

**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. 201703276 (McCutchan)
 201705467 (Salazar)**

JUDGMENT OF PROBATED SUSPENSION

Parties and Appearance

On June 7, 2018, came to be heard the above styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, Mark Davis, Texas Bar Number 24012509, appeared in person and through his attorney Rodney Durham announced ready.

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 11-3, 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 all of the pleadings, evidence, stipulations, and argument, finds Respondent has committed Professional Misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

The Evidentiary Panel, having considered the pleadings, evidence and argument of

counsel, makes the following findings of fact and conclusions of law:

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. In representing Calvin McCutchan Respondent neglected the legal matter entrusted to him.
4. Respondent failed to keep Calvin McCutchan reasonably informed about the status of his legal matter.
5. Upon termination of representation, Respondent failed to refund advance payments of fee that had not been earned.
6. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response to Calvin McCutchan's complaint 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.
7. In representing Krystal Salazar Respondent neglected the legal matter entrusted to him.
8. Respondent failed to keep Krystal Salazar reasonably informed about the status of his legal matter.
9. Upon request by Krystal Salazar Respondent failed to promptly render a full accounting regarding money paid for the legal representation.
10. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response to Krystal Salazar's complaint 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.
11. 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 \$2,358.14.
12. Respondent owes restitution in the amount of \$2,000.00 payable to Krystal Salazar and \$1,750.00 payable to Calvin McCutchan.

Conclusions of Law

The Evidentiary Panel concludes that, based on foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: 1.01(b)(1); 1.03(a); 1.15(d); 1.14(b); 8.04(a)(8).

Sanction

The Evidentiary Panel, having found that Respondent has committed professional misconduct, heard and considered additional evidence regarding the appropriate sanction

to be imposed against Respondent. After hearing all evidence and argument and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is a Probated Suspension.

Accordingly, it is ORDERED, ADJUDGED and DECREED that Respondent be suspended from the practice of law for a period of two years, with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on July 1, 2018 and shall end on June 30, 2020.

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 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 \$2,358.14. The payment shall be made in installments of \$250.00 a month starting on May 1, 2019. Each payment is due at the beginning of the month, 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 Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
9. Respondent shall pay restitution to Krystal Salazar in the amount of \$2,000.00. The payments shall be made in installments of \$500.00 a month starting on September 15, 2018. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Krystal Salazar 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).
10. Respondent shall pay restitution to Calvin McCutchan in the amount of \$1,750.00. The payments shall be made in installments of \$500.00 a month starting on January 1, 2019. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Calvin McCutchan 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).
 11. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete 6 additional hours of continuing legal education in the area of Ethics with an emphasis on attorney-client communications. These additional hours of CLE are to be completed between July 1, 2018 and June 30, 2020. 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, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701.**
 12. Respondent shall make contact with the Texas Lawyers' Assistance Program (TLAP) at its hotline number, 800-343-8527, not later than seven (7) days after receipt of a copy of this judgment to inquire as to services and referrals offered by that program to aid in Respondent's rehabilitation. Respondent shall additionally send verification of contact with TLAP to the State Bar of Texas within fifteen (15) days such contact. Respondent should inquire of TLAP if a psychological assessment and a monitor program could be performed at no cost of Respondent.
 - a. If there is no cost to Respondent for the monitor program, Respondent shall submit to supervision for a period of 24 months by a rehabilitation monitor acceptable to the State Bar of Texas and selected by the monitoring program of the Texas Lawyers' Assistance Program. The monitor shall supervise Respondent's compliance with the requirements of the rehabilitation conditions and is under a duty to immediately report to the Chief Disciplinary Counsel's Office State Bar of Texas any noncompliance on the part of Respondent. The monitor shall report the status of Respondent's compliance with these conditions on a monthly basis, with the report due by the 5th day of each month for the duration of the monitoring period.

Respondent shall meet with the monitor a minimum of two times per month. The initial meeting shall be held not later than ten (10) days after Respondent receives written notification from the State Bar of Texas of the name and phone number of Respondent's assigned monitor. Such meetings shall be in person at a place and time determined by the monitor. Exceptions must be approved in advance by the monitor and noted on the monthly report.

- b. If there is no cost to Respondent for a psychological evaluation. Within ten (30) 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 ninety (90) 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.
13. 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 to Krystal Salazar in the amount of \$2,000.00. The payments shall be made in installments of \$500.00 a month starting on September 15, 2018. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Krystal Salazar 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 restitution to Calvin McCutchan in the amount of \$1,750.00. The payments shall be made in installments of \$500.00 a month starting on January 1, 2019. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Calvin McCutchan 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 the amount of \$2,358.14. The payment shall be made in installments of \$250.00 a month starting on May 1, 2019. Each payment is due at the beginning of the month 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 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, 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 14th day of June, 2018.

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



**LIDIA SERRATA
District 11-3 Presiding Member**