

FILED

JAN 20 2019

Austin Office
Chief Disciplinary Counsel
State Bar of Texas

**BEFORE THE EVIDENTIARY PANEL FOR
STATE BAR DISTRICT NO. 8-5 STATE BAR OF TEXAS**

COMMISSION FOR LAWYER	*	
DISCIPLINE,	*	
Petitioner	*	
	*	201707635
V.	*	
	*	
CYNTHIA BORGFELD SMITH,	*	
Respondent	*	

AGREED JUDGMENT OF PROBATED SUSPENSION

Parties and Appearance

On this day came to be heard the above styled and numbered cause. Petitioner and Respondent, Cynthia Borgfeld Smith, Texas Bar Number 18553650, announce that an agreement has been reached on all matters including the imposition of a Probated Suspension.

Jurisdiction and Venue

The Evidentiary Panel 8-5 having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 8, 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 her principal place of practice in Williamson County, Texas.
3. In September of 2016, Complainant, Danny Armacost, paid a \$2,500 retainer to Respondent, Cynthia Smith, to represent him in a child support modification. Respondent told Complainant that she filed a petition on his behalf, however, no such petition was filed. Respondent ceased all communication with Complainant as of June of 2017. Complainant sent Respondent a certified letter requesting a copy of his file, an accounting of any earned fees, and the return of any unearned fees, to no avail. Respondent failed to file a response as required by the Texas Rules of Disciplinary Procedure.
4. 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 \$580.50.
5. Respondent owes restitution in the amount of \$400.00 payable to Danny Armacost.

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), 1.03(a), 1.15(d) and 8.04(a)(8).

Sanction

It is AGREED and ORDERED that the sanction of a 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 one year, with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on March 15, 2019 and shall end on March 14, 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.

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 before the judgment is presented to the Evidentiary Panel for execution, to Danny Armacost in amount of \$400.00. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Danny Armacost 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 \$580.50. The payment shall be due and payable on or before 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, 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.

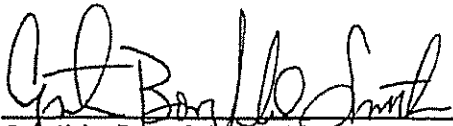
SIGNED this 20 day of March, 2019.

EVIDENTIARY PANEL 8-5
DISTRICT NO. 8
STATE BAR OF TEXAS

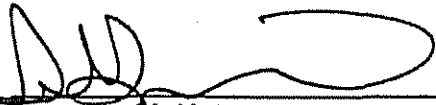


Joshua Park Murray
District 8-5 Presiding Member

AGREED AS TO BOTH FORM AND SUBSTANCE:



Cynthia Borgfeld Smith
State Bar No. 553650
Respondent



Amanda M. Kates
State Bar No. 24075987
Attorney for Petitioner