BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

MARK L. HONSAKER	§	
State Bar of Texas Card No. 00795425	§	
	§	
v.	§	**CAUSE NO. 58471**
	§	
COMMISSION FOR LAWYER	§	
DISCIPLINE OF THE STATE BAR OF TEXAS	§	

APPELANT'S BRIEF IN SUPPORT OF APPEAL

COMES NOW, MARK L. HONSAKER, Appellant, and files the following as his brief in support of his appeal of the decision of the State Bar District No. 4-1 Grievance Committee which entered a Judgment of Disbarment against Appellant on or about September 19, 2016. With regards to this Brief, Appellant, and although the Record was filed with the Board of Disciplinary Appeals, has never been provided with a copy of the Record and so no specific references to the Record other than exhibits which were introduced during the hearing are referred to herein. Further, and as Appellant has made it well known, his limited financial resources have made it impossible to find assistance with the research and drafting of this brief so, again, Appellant's references to legal theories and law in support of his appeal are based upon his personal knowledge of black letter law in this State. More specifically, Appellant's arguments and authorities are based upon his legal acumen which was built over twenty plus years of practice in the Texas legal system in representing clients in all types of matters before the Judges and in the courtrooms of this State. Therefore, in support of his request that the Judgment of Disbarment entered against him be vacated Appellant would respectfully show as follows:

FACTUAL BACKGROUND

Appellant was hired by Ms. Janie Patteson, Complainant, in late 2011 to represent her in connection with obtaining a divorce from her then husband, Rocky Shawn Hogdon, Sr. In connection with the divorce, Complainant signed an hourly fee agreement under which Appellant would be her attorney of record and she agreed to pay Appellant the sum of $350 per hour for said services. Complainant also agreed to pay for, and reimburse, any out of pocket expenses incurred on her behalf. Complainant does not dispute that she signed a fee agreement with Appellant consistent with the terms outlined above and, in fact, paid for the services rendered by Appellant under said fee contract in connection with her divorce based upon said fee agreement. (See Exhibits 2, 4, & 5). An Agreed Final Decree of Divorce was entered in Complainant's Divorce case on or about August 16, 2012. (See Exhibit 3). Under the terms of that Agreed Final Decree of Divorce, Complainant was to receive the sum of $32,000.00 from the refinancing of the marital residence as part of the property division set forth therein. (Id., p.5-6). At the time of representing her in connection with the divorce, Appellant was working with the firm of Bill De La Garza and Associates (hereinafter "the firm").

In April of 2013, Appellant left the employment of the firm and opened his own practice which prior to joining the firm, Appellant had owned and operated his own successful solo practice in the State of Texas for nearly sixteen years. During that time, Appellant built a reputation as an honest and hard working lawyer who represented clients in and out of the courtroom, he had no complaints regarding the services he rendered, and not only did the majority of his business come from referrals from the clients he represented, but many of his business and transactional clients had been with him from the time he started his practice and were still utilizing his services when he joined the firm. Additionally, many of the clients he was representing at the time he left the

firm chose to continue with Appellant as their attorney instead of stay with the firm because of the professional manner in which he conducted himself and the trust and confidence they had in Appellant to take care of their legal issues for them. Complainant was one of these satisfied clients. So in early April 2013, Complainant contacted the firm and requested that the money that was on deposit in the firm's trust account be transferred to Complainant.

On April 11, 2013, Appellant met with Complainant to discuss the work that she was wanting him to continue with, the work that he was doing on some ancillary matters in connection with her personal matters, and to discuss the handling of her settlement funds. After meeting with Appellant at his new office to discuss the foregoing, Appellant drafted and reviewed a Settlement Sheet that outlined the discussions that took place between the two, what Complainant had instructed Appellant to do on her behalf, and how Appellant was to handle the balance of the funds that was to remain with Appellant. After reviewing the document with Complainant, and confirming that Complainant knew and understood the document, but also that the document contained a true and accurate depiction of Complainant's wishes at the time, Complainant approved same and acknowledged it with her signature. (See Exhibit 6). After their meeting, Appellant maintained the funds that remained due and owing to Complainant in accordance with the terms of their agreement and Complainant's wishes. Approximately a year later, Complainant came to Appellant and requested a disbursement from the funds that she had remaining. As was done during the first meeting between Appellant and Complainant, the parties talked about Complainant's status, what she was doing, what needed to be done, and generally what her wishes were with regards to the money that was still owed to her. At the time, a Statement of Account and Funding was drafting and provided to Complainant just as was done during the last time the parties had met to discuss disbursements being made under the account. Again, Appellant signed

that document indicating that she had agreed to the disbursements that were made prior to that time, that she agreed to the disbursements that were being made that day, and that she authorized the disbursements to be made. (See Exhibit 7). At the time of the disbursements made that day, Complainant was owed the sum of $19,000. (Id.) Over the course of the next two months, Complainant obtained and received additional disbursements from Appellant in the total sum of $9,000, leaving the sum of $10,000 due and owing to Complainant as of June 18, 2014. (Id, See also Exhibits 9 and 10). Under the terms of all the documents that Complainant signed, and readily acknowledged that she signed and agreed to during the hearing of this matter, Appellant was authorized to utilize the funds at his discretion and to manage, borrow, and invest said funds as he deemed appropriate. (See Exhibits 6, 7, & 8). Further, it was agreed between the parties that any remaining funds due and owing to Complainant would be paid to her in accordance with a payment plan agreed upon between the parties in the event a lump sum could not be provided. (Id.)

When Appellant appeared before the Grievance Panel, he never denied that he had borrowed $10,000 from Complainant, that he knew he had the obligation to pay her back, and that he was taking steps to try to pay her back by contacting TLAP to obtain assistance for the some personal issues he was dealing with and he had also contacted the State Bar about bringing his dues and fees current as well as correcting his CLE deficiencies. Further, and based upon his knowledge of the Complaint filed against him, Complainant only issue was repayment of the loan and the funds Appellant had borrowed and Appellant's failure to do so. Much to his surprise, and only during the hearing, did Appellant learn that Complainant was no alleging that not only did she not know that Appellant had borrowed the money but that she was alleging she never gave him the authority to do so and that she also was disputing the payment of the attorney fees that were not only discussed and gone over with Complainant prior to said fees being paid, but that she

had specifically authorized the payment of same by virtue of her signature on the very documents and exhibits she had signed of her own free will. At the conclusion of the hearing, the Grievance Panel voted for disbarment and entered an order granting same and requiring as a condition of reinstatement, should Appellant decide to apply for same, that he pay to Complainant not only the $10,000 that remained due and owing to her, but that he also reimburse her for the attorney fees she authorized to be paid and deducted from her funds, and pay to the State Bar the attorney fees and costs incurred in this matter. (See Judgment). Appellant timely filed a Motion for New Trial detailing the reasons for said New Trial and attaching the requisite proof and documents to his Motion for New Trial. (See Motion for New Trial). Appellant's Motion for New Trial, despite him requesting an oral hearing on same, was never considered or heard and was overruled by operation of law. Appellant then timely filed this Appeal and requests that the Board of Disciplinary Appeals reverse the Judgment of Disbarment in its entirety based upon the facts of this case and the black letter law of this State and render Judgment in his favor. Alternatively, Appellant requests that the Judgment of Disbarment be vacated and that he be granted a new trial so that additional evidence and facts may be brought before the Grievance Committee that were not available at time of trial, and more detailed as to why in his Motion for New Trial, and that a rehearing be granted in this matter. In support of the foregoing, Appellant would respectfully show the Board of Disciplinary Appeals as follows:

ARGUMENT & AUTHORITIES

As stated previously, Appellant believes this is a straight forward and black letter law case. I apologize in advance for not citing any case law or authority on my behalf but I honestly believe this is a case that should not have resulted in the outcome it did, I followed the same principles and guidelines in handling this matter as I had for most of my legal career, fully explained all

documents and information that Complainant and I had discussed at length, what she wanted done with the funds, and what authority I had over the funds and the money that was left with me to manage for Complainant.

When an attorney and a client enter into a fee agreement, said fee agreement should contain the terms and conditions of their arrangement and agreement. Once an attorney represents a client, they are not required to have the same client sign a new fee agreement thereafter for legal services to be rendered on behalf of the client unless the terms and conditions under which the attorney is to be paid for services rendered change. In other words, if the client agrees to pay the attorney $350 per hour for services rendered on their behalf and to reimburse the attorney for any out of pocket expenses, and the client has signed a written fee contract with the attorney stating such (as is the case in the matter at hand), it is not necessary for the client to sign and execute a new fee agreement for every matter the attorney handles for the client thereafter. Further, upon presentation of a bill to the client and the authorization of the client to pay for said services, the attorney is authorized to deduct from any client funds he has in his possession to pay for those services and fees incurred.

Under the terms of the Judgment granted herein, Appellant was ordered to repay to Complainant the sum of $2,000 representing attorney fees and expenses that were deducted from funds that were placed in the care of Appellant by Complainant. The granting of this relief was not only without foundation, it is incorrect and not supported by the law or the documents which the attorney for the State Bar submitted on behalf of its case against Appellant. In fact, if you truly look at Exhibit 6 you clearly see that $636.81 of the initial $1,000 in fees that was authorized to be deducted from the Complainant's funds was not even paid to Appellant but in fact paid to the firm as it was the balance owed to the firm. (See Exhibit 6). Of that initial $1,000 in fees paid,

only $363.19 was actually paid to and received by Appellant. (Id.) Appellant cannot be legally held responsible for reimbursement of funds that he never received in the first place and were paid to a third party at the specific direction and instructions of his client. With respect to the second $1,000 fee payment deduction, Appellant would again assert that Complainant was well aware of the services that were rendered on her behalf, they were fully explained to her at the time payment for services was requested, and payment for said services was authorized not only verbally by Complainant, but also in writing as she signed the document authorizing said disbursements. (See Exhibit 7). If Complainant did not agree to payment for said services, she had every right to say she was not going to pay for them and to dispute them with Appellant at the time the bill was presented to Complainant. She did not do that. Rather, she authorized the payments to be made and in accordance with her verbal and written instructions, payment of the fees and services incurred on her behalf were paid in full. (Id.)

Based upon the foregoing, the Judgment for Disbarment, and the granting of the relief of requiring Appellant to reimburse Complainant the sum of $2,000 is incorrect and should be vacated in its entirety because the Judgment holds Appellant responsible to repay fees he never received and because it requires Appellant to repay fees he was specifically authorized to pay by Complainant.

When two parties enter into a contractual relationship, the terms of their relationship are governed by the documents they sign. Extrinsic evidence is not allowed to contradict the terms of the contract absent the original contract being unavailable, or the conduct of the parties that is being disputed or questioned, is not contained within the terms of that document. Further, evidence of the signing of the document, that is dated and which reflects the terms and conditions of what

the parties agreed to do, is a valid and binding contract upon which the parties to the transaction can rely upon in conducting their affairs in accordance with the terms of that document.

Exhibits 6, 7, and 8 clearly show that Appellant had the authority to manage the funds that Complainant had left in his care. Further, the missing documents and exhibits attached to Appellant's Motion for New Trial, clearly show what the relationship between the parties was with respect to the funds that were left in Appellant's care by Complainant. Appellant has never disputed he borrowed funds from Complainant as she had agreed to allow him to do. Appellant has never disputed that he owes to Complainant the sum of $10,000 from the funds that he borrowed from her. No, it is not Complainant's fault that the circumstances under which Appellant found himself in 2014 began to affect his ability to practice law and to continue in the practice of law. However, Appellant contends that he made the right decision at the time to stop actively practicing law and deal with the personal issues and depression he was beginning to suffer from. Appellant recognizing by doing so, he closed off his ability to repay to Complainant the sum that was still due and owing to her. I deeply regret the fact that I was unable to do that. However, the fact still remains the same that it was a sum of money that I borrowed from Complainant, she was aware of the fact that I borrowed it, and she was willing to allow me to make payment arrangements with her. Why her tune suddenly changed and she would accept nothing other than payment in full at the time I do not know and will likely never know. When the hearing was held before the Grievance panel, I fully expected to be told to repay Complainant, I fully expected that a Judgment for said sum would be granted against me, but I did not expect to be disbarred for failing to repay money that I borrowed from a client with their authorization and consent.

Based upon the Exhibits presented in this case, which Appellant contends were reviewed and covered with Complainant prior to her signing them, and which Complainant acknowledged

and authorized Appellant to act under and rely upon as controlling the relationship between the parties when she signed them, Appellant contends that the Judgment of Disbarment is in error and should be vacated in its entirety. Alternatively, the Judgment of Disbarment should be reversed and this matter remanded for a New Trial based upon the fact that Appellant was not given proper and actual notice of all the claims against him and which were brought during the hearing as detailed in his Motion for New Trial and that he be afforded the opportunity to present evidence on his behalf to refute those allegations.

CLOSING

For nearly 20 years I practiced law with the same fire and passion that I live my life with. During that time I made a good living by helping people and handling cases a lot of other lawyers wouldn't take for whatever reason. Again though, when I graduated law school I took an oath to help people not to make money, worry about my billable hours, or to be concerned with what car I drove, how big my house was, or what my bank account looked like. So when I hit a rough stretch in my life, and needed to ask for help for the first time in my adult life, and the people that I considered close friends or colleagues turned their backs on me, I borrowed money from a client who I had helped. Unfortunately things always get worse before they get better and I pretty much lost everything I ever had. Anyway, a little over a year ago, as I was trying to pick up the pieces, I started the process of getting help through TLAP, and tried to bring my dues and fees current to activate my law license. During that time I went before the Grievance Panel about the money that I still owed Complainant. I never disputed that I borrowed the money, I never disputed I owed it to her, and I explained my intention to pay her back and that the easiest and quickest way to do that was by doing exactly what I was doing, activate my law license and start doing what I do best. Not only did the Grievance Panel say that isn’t going to happen, but they take my license from me

and tell me I can apply for reinstatement in five years as long as I pay the money and the additional fees and fines they assess first. So, at 50 years old I am told you can't do what you have done, pretty well and successfully I might add, to make a living, provide for your family, and pay your bills, so go reinvent yourself and your life and come back to us in five years and we will let you know, but no guarantees. I appealed that decision but, to be honest with you, not only have I been busting my ass just to stay afloat and put my life back together since then, I actually enjoy the restaurant business and am happy again. Then, about six weeks ago a friend of mine who is a Judge in Galveston County comes into the restaurant, we get to talking about old times and when he says Mark we need you back in the courtroom and I will do whatever I can to help you, he lights a fire inside me that hasn't been burning for a long time. Shortly after that, a friend who overheard that conversation offers to pay the balance of the loan in full if it will get my license back in good standing. So three weeks ago I made an offer to the State Bar to not only pay the loan balance in full but to do nothing but take court appointments helping indigent defendants or parties in Galveston County, supervised by the Judges of that County, for the next six months so as to not only help those folks that really need a lawyer but to prove to all that I am still one of the best damn trial lawyers out there, and to discuss and agree on any other plan of action they believe is required. The response I received was no and you need to file your brief by the deadline.

After initially thinking I would just forget the practice of law, I decided to go ahead and do what I have done for the past two years and that is to pick myself back up, stand on my own two feet and come out swinging. I recognize that under better conditions and better circumstances I could have prepared and filed an All Star brief just like I used to and which typically won my case, or at least swayed opinions in my favor. However, I find myself having the only tool in the box that is worth anything left to use and that is my legal mind and my experience and knowledge that

was gained over nearly twenty years of studying and practicing law in the State of Texas. I cannot say that I did everything perfect during that time but I can assure you that I did nothing without my client's full knowledge and consent, or we simply did not do it. Basically I offer to do exactly what the Grievance Panel was so upset about, repay a loan in full, plus prove myself in front of the very people that have watched me practice most of the time I was in the courtroom, help the people that need a lawyer the most, and ask for nothing in return other than my right to be able to help people and perhaps teach someone a lesson or two about what doing the right thing is all about. If I am not allowed to do that, I will continue redefining my career, and be happy the rest of my life doing something else. Either way, I will always have the heart and a soul of a champion, I will help whoever I can, and no matter what, I will always do the right thing and do it with a smile on my face. Life is fun again, I am happy, and I have the knowledge and wisdom needed to move forward as it is not about what you have, but what you give and teach to others that is important.

PRAYER

WHEREFORE PREMISES CONSIDERED, Mark L. Honsaker, Appellant, prays that the Board of Disciplinary Appeals grant the relief requested herein and vacate the Judgment of Disbarment entered against him. Alternatively, Appellant requests that the Judgment of Disbarment be reversed and that Appellant be granted a New Trial. Appellant prays for such other and further relief, at law or in equity, for which he may be justly entitled. Appellant prays for general relief.

Respectfully submitted,

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