

**BEFORE THE DISTRICT 10 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 10-4
STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER
DISCIPLINE,**
Petitioner

vs.

BRETT A. PRUIT,
Respondent

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FILE NO. 201803308

JUDGMENT OF DISBARMENT

Parties and Appearance

On May 9, 2019, 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, BRETT A. PRUIT, Texas Bar Number 16367800, although duly served with the Evidentiary Petition and notice of this default and sanctions hearing, failed to appear.

Jurisdiction and Venue

The Evidentiary Panel 10, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 10-4, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Default

The Evidentiary Panel finds Respondent was properly served with the Evidentiary Petition and that Respondent failed to timely file a responsive pleading to the Evidentiary Petition as required by Rule 2.17(B) of the Texas Rules of Disciplinary Procedure. Accordingly, the Evidentiary Panel finds Respondent in default and further finds that all facts alleged in the Evidentiary Petition are deemed true pursuant to Rule 2.17(C) of the Texas Rules of Disciplinary Procedure.

Professional Misconduct

The Evidentiary Panel, having deemed all facts as alleged in the Evidentiary Petition true, 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 allegations as deemed true, 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/or maintains his principal place of practice in Bexar County, Texas.
3. Respondent was licensed to practice law in Texas in November 1983 and at all times relevant maintained his principal place of practice in Texas. Respondent is not admitted to practice in any other state of the United States. In August 2017, Respondent contacted a former high school classmate, J. Matthew DePetro (“DePetro”), who is an attorney licensed to practice law in Colorado. Respondent asked DePetro to sponsor Respondent to be admitted to practice law *pro hac vice* in a criminal case pending in Colorado state court and DePetro agreed. An Order allowing Respondent to appear *pro hac vice* was signed on August 18, 2017 in case number 2017M001369, “*The People of the State of Colorado v. Sheila Marie Tomasek*” filed in the Douglas County Court (“the Tomasek case”). With the agreement of the client, Respondent assumed primary responsibility for the Tomasek case.
4. Respondent was eligible to practice law in Texas at the time he sought and obtained permission to appear *pro hac vice* in the Colorado case. However, Respondent was suspended from the practice of law effective November 1, 2017 pursuant to an Agreed Judgment of Partially Probated Suspension signed September 6, 2017. (“the 2017 Judgment”). Due in part to Respondent’s non-compliance with the terms of the 2017 Judgment, Respondent has remained actively suspended from the practice of law continuously from November 1, 2017 through the present date.
5. Respondent appeared for the defendant and participated at pre-trial hearings or conferences in the Tomasek case on November 17, 2017 and December 18, 2017. A jury trial was set for March 6, 2018 and a Pre-Trial Readiness Conference was set for March 5, 2018. Prior to the hearing on March 5, 2018, Respondent told his client, Sheila Marie Tomasek (“Tomasek”) she did not need to appear in court because Respondent had obtained a continuance of her trial to April 2018. In fact, Respondent had not filed a

motion or obtained a continuance and had not taken any other action to protect his client's interests.

6. DePetro happened to be present at the courthouse on March 5, 2018 on other matters and was informed of Respondent's failure to appear in the Tomasek case. When he went to inquire, a court clerk told DePetro that Respondent had left a voicemail message the same day stating Respondent would not be present in court due to a disciplinary suspension in Texas. DePetro appeared that day on behalf of Tomasek and was able to avoid the issuance of a bench warrant for Tomasek's arrest for her failure to appear.
7. On March 6, 2018, Respondent provided DePetro with a copy of the Texas disciplinary judgment against Respondent. Respondent e-mailed DePetro an attachment titled "Agreed Judgment" consisting of seven pages. The purported judgment that Respondent e-mailed to DePetro was fabricated by Respondent and differed from Respondent's true disciplinary judgment in several respects. In particular, the judgment Respondent sent imposes a disciplinary suspension against Respondent beginning February 1, 2018 and the judgment is dated January 15, 2018. The Agreed Judgment provided by Respondent to DePetro contains forged signatures of Dean A. Schaffer, Petitioner's counsel, and Dirk M. Jordan, the Presiding Member of the Evidentiary Panel 9-1 of the State Bar of Texas. Respondent provided the fabricated document in an attempt to hide Respondent's prior unauthorized practice of law in Colorado and Respondent's violation of the terms of the actual Agreed Judgment of Partially Probated Suspension.
8. The terms of the 2017 Judgment required Respondent to notify all current clients, courts and opposing counsel of Respondent's disciplinary suspension no later than November 1, 2017. Respondent failed to notify Tomasek of Respondent's disciplinary suspension. When DePetro spoke to Tomasek on March 5, 2018, Tomasek was unaware of Respondent's disciplinary suspension. Respondent failed to notify the court in the Tomasek case of Respondent's disciplinary suspension until March 5, 2018. Respondent falsely swore in an Affidavit signed by Respondent on January 8, 2018 that Respondent had notified each court where he had a pending matter of his disciplinary suspension.
9. Respondent was served on June 27, 2018 with notice of the grievance complaint initiated by the Office of the Chief Disciplinary Counsel. Respondent was directed to furnish a written response to the complaint within thirty days. Respondent failed to furnish a written response to the complaint as directed.
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 Six Hundred Fifty-Five and 00/100 Dollars (\$1,655.00).

Conclusions of Law

The Evidentiary Panel concludes that, based on foregoing findings of fact, Respondent has violated Texas Disciplinary Rules of Professional Conduct 8.04(a)(3), 8.04(a)(7) and 8.04(a)(8).

Sanction

The Evidentiary Panel, having found Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all sanction 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 Disbarment.

Disbarment

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that effective May 10, 2019, Respondent, BRETT A. PRUIT, State Bar Number 16367800, is hereby DISBARRED from the practice of law in the State of Texas.

IT IS FURTHER ORDERED that Respondent is 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 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."

Notification

IT IS FURTHER ORDERED that Respondent shall immediately notify each of his current clients in writing of this disbarment. In addition to such notification, Respondent is ORDERED to return any files, papers, unearned monies and other property belonging to clients and former clients

in the Respondent's possession to the respective clients or former clients or to another attorney at the client's or former client's request. Respondent is further ORDERED to 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) within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that all current clients have been notified of Respondent's disbarment and that all files, papers, monies and other property belonging to all clients and former clients have been returned as ordered herein.

IT IS FURTHER ORDERED that Respondent shall, on or before thirty (30) days from the signing of this judgment by the Panel Chair, 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. Respondent is further ORDERED to 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) within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice has received written notice of the terms of this judgment.

Surrender of License

IT IS FURTHER ORDERED that Respondent shall, within thirty (30) days of the signing of this judgment by the Panel Chair, 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 the State of Texas.

Attorney's Fees and Expenses

IT IS FURTHER ORDERED that Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of One Thousand Six Hundred Fifty-Five and 00/100 Dollars (\$1,655.00). The payment shall be due and payable on or before July 9, 2019, 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 in the event of an unsuccessful appeal of this judgment by Respondent to the Board of Disciplinary Appeals ("BODA"), Respondent shall pay an additional Four Thousand and 00/100 Dollars (\$4,000.00) in attorney's fees to the State Bar of Texas, due 30 days after the date of BODA's decision. IT IS FURTHER ORDERED that in the event Petitioner is required to respond to an unsuccessful petition filed by Respondent for review by the Supreme Court of Texas, Respondent shall pay an additional Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) in attorney's fees to the State Bar of Texas due upon the issuance of a mandate.

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.

Publication

IT IS FURTHER ORDERED that this disbarment shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Conditions Precedent to Reinstatement

IT IS FURTHER ORDERED that payment of the foregoing attorney's fees and expenses shall be a condition precedent to any consideration of reinstatement from disbarment as provided by Rules 2.19, 2.20 and 11.02(D) of the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 10 day of May, 2019.

**EVIDENTIARY PANEL 10-4
DISTRICT NO. 10
STATE BAR OF TEXAS**



JUSTIN HILL, Chair