

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

IN THE MATTER OF

ALTON W. PAYNE, JR.

STATE BAR CARD NO. 15649450

§
§
§
§
§

CAUSE NO. 45772

**JUDGMENT REVOKING PROBATION AND ACTIVELY
SUSPENDING RESPONDENT FROM THE PRACTICE OF LAW**

On April 9, 2010, the Board of Disciplinary Appeals heard the Petition for Revocation of Probation filed by the Commission for Lawyer Discipline of the State Bar of Texas against Respondent, Alton W. Payne ("Respondent" or "Payne"), State Bar No. 15649450. Petitioner appeared by attorney and announced ready. Respondent, Alton W. Payne, Jr., appeared by attorney and announced ready. All issues of fact and questions of law were submitted to the Board.

Having considered the pleadings, and having heard the evidence and the argument of counsel, the Board finds as follows:

- (1) Respondent, Alton W. Payne, Jr., State Bar Card No. 15649450, is currently licensed and authorized by the Supreme Court of Texas to practice law.
- (2) Respondent was personally served with the Petition for Revocation of Probation and hearing notice in this cause by a duly authorized process server on December 19, 2009, in accordance with the Texas Rules of Disciplinary Procedure 2.23 ("TRDP"). The affidavit of service was filed with the Board on January 6, 2010.
- (3) On November 25, 2008, Payne signed a Corrected Agreed Judgment of Partially Probated Suspension issued by the Evidentiary Panel of the State Bar of Texas District 04B3 Grievance Committee which imposed a sanction of a twenty-four month partially probated suspension starting January 1, 2009, and ending December 31, 2010, with two months active suspension

starting January 1, 2009, and ending February 28, 2009, and twenty-two months probated suspension beginning March 1, 2009, and ending December 31, 2010.

- (4) The Judgment ordered Respondent to notify all his current clients of his suspension and file an affidavit with the Office of the Chief Disciplinary Counsel of the State Bar of Texas that he had so notified all current clients.
- (5) Payne received the signed Judgment of Partially Probated Suspension on December 5, 2008, by U.S. Mail, certified, return receipt requested.
- (6) Payne was aware of the Judgment before the time that the period of active suspension went into effect.
- (7) The language of the Judgment to which Payne agreed prohibiting Payne from practicing law during the period of active suspension was clear and unambiguous.
- (8) Payne did not contact or attempt to contact the Office of the Chief Disciplinary Counsel to clarify or discuss the language of the Judgment.
- (9) Payne swore under oath by affidavit signed December 31, 2008 that he did not have any current client matters pending in any tribunal.
- (10) Payne appeared as the sole "counsel for plaintiff/counter-defendant" representing a client in multiple depositions during the period of active suspension.
- (11) In at least one deposition at which he represented a client during the period of active suspension, Payne questioned the deponent.
- (12) Respondent, Alton W. Payne, Jr., is the same person as the Alton W. Payne who is the subject of the Evidentiary Judgment described above.

Based on these undisputed facts, the Board concludes that:

- (1) This Board has exclusive jurisdiction to hear a petition to revoke a probated suspension from the practice of law imposed by an evidentiary panel of the State Bar of Texas grievance committee during the full term of suspension, including any probationary period. TRDP 2.23; *In re State Bar of Texas*, 113 S.W.3d 730,733 (Tex. 2003).
- (2) Payne knowingly practiced law during the period when his license was

actively suspended. *See, Cooper v. Texaco, Inc.*, 961 F.2d 71, 72-73 (5th Cir. 1992).

- (3) Payne materially violated the terms and conditions of the Corrected Agreed Judgment of Partially Probated Suspension signed on November 25, 2008, in Cause No. H0030724104.
- (4) Payne should be actively suspended from practicing law for the full term of the suspension as originally imposed by the Judgment of Partially Probated Suspension without credit for any probationary time served. TRDP 2.23.

It is therefore, ORDERED, ADJUDGED, and DECREED that Respondent Alton W. Payne, Jr., State Bar No. 15649450, be, and hereby is, actively SUSPENDED from the practice of law in the State of Texas for a period of 22 months, effective immediately on the date of this judgment and ending on February 13, 2012.

It is further ORDERED, ADJUDGED and DECREED that Respondent, Alton W. Payne, Jr., is prohibited during said suspension from practicing law in Texas, holding himself out as an attorney at law, performing any legal service for others, accepting any fee directly or indirectly for legal services not completed prior to the date of this judgment, appearing as counsel in any proceeding in any Texas court or before any Texas administrative body, or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney," "counselor," or "lawyer."

It is further ORDERED that Respondent, Alton W. Payne, Jr., no later than thirty (30) days from the date of this judgment, shall notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court, if any, in which Respondent, Alton W. Payne, Jr., has any legal matter pending, if any, of his suspension, of the style and cause number of the pending matter(s), and of the name, address, and telephone number of the client(s) Respondent is representing in that court. Respondent is ORDERED to mail copies of all such notifications to the

Statewide Compliance Monitor, Office of the Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further ORDERED that Respondent, Alton W. Payne, Jr., shall immediately notify each of his current clients, if any, in writing, of his suspension. In addition to such notification, Respondent is ORDERED to return all files, papers, unearned fees paid in advance, and all other monies and properties which are in his possession but which belong to current or former clients, if any, to those respective clients or former clients within thirty (30) days after the date of this Judgment. Respondent is further ORDERED to file with the Statewide Compliance Monitor, Office of Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711, within the same thirty (30) days, an affidavit stating that all current clients have been notified of his suspension and that all files, papers, unearned fees paid in advance, and all other monies and properties belonging to clients and former clients have been returned as ordered herein. If Respondent should be unable to return any file, papers, money or other property to any client or former client, Respondent's affidavit shall state with particularity the efforts made by Respondent with respect to each particular client and the cause of his inability to return to said client any file, paper, money or other property. Respondent is ORDERED to mail copies of all notification letters to clients to the Statewide Compliance Monitor, Office of Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further ORDERED that Respondent, Alton W. Payne, Jr., if he has not already done so, immediately surrender his Texas law license and permanent State Bar Card to the Office of Chief Disciplinary Counsel, State Bar of Texas, for transmittal to the Clerk of the Supreme Court of Texas.

Signed this 13th day of April 2010.



CHAIR PRESIDING