

By: FILED
JAN 21 2014
Board of Disciplinary Appeals
appointed by the
Supreme Court of Texas

HUGH M. HODGES, JR.
V.
COMMISSION FOR LAWYER DISCIPLINE

BODA CAUSE NO. 52673
SBOT CASE NO. D0021244955

RESPONDENT'S BRIEF

ORAL ARGUMENT REQUESTED

LIST OF NAMES OF PARTIES

1. Commission for Lawyer Discipline, State Bar of Texas
2. Hugh M. Hodges, Jr.

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I.

The point relating to Rule 103(B) concerning informal decision by the client.

- a. Page 10, lines 14-16; Respondent's Brief p.7
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- c. Page 21, lines 11-13; Respondent's Brief p.7
- d. Page 25, lines 10-12; Respondent's Brief p.7
- e. Page 32, lines 2-5; Respondent's Brief p.7
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- j. Page 41, lines 19-21; Respondent's Brief p. 8
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- l. Page 47, lines 7-12; Respondent's Brief p. 8
- m. Page 53, lines 4-6; Respondent's Brief p. 9

Each of the above refer to Transcript of Testimony followed by page references to Respondent's Brief.

II.

The point relating to Rule 115(D) concerning termination of representation.

- a. Page 16, lines 6-12, 21
- b. Page 76, line 25; page 77, lines 1-18
- c. Page 90, lines 2-6

Each of the above refer to Transcript of Testimony followed by page references to Respondent's Brief.

NATURE OF THE CAUSE AND RESULT

Consideration of allegations of professional misconduct. Allegation of violation of Rules 101(B)1, 103(A), 103(B), 114(B), 115(D) and 8.04(A)1.

The panel found violations of 103(B), 114(A), although not pled by the Commission, 115(D) and 8.04(A)1.

The result was a three year active suspension. Attorney's fees in the amount of \$3,328.75, costs in the amount of \$297.35 and restitution in the amount of \$2750 to Wanda Ware were added to be paid by April 10, 2016.

POINTS UPON WHICH APPEAL IS PREDICATED

I.

The Commission erred in finding that the matter was not explained to the extent necessary for the client to make informed decisions as required by Rule 103(B).

II.

The Commission erred in finding a violation of Rule 114(A) as this was not alleged in the Commission's First Amended Evidentiary Petition, this being the latest Petition.

III.

The Commission erred in finding a violation of Rule 115(D) relating to a lawyer's duties upon termination of employment.

IV.

The Commission erred in the interpretation of Rule 8.04.

ARGUMENT

I.

Ms. Ware testified that I did not advise her that additional fees were required after our conversation regarding for what purpose I was being retained. She testified that her purpose at all times was to seek a bond reduction, not for me to make appearances at court settings. She testified she came to me seeking a bond reduction; Ms. Ware testified that the initial payment was for the purpose of seeking a bond reduction and possibly partial payment for bond premium. Ms. Ware, because I could not obtain a bond reduction, wanted all of her money refunded. She states again that I was not hired to appear in court as her attorney. Ms. Ware testifies that she has no complaint that she was not being informed. Ms. Ware testified after December 14, 2011 there was no need for me to call her. She testified that I explained the matter sufficiently. Mr. Ware testified that I came to see him regarding his health and that I read a newspaper and stroked my beard. He acknowledged mental problems, a stroke, and he cried the entire time that I was there. He did testify that I had been paid for a bond. Mr. Ware's charge was reduced later.

II.

Although testimony was allowed regarding a possible violation of Rule 114(A), this rule was not properly considered as it was not pled.

III.

My employment was terminated when a new attorney was retained in December 2011, or January 2012. I was not informed that Ms. Ware had retained another lawyer by her, her son, or the next lawyer. I would have cooperated fully if called upon to do so. There was no advance payment of fees and I sent everything in my file to Ms. Ware.

IV.

The Commission did not consider the procedure relating to suspension and reinstatement. The suspension that took effect in September 2011 was lifted in January 2012 and reinstatement was back dated to the date of suspension.

PRAYER FOR RELIEF

Respondent prays that the decision of the Commission be overturned. In the alternative, Respondent prays for a reduction of imposed sanctions.

APPENDIX

Page 10, Lines 14-16

- Q. But did he ever tell you that you owed him additional fees?
A. No, ma'am.

Page 15, lines 8-9

...I was still seeking bonding purposes at the time. I didn't go any further.

Page 16, lines 6-12, 21

- Q. So, do you recall when you approximately hired another attorney for Byron?
A. Give or take, roughly, before the first of the year actually.
Q. Okay. So these receipts are dated 2011, so you're talking late December or early January, 2012?
A. Yes ma'am.
Q. How... this other attorney that you hired...

Page 21, lines 11-13

...I came to you on a bond reduction or bonding him out.

Page 25, lines 10-12

- Q. Well, you already testified that you originally brought it to me to try to get his bond reduced.
A. Reduced and posting the bond, yes.

Page 32, lines 2-5

- A. Because there wasn't an attorney hired. That's what I'm saying. You weren't hired in as his attorney. You didn't... that I know of, sir, you weren't hired in as his attorney.

Page 33, lines 13-16

- Q. Okay. You aren't complaining that I did not appear for your son because your testimony is you didn't hire me to appear for your son, is that correct?
A. No, I didn't.

Page 36, lines 16-25

- Q. Okay. So it sounds like you don't have a complaint that he wasn't trying during that time in keeping you informed, it was just the bond wasn't... nothing was happening, positive on your son's case.

A. Yes ma'am.

Q. Okay. So you don't have a complaint about what he was doing from... because we have these dates, November 14th through December 14th. Am I right on that?

A. Yes ma'am, you're right.

Page 37, lines 10-19

Q. Okay. So anything after December 14th or thereabouts right when you paid him that money...

A. Yes, ma'am.

Q. ...you at that point figured you had terminated his services, you didn't need him anymore?

A. Yes ma'am.

Q. Okay. So then there would be no need for him to call you after that other than in your mind to exchange this money?

A. Yes ma'am.

Page 39, lines 13-16

Q. Okay. And when you took him the \$2,000, you felt like you knew what you were giving it for and that he had explained it to you sufficiently?

A. I thought I was under clear understanding.

Page 41, lines 19-21

A. Yes, he came to see if I was ill and said that my mother sent him, and that was it. Just check on me about being ill. Nothing else.

Page 45, lines 13-21

Q. Okay. And at that time did you tell me that you had some mental problems?

A. Yes.

Q. And at that time, did you tell me that you had had a stroke while you were in jail?

A. Yeah, I had a minor stroke.

Q. And were you crying the entire time that I was talking to you that time?

A. Yes.

Page 47, lines 7-12

A. No. You...you... stated to me clearly. I thought I had asked you what was the deal on me getting out on bond, why should I be sitting in a booth on a visitation when I need to be signing some papers on a bond when you received payment for a bond and only for a bond.

Page 53, lines 4-6

THE WITNESS: They dropped it to a lesser charge and went down to something like... think it was like, maybe 2,000 and something.

Page 76, line 25; Page 77, lines 1-18

Q. Okay. Did you consider the \$2,000 earned?

A. Yes.

Q. You did?

A. Yes, I did.

Q. On what basis?

A. On the basis of two... well... I... I... I... considered that the \$2750 was earned.

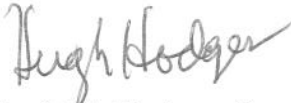
Q. Okay.

A. That... that was earned on the basis of the initial interview with Ms. Ware, the interview when she... on the phone; the interview when she came in to see me and we talked about what we could, what she knew about which were my two visits with him, my two or three visits with the assistant district attorney seeking a bond reduction, the informal hearing in front of the judge of Criminal District Court No. 6 regarding reduction of the bond and the either two or three attempts by me to negotiate a plea bargain agreement that everyone could live with.

Page 90, lines 2-6

And... and at the time she requested that I send her things, I gave her everything I had then. But I... I have something in addition now. I show 10 ³/₄ hours at \$280 an hour.

Respectfully submitted,

A handwritten signature in cursive script that reads "Hugh M. Hodges, Jr.".

Hugh M. Hodges, Jr.