

FILED

09/23/2020



Austin Office
Chief Disciplinary Counsel

**BEFORE THE DISTRICT 8 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 8-7
STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner**

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V.

201806926

**CYNTHIA BORGFELD SMITH,
Respondent**

JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On the 17th day of September 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, Cynthia Borgfeld Smith, Texas Bar Number 18553650, although duly served with the Evidentiary Petition and notice of this default and sanctions hearing, failed to appear.

Jurisdiction and Venue

The Evidentiary Panel 8-7 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.

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(CC) 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 maintains her principal place of practice in Williamson County, Texas.
3. In April of 2018, Complainant, Jessica DeStefano, hired Respondent, Cynthia Smith, to represent her in a child custody matter. Complainant and Respondent first met in June of 2018 to discuss a settlement agreement between Complainant and her ex-husband. Thereafter, Complainant did not receive any contact from Respondent until September of 2018, despite numerous attempts at contact. Respondent and Complainant met again in September of 2018 in order for Complainant to sign final paperwork evidencing the agreement between Complainant and her ex-husband. To date, nothing has been filed with the court on Complainant's behalf and Respondent has failed to return any attempts at communication from Complainant. Due to Respondent's neglect, Complainant was forced to hire subsequent counsel. Complainant and her new counsel have requested the case file but have yet to receive any response from Respondent. 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 \$2,612.00.
5. Respondent owes restitution in the amount of \$3,000.00 payable to Jessica DeStefano.

Conclusions of Law

The Evidentiary Panel concludes that, based upon the 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) 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 evidence and argument, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is a Partially Probated Suspension.

Accordingly, it is ORDERED, ADJUDGED and DECREED that Respondent be suspended from the practice of law for a period of three (3) years beginning October 1, 2020, and ending September 30, 2023. Respondent shall be actively suspended from the practice of law for a period of one (1) year beginning October 1, 2020, and ending September 30, 2021. If Respondent complies with all of the following terms and conditions timely, the two (2) year period of probated suspension shall begin on October 1, 2021, and shall end on September 30, 2023:

1. Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of \$2,612.00. The payment shall be due and payable on or before December 17, 2020, 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
2. Respondent shall pay restitution on or before December 17, 2020, to Jessica DeStefano in the amount of \$3,000.00. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Jessica DeStefano 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).
3. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete forty (40) additional hours of continuing legal education in the area of family law. These

- additional hours of CLE are to be completed on or before July 1, 2021. 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.
4. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete eight (8) additional hours of continuing legal education in the area of Law Practice Management). These additional hours of CLE are to be completed on or before July 1, 2021. 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.
 5. Respondent shall provide a quarterly report to the State Bar of Texas for each trust account that she maintains as part of her law license. The first report shall be filed by January 25, 2021, and cover the three months from October 1, 2020, through December 31, 2020. Additional reports shall be filed every three months thereafter, with each report covering the three-month period ending on the last day of the previous month. The last report shall be filed by September 25, 2023 and shall cover the two-month period from July 1, 2023 through August 31, 2023. Each report shall include the records regarding Respondent's trust accounts for the applicable three-month period, including the checkbooks, canceled checks, check stubs, check registers, bank statements, vouchers, deposit slips, ledgers, journals, closing statements, accountings, and other statements of receipts and disbursements rendered to clients or other parties with regard to client trust funds, or other similar records clearly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client. The records regarding each trust account shall be grouped together.
 6. All reports and verifications of compliance with the above shall be sent to the State Bar of Texas via USPS to: Compliance Monitor, 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., Austin, TX 78701, or via FAX to: 512-427-4167.
 7. 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.

Should Respondent fail to comply with all of the above terms and conditions timely, Respondent shall remain actively suspended until the date of compliance or September 30, 2023, whichever occurs first.

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 as a result of a probation revocation proceeding, Respondent shall be prohibited from practicing law in Texas; holding herself 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 herself out to others or using her name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

It is further ORDERED that, or before October 1, 2020, 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, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before October 15, 2020, 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. If it is Respondent's assertion that at the time of suspension she possessed no current clients and/or Respondent was not in possession of any files,

papers, monies or other property belonging to clients, Respondent shall submit an affidavit attesting that, at the time of suspension, Respondent had no current clients and did not possess any files, papers monies and other property belonging to clients.

It is further ORDERED Respondent shall, on or before October 1, 2020, 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, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), on or before October 15, 2020, 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. If it is Respondent's assertion that at the time of suspension Respondent was not currently listed as counsel or co-counsel in any matter pending before any justice of the peace, judge, magistrate, administrative judge or officer, or chief justice of any court or tribunal, Respondent shall submit an affidavit attesting to the absence of any such pending matter before any justice of the peace, judge, magistrate, administrative judge or officer, or chief justice.

It is further ORDERED that, on or before October 15, 2020, Respondent shall

surrender her 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 Texas.

Terms of Probation

It is further ORDERED that during all periods of suspension, Respondent shall be under the following terms and conditions:

8. Respondent shall not violate any term of this judgment.
9. Respondent shall not engage in professional misconduct as defined by Rule 1.06(CC) of the Texas Rules of Disciplinary Procedure.
10. Respondent shall not violate any state or federal criminal statutes.
11. Respondent shall keep State Bar of Texas membership department notified of current mailing, residence and business addresses and telephone numbers.
12. Respondent shall comply with Minimum Continuing Legal Education requirements.
13. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.
14. 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 2.22 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 on or before December 17, 2020, to Jessica DeStefano in the amount of \$3,000.00. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Jessica DeStefano 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 \$2,612.00. The payment shall be due and payable on or before December 17, 2020, 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(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.

It is further ORDERED that Respondent shall remain actively suspended from the practice of law as set out above until such time as Respondent has completely paid attorney fees and direct expenses in the amount of \$2,612.00 to the State Bar of Texas and restitution in the amount of 3,000.00 to Jessica DeStefano.

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 22 day of September, 2020.

**EVIDENTIARY PANEL 8-7
DISTRICT NO. 8
STATE BAR OF TEXAS**



**Carl Barrett Thomas
District 8-7 Presiding Member**