

BEFORE THE EVIDENTIARY PANEL FOR
STATE BAR DISTRICT NO. 09-1 STATE BAR OF TEXAS

COMMISSION FOR LAWYER	*	
DISCIPLINE,	*	
Petitioner	*	
	*	201403043
V.	*	
	*	
BRETT A. PRUIT,	*	
Respondent	*	

AGREED JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On this day came to be heard the above styled and numbered cause. Petitioner and Respondent, Brett A. Pruit, Texas Bar Number 16367800, announce that an agreement has been reached on all matters including the imposition of a Partially Probated Suspension.

Jurisdiction and Venue

The Evidentiary Panel 9-1 having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 9, 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(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 Bexar County, Texas.
3. Brett A. Pruitt (Respondent) represented Emmett Lee Smith (Smith) in connection with Cause No. 10927, styled Emmett Lee Smith v. Marisa Tole, et al., in the 50th Judicial District Court, Baylor County, Texas. Respondent also represented Smith in connection with a related case, Cause No. 10931, styled W.T. Waggoner Estate v. Emmett Lee Smith, in the 50th Judicial District Court, Baylor County, Texas. Complainant is Marisa Tole.
4. In Cause No. 10931, a jury trial was set for November 12, 2013. On or about November 8, 2013, Respondent represented to opposing counsel that all issues in both cases had been settled and resolved, resulting in the cancellation of the trial. A Rule 11 Agreement was entered into and signed by counsel for the parties.
5. By email to opposing counsel dated December 19, 2013, Respondent acknowledged that he had agreed to settle the case without Smith's consent. In representing Smith, Respondent failed to abide by Smith's decisions concerning whether to accept an offer of settlement in the matter. Further, in the course of litigation, Respondent took a position that unreasonably increased the costs or other burdens of the case or that unreasonably delayed resolution of the matter.
6. Finally, notice and a copy of the complaint were sent to Respondent by certified mail, return receipt requested, and were delivered on March 24, 2015. Respondent was directed to provide a written response to the allegations within 30 days receipt of the notice. 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. Respondent did not in good faith timely assert a privilege or other legal ground for his failure to do so. 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 \$3,833.00.

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: 1.02(a)(2), 3.02, and 8.04(a)(8).

Sanction

It is AGREED and ORDERED that the sanction of a Partially 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 thirty months, beginning November 1, 2017, and ending April 30, 2020, provided Respondent complies with the following terms and conditions. Respondent shall be actively suspended from the practice of law for a period of three (3) months beginning November 1, 2017, and ending January 31, 2018. If Respondent complies with all of the following terms and conditions timely, the twenty-seven (27) months period of probated suspension shall begin on February 1, 2018, and shall end on April 30, 2020.

1. Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of \$3,833.00. The payment shall be due and payable on or before the date that this judgment is presented to the Evidentiary Panel for execution, 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
2. Within ten (10) days of Respondent's receipt of a copy of this judgment, Respondent shall schedule a full psychological assessment to be conducted by a mental health professional licensed in Texas as a psychiatrist, a psychologist, a master's level social worker (LCSW), or a licensed professional counselor (LPC). Respondent shall complete the assessment at the earliest practicable date, but in no event later than sixty (60) days after receipt of a copy of this judgment. Although the details of information disclosed during the assessment shall remain confidential, the conclusions, diagnosis and treatment plan recommendations of the mental health professional shall be reported to the State Bar of Texas within ten (10) days of the completion of the assessment. Respondent shall take all necessary action, including the execution of a valid release of information, to allow and direct the mental health professional to report such results and recommendations.

3. If recommended as part of the above assessment, Respondent shall remain under the care of one or more mental health professionals at the frequency recommended by the treatment plan for the duration of the supervision period or until released in writing by the treatment provider. Each treating mental health professional shall provide written quarterly reports to the State Bar of Texas verifying Respondent's attendance at the sessions and good faith participation in the treatment plan. The initial report(s) shall be due ninety (90) days after completion of the assessment, with subsequent reports due quarterly thereafter. Respondent shall take all necessary action, including the execution of a valid release of information, to permit any treating mental health professional to provide written or oral reports for the duration of the supervision period.
4. Respondent shall be responsible for all costs and expenses incurred, directly or indirectly, by compliance with these terms and shall pay all such costs and expenses as required by the provider, but in no event later than the final day of the supervision period.
5. Any and all reports and evaluations required by these terms of probation shall be sent to the State Bar of Texas, via USPS: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701.
6. 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.

Should Respondent fail to comply with all of the above terms and conditions timely, Respondent shall remain actively suspended until the date of compliance or April 30, 2020, whichever occurs first.

Terms of Active Suspension

It is further ORDERED that during the term of active suspension ordered herein, or that may be imposed upon Respondent by the Board of Disciplinary Appeals as a result of a probation revocation proceeding, Respondent shall be prohibited from practicing law in Texas; holding himself out as an attorney at law; performing any legal services for others; accepting any fee directly or indirectly for legal services; appearing as counsel or

in any representative capacity in any proceeding in any Texas or Federal court or before any administrative body; or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

It is further ORDERED that, on or before November 1, 2017, Respondent shall notify each of Respondent's current clients and opposing counsel in writing of this suspension.

In addition to such notification, it is further ORDERED Respondent shall return any files, papers, unearned monies and other property belonging to current clients in Respondent's possession to the respective clients or to another attorney at the client's request.

It is further ORDERED Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), on or before November 15, 2017, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein.

It is further ORDERED Respondent shall, on or before November 1, 2017, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing.

It is further ORDERED Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), on or before November 15, 2017, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court.

It is further ORDERED that, on or before November 1, 2017, Respondent shall surrender his law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of Texas.

Terms of Probation

It is further ORDERED, that if Respondent has complied with all terms and conditions set forth above in a timely manner entitling Respondent to a period of this suspension being probated, 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 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. If recommended as part of the assessment previously ordered, Respondent shall remain under the care of one or more mental health professionals at the frequency recommended by the treatment plan for the duration of the supervision period or until released in writing by the treatment provider. Each treating mental health professional shall provide written quarterly reports to the State Bar of Texas verifying Respondent's attendance at the sessions and good faith participation in the treatment plan.

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.

Attorney's Fees and Expenses

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 \$3,833.00. The payment shall be due and payable on or before the date that this judgment is presented to the Evidentiary Panel for execution, 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further ORDERED that all amounts ordered herein are due to the misconduct of Respondent and 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.

It is further ORDERED that Respondent shall remain actively suspended from the practice of law as set out above until such time as Respondent has completely paid attorney fees and direct expenses in the amount of \$ 3,833.00 to the State Bar of Texas.

Publication

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

Other Relief

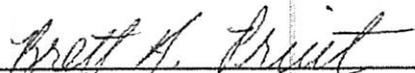
All requested relief not expressly granted herein is expressly DENIED.

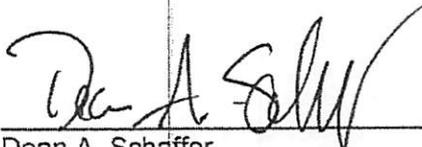
SIGNED this 10th day of September, 2017.

EVIDENTIARY PANEL 9-1
DISTRICT NO. 9
STATE BAR OF TEXAS


Dirk M. Jordan
District 9-1 Presiding Member

AGREED AS TO BOTH FORM AND SUBSTANCE:


Brett A. Pruitt
State Bar No. 16367800
Respondent


Dean A. Schaffer
State Bar No. 17723500
Counsel for Petitioner