

No. 58402



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Board of Disciplinary Appeal

**Before the Board of Disciplinary Appeals
Appointed by
The Supreme Court of Texas**

**CHRISTOPHER L. GRAHAM,
APPELLANT**

V.

**COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE**

*On Appeal from the Evidentiary Panel
For the State Bar of Texas District 6-1
No. 201502093*

**BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE**

LINDA A. ACEVEDO
CHIEF DISCIPLINARY COUNSEL

DEAN A. SCHAFFER
ASSISTANT DISCIPLINARY COUNSEL

LAURA BAYOUTH POPPS
DEPUTY COUNSEL FOR
ADMINISTRATION

OFFICE OF THE CHIEF DISCIPLINARY
COUNSEL
COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS
P.O. Box 12487
AUSTIN, TEXAS 78711-2487
dschaffer@texasbar.com
512.427.1350; 1.877.953.5535
FAX: 512.427.4167

IDENTITY OF PARTIES AND COUNSEL

APPELLANT

CHRISTOPHER L. GRAHAM
P.O. Box 226265
Dallas, Texas 75222
Telephone: 214.989.4258
Fax: 214.989.4258
Email: clgraham@lgi-law.com

APPELLEE

COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS
P.O. Box 12487
Austin, Texas 78711

COUNSEL FOR APPELLEE

LINDA A. ACEVEDO
Chief Disciplinary Counsel

LAURA BAYOUTH POPPS
Deputy Counsel for Administration

DEAN A. SCHAFFER
Assistant Disciplinary Counsel
STATE BAR CARD NO. 17723500
Email: dschaffer@texasbar.com

State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
512.427.1350; 1.877.953.5535
Fax: 512.427.4167

TABLE OF CONTENTS

PAGE

IDENTITY OF PARTIES AND COUNSEL1

INDEX OF AUTHORITIES.....4

STATEMENT OF THE CASE8

STATEMENT OF THE ISSUES9

 1. The finding of misconduct meets the substantial evidence test.

 2. There is more than a scintilla of evidence that Graham neglected a legal matter and failed to carry out obligations.

 3. There is more than a scintilla of evidence that Graham was noncompliant and failed to keep the client informed.

 4. There is more than a scintilla of evidence that, upon termination, Graham failed to reasonably protect the client’s interests.

 5. Restitution is proper; the sanctions order is well within the panel’s discretion.

STATEMENT OF FACTS.....10

SUMMARY OF THE ARGUMENT.....16

ARGUMENT17

 I. The record supports the panel’s decision that Graham committed misconduct.....17

 A. Standard of review17

 B. The panel’s findings.....18

II.	The record provides reasonable basis for the panel’s finding that Graham neglected a legal matter and failed to carry out obligations.....	19	
III.	The record provides reasonable basis for the panel’s finding that Graham was noncompliant and failed to keep the client informed.....	21	
IV.	The record provides reasonable basis for the panel’s finding that, upon termination, Graham failed to take steps to reasonably protect the client’s interests	23	
	A.	Graham abandoned the client.....	23
	B.	Graham failed to return unearned fees.....	24
	1.	Quantum meruit does not apply	24
	2.	There was no nonrefundable retainer.....	25
	3.	No property was held in trust for dispute resolution	25
V.	The record supports the sanction of restitution.....	26	
	A.	Standard of review	27
	B.	Restitution is proper; the sanctions order is well within the panel’s discretion	27
	CONCLUSION AND PRAYER	28	
	CERTIFICATE OF COMPLIANCE	29	
	CERTIFICATE OF SERVICE.....	29	
	APPENDIX.....	31	

Tab 1: Judgment of Fully Probated Suspension (CR 163-169)

INDEX OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Bortt Expl. Co. v. Chevron, Inc.</i> , 787 S.W.2d 942 (Tex. 1990)	24
<i>City of El Paso v. Pub. Util. Comm’n of Tex.</i> , 883 S.W.2d 179 (Tex. 1994)	18
<i>Cluck v. Commission for Lawyer Discipline</i> , 214 S.W.3d 736 (Tex. App. – Austin 2007, no pet.).....	25
<i>Comm’n for Lawyer Discipline v. Schaefer</i> , 364 S.W.3d 831 (Tex. 2012)	17
<i>Helena Chemical Co. v. Wilkins</i> , 47 S.W.3d 486 (Tex. 2001)	27
<i>K-Mart Corp. v. Honeycutt</i> , 24 S.W.3d 357 (Tex. 2000) (per curiam)	27
<i>R.R. Comm’n of Tex. v. Torch Operating Co.</i> , 912 S.W.2d 790 (Tex. 1995)	18
<i>Schultz v. Comm’n for Lawyer Discipline</i> , No. 55649, 2015 WL 9855916 (Tex. Bd. Discip. App. Dec. 17, 2015)	18
<i>State Bar of Texas v. Kilpatrick</i> , 874 S.W.2d 656 (Tex. 1994)	27
<i>Tex. Dep’t of Pub. Safety v. Cuellar</i> , 58 S.W.3d 781 (Tex.App.—San Antonio 2001, no pet.)	18
<i>Tex. State Bd. of Dental Exam’rs v. Sizemore</i> , 759 S.W.2d 114 (Tex. 1988)	18

<u>RULES</u>	<u>PAGE</u>
TEX. RULES DISCIPLINARY P. R. 2.20.....	27
 <u>STATUTES</u>	
TEX. GOV'T CODE ANN. § 81.072(b)(7) (West 2015).....	17
 <u>SECONDARY MATERIALS</u>	
Tex. Comm. on Prof'l Ethics, Op. 431, 49 Tex. B.J. 1084 (1986)	25

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**COMMISSION FOR LAWYER DISCIPLINE,
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*On Appeal from the Evidentiary Panel
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**BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE**

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits this brief in response to the brief filed by Appellant, Christopher L. Graham. For clarity, this brief refers to Appellant as “Graham” and Appellee as “the Commission.” References to the record are labeled CR (clerk’s record), RR (reporter’s record), Pet. Ex. (Petitioner’s exhibit to reporter’s record), Resp. Ex. (Respondent’s exhibit to reporter’s record), and App. (appendix to brief). The Texas Disciplinary Rules of

Professional Conduct are referred to as TDRPC. The Texas Rules of Disciplinary Procedure are referred to as TRDP.

STATEMENT OF THE CASE

Type of Proceeding: Attorney Discipline

Petitioner/Appellee: The Commission for Lawyer Discipline

Respondent/Appellant: Christopher L. Graham

Evidentiary Panel: 6-1

Judgment: Judgment of Fully Probated Suspension

*Violations found (Texas
Disciplinary Rules of
Professional Conduct):*

Rule 1.01(b)(1): In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

Rules 1.01(b)(2): In representing a client, a lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.

Rule 1.03(a): A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.15(d): (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.

STATEMENT OF THE ISSUES

1. The finding of misconduct meets the substantial evidence test.
2. There is more than a scintilla of evidence that Graham neglected a legal matter and failed to carry out obligations.
3. There is more than a scintilla of evidence that Graham was noncompliant and failed to keep the client informed.
4. There is more than a scintilla of evidence that, upon termination, Graham failed to reasonably protect the client's interests.
5. Restitution is proper; the sanctions order is well within the panel's discretion.

STATEMENT OF FACTS

Emund Willingham hired Christopher Graham to defend against felony criminal charges. (RR 9) Graham quoted \$2,500.00 for pretrial services. (RR 97) Willingham completed payments totaling \$3,000.00 on May 18, 2013. (RR 11-12) Graham provided receipts, with written confirmation that \$500.00 “is applied to investigator retainer.” (Pet. Ex. 2)

After the money was paid, Willingham found difficulty in communicating with Graham. Months went by without meaningful contact; Graham never hired an investigator (RR 12, 111). On December 27, 2013, Willingham wrote:

Hello Mr. Graham, I’m reaching out to you ... I have made several attempts to reach you via phone and voice mail messages with no success.

When we spoke at our last meeting over six months ago you indicated that an investigator would begin working on the case, and that we would schedule yet another meeting to review the evidence package. To date that has yet to happen.

I realize that in order for this case to go to trial you are requesting an additional two thousand dollars in payment, however I have not seen much progress on this case since I retained you as counsel almost two years ago.

I’m well aware that you are extremely busy, however my life and livelihood are on hold until this case is resolved, please let me know if this is too much for your already busy caseload and I will explore other legal avenues.

(Pet. Ex. 4) Graham responded that he had been in Central and South America, “where phone access was limited” – but now that he was back in the country – Graham assured he would address concerns. (Pet. Ex. 4)

Not much changed until Willingham's bail bond company alerted him that his case was set for hearing on June 25, 2014. (RR 21) Willingham knew nothing of it from Graham; he reached out to make sure Graham knew. (RR 21) Graham, again, declined to answer calls; Willingham emailed Graham the night before the hearing:

I was informed on this past Saturday by the bond company that I have court date tomorrow at 9:00 am. I wanted to find how I need to proceed, and if you were in fact also aware of the court date and would be able to attend. I've tried calling a few times but keep receiving your voicemail. I will also attempt to reach you via social media as well. (Pet. Ex. 6)

On the day of hearing, Graham spoke to Willingham through text messages. (RR 23) Graham asked for more money and left it to the client to talk to the court. (RR 24-26, Pet. Ex. 7) In a docket note from the hearing, the court denoted Graham as the retained attorney, then stated: "Other (Spoke w/ Bonding Company)." (Resp. Ex. 1) Ninety days later, the court revoked Willingham's bond, noting: "Attorney not returning calls." (Resp. Ex. 1)

Willingham discovered the bond revocation when he reviewed a Dallas County website. (RR 27) Graham had said nothing about it – Willingham had to explain to his lawyer that a warrant had issued for his arrest. (RR 27) Graham's response was to ask for more money, another sum on top of what had been paid for pretrial services and an investigator. On November 6, 2014, Willingham paid \$1,750.00, the sum Graham charged for "consultation ... pretrial representation, and bond reinstatement." (Pet. Ex. 3)

At trial, Graham described “game plan” to execute bond reinstatement:

1. He would evaluate the recent judicial elections to see if he could approach the judge informally – “that didn’t work because at the holidays, December time, and in addition it was an outgoing judge and one coming in.” (RR 98-99)

2. He would attempt an informal approach to the prosecutor, Cries Prior, to see if the bond could be reinstated by agreement – “There was an issue with him and that didn’t happen. He was actually in trial two times, and we have all December and half of January, with Cries Prior in trial.” (RR 99)

3. If he couldn’t “wait on some kind of informal approach ... [then he would] file something” – “I filed February of 2015 in order to get a hearing date scheduled. When I’m at the court on that, in February – in February, I see Mr. Andrew KaiKai in the hallway ... and he said, no, no, don’t worry about that, I am being retained ... I didn’t take any action because Mr. KaiKai told me, don’t take any action.” (RR 99-100)

Through each step Graham left Willingham in harm’s way. In Graham’s mind, the grievance was “[e]ssentially ... a situation where Mr. Willingham ... was upset about him having to go to jail as a result of what took place.” (RR 96)

Willingham was arrested due to bond revocation on January 26, 2015. (RR 31-32) He was incarcerated for 45 days; Graham at no time visited him in jail. (RR 32) Graham ceased direct communication with Willingham. (RR 31) The client

learned through his girlfriend that the lawyer might be working on a bond reduction. (RR 33)

Knowing that Willingham was arrested on January 26, 2015, Graham waited until February 2, 2015 to file for bond reduction. (Pet. Ex. 17) Graham avers in the filing that he signed and served the application the day of Willingham's arrest – the document does not explain why Graham waited a week to file it. (Pet. Ex. 17)

The court set hearing for February 6, 2015, to consider the Application for Habeas Corpus Seeking Bond Reduction. (RR 92) On the day of hearing, Graham failed to appear. (RR 92) Graham denies he was obligated as Willingham's lawyer to attend the hearing. (RR 92-93) Graham asserts he deferred to Mr. KaiKai; but attorney KaiKai's letter of representation is dated February 9, 2015, after the date of the hearing. (RR 93, Pet. Ex. 9)

Graham acknowledges that KaiKai was not attorney of record at the time of the writ hearing. (RR 93) Graham sought no instruction from Willingham, and failed to apprise the court that he was leaving the case. (RR 93-94) At the disciplinary hearing, when Graham suggested to Willingham that KaiKai was the new lawyer before the writ hearing, Willingham declared, "That is not correct, Mr. Graham. I was waiting for my old attorney, Mr. Graham, to show up in court on the 6th, so I would know where I stood in regards to being released." (RR 51)

Graham was terminated on failing to show for the February 6 hearing. (RR 35, 51) Willingham obtained new counsel. (Pet. Ex. 9) Graham failed to turn over a client file, and failed to refund unearned fees. (RR 36, 39, 102, Pet. Ex. 9) Graham now complains, “I believe they must have gotten, I don’t know, fearful or anxious, and before I had time to do anything, I was off the case and Mr. KaiKai was on the case. (RR 103)

Willingham had to pay the new lawyer’s fee, despite having paid Graham for the same service. (RR 39) KaiKai secured Willingham’s release the month after Graham no-showed. (RR 37) KaiKai successfully reached a plea agreement to resolve the criminal charge by deferred adjudication. (RR 37, Pet. Ex. 10, 11) Graham, on the other hand, filed suit against Willingham for more fees, as if he had handled the criminal case through trial. (RR 40-41, Pet. Ex. 12)

The Commission initiated disciplinary action, alleging Graham violated Rules 1.01(b)(1), 1.01(b)(2), 1.03(a), and 1.15(d). (CR 29.) The Evidentiary Panel determined that Graham neglected the legal matter, failed to carry out obligations to Willingham, failed to keep the client reasonably informed, and, upon termination, failed to reasonably protect the client’s interests. (CR 163, App. Tab 1) The Evidentiary Panel ordered a two-year fully probated suspension. (CR 163, App. Tab 1) The panel also ordered restitution in the amount of \$2,250.00 – the sum total of

payments made by Willingham for hire of an investigator (\$500.00) and bond reinstatement (\$1,750.00).

SUMMARY OF THE ARGUMENT

Graham was hired to defend Willingham against felony criminal charges. Graham received payment, but neglected to implement a defense. He was paid to hire an investigator, but never did. His neglect and failure to communicate may have contributed to Willingham's bond revocation. Graham accepted payment to reinstate bond, but further neglect and inaction may have contributed to Willingham's arrest. Graham did not visit Willingham at jail; Graham ceased all direct communication with the client. He later abandoned Willingham by failing to appear at a hearing for habeas corpus relief. Willingham rightfully hired a new lawyer. Graham failed to provide a client file; and failed to refund unearned fees. Graham decided instead to sue Willingham for more fees, demanding expectation damages as if he had completed the case through trial. The Commission took action to discipline Graham. The panel did not err in finding misconduct; the sanction against Graham is well within panel's discretion.

ARGUMENT

I. The record supports the panel's decision that Graham committed misconduct.

Graham was hired to defend Willingham against felony criminal charges. The record establishes that Graham received payment in advance, failed to follow through, and ultimately abandoned Willingham by failing to appear at habeas corpus hearing. The Commission alleged that Graham:

- Neglected a legal matter entrusted to him, TDRPC 1.01(b)(1);
- Failed to carry out obligations to the client, TDRPC 1.01(b)(2);
- Failed to keep the client informed, TDRPC 1.03(a); and
- Upon termination, failed to reasonably protect the client's interests, TDRPC 1.15(d).

The Evidentiary Panel found misconduct. The panel's findings meet the test of substantial evidence.

A. Standard of review.

In disciplinary cases, the substantial evidence standard of review applies. TEX. GOV'T CODE ANN. § 81.072(b)(7) (West 2015) (State Bar Act); *Comm'n for Lawyer Discipline v. Schaefer*, 364 S.W.3d 831, 835 (Tex. 2012). Here, the panel's judgment sets forth Findings of Fact and Conclusions of Law. BODA reviews legal conclusions *de novo*; BODA reviews findings of fact under a substantial evidence

standard. *Schultz v. Comm'n for Lawyer Discipline*, No. 55649, 2015 WL 9855916 (Tex. Bd. Discip. App. Dec. 17, 2015).

The substantial evidence standard focuses on whether there is *any* reasonable basis in the record for the administrative body's findings. *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994). Anything more than a scintilla of evidence is sufficient to support a finding. *Tex. Dep't of Pub. Safety v. Cuellar*, 58 S.W.3d 781, 783 (Tex.App.—San Antonio 2001, no pet.). The ultimate question is not whether a finding is correct, but only whether there is some reasonable basis for it. *City of El Paso*, 883 S.W.2d at 185. The reviewing tribunal may not substitute its judgment for that of the administrative body and must consider only the record upon which the decision is based. *R.R. Comm'n of Tex. v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995); *Tex. State Bd. of Dental Exam'rs v. Sizemore*, 759 S.W.2d 114, 116 (Tex. 1988). BODA presumes the panel's findings, inferences, conclusions, and decisions are supported by substantial evidence, and Graham bears the burden to prove otherwise. *Schultz v. Comm'n for Lawyer Discipline*, No. 55649, 2015 WL 9855916.

B. The panel's findings.

The panel held a full evidentiary hearing and issued findings of fact and conclusions of law. Among other things, the panel found:

- On or about March 9, 2012, Complainant Emund K. Willingham (Willingham) hired Respondent to represent him in a felony criminal matter.
- In representing Willingham, Respondent neglected the legal matter entrusted to him.
- In representing Willingham, Respondent frequently failed to carry out completely the obligations Respondent owed to Willingham.
- Respondent failed to keep Willingham reasonably informed about the status of his felony criminal case matter and failed to promptly comply with reasonable requests for information from Willingham.
- Upon termination of representation, Respondent failed to surrender papers and property to which Willingham was entitled. Respondent also failed to refund advance payments of the fee that had not been earned.
- Respondent owes restitution in the amount of Two Thousand Two Hundred Fifty Dollars and No Cents (\$2,250.00) payable to Emund K. Willingham. (CR 163)

The record provides reasonable basis to support the panel's findings. There is more than a scintilla of evidence that Graham committed misconduct.

II. The record provides reasonable basis for the panel's findings that Graham neglected a legal matter and failed to carry out obligations.

The record demonstrates that Graham neglected the legal matter and failed to carry out legal obligations. The evidence shows:

1. Emund Willingham hired Christopher Graham to defend against felony criminal charges. (RR 9)
2. Graham quoted \$2,500.00 for pretrial services. (RR 97)

3. Willingham completed payments totaling \$3,000.00 on May 18, 2013. (RR 11-12)
4. Graham confirmed in writing that the extra \$500.00 was to be “applied to investigator retainer.” (Pet. Ex. 2)
5. Months went by without action; Graham never hired an investigator (RR 12, 111).
6. On December 27, 2013, Willingham wrote to Graham voicing concern over Graham’s lack of progress, communication, and understanding. (Pet. Ex. 4)
7. Nothing changed until the bail bond company alerted Willingham his case was set for hearing on June 25, 2014. (RR 21)
8. Graham failed to appear at the hearing or call in to the court – he sent text message to Willingham and left it to the client to talk to the court. (RR 23, 24-26, Pet. Ex. 7)
9. At the hearing, the court noted that Graham was retained, but wrote that discussion was limited to “Other,” the bond company. (Resp. Ex. 1) Ninety days later, the court revoked Willingham’s bond, noting “Attorney not returning calls.” (Resp. Ex. 1)¹
10. Graham failed to inform Willingham of the bond revocation; Willingham alerted Graham after seeing on a website that a warrant had issued for his arrest. (RR 27)
11. Graham’s response was to demand for more money. On November 6, 2014, Willingham paid \$1,750.00 to Graham for bond reinstatement. (Pet. Ex. 3)
12. Graham’s game plan for bond reinstatement proved to be abject failure: a) he didn’t speak informally with the judge; b) he didn’t have meaningful informal discussions with the prosecutor; c) his months-

¹ It is a fair inference that the court revoked Willingham’s bond out of concern that the retained lawyer no longer trusted the client to comply with terms of the bond. Graham never dialed in to speak up for Willingham.

long wait to take action likely contributed to Willingham's arrest; d) Graham then failed to appear on his own motion for bond reduction. (RR 98-100)

13. Willingham was arrested due to bond revocation on January 26, 2015. (RR 31-32) He was incarcerated for 45 days. (RR 32)
14. A week after the arrest, Graham abandoned Willingham by failing to appear at a hearing for habeas corpus relief. (RR 92) Graham denies he had an obligation to follow through with the hearing. (RR 92-93) Graham deferred to a new lawyer, who had not yet appeared and was not yet retained. (RR 93) Graham concedes he was attorney of record and no-showed for the hearing, without so much as a word of discussion with Willingham. (RR 93-94)
15. Graham was terminated and failed to return – or assemble – a client file. (RR 36, 102, Pet. Ex. 9) Graham did not refund unearned fees. (RR 39, 102)
16. Willingham had to pay the new lawyer's fee, despite having paid Graham for the same service. (RR 39)

On this record, there is more than a scintilla of evidence that Graham neglected a legal matter entrusted to him and failed to carry out obligations to Willingham. The record provides reasonable basis for the panel's findings that Graham violated TDRPC 1.01(b)(1) and 1.01(b)(2).

III. The record provides reasonable basis for the panel's finding that Graham was noncompliant and failed to keep the client informed.

The record demonstrates that Graham failed to keep the client adequately informed and failed to promptly respond to requests for information. The evidence shows:

1. Willingham paid Graham for pretrial services and the hire of an investigator. (RR 11-12, 97, Pet. Ex. 2)
2. After taking the money, Graham ceased meaningful contact for months; Willingham pleaded with Graham for support; Graham did not return messages, and kept secret the fact he did not retain an investigator (RR 12, 111, Pet. Ex. 4).
3. Willingham later learned through his bail bond company that his case was set for hearing on June 25, 2014. (RR 21) Graham said nothing of it; Willingham again pleaded for guidance; Graham did not answer calls. (RR 21)
4. On the day of hearing, Graham texted Willingham to demand additional payment, but failed to appear at the hearing or call in to the court; the court later revoked Willingham's bond, noting Willingham's retained attorney did not return calls on the case. (RR 24-26, Pet. Ex. 7, Resp. Ex. 1)
5. Graham failed to inform Willingham of the bond revocation; Willingham was again left to figure it out. (RR 27) Graham's unresponsiveness and delay may well have contributed to Willingham's subsequent arrest on bond revocation. (RR 96-100)
6. Willingham was incarcerated for 45 days; Graham at no time visited him in jail. (RR 32) Graham ceased all direct communication with Willingham. (RR 31)
7. Graham later no-showed for habeas corpus relief, departing Willingham without so much as a phone call. (RR 51, 92-94)

This record demonstrates more than a scintilla of evidence that Graham failed to keep Willingham informed and did not comply with the client's reasonable requests for information. The record provides reasonable basis for the panel's finding that Graham violated TDRPC 1.03(a).

IV. The record provides reasonable basis for the panel’s finding that, upon termination, Graham failed to take steps to protect the client’s interests.

A. Graham abandoned the client.

The record demonstrates Graham abandoned the client and failed to take reasonable steps to protect the client’s interests. The evidence shows:

1. In Graham’s mind, the impetus for the grievance was “[e]ssentially ... a situation where Mr. Willingham ... was upset about him having to go to jail as a result of what took place.” (RR 96)
2. Willingham was arrested due to bond revocation on January 26, 2015. (RR 31-32) He was incarcerated for 45 days; Graham at no time visited him in jail. (RR 32) Graham ceased direct communication with Willingham. (RR 31) The client learned through his girlfriend that the lawyer might be working on a bond reduction. (RR 33)
3. Knowing that Willingham was arrested on January 26, 2015, Graham waited a week to file for bond reduction. (Pet. Ex. 17) Graham then failed to appear for a hearing on his own motion. (RR 92)
4. Graham denies he had an obligation as Willingham’s lawyer to attend the hearing to reinstate bond. (RR 92-93) Graham asserts he deferred to KaiKai, but he concedes he alone was the attorney of record on the day of the hearing. (RR 93)
5. At the disciplinary hearing, when Graham suggested that KaiKai had replaced him before the writ hearing, Willingham declared, “That is not correct, Mr. Graham. I was waiting for my old attorney, Mr. Graham, to show up in court on the 6th, so I would know where I stood in regards to being released.” (RR 51)
6. Willingham hired new counsel; Graham failed to provide a client file. (RR 36, 102, Pet. Ex. 9)
7. Graham also failed to refund unearned fees. (RR 39, 102) Willingham had to pay the new lawyer’s fee, despite having paid Graham for the same service. (RR 39)

On this record, there is more than a scintilla of evidence that Graham abandoned Willingham before he was terminated as counsel.

B. Graham failed to return unearned fees.

The evidence shows that Graham did not refund unearned fees. Indeed, even though he absented himself from the case, Graham sued Willingham for breach of contract, alleging entitlement to fictitious fees as if he had handled the case through trial. (Pet. Ex. 12) Graham's refusal to refund unearned fees is misconduct.

1. Quantum meruit does not apply.

Graham argues he was entitled to keep the money pursuant to the doctrine of quantum meruit. Quantum meruit allows a plaintiff to recover the reasonable value of its goods or services the defendant used, accepted, or enjoyed, when the defendant had notice that the plaintiff expected to be paid for the goods or services. *Bortt Expl. Co. v. Chevron, Inc.*, 787 S.W.2d 942, 944 (Tex. 1990).

Graham claims he provided Willingham a valuable service, but misses the point that his acts and omissions caused harm. Willingham paid Graham \$500.00 to retain an investigator; Graham never hired one. (RR 12, 111; Pet. Ex. 2). Likewise, Graham may have contributed to Willingham's bond revocation, but still was paid \$1,750 for "bond reinstatement." (Pet. Ex. 3) Graham failed miserably in that effort, and Graham's delay and inaction may have contributed to Willingham's arrest. (RR

98-100) Graham subsequently no-showed for the hearing on bond reinstatement. (RR 51, 92-93)

Graham's failures with respect to the investigator and bond reinstatement brought nothing for Willingham to use, accept, or enjoy. It is baffling that Graham deems value in the outcome. The panel correctly ordered Graham to pay restitution of these sums, and his excuse under quantum meruit is a nonstarter.

2. There was no nonrefundable retainer.

Graham next contends he was entitled to keep the money as a nonrefundable retainer. "A fee is not earned simply because it is designated as non-refundable." *Cluck v. Commission for Lawyer Discipline*, 214 S.W.3d 736, 740 (Tex. App. – Austin 2007, no pet.) (citing Tex. Comm. on Prof'l Ethics, Op. 431, 49 Tex. B.J. 1084 (1986)). Money that constitutes prepayment of a fee belongs to the client until the services are rendered. *Id.* Here, Graham was not paid for his loss of opportunity to accept other employment – Willingham paid for pretrial services, the hire of an investigator, and bond reinstatement. (RR 9-13) Even Graham's testimony agrees: "If I haven't done any work, no, I am not entitled to it." (RR 83)

3. No property was held in trust for dispute resolution.

Lastly, Graham contends there was no misconduct because "Tex. Disp. R. Prof'l Conduct 1.14(c) was followed." TDRPC 1.14 pertains to "Safekeeping Property." Subsection (c) provides that a lawyer is to keep separate any fund in

which both the lawyer and another person claim interest. Funds in trust are not to be disbursed until there is an accounting and severance of interests. In the event of dispute, the disputed portion is to be kept separate until the dispute is resolved and the undisputed portion distributed appropriately.

Graham did none of the above. There is no evidence of trust accounting; Graham failed to produce a signed fee agreement; he did not keep time records. On the other hand, there is more than a scintilla of evidence that Graham did not pursue a bona fide dispute under TDRPC 1.14(c).

Here, Graham was to serve as Willingham's advocate. He was paid in advance, but failed to reserve funds and failed to follow through. He documented receipt of \$500.00 to hire an investigator, but never hired one. Having been paid for bond reinstatement, he abandoned the client. After Willingham succeeded with a new lawyer and filed the grievance against Graham, Graham retaliated with a lawsuit for breach of contract, seeking expectation damages as if he had performed the full array of trial services. (Pet. Ex. 12.) None of this comports with function of TDRPC 1.14(c). There is no evidence that Graham reserved a fund of Willingham's money for dispute resolution – the only evidence is that Graham took the money for himself.

V. The record supports the sanction of restitution.

Insofar as Graham may challenge the order for restitution, the panel's sanction is proper and fits well within the panel's discretion.

A. Standard of review.

The trial court's determination of sanction is reviewed under the abuse of discretion standard. *State Bar of Texas v. Kilpatrick*, 874 S.W.2d 656 (Tex. 1994). Likewise, the admission of evidence is reviewed for abuse of discretion. *Helena Chemical Co. v. Wilkins*, 47 S.W.3d 486, 499 (Tex. 2001). A trial court abuses its discretion when its ruling is arbitrary, unreasonable, or without reference to any guiding rules or legal principles. *K-Mart Corp. v. Honeycutt*, 24 S.W.3d 357, 360 (Tex. 2000) (per curiam).

B. Restitution is proper; the sanctions order is well within the panel's discretion.

Restitution is expressly authorized under TRDP 2.20. "In all cases in which the proof establishes that the Respondent's misconduct involved misappropriation of funds and the Respondent is ... suspended, the panel's judgment must require the Respondent to make restitution during the period of suspension" TEX. RULES DISCIPLINARY P. R. 2.20. Graham should return the sums Willingham paid for retaining an investigator and bond reinstatement. The panel's restitution order is proper and well within the panel's discretion.

CONCLUSION AND PRAYER

For these reasons, the Commission prays that the Board affirm the judgment of the District 6-1 Evidentiary Panel of the State Bar of Texas.

RESPECTFULLY SUBMITTED,

LINDA A. ACEVEDO
CHIEF DISCIPLINARY COUNSEL

LAURA BAYOUTH POPPS
DEPUTY COUNSEL FOR ADMINISTRATION

DEAN A. SCHAFFER
ASSISTANT DISCIPLINARY COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY
COUNSEL
STATE BAR OF TEXAS
P.O. Box 12487
AUSTIN, TEXAS 78711
TELEPHONE: 512.427.1350; 1.877.953.5535
FAX: 512.427.4167

/s/ Dean A. Schaffer
DEAN A. SCHAFFER
STATE BAR CARD NO. 17723500
ATTORNEY FOR APPELLEE

CERTIFICATE OF COMPLIANCE

Pursuant to the Board of Disciplinary Appeals Internal Procedural Rules, the foregoing brief on the merits contains approximately 4,144 words (total for all sections of brief that are required to be counted), which is less than the total words permitted by the Board's Internal Procedural Rules. Counsel relies on the word count of the computer program used to prepare this petition.

/s/ Dean A. Schaffer
DEAN A. SCHAFFER

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing brief of Appellee, the Commission For Lawyer Discipline has been served on Appellant, Christopher L. Graham, by email to clgraham@lgi-law.com on the 23rd day of August, 2017.

/s/ Dean A. Schaffer
DEAN A. SCHAFFER
ASSISTANT DISCIPLINARY COUNSEL
STATE BAR OF TEXAS

No. 58402

**Before the Board of Disciplinary Appeals
Appointed by
The Supreme Court of Texas**

**CHRISTOPHER L. GRAHAM,
APPELLANT**

V.

**COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE**

*On Appeal from the Evidentiary Panel
For the State Bar of Texas District 6-1
No. 201502093*

**APPENDIX TO BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE**

LINDA A. ACEVEDO
CHIEF DISCIPLINARY COUNSEL

LAURA BAYOUTH POPPS
DEPUTY COUNSEL FOR
ADMINISTRATION

DEAN A. SCHAFFER
ASSISTANT DISCIPLINARY COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY
COUNSEL
COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS
P.O. Box 12487
AUSTIN, TEXAS 78711-2487
512.427.1350; 1.877.953.5535
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APPENDIX TO BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

The Commission for Lawyer Discipline attaches the following documents in support of the foregoing brief:

TAB 1: Judgment of Fully Probated Suspension (CR 163-169)

Tab 1

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 Dallas County, Texas and maintains his principal place of practice "Out Of State". Dallas County is the county in Texas where the Professional Misconduct occurred.
3. On or about March 9, 2012, Complainant Emund K. Willingham (Willingham) hired Respondent to represent him in a felony criminal matter.
4. In representing Willingham, Respondent neglected the legal matter entrusted to him.
5. In representing Willingham, Respondent frequently failed to carry out completely the obligations Respondent owed to Willingham.
6. Respondent failed to keep Willingham reasonably informed about the status of his felony criminal case matter and failed to promptly comply with reasonable requests for information from Willingham.
7. Upon termination of representation, Respondent failed to surrender papers and property to which Willingham was entitled. Respondent also failed to refund advance payments of the fee that had not been earned.
8. Respondent owes restitution in the amount of Two Thousand Two Hundred Fifty Dollars and No Cents (\$2,250.00) payable to Emund K. Willingham.
9. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney's fees associated with this Disciplinary Proceeding in the amount of Four Thousand Three Hundred Twenty Dollars and No Cents (\$4,320.00).
10. The Chief Disciplinary Counsel of the State Bar of Texas has incurred direct expenses associated with this Disciplinary Proceeding in the amount of Two Hundred Dollars and No Cents (\$200.00).

Conclusions of Law

The Evidentiary Panel concludes that, based on foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: 1.01(b)(1), 1.01(b)(2), 1.03(a) and 1.15(d).

Sanction

The Evidentiary Panel, having found that 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 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 a Probated Suspension.

Accordingly, it is **ORDERED, ADJUDGED** and **DECREED** that Respondent be suspended from the practice of law for a period of two (2) years, with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on October 10, 2016, and shall end on October 9, 2018.

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.
8. Respondent shall pay restitution to Emund K. Willingham in the amount of Two Thousand Two Hundred Fifty Dollars and No Cents (\$2,250.00). The payment of restitution shall be made in four (4) monthly installments, each in the amount of Five Hundred Sixty-Two Dollars and Fifty Cents (\$562.50). Each payment is due on or before the first (1st) day of every month, beginning November 1, 2016, and ending February 1, 2017. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Emund K. Willingham 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).
9. Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of Four Thousand Five Hundred Twenty Dollars and No Cents (\$4,520.00). The payment of attorney's fees and expenses shall be made in six (6) monthly installments, with the first five (5) payments in the amount of Seven Hundred Fifty-Three Dollars and Thirty-Three Cents (\$753.33) and the sixth and final payment in the amount of Seven Hundred Fifty-Three Dollars and Thirty-Five Cents (\$753.35). Each payment shall be due and payable on or before the first (1st) day of each month, beginning March 1, 2017, and ending August 1, 2017. Respondent shall pay the attorney's fees and direct expenses by certified or cashier's check or money order made payable to the State Bar of Texas 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).
10. 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 Ethics in Professional Responsibility and fourteen (14) additional hours of continuing legal education in the area of Law Practice Management. These twenty-two (22) additional hours of CLE are to be completed by June 1, 2017, and shall be participatory, not self-study. 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
11. Respondent shall make contact with the Chief Disciplinary Counsel's Office's 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 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 to Emund K. Willingham in the amount of Two Thousand Two Hundred Fifty Dollars and No Cents (\$2,250.00). The payment of restitution shall be made in four (4) monthly installments, each in the amount of Five Hundred Sixty-Two Dollars and Fifty Cents (\$562.50). Each payment is due on or before the first (1st) day of every month, beginning November 1, 2016, and ending February 1, 2017. Respondent shall pay the restitution by certified or cashier's check or

money order made payable to Emund K. Willingham 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 Four Thousand Five Hundred Twenty Dollars and No Cents (\$4,520.00). The payment of attorney's fees and direct expenses shall be made in six (6) monthly installments, with the first five (5) payments in the amount of Seven Hundred Fifty-Three Dollars and Thirty-Three Cents (\$753.33) and the sixth and final payment in the amount of Seven Hundred Fifty-Three Dollars and Thirty-Five Cents (\$753.35). Each payment shall be due and payable on or before the first (1st) day of each month, beginning March 1, 2017, and ending August 1, 2017. Respondent shall pay the attorney's fees and direct expenses by certified or cashier's check or money order made payable to the State Bar of Texas 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** 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 19th day of October, 2016.

**EVIDENTIARY PANEL 6-1
DISTRICT NO. 6
STATE BAR OF TEXAS**



**Jeanne M. Huey
District 6, Panel 6-1 Presiding Member**