

**BEFORE THE EVIDENTIARY PANEL OF THE
STATE BAR DISTRICT NO. 4-1 GRIEVANCE COMMITTEE**

COMMISSION FOR LAWYER DISCIPLINE,	§ 201301543 [LANCE KYLE NABB]
	§ 201301696 [MARISEL GALVAN]
Petitioner,	§ 201302173 [THOMAS JAMES]
	§ 201302439 [RONALD CHEVIS]
v.	§ 201305948 [JASON BURKE]
	§
THOMAS A. WILLBERN, III	§ HARRIS COUNTY, TEXAS
	§
Respondent.	§

AGREED JUDGMENT OF PROBATED SUSPENSION

Parties and Appearance

On this day, came to be heard the above-styled and numbered causes. Petitioner, the **COMMISSION FOR LAWYER DISCIPLINE**, and Respondent, **THOMAS A. WILLBERN, III** (“Respondent”), 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 4-1 having been duly appointed to hear these complaints by the chair of the Grievance Committee for STATE BAR OF TEXAS District 4, finds that it has jurisdiction over the parties and the subject matter of these actions, 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(W) 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.
-

201301543 Lance Nabb – Thomas A. Willbern, III

3. Lance Nabb (“Nabb”) hired Respondent to represent him in a termination of parental rights case. Respondent was paid a Five Thousand and No/100 Dollars (\$5,000.00) retainer of a \$10,000.00 fee.
4. The parties eventually reached and signed a Rule 11 agreement. Opposing counsel drafted the final order and submitted it to all of the parties for approval. Nabb made numerous attempts to contact Respondent as the proposed final order did not reflect his wishes about the agreement. Upon instruction by Nabb, the final order submitted by opposing counsel was entered by the court without Respondent or Nabb’s approval as to form or substance.
5. Respondent prepared a draft motion for new trial to set aside the final order, but did not file it.

201301696 Marisel Galvan – Thomas A. Willbern, III

6. Marisel Galvan (“Galvan”) hired Respondent for representation in a divorce matter. Galvan paid Respondent One Thousand and No/100 Dollars (\$1,000.00). Galvan terminated the representation and requested a refund of the advance fees paid, but Respondent failed to comply.
7. Respondent received notice of the Galvan grievance, but failed to file a response even after he requested and received an extension in which to do so.

201302173 Thomas James – Thomas A. Willbern, III

8. Thomas James (“James”) hired Respondent for representation in a criminal matter involving knowingly discharging a firearm in a public place.

9. At the end of the representation James filed a grievance against Respondent. Respondent received notice of the James grievance, but failed to file a response.

201302439 Ronald Chevis – Thomas A. Willbern, III

10. Ronald Chevis (“Chevis”) hired Respondent for representation in his divorce and child custody matter filed in Jefferson County, Texas. Chevis paid Respondent Five Thousand and No/100 Dollars (\$5,000.00) in advance fees.
11. The parties attended mediation and reached a partial agreement. The parties later attended a trial at which the court granted and rendered the divorce. Respondent was instructed to draft the final decree. Based on Chevis’ instructions, Respondent did not prepare the decree and so advised the court. Respondent filed a Motion for New Trial and Appeal based on the court’s rendering. Chevis repeatedly asked Respondent for documentation necessary to refinance his house. Respondent did not communicate clearly that since no decree had been entered, Chevis would be unable to refinance his house. On or about December 15, 2011, the Court of Appeals for the Thirteenth District notified Respondent of a defect regarding perfection of the appeal since a judgment had not been entered in the underlying case. Respondent failed to take any action.
12. On February 9, 2012, Chevis’ appeal was dismissed for want of prosecution. Respondent failed to notify Chevis that the appeal had been dismissed and failed to explain the matter to Chevis.
13. Thereafter, on or about March 15, 2012, the opposing counsel submitted a final decree of divorce to the court, which was ultimately signed on March 30, 2012. Respondent failed to notify Chevis of and/or provide Chevis with a copy of the signed final decree or take any other action on Chevis’ behalf.
14. Respondent received notice of the Chevis grievance, but failed to file a response even after he requested and received an extension in which to do so.

201305948 Jason Burke – Thomas A. Willbern, III

15. Jason Burke (“Burke”) hired Respondent to defend him in a civil suit involving the collection of a debt in the Harris County Justice of Peace Court. Respondent filed an answer on behalf of Burke.
16. Counsel for the plaintiff served Respondent with written discovery requests and Respondent failed to respond. The plaintiff filed a motion for summary judgment, which was based in part on the deemed admissions. The court set the hearing on the motion for summary judgment on July 29, 2013, the same day as the trial setting in the case. Respondent failed to file a response or any objections to the motion for summary judgment. A trial was held on July 29, 2013, and by Order dated July 30, 2013, the court awarded the plaintiff Six Thousand One Hundred Ninety-Nine and 81/100 Dollars

(\$6,199.81), plus One Thousand Two Hundred Twenty-Five and No/100 Dollars (\$1,225.00) in attorney's fees.

17. 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 Two Thousand Two Hundred Twenty-Five and No/100 Dollars (\$2,225.00).
18. Respondent owes restitution in the amount of One Thousand and No/100 Dollars (\$1,000.00) payable to Marisel Galvan.

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 that the following TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT have been violated: **1.01(b)(1)** [in representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer] (**2 COUNTS –Chevis and Burke**); **1.03(a)** [a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information] (**1 COUNT –Chevis**); **1.03(b)** [a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation] (**1 COUNTS –Chevis**); **1.15(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 payments of fee that was not earned] (**2 COUNTS – Nabb and Galvan**); and **8.04(a)(8)** [a lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's Office a response or other information as required by the Texas Rules of Disciplinary Procedure] (**3 COUNTS – Galvan, James, and Chevis**).

Sanction

It is **AGREED** and **ORDERED** that the sanction of a Fully 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 three (3) years, with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on September 1, 2014, and shall end on August 31, 2017.

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(W) of the TEXAS RULES OF DISCIPLINARY PROCEDURE.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep the 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 restitution to Marisel Galvan in the amount of One Thousand and No/100 Dollars (\$1,000.00). The payment of restitution shall be made by certified or cashier's check or money order and made payable to Marisel Galvan. The payment shall be submitted to the STATE BAR OF TEXAS, Chief Disciplinary Counsel's Office on or before the date this *Judgment* is presented to the Evidentiary Panel for execution.

9. Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the STATE BAR OF TEXAS in the amount of Two Thousand Two Hundred Twenty-Five and No/100 Dollars (\$2,225.00). The payment of attorneys' fees and direct expenses shall be made by certified or cashier's check or money order and made payable to the STATE BAR OF TEXAS. The payment shall be submitted to the STATE BAR OF TEXAS, Chief Disciplinary Counsel's Office on or before the date this *Judgment* is presented to the Evidentiary Panel for execution.

10. In addition to complying with the Minimum Continuing Legal Education requirements of the STATE BAR OF TEXAS, Respondent shall complete three (3) additional hours of continuing legal education ("CLE") in the area of Law Practice Management. These additional hours of CLE are to be completed between September 1, 2014, and March 31, 2015. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course to the STATE BAR OF TEXAS, via USPS: Office of the CDC, STATE BAR OF TEXAS, P.O. Box 12487, Austin, Texas 78711-2487; or via Delivery: Office of the CDC, STATE BAR OF TEXAS, 1414 Colorado St., Suite 200, Austin, Texas 78701.

Respondent shall make contact with the Chief Disciplinary Counsel's Offices' Compliance Monitor at 877-953-5535, ext. 1334 and Special Programs Coordinator at 877-953-5535, ext. 1323, not later than seven (7) days after receipt of a copy of this *Judgment* to coordinate Respondent's compliance.

Probation Revocation

Upon information that Respondent has violated a term of this *Judgment*, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Rule 2.23 of the TEXAS RULES OF DISCIPLINARY PROCEDURE with the BOARD OF DISCIPLINARY APPEALS ("BODA") and serve a copy 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, Attorneys' Fees and Expenses

It is further **ORDERED** Respondent shall pay restitution to Marisel Galvan in the amount of One Thousand and No/100 Dollars (\$1,000.00). The payment of restitution shall be made by certified or cashier's check or money order and made payable to Marisel Galvan. The payment shall be submitted to the STATE BAR OF TEXAS, Chief Disciplinary Counsel's Office on or before the date this *Judgment* is presented to the Evidentiary Panel for execution.

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorneys' fees and direct expenses to the STATE BAR OF TEXAS in the amount of Two Thousand Two Hundred Twenty-Five and No/100 Dollars (\$2,225.00). The payment of attorneys' fees and direct expenses shall be made by certified or cashier's check or money order and made payable to the STATE BAR OF TEXAS. The payment shall be submitted to the STATE BAR OF TEXAS, Chief Disciplinary Counsel's Office on or before the date this *Judgment* is presented to the Evidentiary Panel for execution.

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(Z) 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

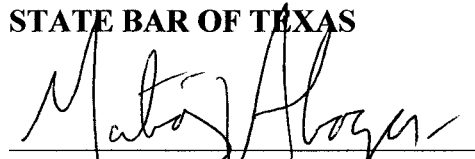
This suspension shall be made a matter of record and appropriately published in accordance with the TEXAS RULES OF DISCIPLINARY PROCEDURE.

Other Relief

All requested relief not expressly granted herein is expressly **DENIED**.

SIGNED this 20th day of August, 2014.

**EVIDENTIARY PANEL 4-1
DISTRICT NO. 4
STATE BAR OF TEXAS**

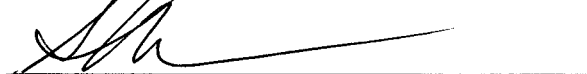


MATIAS J. ADROGUE
District 4-1 Presiding Member

AGREED AS TO BOTH FORM AND SUBSTANCE:

STATE BAR OF TEXAS
Office of the Chief Disciplinary Counsel

LINDA A. ACEVEDO
Chief Disciplinary Counsel



SHANNON BREAU SAUCEDA
Assistant Disciplinary Counsel
State Bar No. 24002896
600 Jefferson, Suite 1000
Houston, Texas 77002
Phone: (713) 758-8200
Fax: (713) 758-8292
Email: ssauceda@texasbar.com

**ATTORNEYS FOR PETITIONER,
COMMISSION FOR LAWYER DISCIPLINE**



PAMELA S. HALLIBURTON
Attorney at Law
State Bar No. 08794500
P.O. Box 70845
Houston, Texas 77270
Phone: (832) 516-7073
Fax: (713) 583-9809
Email: halliburtonlaw@gmail.com

**ATTORNEY FOR RESPONDENT,
THOMAS A. WILLBERN, III**



THOMAS A. WILLBERN, III
State Bar No. 21507700