

BEFORE THE DISTRICT 4D GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 4D07
STATE BAR OF TEXAS

COMMISSION FOR LAWYER	§	
DISCIPLINE,	§	
Petitioner	§	
	§	H0080725111 [POPE]
V.	§	H0010723754 [BAY]
	§	H0050724377 [KUHN]
THOMAS A. WILLBERN, III,	§	
Respondent	§	HARRIS COUNTY, TEXAS

AGREED JUDGMENT OF FULLY PROBATED SUSPENSION

Parties and Appearance

On this day, came to be heard the above styled and numbered cause. Petitioner and Respondent, Thomas A. Willbern, III, Texas Bar Number 21507700 announce that an agreement has been reached on all matters including the imposition of a Fully Probated Suspension.

Jurisdiction and Venue

The Evidentiary Panel 4D having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 4D07, finds that it has jurisdiction over the parties and the subject matter of this action, and that venue is proper.

Professional Misconduct

The Evidentiary Panel, having considered the pleadings, admissions, stipulations and agreements of the parties, finds Respondent has committed Professional Misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

Petitioner and Respondent agree to the following findings of fact. Accordingly, the Evidentiary Panel finds:

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
2. Respondent resides in and maintains his principal place of practice in Harris County, Texas.
3. In the Lindi Bay matter, Respondent neglected the legal matter entrusted to him.
4. In representing Lindi Bay, Respondent frequently failed to carry out completely the obligations Respondent owed to her.
5. In the Michael Kuhn matter, Respondent neglected the legal matter entrusted to him.
6. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure.
7. In the J.W. Pope matter, Respondent neglected the legal matter entrusted to him.
8. Upon termination of representation, Respondent failed to surrender papers and property to which J.W. Pope was entitled.
9. Upon termination of representation, Respondent failed to refund advance payment of fees that had not been earned.
10. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees and direct expenses associated with this Disciplinary Proceeding in the amount of \$3,318.95.
11. Respondent owes restitution in the amount of \$1,000.00 payable to J.W. Pope.

Conclusions of Law

Petitioner and Respondent agree that, based on the foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated. Accordingly, the Evidentiary Panel concludes the following rules of the Texas Disciplinary Rules of Professional Conduct have been violated: In the Lindi Bay matter, Rules: 1.01(b)(1) and 1.01(b)(2); In the Michael Kuhn matter, Rules: 1.01(b)(1) and 8.04(a)(8); In the J.W. Pope matter, Rules: 1.01(b)(1) and 1.15(d).

Sanction

It is AGREED and ORDERED that the sanction of a Probated Suspension shall be imposed against Respondent in accordance with the Texas Rules of Disciplinary Procedure.

Accordingly, it is ORDERED, ADJUDGED and DECREED that Respondent be suspended from the practice of law for a period of six (6) months, with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on March 1, 2009 and shall end on August 31, 2009.

Terms of Probation

It is further ORDERED that during all periods of suspension, Respondent shall be under the following terms and conditions:

1. Respondent shall not violate any term of this judgment.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep State Bar of Texas membership department notified of current mailing, residence and business addresses and telephone numbers.
5. Respondent shall comply with Minimum Continuing Legal Education requirements.
6. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.
7. Respondent shall promptly respond to any request for information from the Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.
8. Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of \$3,318.95. The payment shall be made contemporaneously with

the signing of the Judgment, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the State Bar of Texas, Chief Disciplinary Counsel, 600 Jefferson, Suite 1000, Houston, Texas, 77002.

9. Respondent shall pay restitution to J.W. Pope in the amount of \$1,000.00. The payment shall be made contemporaneously with the signing of the Judgment, and shall be made by certified or cashier's check or money order made payable to J.W. Pope and delivered to the State Bar of Texas, Chief Disciplinary Counsel, 600 Jefferson, Suite 1000, Houston, Texas 77002.

10. Respondent shall return all files in his possession belonging to J.W. Pope, including but not limited to the following files: Moraz, Reynolds, Powers, Miller, Hobbs, Diaz, Martin, and Jacobs. The files shall be returned to J.W. on or before March 1, 2009.

Probation Revocation

It is further ORDERED that, if Respondent violates any term of this judgment, the Board of Disciplinary Appeals ("BODA") shall enter an order revoking the probation and imposing the active suspension of Respondent from the practice of law to commence on the date of revocation.

Upon determination that Respondent has violated any term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation with BODA and serve a photocopy of the motion on Respondent pursuant to Tex.R.Civ.P.

21a.

BODA shall conduct an evidentiary hearing. At the hearing, BODA shall determine by a preponderance of the evidence whether Respondent has violated any term of this Judgment. If BODA finds grounds for revocation, BODA shall enter an order revoking probation and placing Respondent on active suspension from the date of such revocation order. Respondent shall not be given credit for any term of probation served prior to revocation.

It is further ORDERED that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Restitution, Attorney's Fees and Expenses

It is further ORDERED that Respondent pay restitution to J.W. Pope the amount of \$1,000.00. All payments are to be remitted to the STATE BAR OF TEXAS, Office of the Chief Disciplinary Counsel, 600 Jefferson, Houston, Texas 77002, by money order, certified check, or cashier's check.

It is further ORDERED Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the STATE BAR OF TEXAS in the amount of \$3,318.95. All payments are to be remitted to the STATE BAR OF TEXAS, Office of the Chief Disciplinary Counsel, 600 Jefferson, Suite 1000, Houston, Texas 77002, by money order, certified check, or cashier's check.

It is further ORDERED that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(Y) of the Texas Rules of Disciplinary Procedure. Any amount not paid shall accrue interest at the maximum legal rate per annum until paid and the State Bar of Texas shall have all writs and other post-judgment remedies against Respondent in order to collect all unpaid amounts.

Publication

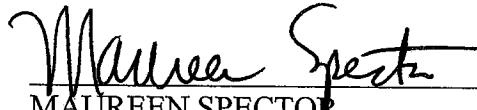
This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 7 day of February, 2009.

**EVIDENTIARY PANEL
DISTRICT NO. 4D07
STATE BAR OF TEXAS**



MAUREEN SPECTOR
District 4D07 Presiding Member

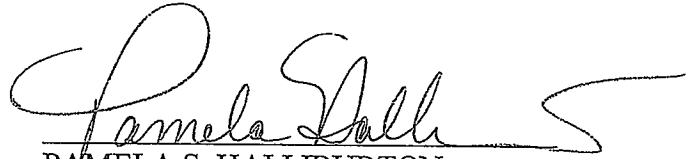
AGREED AS TO BOTH FORM AND SUBSTANCE:

STATE BAR OF TEXAS
Office of the Chief Disciplinary Counsel

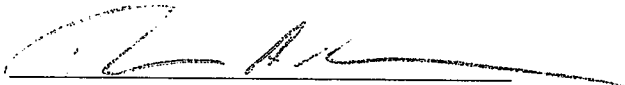
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Chief Disciplinary Counsel



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