

IN THE MATTER OF:

DEREK H. DAVIS,

Bar No. 05479400

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INVESTIGATORY PANEL 6-1

DISTRICT 6

GRIEVANCE COMMITTEE

AGREED JUDGMENT OF FULLY PROBATED SUSPENSION

Parties and Appearance

Chief Disciplinary Counsel and Respondent, **DEREK H. DAVIS** (Respondent), Texas Bar Number **05479400**, announce that an agreement has been reached on all matters including the imposition of a Probated Suspension.

Jurisdiction and Venue

The Investigatory Panel 6-1, having conducted an Investigatory Hearing on May 23, 2019, on the Complaint filed by Jody Sodd McSpadden, finds that it has jurisdiction over the parties and the subject matter of this action, and that venue is proper.

Professional Misconduct

The Investigatory Panel, having considered the admissions, stipulations and agreements of the parties, finds Respondent has committed Professional Misconduct as defined by Rule 1.06(CC) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

Petitioner and Respondent agree to the following findings of fact. Accordingly, the Investigatory 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's Professional Misconduct occurred, in whole or in part, in Dallas County, Texas.

3. Respondent is the trustee of a trust benefitting Mary Larkin. Respondent invested the trust funds in Respondent's personal high-risk investment project in Africa. Respondent failed to appropriately safeguard the trust funds entrusted to him.
4. Respondent is the trustee of a trust benefitting Debra Kuehn. Respondent invested the trust funds in Respondent's personal high-risk investment project in Africa. Respondent failed to appropriately safeguard the trust funds entrusted to him.
5. Respondent represented Joy Taubner (Taubner) in a real estate matter and received \$24,500 in settlement funds. Respondent failed to appropriately safeguard the settlement funds entrusted to him and failed to promptly deliver funds to a Taubner. Respondent also misrepresented the status of the funds when Taubner inquired about the settlement funds.
6. Respondent entered into a business transaction with clients' funds wherein Respondent had an interest but the terms were not fair and reasonable to the clients and were not fully disclosed in a manner which can be reasonably understood by the clients, the clients were not given a reasonable opportunity to seek the advice of independent counsel, and Respondent failed to get written consent from the clients.
7. Respondent's use and misapplication of funds entrusted to him adversely reflects on his honesty, trustworthiness or fitness as a lawyer.
8. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney's fees and direct expenses associated with this Disciplinary Proceeding in the amount of in the amount of Five Hundred and 00/100 Dollars (\$500.00).

Conclusions of Law

Based on the agreed foregoing findings of fact, the Investigatory Panel finds that the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 1.08(a), 1.14(a), 1.14(b), 8.04(a)(2), and 8.04(a)(3).

Sanction

It is **AGREED** and **ORDERED** that the sanction of a Probated Suspension shall be imposed against Respondent and is in accordance with Part XV of 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 forty-eight (48) months, with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on July 15, 2019, and shall end on July 14, 2023.

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(CC) 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 in the amount of Five Hundred and 00/100 Dollars (\$500.00). The payment shall be

made by certified or cashier's check or money order, made payable to the State Bar of Texas, and submitted contemporaneously with the signing of this judgment, to the State Bar of Texas, Chief Disciplinary Counsel's Office, 14651 Dallas Parkway, Suite 925, Dallas, Texas 75254.

9. Respondent shall resign from all trusts that he is currently serving as trustee. 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 July 15, 2019, an affidavit stating he has resigned from all trusts that he is currently serving as trustee, as ordered herein.
10. Respondent is prohibited from serving as trustee for any trust during the period of his suspension.
11. Respondent shall submit to monitoring of his law practice for a period of forty-eight (48) months by an attorney monitor acceptable to the State Bar of Texas. The practice monitor shall have no personal or professional relationship with the Respondent that would interfere with the monitor's ability to exercise independent judgment regarding Respondent's compliance with the terms of this judgment. The monitor shall report the status of Respondent's compliance on a quarterly basis on the form provided by the State Bar of Texas, with the initial report due by the September 5th, 2019. Subsequent reports shall be due on every January 5th, March 5th, September 5th, and December 5th for the duration of the monitoring period and shall be sent to the State Bar of Texas, Office of Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
12. Respondent shall meet with the attorney monitor a minimum of once every three months. The initial meeting shall be held not later than fifteen (15) 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 as determined by the monitor. Exceptions must be approved in advance by the monitor and noted on the monthly report.
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 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.

Attorney's Fees and Expenses

It is **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees and direct expenses, contemporaneous with the signing of this judgment, to the State Bar of Texas in the amount of Five Hundred and 00/100 Dollars (\$500.00). The payment shall be made by certified or cashier's check or money order, made payable to the State Bar of Texas, and submitted contemporaneously with the signing of this judgment, to the State

Bar of Texas, Chief Disciplinary Counsel's Office, 14651 Dallas Parkway, Suite 925, Dallas, Texas 75254.

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(FF) 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 public 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 19 day of July, 2019.


INVESTIGATORY PANEL 6-1
DISTRICT 6



GREGG OBERG Thomas B. Cowart
PRESIDING MEMBER

AGREED AS TO FORM AND SUBSTANCE:



Derek H. Davis
State Bar No. 05479400
RESPONDENT

Jackie K. Wheelington
State Bar No. 24086673
ASSISTANT DISCIPLINARY COUNSEL