.N.Y. 2005) (filing lawsuit is a protected activity for a retaliation claim)); *Chavez v. Aber*, 122 F. Supp. 3d 581, 599 (W.D. Tex. 2015) (requesting reasonable accommodation is a protected activity for a retaliation claim).

For the reasons set forth herein,

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for Summary Judgment [Doc. No. 48] against Defendant Kevin Belton is hereby **GRANTED**.

MONROE, LOUSIANA, this 3rd day of August 2022.

/s/
Terry A. Doughty
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CLIFFORD OSBORNE ET AL

VERSUS

KEVIN BELTON

CASE NO. 3:20-CV-00208
JUDGE TERRY A. DOUGHTY
MAG. JUDGE KAYLA D. MCCLUSKY

JUDGMENT

For the reasons set forth in the Court's Memorandum Ruling,

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for Summary Judgment [Doc. No. 48] against Defendant Kevin Belton is hereby **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs file a motion to enforce judgment with specific demands against Defendant within thirty (30) days of this Memorandum Ruling and Judgment.

MONROE, LOUSIANA, this 3rd day of August

2022.

/s/
TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

APPENDIX F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CLIFFORD OSBORNE ET AL

VERSUS

KEVIN BELTON

CASE NO. 3:20-CV-00208
JUDGE TERRY A. DOUGHTY
MAG. JUDGE KAYLA D. MCCLUSKY

REPORT AND RECOMMENDATION

Before the undersigned Magistrate Judge, on reference from the District Court, is a motion to dismiss for failure to state a claim upon which relief can be granted [doc. # 25] filed by Defendant Kevin Belton. For reasons detailed below, it is recommended that the motion be DENIED.

Background

On February 17, 2020, Plaintiffs Clifford Osborne, III, and Deborah Olsen filed the instant complaint against Defendant Kevin Belton for declaratory and injunctive relief, compensatory and punitive damages, plus attorneys' fees and costs, pursuant to the Fair Housing Amendments Act, 42 U.S.C. § 3601, *et. seq.*,

and the Louisiana Equal Housing Opportunity Act, Louisiana Revised Statute § 51:2606. (Compl.). Plaintiffs alleged that Osborne is an individual with developmental and other disabilities who required the use of an assistance dog. *Id.* Per the Complaint:

> [o]n March 7, 2018, Plaintiffs signed a month-to-month lease for a single-family home located at 223 Talbot Street, Jonesboro, Louisiana, (hereinafter referred to as the "Property"). The Property is a dwelling subject to the Fair Housing Act, 42 U.S.C. § 3602(b) and subject to no exception under 42 U.S.C. § 3603(b). The Property is owned and managed by Defendant Kevin Belton.
>
> During the lease signing, Plaintiff Osborne informed Defendant Belton that he kept a dog as an assistance animal. Defendant stated that he would temporarily make an exception to his no-pets policy to allow Mr. Osborne to keep the dog on a short-term basis.
>
> At all times relevant to this Complaint, Plaintiffs timely paid their rent and the lease reconducted on a month-to-month basis.

(Compl., ¶¶ 9-11).

In the Spring of 2018, Belton notified Osborne that he could no longer keep his support animal on the

premises. *Id.*, ¶ 12. In late July 2018, however, Belton observed the animal in the Property's yard, whereupon Belton transported the dog out of town and abandoned it. *Id.*, ¶¶ 15-17. Fortunately, the dog managed to find its way back to its owner, Osborne. *Id.* When Belton again observed the dog on premises in late August 2018, he confronted Osborne and threatened him with violence and eviction. *Id.* On October 4, 2018, Belton evicted Plaintiffs because they had violated Defendant's prohibition on pets. *Id.*, ¶ 19.

Belton executed a waiver of service for this suit, but then failed to file a responsive pleading within the extended deadline afforded by the waiver. (Waiver of Service [doc. # 8]). Accordingly, on June 22, 2020, Plaintiffs obtained a Clerk's entry of default against Belton. (Clerk's Entry of Default [doc. # 11]). Over one year later, on June 29, 2021, Plaintiffs filed a motion to confirm default judgment against Belton. [doc. # 13]. On July 21, 2021, however, Belton filed a motion to set aside the entry of default, which the District Court granted and concomitantly denied the motion for default judgment as moot. *See* doc. #s 18, 22.

On August 6, 2021, Belton filed the instant motion to dismiss for failure to state a claim upon which relief can be granted. Belton contends that he does not own more than three single family houses, and, therefore, that he is exempt from coverage under the Fair Housing Amendments Act and the Louisiana Equal Housing Opportunity Act. Belton argued that the onus was on Plaintiffs to allege facts in the complaint to show that he owned more than three single family units, but they failed to do so.

On August 30, 2021, Plaintiffs filed their opposition to the motion to dismiss, wherein they argued, *inter alia*, that Defendant's motion was untimely, that the exemptions were inapplicable, and that, in any event, the exception(s) at issue is an affirmative defense for which defendant bears the burden of proof.[1] Finally, Plaintiffs adduced records from the tax assessor's office to show that Belton, in fact, owned more than three single-family homes used for rental income.[2]

Belton filed his reply brief on September 7, 2021, wherein he asserted that his motion was timely. (Reply Brief [doc. # 31]). He further argued that Plaintiffs failed to set forth facts, rather than conclusory allegations, to show that the exceptions and exemptions to liability under the Fair Housing Amendments Act and the Louisiana Equal Housing Opportunity Act were inapplicable. In addition to Plaintiffs' alleged failure to demonstrate that he owned more than three single-family rental houses, Belton stated that Plaintiffs did not include facts to overcome the exemption that applies for single-family

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[1] The Clerk of Court issued Plaintiffs a deficiency notice because they did not include a table of contents and table of authorities as required by Local Rule 7.8. (Notice of Deficient Document [doc. # 28]). Plaintiffs have since corrected the deficiency. *See* Corrective Document [doc. # 32].

[2] Plaintiffs also took issue with the Court's decision to set aside the entry of default without affording them an opportunity to submit a response. That ship, however, has sailed and is not before the undersigned.

houses that are rented via an agent, broker, or the like, and that are not publicly advertised. *See* 42 U.S.C. § 3063(b)(1). The matter is ripe.

Standard of Review

The Federal Rules of Civil Procedure sanction dismissal where the plaintiff fails "to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). A pleading states a claim for relief when, *inter alia*, it contains a "short and plain statement . . . showing that the pleader is entitled to relief . . ." FED. R. CIV. P. 8(a)(2).

To withstand a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to Astate a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955 (2007)). A claim is facially plausible when it contains sufficient factual content for the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* *Plausibility* does not equate to *possibility* or *probability*; it lies somewhere in between. *See Iqbal, supra*. Plausibility simply calls for enough factual allegations to raise a reasonable expectation that discovery will reveal evidence to support the elements of the claim. *See Twombly*, 550 U.S. at 556, 127 S.Ct. at 1965. Assessing whether a complaint states a plausible claim for relief is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal, supra* (citation omitted). A well-pleaded complaint may proceed even

if it strikes the court that actual proof of the asserted facts is improbable, and that recovery is unlikely. *Twombly,*

Although the court must accept as true all factual allegations set forth in the complaint, the same presumption does not extend to legal conclusions. *Iqbal, supra.* A pleading comprised of "labels and conclusions" or "a formulaic recitation of the elements of a cause of action" does not satisfy Rule 8. *Id.* Moreover, courts are compelled to dismiss claims grounded upon invalid legal theories even though they might otherwise be well-pleaded. *Neitzke v. Williams,* 490 U.S. 319, 109 S.Ct. 1827 (1989).

Nevertheless, "[t]he notice pleading requirements of Federal Rule of Civil Procedure 8 and case law do not require an inordinate amount of detail or precision." *Gilbert v. Outback Steakhouse of Florida Inc.*, 295 Fed. App'x. 710, 713 (5th Cir. 2008) (citations and internal quotation marks omitted). Further, "a complaint need not pin plaintiff's claim for relief to a precise legal theory. Rule 8(a)(2) of the Federal Rules of Civil Procedure generally requires only a plausible 'short and plain' statement of the plaintiff's claim, not an exposition of his legal argument." *Skinner v. Switzer*, 562 U. S. 521, 131 S. Ct. 1289, 1296 (2011). Indeed, "[c]ourts must focus on the substance of the relief sought and the allegations pleaded, not on the label used." *Gearlds v. Entergy Servs., Inc.*, 709 F.3d 448, 452 (5th Cir. 2013) (citations omitted). "Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus,*

127 S. Ct. 2197, 2200 (2007) (quoting *Bell Atl.*, 127 S. Ct. at 1958).

When considering a motion to dismiss, courts generally are limited to the complaint and its proper attachments. *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008) (citation omitted). However, courts may rely upon "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice," including public records. *Dorsey, supra*; *Norris v. Hearst Trust*, 500 F.3d 454, 461 n9 (5th Cir. 2007) (citation omitted) (proper to take judicial notice of matters of public record). Furthermore, "[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to his claim." *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498- 499 (5th Cir. 2000) (citations and internal quotation marks omitted).

Analysis

As an initial matter, Plaintiffs have not adduced any binding authority to establish that Defendant's motion to dismiss is untimely. Accordingly, the court declines Plaintiffs' invitation to deny the motion on that basis.

Instead, a much surer footing for the disposition of the pending motion is Plaintiffs' argument that exemptions under the Fair Housing Act, including the so-called "Mrs. Murphy" exemption, constitute affirmative defenses. *See United States v. Space*

Hunters, Inc., 429 F.3d 416, 426–27 (2d Cir. 2005) (courts have consistently characterized exemptions to the FHA as affirmative defenses); *Ho v. Donovan*, 569 F.3d 677, 682 (7th Cir. 2009) (§ 3603(b) is captioned "Exemptions," which makes it an affirmative defense); *Monus v. Riecke*, Civ. Action No. 21-218, 2021 WL 1721010, at *4 (E.D. La. Apr. 30, 2021) (§ 3603(b) exemptions constitute affirmative defenses for which defendant bears the burden of proof).[3]

Because the exemptions and exceptions invoked by Defendant represent affirmative defenses, Plaintiffs need not plead facts to overcome them. *See Jones v. Bock,* 549 U.S. 199, 216; 127 S.Ct. 910, 921; (2007) (exhaustion is an affirmative defense that plaintiffs need not specifically plead in their complaints); *EPCO Carbon Dioxide Products, Inc. v. JP Morgan Chase Bank, NA,* 467 F.3d 466, 470 (5th Cir. 2006) (plaintiff's pleadings need not identify elements that relate to affirmative defense). Rather, it is defendant who bears the burden of pleading an affirmative defense. *See Gomez v. Toledo*, 446 U.S. 635, 640; 100 S.Ct. 1920, 1924 (1980) (citing *inter alia,* FED. R. CIV. P. 8(c)).[4]

Although dismissal under Rule 12(b)(6) sometimes may be premised upon a successful

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[3] The Louisiana Equal Housing Opportunity Act characterizes the Fair Housing Act "exemptions" as "exceptions," but the language otherwise is the same.

[4] Defendant has since filed an answer to the complaint that included as affirmative defenses the exemptions and exceptions he raised in the present motion. *See* Answer [doc. # 30].

affirmative defense, that defense must appear on the face of the complaint. *EPCO, supra.* Here, the Complaint does not establish the elements of the exemptions and exceptions claimed by Defendant. To the contrary, it denies them. Accordingly, Defendant has not met his burden.

Finally, Defendant cannot argue in good faith that the Complaint does not set forth sufficient facts to put him on notice of the claims against him. Any such argument is belied by the fact that he managed to file an Answer that denied the claims against him. *See* Answer.

Conclusion

Relying upon judicial experience and common sense, the court finds that Plaintiff=s complaint states plausible claims for relief under the Fair Housing Amendments Act, 42 U.S.C. § 3601, *et. seq.*, and the Louisiana Equal Housing Opportunity Act, Louisiana Revised Statute § 51:2606, sufficient to afford Defendant fair notice of the claims against him, along with the reasonable *expectation* that discovery will reveal relevant evidence for each of the elements of the claim. *Twombly, supra.* Under these circumstances,

IT IS RECOMMENDED that Defendant Kevin Belton's motion to dismiss for failure to state a claim upon which relief can be granted [doc. # 25] be DENIED.

Under the provisions of 28 U.S.C. '636(b)(1)(C) and F.R.C.P. Rule 72(b), the parties have **fourteen**

(14) days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party=s objections within **fourteen (14) days** after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the District Judge before he makes a final ruling.

A PARTY'S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN FOURTEEN (14) DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

In Chambers, at Monroe, Louisiana, on this 10th day of September, 2021.

/s/
KAYLA DYE MCCLUSKY
UNITED STATES MAGISTRATE JUDGE

APPENDIX G

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CLIFFORD OSBORNE ET AL

VERSUS

KEVIN BELTON

CASE NO. 3:20-CV-00208
JUDGE TERRY A. DOUGHTY
MAG. JUDGE KAYLA D. MCCLUSKY

MEMORANDUM ORDER

Pending before the Court is a Motion to Set Aside Entry of Default under FRCP 55(c) [Doc. No. 18] filed by Defendant Kevin Belton ("Belton"). Belton moves to set aside the default entered against him on June 22, 2020 [Doc. No. 11]. Also pending is Plaintiffs', Clifford Lee Obsorne, III and Deborah Olsen ("Plaintiffs"), Motion for Default Judgment (incorrectly titled "Motion for Entry of Default") [Doc. No. 13].

Belton was named as Defendant in the initial Complaint filed on February 17, 2020 [Doc. No. 1]. Summons were issued as to Belton on March 12, 2020 [Doc. No. 7]. A Waiver of Service was returned and executed as to Belton on April 3, 2020, and it was filed on April 18, 2020 [Doc. No. 8]. An answer was due

from Belton by June 2, 2020. Belton never filed an answer to the Complaint. On June 19, 2020, a Motion for Entry of Default Against Defendant Kevin Belton [Doc. No. 10] was filed by Plaintiffs. On June 22 2020, a Notice of Entry of Default against Belton was filed by the Clerk of Court [Doc. No. 11].

Belton submits that the failure to timely file an answer was the result of a number of factors. Belton was notified of the suit during the COVID-19 Pandemic ("the Pandemic"), after which he contacted P. Heath Hattaway for advice. Because of the Pandemic, Belton was unable to meet with Mr. Hattaway in person to secure a contract for representation; however, Mr. Hattaway did make some representations on his behalf, i.e., emailing opposing party. No contract for services was ever entered into between Belton and Mr. Hattaway. Additionally, during the Pandemic, Mr. Hattaway was diagnosed with "Institutional Brain Trauma," resulting in symptoms of high anxiety, post-traumatic stress disorder, and more that caused difficulties in his ability to practice law. Mr. Hattaway no longer resides in, or practices in, the state of Louisiana. He has since relocated to Bend, Oregon as of November 2020. [Doc. No. 19].

Mr. Hattaway states that, on June 23, 2020, the day after the entry of the default, he contacted counsel for Plaintiffs, Ms. Elizabeth Owens, and made her aware of the interim disability via telephone and she agreed to take no additional adverse action without first contacting Mr. Hattaway. [Doc. No. 19, p. 4]. Mr. Hattaway further states it appears counsel for

Plaintiff, Ms. Olsen, left the Greater New Orleans Fair Housing Action Center sometime after their last communication in June of 2020. [Id.]. Further, Mr. Hattaway states he has not had any communication with Plaintiffs' counsel in over a year [Id.].

Belton asserts that the causes of action subject to this complaint are not applicable to him because he owns three (3) single family units and one parcel of underdeveloped land, which would make Plaintiffs unable to pursue a claim against him under the Fair Housing Act and the Louisiana Equal Housing Opportunity Act. Belton finally states that setting aside the motion for default to allow Belton to answer and assert defenses does not prejudice Plaintiffs in any way because there are no ongoing damages.

Federal Rule of Civil Procedure 55(c) permits a court to set aside an entry of default for good cause. Resolution of a case on the merits is preferable to a default judgment and, therefore, default judgments are disfavored in the Fifth Circuit. *Rogers v. Hartford Life & Accident Ins. Co.*, 167 F. 3d 933, 936 (5th Cir. 1999). "Any doubt should, as a general proposition, be resolved in favor of [the party moving to set aside the default] to the end of securing a trial upon the merits." *Gen. Tel. Corp. v. Gen. Tel. Answering Serv.*, 277 F.2d 919, 921 (5th Cir. 1960). Furthermore, federal courts should not be agnostic with respect to the entry of default judgments, which are "generally disfavored in the law" and thus "should not be granted on the claim, without more, that the defendant had failed to meet a procedural time requirement." *Mason & Hanger-Silas Mason Co. v. Metal Trades Council*, 726 F.2d 166, 168

(5th Cir. 1984).

The Fifth Circuit has established a three-part test for determining whether to set aside the default. "[T]he district court should consider whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented." *United States v. One Parcel of Real Property*, 763 F.2d 181, 183 (5thCir. 1985). The Court may also consider whether "the defendant acted expeditiously to correct the default." See *Dierschke v. O'Cheskey (In re Dierschke)*, 975 F.2d 181, 184 (5th Cir.1992).

The Fifth Circuit has defined willfulness as "an intentional failure to respond to litigation." *In re OCA*, 551 F.3d at 370 n.32. Here, Belton shows that the failure to respond was not intentional. Rather, and unfortunately, due to the Pandemic and counsel's medical diagnosis, responsive pleadings were not filed timely.

Additionally, here there is no prejudice to the plaintiff where "the setting aside of the default has done no harm to plaintiff except to require it to prove its case." *Lacy v. Sitel Corp.*, 227 F.3d 290, 293 (5th Cir. 2000). Setting aside the default would have no effect other than to require Plaintiffs to litigate its cause. Thus, allowing Belton the opportunity to file responsive pleadings would not prejudice Plaintiffs.

As noted above, resolution of a case on the merits is preferable to a default judgment and, therefore, default judgments are disfavored in the Fifth Circuit.

Rogers v. Hartford Life & Accident Ins. Co., 167 F. 3d 933, 936 (5th Cir. 1999). "Any doubt should, as a general proposition, be resolved in favor of [the party moving to set aside the default] to the end of securing a trial upon the merits." *Gen. Tel. Corp. v. Gen. Tel. Answering Serv.*, 277 F.2d 919, 921 (5th Cir. 1960).

Accordingly, for the above reasons,

IT IS HEREBY ORDERED that the Motion to Set Aside Entry of Default under FRCP 55(c) [Doc. No. 18] is **GRANTED**. The default entered against Belton on June 22, 2020 [Doc. No. 11] is **SET ASIDE**.

IT IS FURTHER ORDERED that Belton file responsive pleadings no later than August 6, 2021.

IT IS FURTHER ORDERED that, in light of the Court's ruling, Plaintiffs', Clifford Lee Obsorne, III and Deborah Olsen ("Plaintiffs"), Motion for Default Judgment (incorrectly titled "Motion for Entry of Default") [Doc. No. 13] is **DENIED AS MOOT**.

MONROE, LOUISIANA, this 22nd day of July 2021.

/s/
Terry A. Doughty
United States District Judge

APPENDIX H

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CLIFFORD OSBORNE, ET AL.

VERSUS

KEVIN BELTON

CASE NO. 3:20-CV-00208
JUDGE TERRY A. DOUGHTY
MAG. JUDGE KAYLA MCCLUSKY

ORDER

Although P. Heath Hattaway has not enrolled as counsel in this matter, the record indicates he signed a waiver of service on behalf of Defendant [Doc. No. 8], and, additionally, the exhibits to Plaintiffs' Motion for Default Judgment [Doc. No. 13] indicate that Mr. Hattaway has communicated with Plaintiffs' counsel on behalf of Defendant. Accordingly, out of an abundance of caution,

IT IS ORDERED that the Clerk of Court serve P. Heath Hattaway with the Motion for Default Judgment [Doc. No. 13] as well as the Notice of Motion Setting [Doc. No. 14]

Monroe, Louisiana, this 30th day of June, 2021.

/s/
TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30829

United States Court of Appeals
Fifth Circuit
FILED
April 28, 2025
Lyle W. Cayce
Clerk

Clifford Osborne; Deborah Olsen,
Plaintiffs Appellees,

versus

Kevin Belton,
Defendant Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:20-CV-208

ON PETITION FOR REHEARING EN BANC

Before Elrod, *Chief Judge*, Oldham, and Wilson, *Circuit Judges.*

Per Curiam:

Treating the petition for rehearing en banc as a petition for panel rehearing (5th Cir. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P.40 and 5th Cir. R.40), the petition for rehearing en banc is DENIED.

APPENDIX J

SUPREME COURT OF LOUISIANA

No. 2024-B-01405

IN RE: PAUL H. HATTAWAY

IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations (Formal Charges);

April 08, 2025

Suspension imposed. See per curiam.

JDH
WJC
PDG
JMG
CRC

Weimer, C.J., dissents.

Supreme Court of Louisiana
April 08, 2025

/s/
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2024-B-01405

IN RE: PAUL H. HATTAWAY

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Paul H. Hattaway, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

In 2022, the ODC received a complaint from Sarah Watson, the Legal Director for the Louisiana Fair Housing Action Center, Inc. ("LFHAC"). Respondent, who had no experience in defending claims brought under the Fair Housing Act, represented Kevin Belton in a federal civil suit for alleged housing discrimination initiated by the LFHAC against Mr. Belton on behalf of plaintiffs Deborah Olsen and Clifford Osborne, III. The complaint advised of the following:

In May 2020, respondent filed a waiver of service for summons. Therein, he acknowledged that an answer was due within sixty days. Respondent requested and was granted an extension of time to file Mr. Belton's answer, but he failed to do so. Plaintiffs then moved for entry of default against Mr. Belton.

The clerk of court issued a notice of entry of default, but over the next year, respondent took no action in the litigation. In June 2021, plaintiffs moved for entry of default judgment. Thereafter, respondent filed a motion to set aside entry of default, representing, in pertinent part, as follows:

> [U]ndersigned counsel was diagnosed with "Institutional Betrayal Trauma" manifesting symptoms of high anxiety, post-traumatic stress disorder, and other symptoms which prohibited and made difficult his ability to practice law at a level normal attorneys are able to do. These symptoms began manifesting in late 2019 and were treated beginning in June 2020. These symptoms severely inhibited the undersigned's ability to practice law through December of 2020.

The district court granted the motion to set aside, and respondent then filed an answer on behalf of Mr. Belton. The court issued a scheduling order which set a discovery completion deadline for May 23, 2022, with written discovery required to be served more than thirty days before that deadline.

In January 2022, respondent received plaintiffs' interrogatories, requests for production of documents, and requests for admissions, but he failed to respond to the discovery requests by the deadline of February 23, 2022. As a result, plaintiffs' requests for admissions were deemed admitted. Respondent acknowledged that he was aware of a procedure within the Federal Rules of Civil Procedure to "undo those

admissions," but he failed to take any action in that regard. In addition, respondent did not serve discovery requests on plaintiffs until 11:00 p.m. on May 23, 2022, the discovery completion deadline. During his sworn statement, respondent testified that the untimely requests were the result of a calendaring mistake.

In June 2022, plaintiffs filed a motion for summary judgment. Notice of the motion was mailed to respondent, but because he failed to regularly check his email account, he missed the notice. As a result, respondent did not file an opposition to the motion, and the court granted the motion. Respondent did not appeal from, or otherwise seek reconsideration of, that judgment. He became aware of the negative decision after the fact, but then failed to timely disclose same to Mr. Belton.

On September 2, 2022, plaintiffs filed a motion to enforce judgment. The clerk of court issued a notice of motion setting, therein advising that Mr. Belton's opposition to the motion was due by September 27, 2022. On September 13, 2022, Ms. Watson asked respondent whether he planned to file an opposition to the motion to enforce. Respondent replied in the affirmative, but then failed to do so.

On September 16, 2022, respondent was declared ineligible to practice law in Louisiana due to his failure to pay his bar dues and the disciplinary assessment. Despite his ineligibility, respondent remained enrolled as Mr. Belton's counsel and otherwise held himself out as an attorney licensed to practice law in Louisiana.

Respondent did not file a motion to withdraw as counsel in the litigation.

In September 2022, the court issued a ruling which granted in part and denied in part the motion to enforce. The court also ordered Mr. Belton to pay plaintiffs $89,991.80 in total damages, consisting of $29,991.80 in attorney's fees, $50,000.00 in compensatory damages, and $10,000.00 in punitive damages. Respondent did not appeal from, or otherwise seek reconsideration of, that judgment. He also failed to advise Mr. Belton of these negative decisions.

In December 2022, Mr. Belton filed a pro se motion for a hearing in the litigation. As a basis for the request, Mr. Belton advised the court that respondent had moved out of state and had been non-responsive to correspondence regarding the case. Mr. Belton subsequently retained new counsel who filed a motion for relief from summary judgment, but the court denied the motion.

In his response to the disciplinary complaint, respondent stated: "I admit I should have contacted my client when I became aware of the negative information surrounding this matter. I accept responsibility for this failure on my part." Respondent also suggested that he suffers from one or more mental conditions which materially impaired his ability to represent Mr. Belton in the litigation:

> Beginning in the fall of 2019, I began to experience panic attacks, loss of confidence

> in myself (including my judgment), and other symptoms of extreme anxiety as it related to my work in Louisiana. ... I reached out the [sic] JLAP for assistance. Then [Covid] lockdown occurred, and I was confined to my residence, without staff, and surrounded by everyone's problems. I was unable to open the mail, answer calls, or text messages due to extreme anxiety.
>
> * * *
>
> In December of 2020, I moved to Bend, Oregon. I took time away from the practice of law to recover. ...

During his sworn statement, respondent testified that he "had diminished capacity," "was a disabled attorney that wasn't capable of providing answers to anyone," and was "not in a place to handle" the representation of Mr. Belton.

DISCIPLINARY PROCEEDINGS:

In January 2024, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated Rules 1.1(a) (failure to provide competent representation to a client), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.16(a) (failure to withdraw from the representation of a client), 1.16(d) (obligations upon termination of the representation), 3.2 (failure to make reasonable efforts to expedite litigation), 5.5(a)(e)(3)

(engaging in the unauthorized practice of law), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct.

Respondent answered the formal charges, stipulated to the alleged facts, and requested a hearing in mitigation. Prior to the hearing, respondent and the ODC filed joint stipulations wherein respondent again admitted to the factual allegations of the formal charges and also stipulated to the rule violations as set forth above.

Mitigation Hearing

The mitigation hearing was conducted by the hearing committee on August 14, 2024. Both respondent and the ODC introduced documentary evidence. Respondent called the following character witnesses to testify via remote video before the committee: Oregon attorney Joseph Harder (respondent's former employer); Oregon attorney Tim Williams (respondent's current employer); Oregon attorney Sarah Harlos (respondent's opposing counsel in several cases); Dr. Michael Conner (respondent's landlord); and Shawn Eves (respondent's former therapist).

Respondent also testified on his own behalf and on cross-examination by the ODC. Respondent testified that he graduated from Mississippi College of Law, and later served as an adjunct professor at

Grambling State University. After clerking for the Mississippi Supreme Court, he worked for the Mississippi Attorney General's Office and the United States Attorney's Office. Thereafter, respondent began working on political campaigns and then in criminal defense. However, he would soon become discouraged with the criminal justice system and lost confidence in his ability to help his clients. He testified: "After four years of defending someone without pay. And in that moment, my mind broke. My spirit broke. ... and my confidence was completely gone." As his problems began to interfere with his ability to practice law, respondent voluntarily contacted the Judges and Lawyers Assistance Program ("JLAP") for assistance:

> ... I called JLAP because I didn't know what else to do. It was not a substance abuse problem. It was a lack of - - I didn't know what was wrong and I didn't know who to go to, but I knew there was a problem. Then, of course, we got locked up. And by locked up, I mean, shut down in Covid. I had moved out of my law firm, because I could not longer practice criminal law ...
>
> * * *
>
> So I reach out in February, right? They connect with me in June. And again, part of that is part of the pandemic. I'm not blaming anyone, right. But when you're having a crisis of confidence and you move out of your law practice and you move everyone else's problems into your home and then you get

locked up in that home, because of the pandemic, it compounds the situation to - - to the point to where it was debilitating, completely debilitating.

JLAP helped. They asked me to undergo two evaluations. I underwent both of them. I finally got permission to go see a therapist, because at the time, I was in such a poor ability to make decision that I didn't know if I could go and talk to a therapist about what was going on in my life, because so much of it revolved around my clients and I didn't know if that was permissible or not. I finally get, yeah, you can go talk to a therapist, so I go.

* * *

But that began a process of healing, right? And - - and what I found is that, through practice - - and guided exercises, right, like that I could get through things. That some PTSD developed, right? And some of the symptoms that I have developed are, one, paralyzation. You can kind of hear some of it in my speech patterns this morning. I don't typically stutter when I speak.

The first time I came home, I had a full blown panic attack driving down the interstate. As soon as I drove into my hometown, I had to pull over because I had a panic attack driving down the roads that I

> grew up on. I don't go home as often anymore, because it triggers things in my body that are - - that I don't know how to explain to you. Then like it's a panic attack, you know, I get anxiety. My heart races. I have trouble breathing. My hands sweat. And these are all things that are real. And I was one of these people that - - not mental health, whatever, until it happened to me.
>
> And that does not make an excuse for what occurred. I accept responsibility for what occurred. But I wasn't being lazy. I didn't miss a deadline because I was lazy. I begged this client to get another lawyer. I missed this because when I touch my email, when I go to the mailbox, I have a panic attack. Still today, which is why I have not practiced in Louisiana since I left.

Respondent acknowledged that he participated in a three-day inpatient evaluation at the Professionals' Wellness Evaluation Center in July 2020. He further acknowledged that the report cited the following diagnostic impressions: alcohol use disorder, mild; generalized anxiety disorder; post-traumatic stress disorder; obsessive compulsive personality disorder; cannabis use disorder, mild; and stimulant use disorder, mild. In addition, respondent acknowledged that JLAP had recommended that he undergo an intensive outpatient program and sign a two-year monitoring agreement. Respondent was questioned about those recommendations, and the following exchange occurred:

Q. Okay. Thank you. Let me stop with that one. Is it a fair statement that you have not executed a JLAP monitoring contract?

A. No. I offered to do so and I never heard back from them. They knew I was moving to Oregon, so I don't know - - I think the problem was, they weren't sure who - - part of the monitoring would have required me to check in and like provide certain things with people and they didn't know where in Bend, Oregon to partner with and I think they were supposed to get back to me and they just kind of didn't.

Q. Okay. Another recommendation, complete intensive outpatient program at a JLAP approved provider. Does not look like that occurred; is that a fair statement?

A. No. Again, same scenario. Whenever we received this, there was not enough time for me to complete it in

> Louisiana prior to moving to Bend, Oregon, and I offered to do it in Oregon, but they didn't identify a location and - - I forget the - - Ms. Duplantis [a clinical caseworker employed with JLAP] – she said she would look into it and try to find something, and I never heard back.

Respondent further testified:

> If you look at October 6, 2020, that's when this letter came out. I moved, sir, 30 days later. And I offered the JLAP program to identify a location in Bend, Oregon that I could participate. They never did that. And if they want to identify one today, I am happy to do it. It's not a problem for me to do it. But part of their recommendation is a JLAP approved facility. I sought out therapy for myself because I needed it, sir. And it's helped me maintain and be able to come here and have this conversation with you today. So if JLAP requires me to do something, I am happy to follow through with that.
>
> * * *
>
> Their recommendation was for a facility in Louisiana, which would require me to spend

> eight or nine weeks, which is fine, in Louisiana, not something I can do remotely. I physically relocated and moved my things out the second week of November. So there was not time for me to do a Louisiana approved program. I had conversations with Ms. Duplantis about that fact and said, if there's somewhere you can identify in Bend, Oregon, I am happy to do this. And they never identified anywhere in Bend, Oregon. If they were to identify somewhere today, I would be happy to complete their recommendation in this program.

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the hearing committee summarized the relevant testimony as follows:

Joseph Harder – Mr. Harder testified that respondent was well respected by colleagues and local judges during his two-year employment at the law firm. Mr. Harder further testified that respondent produced good results as a clerk and consistently received positive feedback from other attorneys during his tenure.

Tim Williams – Mr. Williams testified that respondent came to the firm highly recommended, and he was candid regarding his Louisiana disciplinary issues during the hiring process. Mr. Williams further testified that he has been very satisfied with respondent's performance to date.

Sarah Harlos – Ms. Harlos testified that respondent has an excellent reputation and is a zealous advocate, always prepared, honest, and forthright.

Dr. Michael Conner and Shawn Eves – Dr. Conner and Ms. Eves provided testimony supporting respondent's representations, including the declaration that he would not move back to Louisiana to practice law.

The committee noted that respondent has stipulated to the factual allegations and the rule violations set forth in the formal charges and that those stipulations must be given effect.[1] The committee found the testimony of respondent and his witnesses to be credible, noting that they "reliably asserted the Respondent's excellent reputation and good work on behalf of his clients in his new home state."

The committee determined that respondent violated duties owed to his client, the legal system, and the legal profession. The committee noted that respondent has stipulated that he acted negligently with respect to his violation of Rule 5.5 but acted negligently in part and knowingly in part with respect to all remaining rule violations. His conduct caused actual harm as his neglect of Mr. Belton's legal matter resulted in an $89,991.80 judgment being issued

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[1] *See In re: Torry*, 10-0837 (La. 10/19/10), 48 So. 3d 1038 (respondent and the ODC are free to enter into stipulations, and "effect must be given to them unless they are withdrawn.").

against his client. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined that the baseline sanction is suspension. The committee also cited *In re: Trichel*, 00- 1304 (La. 8/31/00), 767 So. 2d 694, wherein the court recognized that the baseline sanction for neglect, failure to communicate, and failure to properly terminate the representation of a client in a matter is a one-year suspension from the practice of law.

The parties stipulated to aggravating and mitigating factors. The stipulated aggravating factors are a pattern of misconduct and multiple offenses. The stipulated mitigating factors are the absence of a prior disciplinary record, personal or emotional problems, full and free disclosure to the disciplinary board and a cooperative attitude towards the proceedings, inexperience in the practice of law (admitted 2016), and remorse. As an additional mitigating factor, the committee found that respondent has good character and reputation.

Turning to the issue of an appropriate sanction, the committee cited several cases but found the facts in this matter to be most similar to those set forth in *In re: Rachal*, 22-1636 (La. 2/14/23), 354 So. 3d 1224. In *Rachal*, an attorney neglected a legal matter, resulting in the dismissal of the client's lawsuit, and then failed to promptly communicate to the client that his malpractice caused the dismissal. For this negligent and knowing misconduct, the court suspended the attorney from the practice of law for sixty days, fully deferred. The committee noted that unlike the attorney in *Rachal*, respondent lacked the

following aggravating factors: a dishonest or selfish motive, submission of a false statement during the disciplinary process, or substantial experience in the practice of law. The committee further noted that, notwithstanding the absence of these factors, an actual and substantial injury to the client occurred in the instant matter.

Based on this caselaw, the committee recommended respondent be suspended from the practice of law for sixty days, fully deferred. The committee also recommended he be assessed with the costs and expenses of this proceeding.

Neither respondent nor the ODC filed an objection to the committee's report. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review. We subsequently issued an order directing the parties to submit written briefs addressing, among other issues, whether the sanction recommended by the committee is appropriate. Both respondent and the ODC submitted briefs in response to the court's order.

DISCUSSION

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57. While we are not bound in any

way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield,* 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue,* 93-2865 (La. 3/11/94), 633 So. 2d 150.

Respondent has admitted the factual allegations of the formal charges as well as the rule violations contained therein. Accordingly, the only issue before the court is that of an appropriate sanction.

In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis,* 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington,* 459 So. 2d 520 (La. 1984).

Respondent's neglect of his client's legal matter caused actual harm to his client. Although respondent eventually did advise Mr. Belton's new attorney of his malpractice, he did not so immediately.

Clearly, the hearing committee was impressed by the mitigating factors present in this case, most notably respondent's significant personal and emotional problems. We agree that the mitigating factors justify a fully deferred suspension.

DECREE

Upon review of the findings and recommendations of the hearing committee, and considering the record and briefs filed by the parties, it is ordered that Paul H. Hattaway, Louisiana Bar Roll number 36870, be and he hereby is suspended from the practice of law for sixty days. This suspension shall be deferred in its entirety, with the condition that any misconduct during the deferral period may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

[Filed April 8, 2025]

APPENDIX K

LOUISIANA ATTORNEY DISCIPLINARY BOARD

[DATE STAMP]
Louisiana Attorney Disciplinary Board
Filed by: /s/
Docket # 24-DB-003
Filed-On 10/15/2024

IN RE: PAUL H. HATTAWAY

DOCKET NO. 24-DB-003

REPORT OF HEARING COMMITTEE #1

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Paul H. Hattaway ("Respondent"), Louisiana Bar Roll Number 36870.[1] ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.1(a), 1.3, 1.4(a), 1.16(a) & (d), 3.2, 5.5(a) & (e)(3), 8.4(a) (c) & (d).[2]

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[1] Respondent was admitted to the practice of law in Louisiana on May, 12, 2016. Respondent is also admitted to the practice of law in Alabama, Washington, and Oregon. Respondent is currently eligible to practice law in Louisiana.

[2] See the attached Appendix for the text of these Rules.

PROCEDURAL HISTORY

The formal charges were filed on January 23, 2024. Respondent filed an answer to the charges on May 30, 2024. The hearing of this matter was held on August 14, 2024. Deputy Disciplinary Counsel Christopher Kiesel appeared on behalf of ODC. Respondent appeared with counsel, Donald Hodge, Jr.

For the following reasons, the Committee finds that Respondent violated the following Rules of Professional Conduct: 1.1(a) (competence), 1.3 (diligence), 1.4(a) (communication), 1.16(a) (terminating representation) & (d), 3.2 (expediting litigation), 5.5(a) & (e)(3) (unauthorized practice of law), 8.4(a) (c) & (d) (misconduct). The Committee recommends that the respondent be suspended for sixty days, fully deferred.

FORMAL CHARGES

The formal charges read, in pertinent part:

On October 26, 2022, the ODC received a complaint ("Complaint") from Sarah Watson ("Ms. Watson") regarding Respondent. Ms. Watson is the Legal Director for the Louisiana Fair Housing Action Center, Inc. ("LFHAC"). The Complaint was opened for investigation as ODC 40476.

On November 3, 2022, the ODC sent a letter and a copy of the Complaint to Respondent to his Louisiana State Bar Association ("LSBA") primary bar registration address of 4148 Palm Street, Baton Rouge,

Louisiana 70808. On November 4, 2022, delivery of the same was accepted on Respondent's behalf. Respondent's response to the Complaint was due within fifteen (15) days from receipt of the same. Respondent failed to provide a response to the Complaint by that deadline.

On November 29, 2022, the ODC sent an email to Respondent to his then LSBA-registered public/service email address of hh@heathhattaway.com. Delivery of that email to Respondent was confirmed via Microsoft Outlook on the same day. The email attached a copy of the Complaint and a second letter requesting that Respondent provide a response to the Complaint within twenty (20) days of the date of that letter, or by December 19, 2022. On November 29, 2022, the ODC also mailed a copy of that correspondence to Respondent to his LSBA-registered secondary address of965 NE Weist Way, Unit 1, Bend, Oregon 97701. On December 16, 2022, the ODC granted Respondent an extension of time to submit his response to the Complaint.

On January 13, 2023, the ODC received Respondent's response to the Complaint. Therein, Respondent acknowledged: "I admit I should have contacted my client when I became aware of the negative information surrounding his matter. I accept responsibility for this failure on my part."

On January 23, 2023, Respondent supplemented his response to the Complaint. On June 7, 2023, the ODC took Respondent's sworn statement. On July 17, 2023, Respondent produced additional records to the

ODC.

Respondent represented Kevin Belton ("Mr. Belton") in the civil litigation matter of *Clifford Osborne, ILL et al. v. Kevin Belton*, No. 3:20-cv-208-TAD-KDM (W.D. La.) ("Litigation"). On February 17, 2020, the Litigation was initiated by LFHAC attorneys on behalf of Clifford Osborne, III ("Mr. Osborne") and Deborah Olsen ("Ms. Olsen") (together, "Plaintiffs"). Plaintiffs sought relief for alleged housing discrimination under the federal Fair Housing Act ("FHA") based on Mr. Belton's refusal to provide reasonable accommodation for Mr. Osborne's assistance animal and subsequent interference with Plaintiffs' fair housing rights by threats of eviction and other intimidation. Prior to representing Mr. Belton in the Litigation, Respondent had no experience or expertise in defending FHA claims.

On May 18, 2020, Respondent filed a Waiver of Service of Summons ("Waiver") in the Litigation on Mr. Belton's behalf. The Waiver acknowledged that Mr. Belton's answer was due within sixty (60) days from April 3, 2020, or by June 3, 2020. Plaintiffs' counsel granted Respondent an extension of time until June 8, 2020 to file Mr. Belton's answer. Respondent failed to do so.

On June 19, 2020, Plaintiffs moved for entry of default against Mr. Belton. On June 22, 2020, the Clerk of Court issued a Notice of Entry of Default against Mr. Belton. Respondent thereafter took no action on Mr. Belton's behalf in the Litigation for over one year. On June 29, 2021, Plaintiffs moved for entry

of default judgment. On July 21, 2021, Respondent filed a Motion to Set Aside Entry of Default ("Motion to Set Aside"). Therein, Respondent represented, in pertinent part:

> [U]ndersigned counsel was diagnosed with "Institutional Betrayal Trauma" manifesting symptoms of high anxiety, post-traumatic stress disorder, and other symptoms which prohibited and made difficult his ability to practice law at a level normal attorneys are able to do so. These symptoms began manifesting in late 2019 and were treated beginning in June 2020. These symptoms severely inhibited the undersigned's ability to practice law through December of 2020.

On July 22, 2021, the district court granted Respondent's Motion to Set Aside. On September 7, 2021, Respondent filed an Answer on Mr. Belton's behalf in the Litigation.

On November 8, 2021, the district court issued a Scheduling Order in the Litigation. Among other things, that order set a May 23, 2022 discovery completion deadline, with written discovery required to be served more than thirty (30) days before that deadline.

On January 24, 2022, Respondent was served with Plaintiffs' First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions. Responses to those discovery requests were due on February 23, 2022. Respondent failed to

provide responses by that deadline. As a result, Plaintiffs' Requests for Admissions were automatically deemed admitted. Respondent knew that there was a procedure available within the Federal Rules of Civil Procedure to "undo those admissions," but Respondent failed to take any action in that regard.

Respondent failed to serve any discovery requests on Plaintiffs until nearly 11:00 p.m. on May 23, 2022, the discovery completion deadline. Respondent admits that those requests were untimely, as they were not submitted more than thirty (30) days before that deadline:

> [T]here's a calendar that you get in PayServ, and I misread it and I did serve it by the deadline date that was on there. Where I messed up is that it's actually not the deadline. The deadline's 30 days prior to that. And so that was a mistake that I made on my calendaring.

On June 28, 2022, Plaintiffs filed a Motion for Summary Judgment ("MSJ") in the Litigation. On June 29, 2022, the Clerk of Court issued a Notice of Motion Setting which confirmed that Mr. Belton's opposition to the MSJ was due by July 20, 2022. Respondent failed to file an opposition to the MSJ. Respondent states that the notice was emailed to him, but he missed it because he failed to regularly check his email account.

On August 3, 2022, the district court issued a Memorandum Ruling which granted the MSJ. That

ruling noted, in pertinent part:

> Osborne served Belton with requests for admission, requests for production of documents, and interrogatories on January 24, 2022. Belton failed to respond by February 23, 2022, as required by the Federal Rules of Civil Procedure. Belton responded on March 4, 2022. At this point, the Court determined that the requests for admission were automatically deemed admitted due to Belton's untimely response. The discovery completion set for May 23, 2022 has since passed. Discovery requests were to be served at least thirty days prior to the deadline to allow sufficient time for responses. Belton served discovery requests at 11:00 p.m. on May 23, 2022 - the day of the discovery competition deadline. Plaintiffs objected to the requests in their entirety as untimely.
>
> * * * *
>
> Plaintiffs assert three arguments for why summary judgment should be granted in their favor. The first is that Belton failed to timely respond to Plaintiffs' requests for admission, so he is deemed to have admitted those statements ....
>
> * * * *
>
> Benton [sic] failed to make a motion for

> withdrawal or amendment of his admission. Further, he did not direct answers or object to the matter of the requests for admission within the proper thirty-day time period. If Benton [sic] had filed a response or opposition to Plaintiffs' Motion for Summary Judgment as to why he did not submit answers to the requests for admission within the thirty-day allotted time period, perhaps the Court would be more considerate. However, as Benton [sic] has not responded, and furthermore he is not pro se, the Court sees it reasonable that Benton [sic] is deemed to have admitted to the statements made in the requests for admissions and is bound by those statements.
>
> Accordingly, Plaintiffs Motion for Summary Judgment on the fact that Belton's failure to timely respond to the requests for admissions causes them to be deemed admitted is GRANTED.

On August 3, 2022, the district court issued a Judgment which granted the MSJ and ordered that "Plaintiffs file a motion to enforce judgment with specific demands against Defendant within thirty (30) days of this Memorandum Ruling and Judgment." Respondent failed to timely appeal from, or otherwise seek reconsideration, of, that Judgment. Respondent became aware of those negative decisions after the fact, but then failed to disclose the same to Mr. Belton. Respondent testified, in pertinent part:

> And so I guess what I'm trying to say is, I wasn't intentionally not trying to communicate to the client, I just didn't, and that's where I messed up. I should have just figured it out and did it, and I just didn't.

On September 2, 2022, Plaintiffs filed a Motion to Enforce Judgment ("Motion to Enforce"). Therein, Plaintiffs justified their request for $50,000 in compensatory damages as follows:

> Finally, Plaintiff[s] has [sic] increased their demand for compensatory damages from $35,000 requested in the Motion for Default Judgment to $50,000. This increase reflects the additional year that Plaintiffs have not received timely relief for their injuries due to Defendant's continued and willful disregard for this Court's orders and the legal process. Despite successfully moving this Court to set aside the Entry of Default, Defendant has failed to timely respond to discovery, timely issue discovery requests, and did not even submit an opposition to Plaintiffs' motion for summary judgment. Considering Defendant had not appeared or defended the lawsuit in any way prior to Plaintiff's Motion for Default Judgment, Plaintiffs could have obtained relief nearly a year ago. Instead, Plaintiffs were forced to wait a year for relief as Defendant and defense counsel continued to waste the time and resources of both this Court and the parties by failing to participate.

On September 6, 2022, the Clerk of Court issued a Notice of Motion Setting which confirmed that Mr. Belton's opposition to the Motion to Enforce was due by September 27, 2022. On September 13, 2022, Ms. Watson spoke to Respondent and asked him whether he planned to file an opposition to the Motion to Enforce. Respondent replied in the affirmative, but then failed to do so.

On September 16, 2022, Respondent was declared ineligible to practice law in Louisiana due to his failure to pay LSBA dues and the disciplinary assessment. Despite his ineligibility, Respondent remained enrolled as Mr. Belton's counsel in the Litigation after that date, and Respondent otherwise held himself out as an attorney authorized to practice law in Louisiana. Even though Respondent no longer represents Mr. Belton today, Respondent has not filed a motion to withdraw as counsel in the Litigation.

On September 29, 2022, the district court issued a Memorandum Ruling which granted in part and denied in part Plaintiffs Motion to Enforce. On the same day, the district court issued a Judgment which ordered that Mr. Belton pay Plaintiffs $89,991.80 in total damages, consisting of $29,991.80 in attorney's fees, $50,000.00 in compensatory damages, and $10,000.00 in punitive damages. Respondent failed to timely appeal from, or otherwise seek reconsideration, of, that Judgement. Respondent also failed to disclose those negative decisions to Mr. Belton.

On October 10, 2022, Ms. Watson spoke to Respondent by telephone. Ms. Watson describes that

conversation and her frustration regarding Respondent's misconduct as follows:

> After several attempts, I hear back from [Respondent] on October 10, 2022, at which time he informed me that he was just seeing the judgment, and that he had not spoken with his client about the judgment at all. I asked whether his client knew that he had not filed a response to our [MSJ and Motion to Enforce], and he said that he could not answer that "on advice of counsel." He further told me that the client would likely no longer want his representation when he was informed of all of this. Finally, Mr. Hattaway told me that he would call me to let me know whether he would be staying on the case, if there was a new attorney we should contact, or if Mr. Belton would be unrepresented so we could contact him directly. He never did. Since then, I have tried to call both Mr. Hattaway's provided number and that of his new law firm, without response. I have tried emailing both his ECF provided email address, his Baxter Harder email address, and that of his assistant at Baxter Harder. Finally, on October 25, 2022, the receptionist at Baxter Harder informed me that [Respondent] told her "he would not be accepting any calls from Louisiana." We are now forced to pursue additional enforcement action to secure payment for our client.

> At every turn, Mr. Hattaway has deliberately and continuously failed to meet the standards of our profession. He has failed to meet nearly every deadline, failed to be available to communicate with counsel, failed to update his contact information, and failed to withdraw from a case here in Louisiana when he clearly intends to practice only in Oregon from here out. Additionally, from his own admission he has engaged in serious neglect of his own client. ... [H]is conduct has delayed relief for our client and continues to impede our ability to resolve this case.

On November 1, 2022, Ms. Watson sent Respondent a letter which further detailed her efforts to communicate with him regarding the Judgment on the Motion to Enforce.

On December 1, 2022, Mr. Belton filed a pro se Motion for a Hearing in the Litigation. As a basis for that request, Mr. Belton stated therein: "Change in legal counsel - The former attorney, Paul Heath Hattaway, moved out-of-state [sic] during the course of the year and since has been non-responsive to any correspondence regarding this case, including his withdrawal. Therefore, I will be proceeding pro se."

On August 2, 2023, Mr. Belton's new counsel filed a Motion for USCS FRCP Rule 60 Relief from Summary Judgment ("Motion for Relief'). On October 5, 2023, the district court issued a Memorandum Ruling which denied the Motion for Relief.

In his response to the Complaint, Respondent suggests that he suffers from one or more mental conditions which materially impaired his ability to represent Mr. Belton in the Litigation:

> Beginning in the fall of 2019, I began to experience panic attacks, loss of confidence in myself (including my judgment), and other symptoms of extreme anxiety as it related to my work in Louisiana. . . . I reached out the [sic] JLAP for assistance. Then [Covid] lockdown occurred and I was confined to my residence, without staff, and surrounded by everyone's problems. I was unable to open the mail, answer calls, or text messages due to extreme anxiety.
>
> * * * *
>
> In December of 2020, I moved to Bend, Oregon. I took time away from the practice of law to recover ....

During his sworn statement, Respondent also testified that he "had diminished capacity," "was a disabled attorney that wasn't capable of providing answers to anyone," and was "not in a place to handle" the representation of Mr. Belton. To the extent that Respondent suffered from a mental condition prior to February 2020, he should not have agreed to represent Mr. Belton in the Litigation. To the extent that a mental condition manifested during the Litigation which materially impaired his ability to represent Mr. Belton thereafter, Respondent should have

immediately withdrawn as Mr. Belton's counsel.

The ODC respectfully submits that there is clear and convincing evidence that Respondent has violated Rules 1.1(a), 1.3, 1.4(a), 1.16(a) and (d), 3.2, 5.5(a) and (e)(3), and 8.4(a), (c) and (d) of the Louisiana Rules of Professional Conduct.

EVIDENCE

ADMITTED EXHIBITS

ODC 1 respondent's current registration information with the LSBA

ODC 2 LSBA membership directory for respondent as of July 26, 2023

ODC 3 October 26, 2022 complaint filed by Ms. Watson

ODC 4 November 3, 2022 letter from ODC to respondent with related documents

ODC 5 November 29, 2022 email and letter from ODC to respondent with attachments

ODC 6 transcript of respondent's June 7, 2023 sworn statement

ODC 7 December 16, 2022 emails between ODC and respondent

ODC 8 January 13, 2023 emails between ODC and respondent with attachments

ODC 9 January 23, 2023 emails between ODC and respondent with attachment

ODC 10 July 17, 2023 emails between ODC 25 and respondent with attachment

ODC 25 September 6, 2022 Notice of Motion Setting the Litigation

ODC 26 September 29, 2022 Memorandum Ruling in the Litigation

ODC 27 September 29, 2022 Judgment in the Litigation

ODC 28 December 1, 2022 Motion for a hearing filed in the Litigation

ODC 29 October 5, 2023 Memorandum Ruling in the Litigation 12

ODC 30 October 6, 2020 JLAP cover letter and records provided by ODC (SEALED EXHIBIT)

PHH-001 WSBA Discipline History Certificate

PHH-002 WSBA Status History Certificate

PHH-003 WSBA Current Status Certificate

PHH-004 OSBA Comity Certificate of MCLE Compliance

PHH-005 OSBA Certificate of Good Standing

PHH-006 OSBA Certificate of Disciplinary History

PHH-007 OSBA Certificate of Status History

PHH-008 ASBA Disciplinary History and Status

PHH-009 LSBA/LADB Bar Dues 2022-2024 and MCLE Compliance

PHH-010 JLAP Correspondence and Evaluation 24 from 2020 (SEALED)

PHH-011 Clinical Summary from S. DeLuca (Respondent's Current Therapist) (SEALED)

PHH-012 Letter from Karen Hooper (Respondent's Current Paralegal)

PHH-013 Letter from Hayden Burket (Respondent's Former Paralegal)

PHH-014 Letter from David Haskett (Attorney in Bend, Oregon)

PHH-015 Letter from Catherine Rutherford (Attorney in Baton Rouge, Louisiana)

PHH-016 Letter from Nicole Mitchell (Respondent's former head paralegal)

TESTIMONY

The following persons provided testimony during the formal hearing:

1. Paul Hattaway – Respondent

2. Shawn Eves - Respondent's Character Witness

3. Michael Conner - Respondent's Character Witness

4. Joseph Harder - Respondent's Character Witness

5. Tim Williams - Respondent's Character Witness

6. Sarah Harlos - Respondent's Character Witness

FINDINGS OF FACT

Respondent stipulated to the facts and conclusions of law as set forth in the partes' Joint Stipulations. Joint Stipulations (filed 7/22/2024). The Committee must accept these stipulations. *See In re Torry*, 2010-0837 (La. 10/19/10), 48 So.3d 1038.[3] These stipulations include the negligent, in part, and knowing, in part, violations of the following Rules of Professional Conduct: 1.1(a) (competence), 1.3 (diligence), 1.4(a) (communication), 1.16(a)

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[3] In *Torry*, the Court rejected the Board's conclusion that the Board was not required to accept the stipulations of the parties. The Court held that "effect must be given to [the stipulations of the parties] unless they are withdrawn." *Torry* at 1041.

(terminating representation) & (d), 3.2 (expediting litigation), 5.5(a) & (e)(3) (unauthorized practice of law), 8.4(a) (c) & (d) (misconduct). Further, the parties stipulated to two aggravating factors: a pattern of misconduct and the existence of multiple offenses. Finally, the parties stipulated to five mitigating factors: the absence of prior disciplinary record, personal and/or emotional problems, full and free disclosure to the disciplinary board or cooperative attitude toward the proceedings, relative inexperience in the practice of law at the time of the misconduct, and remorse. The Respondent also presented evidence of his character or reputation, through the testimony of those individuals listed above, as a further mitigation to the stipulated misconduct.

Specifically, the Respondent elicited the testimony of Joseph Harder, an Oregon attorney and the Respondent's first employer in Oregon. Mr. Harder testified that the Respondent was well respected by both colleagues and local judges during his two-year employment at Mr. Harder's firm. Mr. Harder further testified that the Respondent produced good results as a clerk and consistently received positive feedback from other attorneys during his tenure.

Tim Williams, the Respondent's current Oregon employer since December of 2023, testified that the Respondent, Mr. Hattaway, came to the firm highly recommended, was candid regarding his Louisiana disciplinary issues during the hiring process, and that Mr. Williams has been very satisfied with the Respondent's performance to-date.

Sarah Harlos, an Oregon attorney with whom the Respondent has been acquainted since August of 2022, testified that Mr. Hattaway is a zealous advocate, always prepared, honest, and forthright with an excellent reputation. Ms. Harlos and the Respondent have been opposing counsel on several Family Law cases in the Bend, Oregon region.

The testimony of Michael Conner, the Respondent's landlord, and Shawn Eves, the Respondent's former counselor, supported Mr. Hattaway's representations to the Hearing Committee, including the Respondent's declaration to the Committee that he would not move back to Louisiana to practice law. The Hearing Committee found the testimony of the Respondent and the Respondent's witnesses to be credible. The Respondent and the Respondent's witnesses reliably asserted the Respondent's excellent reputation and good work on behalf of his clients in his new home state. The Hearing Committee reviewed the extent of and weight to be afforded to the aggravating and mitigating factors present and the actual injury caused by Respondent to arrive at an appropriate sanction for Respondent's misconduct.

RULES VIOLATED

In addition to the factual allegations, Respondent stipulated to violating Rules 1.1(a), 1.3, 1.4(a), 1.16(a)(2) & (d), 3.2, 5.5(a) & (e)(3), and 8.4(a) (c) & (d), which the Board must accept. *See Torry, supra.*

SANCTION

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee shall consider the following factors:

(1) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

(2) Whether the lawyer acted intentionally, knowingly, or negligently;

(3) The amount of the actual or potential injury caused by the lawyer's misconduct; and

(4) The existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to his client, the profession, and the legal system. The parties stipulated that Respondent acted negligently in part and knowingly in part with regard to all the Rule violations, except Rule 5.5. The parties stipulated that Respondent's violation of Rule 5.5 was purely negligent. Respondent's misconduct caused actual harm. Respondent's neglect of Mr. Belton's legal matter resulted in a judgment of $89,991.80 being issued against his client.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension is the baseline sanction for Respondent's misconduct. Standard 4.42 states: "Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a

client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect causes injury or potential injury to a client." Here, Respondent, knowingly failed to perform services for his client and caused injury to his client. Furthermore, the Court has held that the baseline sanction for the neglect, failure to communicate, and failure to properly terminate representation in one client matter is a one-year suspension. *See In re Casanova,* 2002-2155 (La. 11/22/02); 847 So.2d 1169, 1175, *citing In re Trichel*, 2000-1304 (La. 8/31/00); 767 So.2d 694.

The following aggravating factors are present: pattern of misconduct and multiple offenses. The following mitigating factors are present: absence of a prior disciplinary record, personal or emotional problems, full and free disclosure to the disciplinary board and a cooperative attitude towards the proceedings, inexperience in the practice of law, remorse, as well as, good character and reputation.

In *In re Rachal*, 2022-01636 (La. 2/14/23), 354 So.3d 1224, the respondent was suspended for sixty days, fully deferred. The Court found that the respondent neglected his client's medical malpractice lawsuit, which resulted in its dismissal by summary judgment, and then for nine months failed to communicate to his client that his malpractice caused the dismissal. The Court concluded that the respondent violated Rules 1.3, 1.4, and 8.4(c). Aggravating factors included dishonest and selfish motive, multiple offenses, submission of a false statement during the disciplinary process, and substantial experience in the practice of law.

Mitigating factors were absence of a prior disciplinary record, personal or emotional problems (as to his failure to oppose the motion for summary judgment), and remorse.

In *In re Claiborne*, 2022-0492 (La. 10/21/22), 351 So.3 684, the respondent neglected a legal matter, resulting in the dismissal of a client's lawsuit due to abandonment, failed to communicate with the client and opposing counsel, failed to advise the client of the potential malpractice claim against him, and knowingly made a false statement of fact when responding to the client's disciplinary complaint. The Court concluded that the respondent violated Rules 1.3, 1.4, 1.7, 8.1(a), 8.4(a), and 8.4(c). Aggravating factors included a prior disciplinary record (diversion program), submission of false evidence, false statements, or other deceptive practices during the disciplinary process, and substantial experience in the practice of law. Mitigating factors were absence of a dishonest or selfish motive, character or reputation, and delay in the disciplinary proceedings.[4] The respondent was suspended for six months with all but thirty days deferred.

In *In re Dirks*, 2017-0067 (La. 6/29/17), 224 So.3d 346, the respondent was suspended for sixty days for violating Rules 1.4 and 8.4(c). The respondent filed suit on behalf of his client and later learned during the discovery process that his client had not provided him

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[4] The delay in the disciplinary proceedings was considered a substantial mitigating factor.

with all of the facts surrounding the case. He then informed the client that, in his opinion, the case would likely be dismissed. The defendant filed a motion for summary judgment. The respondent did not oppose the motion because he did not believe he had any evidence to contradict the motion. The motion was granted and the respondent received the judgment dismissing the case approximately one week after it was rendered. During approximately one year after the court dismissed the case, the client contacted the respondent on numerous occasions to check on the status of the case and the respondent repeatedly advised that he had not heard anything and would check on it. In the course of the disciplinary proceedings the respondent ultimately explained that he was upset with his client because she misled him about the true facts of the case. Although the viability of the client's cause of action was doubtful, she nevertheless lost her right of appeal as a result of the respondent's failure to notify her of the true status of her case. Further, in addition to misleading his client, the respondent initially provided false information to the ODC during its investigation as to when he first received the judgment. The Court in *Dirks* found the respondent knowingly violated duties to his client and the profession, causing the potential for serious harm, and stated that the baseline sanction for the misconduct was suspension. Aggravating factors included substantial experience in the practice of law, dishonest or selfish motive, and submission of false statements during the disciplinary process. Mitigating factors were absence of a prior disciplinary record and sincere remorse.

In *In re Gilley*, the Court suspended Mr. Gilley for six months, with all but ninety days deferred, for failing to pursue a client's parental rights matter. 2023-0989 (La. 12/5/2023), 373 So.3d 704. Mr. Gilley misled his client about the status of the matter, leading the client to believe that suit had been filed, when it had not. Mr. Gilley's neglect contributed to his client losing parental rights. The Court found Mr. Gilley's conduct was negligent in part and knowing in part. The only aggravating factor present was substantial experience in the practice of law. The only mitigating factor was the absence of a prior disciplinary record.

In *In re Bullock*, the Court imposed a one year and one day suspension, with six months deferred, based upon Ms. Bullock's failure to file a petition for damages within the prescriptive period for her client and subsequently misleading her client regarding the issue. 2016-0075 (La. 3/24/2016), 187 So. 3d 986. Rather, Ms. Bullock wired funds to the client from her personal account and failed to inform her client of the true status of the matter. The following aggravating factors were present: vulnerability of the victim, substantial experience in the practice of law, and dishonest and selfish motive. The following mitigating factors were present: absence of a prior disciplinary record, timely and good faith effort to make restitution or to rectify the consequences of her misconduct, full cooperation with the disciplinary proceeding, character and reputation, and remorse.

The facts in the present matter are similar to those in *Rachal*. However, unlike *Rachal*, Respondent

lacked the following aggravating factors: a dishonest or selfish motive, submission of a false statement during the disciplinary process, or substantial experience in the practice of law. Notwithstanding the foregoing, the Hearing Committee confirms an actual and substantial injury to the client. Accordingly, the Committee recommends a sixty-day suspension, fully deferred.

CONCLUSION

The Committee recommends a sixty-day suspension from the practice of law, fully deferred. The Committee also recommends that the respondent be assessed with the costs and expenses of the proceeding pursuant to Rule XIX, §10.1.]

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Lawyer Member Lisa C. Smith to sign on their behalf.

Baton Rouge, Louisiana, this 10th day of October, 2024.

Louisiana Attorney Disciplinary Board
Hearing Committee #1

H. Price Mounger, Committee Chair
Lisa C. Smith, Lawyer Member
Vance J. Normand, Jr., Public Member

BY: /s/

Lisa C. Smith, Lawyer Member
For the Committee

APPENDIX

Rule 1.1. Competence

(a) 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. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4. Communication

(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

...

Rule 1.16. Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law; (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or (3) the lawyer is discharged.

...

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

...

(e)

...

(3) For purposes of this Rule, the practice of law shall include the following activities: (I) holding oneself out as an attorney or lawyer authorized to practice law; (ii) rendering legal consultation or advice to a client; (iii) appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted by law; (iv) appearing as a representative of the client at a deposition or other discovery matter; (v) negotiating or transacting any matter for or on behalf of a client with third parties; (vi) otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law.

...

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

...

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

...