

FILED

OCT 16 2018

STATE BAR OF TEXAS
HOUSTON CDC

BEFORE THE EVIDENTIARY PANEL OF THE
STATE BAR DISTRICT NO. 4-2 GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE, § 201700212 [ANDREA SCHMIDT]

Petitioner,

v.

HARRIS COUNTY, TEXAS

THOMAS A. WILLBERN, III

Respondent.

AGREED JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On this day, came to be heard the above-styled and numbered cause. Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, 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 Partially Probated Suspension.

Jurisdiction and Venue

The Evidentiary Panel 4-2, having been duly appointed to hear this complaint 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 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 Harris County, Texas.
3. In representing Andrea Schmidt, Respondent frequently failed to carry out completely the obligations Respondent owed to her.
4. Respondent failed to keep Andrea Schmidt reasonably informed about the status of her case.
5. Respondent failed to promptly comply with reasonable requests for information from Andrea Schmidt.
6. Upon termination of his representation of Andrea Schmidt, Respondent failed to surrender papers and property.
7. Upon termination of his representation of Andrea Schmidt, Respondent failed to refund advance payments of fee that had not been earned.
8. 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.
9. Respondent owes restitution in the amount of One Thousand and No/100 Dollars (\$1,000.00) payable to Andrea Schmidt.
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 One Thousand Two Hundred Fifty and No/100 Dollars (\$1,250.00).

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: 1.01(b)(2) [in representing a client, a lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client or clients]; 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]; 1.15(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 has not been earned]; and 8.04(a)(8) [a lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's Office or a district grievance committee a response or other information as required by the TEXAS RULES OF DISCIPLINARY PROCEDURE, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so].

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. The Evidentiary Panel finds that the sanction imposed against Respondent is the appropriate sanction for each of the violations set forth in this *Judgment*.

Accordingly, it is **ORDERED, ADJUDGED** and **DECREED** that Respondent be suspended from the practice of law for a period of two (2) years, beginning January 1, 2019, and ending December 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 (1) month beginning January 1, 2019, and ending January 31, 2019. The twenty-three (23) month period of probated suspension shall begin on February 1, 2019, and shall end on December 21, 2020.

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 (BODA)** 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 January 1, 2019, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701)**, on or before January 1, 2019, 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 January 1, 2019, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701), on or before January 1, 2019, 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 January 1, 2019, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701), to be forwarded to the SUPREME COURT OF TEXAS.

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 Andrea Schmidt in the amount of One Thousand and No/100 Dollars (\$1,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Andrea Schmidt. 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 attorneys' fees and direct expenses to the STATE BAR OF TEXAS in the amount of One Thousand Two Hundred Fifty and No/100 Dollars (\$1,250.00). The payment 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. 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 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 Andrea Schmidt in the amount of One Thousand and No/100 Dollars (\$1,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Andrea Schmidt. 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 One Thousand Two Hundred Fifty and No/100 Dollars (\$1,250.00). The payment 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 16th day of October, 2018.

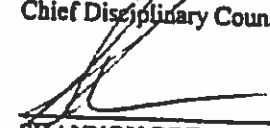
EVIDENTIARY PANEL 4-2
DISTRICT NO. 4
STATE BAR OF TEXAS


RUBEN B. PEREZ
District 4-2 Presiding Member


AGREED AS TO BOTH FORM AND SUBSTANCE:

STATE BAR OF TEXAS
Office of the Chief Disciplinary Counsel


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