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## CORRECTION

An action listed in the November 2011 issue (p. 950) incorrectly stated the amount of time for a suspension given to Stephen James Frost. Frost received a three-year, fully probated suspension effective Sept. 15.

## BODA ACTIONS

On Nov. 7, the Board of Disciplinary Appeals affirmed the findings of misconduct and reversed the sanction of disbarment of **Mustafa Engin Derkunt** [#00785818], 58, of Austin. An evidentiary panel of the District 9-2 Grievance Committee found that on Aug. 6, 2010,

the Board of Disciplinary Appeals affirmed in part and reversed in part the judgment of active suspension, signed by the District 9-2 Grievance Committee in Case No. A0050811711 on Nov. 26, 2009. The Board reversed that part of the judgment that concluded that Derkunt violated Texas Disciplinary Rule of Professional Conduct (TDRPC) 7.03(d) and reversed the three years active suspension sanction along with the award of attorney's fees and direct expenses to the State Bar of Texas. The Board affirmed the conclusions of law that Derkunt violated TDRPC 1.01(b)(1), 3.01, 5.04(a), 7.03(e), and 8.04(a)(1). The matter was remanded to the District 9 Grievance Committee for a new hearing on the sanctions.

On March 17, the same evidentiary panel, after a new sanctions hearing, disbarred Derkunt from the practice of law. Derkunt appealed the judgment of disbarment. Finding that the record and the judgment of disbarment do not support disbarment, the Board reversed the disbarment and payment of fees and costs and suspended Derkunt from the practice of law from Nov. 19, 2009, and ending Aug. 5, 2010, and from March 22, 2011, and ending Nov. 7, 2011. The Board affirmed again the conclusions of law that Derkunt violated TDRPC 1.01(b)(1), 3.01, 5.04(a), 7.03(e), and 8.04(a)(1). BODA Case No. 48512.

## DISBARMENTS

On Sept. 27, **Robert Joseph Smith** [#00789634], 45, of Beaumont, was disbarred. An evidentiary panel of the District 3-A Grievance Committee found that in representing three complainants, Smith failed to promptly comply with reasonable requests for information from the complainants about their legal matters. Regarding two of the complainants,

Smith also neglected the legal matters entrusted to him and failed to respond to the grievances filed against him. Smith also failed to return the client file to one of the complainants and to promptly disburse settlement funds to another.

Smith violated Rules 1.01(b)(1), 1.03(a), 1.14(b), 1.15(d), and 8.04(a)(8). He was ordered to pay \$2,727.20 in attorney's fees and expenses.

Smith filed an appeal on Oct. 27.

On Aug. 3, **Donald G. MacPhail** [#00788757], 44, of Abilene, was disbarred. An evidentiary panel of the District 14-6 Grievance Committee found that in representing the complainant, MacPhail neglected the legal matter entrusted to him. MacPhail failed to abide by the complainant's decision whether to accept an offer of settlement in his workman's compensation matter. MacPhail failed to keep the complainant reasonably informed about the status of his workman's compensation matter. Upon termination of representation, MacPhail failed to return the client file to the complainant. MacPhail made a false statement of material fact or law to a tribunal.

MacPhail violated Rules 1.01(b)(1), 1.02(a)(2), 1.03(a), 1.15(d), and 3.03(a)(1).

MacPhail filed an appeal on Nov. 2.

On Oct. 3, **Darrell D. Gest** [#07830500], 52, of Austin, was disbarred. An evidentiary panel of the District 9 Grievance Committee found that Gest practiced law while actively suspended from the practice of law pursuant to a disciplinary judgment of suspension. Pursuant to the underlying disciplinary judgment, Gest submitted an affidavit to the State Bar of Texas stating that he had notified all clients and courts regarding his suspension. Gest

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failed to inform the complainant of his suspension. Gest failed to file a response to the complaint.

Gest violated Rules 8.04(a)(1), (a)(3), (a)(7), (a)(8), and (a)(11). Gest was ordered to pay \$5,145.25 in attorney's fees and expenses.

## RESIGNATIONS

On Oct. 18, the Supreme Court of Texas accepted the resignation, in lieu of discipline, of **Michael C. Eddings** [#06406100], 66, of Houston. At the time Eddings submitted his resignation, there were five grievances pending against him. The Court found that Eddings settled clients' cases, but failed to remit payments to them. Eddings also neglected cases and failed to communicate with his clients, to return unearned fees, and to file responses to some of the grievances. Furthermore, Eddings contracted with a client to purchase a motor home, an asset of the client's late husband's estate, and then failed to make the agreed-upon payments.

On Oct. 18, the Supreme Court of Texas accepted the resignation, in lieu of discipline, of **Claudia Mitchell Thompson** [#00797773], 65 of Gray, La. At the time of Thompson's resignation, there were five pending disciplinary matters against her. In the first matter, in March 2009, the complainant hired Thompson to file a trademark application with the Texas Secretary of State. Thompson filed the trademark application. In June 2009, Thompson received notice that the application was incomplete and that additional information must be supplied within 60 days. Thompson failed to respond to both requests for information from the Texas Secretary of State and the complainant's telephone calls and written inquiries about the status of the matter.

In the second matter, on Feb. 19, 2010, the complainant employed Thompson to prepare a will. The complainant paid Thompson \$600. Thompson neglected the matter by her failure to provide a will to the complainant. Thompson also failed to reply to the complainant's

requests for information about the status of the matter. The complainant sent a letter to Thompson on Aug. 4, 2010, demanding a completed will or a refund of the retainer. Thompson failed to respond to the demands.

In the third matter, in June 2010, the complainant and her husband employed Thompson to review and rewrite wills that the complainant and her husband had completed using a will kit. The complainant paid Thompson a \$250 retainer. Thereafter, Thompson failed to reply to requests for information about the matter and to prepare corrected wills for the complainant and her husband. By letter dated Oct. 21, 2010, the complainant made a demand for the return of the retainer and the file, including original documents. Thompson failed to provide the file or the retainer until late February 2011.

In the fourth matter, on Dec. 2, 2009, the complainant hired Thompson to prepare a will and a trust for the complainant's minor son. The complainant paid Thompson \$950 for the representation. Thompson prepared the will and prepared a draft of the trust. Thereafter, Thompson agreed to amend the draft and provide a final version of the trust to the complainant but failed to do so. Thompson failed to respond to the complainant's requests for information regarding the status of the trust.

In the fifth matter, in March 2010, the complainant hired Thompson for representation in a child custody matter. The complainant paid Thompson \$750 for the representation. On March 16, 2010, in Case No. 71869-86, a hearing was held to establish temporary custody and child support arrangements. Thompson failed to appear at the hearing and the court rendered a default judgment. The court awarded temporary conservatorship to the children's father and the complainant was ordered to pay child support. A final hearing was scheduled for June 4, 2010. The complainant called Thompson several times to obtain information about the case. Thompson did not return telephone calls and failed to

provide information about the status of the matter. Thereafter, Thompson told the complainant that due to a scheduling conflict Thompson could not attend the final hearing. Thompson assured the complainant that she would file a motion requesting that the date of the final hearing be changed. Thompson did not file the motion and did not appear at the final hearing. A default judgment was entered and the children's father was awarded sole managing conservatorship. Subsequently, the complainant fired Thompson and requested a refund of the unearned fee. Thompson failed to return the unearned fee.

Further, in all five matters, Thompson failed to file a response or assert good cause for her failure to do so.

Thompson violated Rules 1.01(b)(1) and (b)(2), 1.03(a), 1.15(d), and 8.04(a)(8). She was ordered to pay \$2,850 in restitution.

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## SUSPENSIONS

On Aug. 31, **Don D. Becker** [#02012888], 57, of Houston, received an 18-month, fully probated suspension effective Oct. 1. An evidentiary panel of the District 4 Grievance Committee found that Becker neglected the client's legal matter and failed to keep the client reasonably informed about the status of the legal matter and to comply with the client's reasonable requests for information.

Becker violated Rules 1.01(b)(1) and 1.03(a). He was ordered to pay \$1,500 in attorney's fees and costs and \$3,500 in restitution.

On Sept. 18, **Jerry Goh** [#00795378], 49, of Dallas, received a three-month, fully probated suspension effective Oct. 1. An evidentiary panel of the District 6-A2 Grievance Committee found that

Goh failed to keep the complainant reasonably informed about the status of a civil matter, to comply with the complainant's reasonable requests for information, and to explain the matter so that the complainant could make informed decisions regarding the representation.

Goh violated Rules 1.03(a) and (b). He was ordered to pay \$1,189.64 in attorney's fees.

On Oct. 24, **Mitchell D. Collins** [#24025301], 42, of Tyler, received a 30-month, fully probated suspension effective Nov. 1. An evidentiary panel of the District 2-3 Grievance Committee found that Collins neglected the complainant's legal matter and failed to adequately communicate with her during the course of the representation. In addition, Collins failed to return the unearned fee to the complainant once the representation ended.

In a second matter, Collins neglected the complainant's legal matter and failed to adequately communicate with her during the course of the representation. He also failed to respond to the complainant's grievance.

Collins violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). He was ordered to pay \$3,000 in attorney's fees and \$5,750 in restitution.

Collins had until Nov. 23 to file an appeal.

On Sept. 22, **Mark E. Garcia** [#00796601], 41, of Premont, agreed to a one-year, fully probated suspension effective Oct. 1. The 79th District Court of Jim Wells County found that Garcia failed to hold funds separate from his own property and to properly disburse funds owed to a third person.

Garcia violated Rules 1.14(a) and (c). He was ordered to pay \$500 in attorney's fees and expenses.

On Oct. 25, **Don L. Jarvis, Jr.** [#90002001], 43, of McKinney, received a five-year, partially probated suspension effective Oct. 1, with the first three years

actively served and the remainder probated. An evidentiary panel of the District 1 Grievance Committee found that in representing the complainant, Jarvis neglected the legal matter entrusted to him and failed to frequently carry out completely the obligations Jarvis owed to the complainant. Jarvis failed to keep the complainant reasonably informed about the status of her legal matter and to explain the matter to the extent reasonably necessary to permit the complainant to make informed decisions. Jarvis failed to hold funds belonging to the complainant separate from Jarvis' own property, to keep funds belonging to the complainant in a separate trust account, and to promptly deliver to complainant funds that she was entitled to receive. Upon request by the complainant, Jarvis failed to promptly render a full accounting regarding such funds and disbursed the complainant's funds to persons not entitled to receive them. Upon termination of representation, Jarvis failed to refund advance payments of fee that had not been earned. In addition, Jarvis failed to timely furnish a response.

Jarvis violated Rules 1.01(b)(1) and (b)(2); 1.03(a) and (b); 1.14(a), (b), and (c); 1.15(d); and 8.04(a)(8). He was ordered to pay \$2,295 in attorney's fees and direct expenses and \$3,000 in restitution.

On Oct. 11, **Calixtro Villarreal, Jr.** [#20581905], 44, of Rio Grande City, accepted a one-year, fully probated suspension effective Oct. 1. An evidentiary panel of the District 12-3 Grievance Committee found that Villarreal failed to promptly deliver funds that a third party was entitled to receive.

Villarreal violated Rule 1.14(b). He was ordered to pay \$1,000 in attorney's fees and expenses.

On Oct. 24, **Pattie Jo Nolan** [#24046615], 42, of Conroe, accepted a three-year, fully probated suspension effective Nov. 1. An evidentiary panel of the District 3-B Grievance Committee found that in representing three complainants, Nolan failed to promptly

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comply with reasonable requests for information from the complainants about their legal matters. Regarding one of the complainants, Nolan failed to timely refund unearned fees. Also, Nolan failed to respond to the grievances filed against her.

Nolan violated Rules 1.03(a), 1.15(d), and 8.04(a)(8). She agreed to pay \$750 in attorney's fees and costs and \$1,500 in restitution.

On Oct. 11, **Ingrid K. Stamps** [#19025050], 50, of Fort Worth, received a five-year, partially probated suspension effective Oct. 1, with the first year actively served and the remainder probated. The 96th District Court of Tarrant County found that on Sept. 5, 2003, Stamps filed a pro se voluntary Chapter 7 bankruptcy petition within which she failed to list an ownership interest in two real pieces of property. In addition, she subsequently testified that she did not have an ownership interest in these properties. Based upon her representations, Stamps' debts were discharged, and her bankruptcy was closed.

In August 2008, Stamps' bankruptcy was reopened, however, when the court learned of her possible interests in these properties. The court issued a show cause order to Stamps, which was personally served upon her by the U.S. Marshal's Office. Stamps then made misrepresentations to the court about being served with the order. Stamps was consequently sanctioned by the court.

Stamps violated Rules 3.03(a)(1) and 8.04(a)(3). Stamps was ordered to pay \$6,004.32 in attorney's fees.

Stamps did not file an appeal.

On Sept. 29, **Morris Kirschberg** [#11533300], 65, of San Antonio, agreed to a two-year, fully probated suspension effective Nov. 1. The 407th District Court of Bexar County found that Kirschberg failed to keep his client reasonably informed and to explain the matter sufficiently to allow the client to make informed decisions.

Kirschberg violated Rules 1.03(a) and (b). He was ordered to pay \$1,150 in attorney's fees and expenses.

On Oct. 19, **David Arie DeGroot** [#24044444], 49, of McAllen, agreed to a three-year, fully probated suspension effective Oct. 1. An evidentiary panel of the District 9 Grievance Committee found that the complainant paid DeGroot \$1,900 when he hired DeGroot to represent him in a discrimination lawsuit. DeGroot failed to file a petition on the complainant's behalf. After the representation ended, DeGroot informed the complainant that he would provide the complainant with his file and a statement of accounts. DeGroot failed to provide the complainant with the complainant's file or an itemized billing statement. Additionally, DeGroot failed to return any unearned fees to the complainant. DeGroot failed to furnish a written response to the complaint as directed.

DeGroot violated Rules 1.01(b)(1), 1.15(d), and 8.04(a)(1) and (a)(8). DeGroot was ordered to pay \$1,555.72 in attorney's fees and expenses.

On Aug. 9, **Donald G. MacPhail** [#00788757], 44, of Abilene, received a seven-year, fully active suspension effective Aug. 3. An evidentiary panel of the District 14 Grievance Committee found that MacPhail failed to keep the complainant reasonably informed about the status of his wrongful termination matter. MacPhail engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

MacPhail violated Rules 1.03(a) and 8.04(a)(3). He was ordered to pay \$4,272.59 in attorney's fees and \$750 in restitution.

MacPhail filed an appeal on Nov. 7.

On Aug. 9, MacPhail received a four-year, fully active suspension effective July 27. An evidentiary panel of the District 14 Grievance Committee found that MacPhail failed to keep the complainant reasonably informed about the status of his wrongful termination matter. Upon

termination of representation, MacPhail failed to refund advance payments of fee to the complainant that had not been earned and to return her client file as requested by the complainant. MacPhail engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

MacPhail violated Rules 1.03(a), 1.15(d), and 8.04(a)(3). He was ordered to pay \$4,385.05 in attorney's fees and \$900 in restitution.

MacPhail filed an appeal on Nov. 2.

On Oct. 21, **Leandro David Martinez** [#13142710], 52, of Pharr, accepted a two-year, fully probated suspension effective July 1, 2012. An evidentiary panel of the District 12-2 Grievance Committee found that Martinez violated a prior disciplinary judgment by failing to pay restitution and attorney's fees and

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## DISCIPLINARY ACTIONS

to complete six additional hours of CLE as ordered. Martinez failed to respond to the grievance timely.

Martinez violated Rules 8.04(a)(8) and 8.07(a)(7). He was ordered to pay \$1,550 in attorney's fees and expenses.

On Oct. 31, **Gershon D. Cohen** [#04508325], 60, of San Antonio, accepted a three-month, fully probated suspension effective Dec. 1. An evidentiary panel of the District 10 Grievance Committee found that Cohen failed to carry out completely the obligations owed to a client and to hold client funds in a trust account.

Cohen violated Rules 1.01(b)(2) and 1.14(a) and (c). She was ordered to pay \$4,500 in attorney's fees and expenses.

On Oct. 18, **Tshombe Ali Anderson** [#24012218], 43, of Cedar Park, agreed to a five-year, partially probated suspension effective Oct. 1, with the first 18 months actively served and the remainder probated. An evidentiary panel of the District 8 Grievance Committee found that in the first matter, the complainant hired Anderson for representation in a personal injury matter arising from an automobile accident. Anderson filed a lawsuit but allowed the matter to be dismissed for want of prosecution in August 2009. Anderson failed to keep the complainant informed regarding the status of the case.

In a second matter, the panel found that the complainant hired Anderson in connection with a civil matter. The fee agreement provided that Anderson would receive \$150 per hour and 30 percent of any recovery from the suit. Anderson did not reduce the agreement to writing and did not specify the method by which the fee would be determined. Anderson arranged for another Texas attorney, not in the same firm, to work on the complainant's case and billed the complainant \$1,500 for the second attorney's services. Anderson did not advise the complainant that Anderson had engaged the services of the other

attorney, did not obtain the complainant's prior written consent to the association, and did not specify how fees would be divided.

In November 2006, Anderson filed suit on behalf of the complainant and two other individuals. However, beginning in February 2009, Anderson failed to respond to the complainant's numerous and reasonable requests for information regarding the status of the case. Since 2009, Anderson failed to provide meaningful legal services in the matter. During a meeting with the complainant in September 2009, Anderson misrepresented that he had another attorney working on an amended summary judgment motion.

Anderson did not deposit advanced legal fees into a trust or escrow account. Anderson failed to refund unearned fees and to furnish a written response to the complaint as directed.

In both these cases, Anderson relocated his office, but did not notify the complainants. During the representation, Anderson sent letters on stationery that contained "Law Office of Anderson & Associates" in the letterhead. However, at no time during the representation of the complainants did Anderson have any other attorneys as associates in the firm.

Anderson violated Rules 1.01(b)(1), 1.03(a), 1.04(d), 1.14(a) and (c), 1.15(d), 7.01(d), and 8.04(a)(1), (a)(3), and (a)(8). He was ordered to pay \$5,000 in attorney's fees and expenses and \$5,000 in restitution.

### REPRIMANDS

On Oct. 5, **Bradley W. Shields** [#24002938], 40, of Harlingen, accepted a public reprimand. An evidentiary panel of the District 12 Grievance Committee found that Shields neglected his client's case and failed to respond to his client's requests for information. In addition, the panel found that Shields failed to file a response as required by the Texas Rules of Disciplinary Procedure.

Shields violated Rules 1.01(b)(1), 1.03(a), and 8.04(a)(8). He agreed to pay \$500 in attorney's fees and expenses. ★