

BEFORE THE DISTRICT 11 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 11-3
STATE BAR OF TEXAS

COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner

V.

MARK ANTHONY DAVIS,
Respondent

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FILE NO. 201606005

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, Mark Davis, Texas Bar Number 24012509, announce that an agreement has been reached on all matters including the imposition of a Partially Probated Suspension.

Jurisdiction and Venue

The Evidentiary Panel 11-3 having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 11, 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 Victoria County, Texas.
3. Respondent failed to keep Debra Laba reasonably informed about the status of her probate matter.
4. Upon termination of representation, Respondent failed to refund advance payments of fee that had not been earned.
5. 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 failure to do so.
6. 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 \$800.00.
7. Respondent owes restitution in the amount of \$2,500.00 payable to Debra Nicotra-Laba.

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: 1.03(a); 1.15(d); 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 twenty seven months, beginning April 1, 2018 and ending May 31, 2020, provided Respondent complies with the following terms and conditions. Respondent shall be actively suspended from the practice of law for a

period of one month beginning April 1, 2018 and ending May 1, 2018. If Respondent complies with all of the following terms and conditions timely, the twenty six period of probated suspension shall begin on May 1, 2018, and shall end on May 31, 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 \$800.00. The payment shall be due and payable on or before June 31, 2018, 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. Respondent shall pay restitution in the amount of \$2,500.00 to Debra Nicotra-Laba. The payments shall be made in monthly installments of \$500.00 each with the first installment payable by April 15, 2018. Each additional payment shall be made on the fifteenth of each month with the last installment payable by August 15, 2018. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Debra Nicotra-Laba and delivered 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).
3. 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 until May 31, 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 April 1, 2018, 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 April 1, 2018, 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 April 1, 2018, 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 April 1, 2018, 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 April 1, 2018, 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. The State Bar Card and law license will be returned to Respondent once his term of active suspension has been completed.

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. 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, Attorney's Fees and Expenses

It is further ORDERED Respondent shall pay restitution in the amount of \$2,500.00 to Debra Nicotra-Laba. The payments shall be made in monthly installments of \$500.00 each with the first installment payable by April 15, 2018. Each additional payment shall be made on the fifteenth of each month with the last installment payable by August 15, 2018.

Respondent shall pay the restitution by certified or cashier's check or money order made payable to Debra Nicotra-Laba and delivered 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 Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of \$800.00. The payment shall be due and payable on or before June 31, 2018, 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 \$800.00 to the State Bar of Texas and restitution in the amount of \$2,500.00 to Debra Nicotra-Laba. Respondent will not remain actively suspended if he is in compliance with the payment terms as per paragraph 1 and 2 under the heading Sanction in this judgment.

Publication

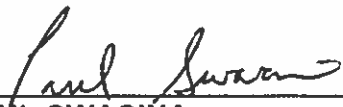
This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

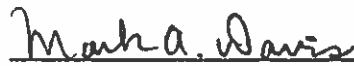
SIGNED this 10th day of January, 2018.

EVIDENTIARY PANEL 11-3
DISTRICT NO. 11
STATE BAR OF TEXAS



PAUL SWACINA
District 11-3 Presiding Member

AGREED AS TO BOTH FORM AND SUBSTANCE:



Mark Davis
State Bar No. 24012509
Respondent



George Smith
State Bar No. 24041940
Counsel for Petitioner