

No. 52673

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

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**HUGH M. HODGES, JR.,**

**APPELLANT**

**V.**

**COMMISSION FOR LAWYER DISCIPLINE,**

**APPELLEE**

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*On Appeal from the Evidentiary Panel  
For the State Bar of Texas District 6-B2  
No. D0021244955*

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

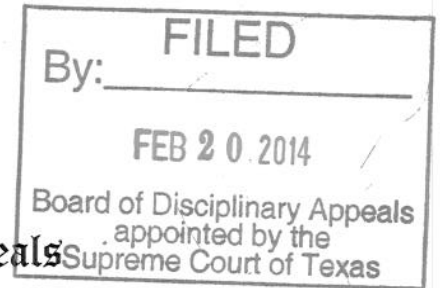
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IDENTITY OF PARTIES AND COUNSEL

Pursuant to Rule 4.06(c)(1) of the Board's Internal Procedural Rules, the undersigned counsel of record certifies that the following listed persons and parties have an interest in the outcome of this case.

**APPELLANT**

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Whether an evidentiary panel may impose discipline for a lawyer’s practicing law while his law license was administratively suspended regardless of the subsequent reinstatement of the lawyer’s license.

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No. D0021244955*

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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, Hugh M. Hodges, Jr. For clarity, Appellant will be referred to as “Hodges” and Appellee as “the Commission.” Any reference in this brief to any matter contained in the record before the Board shall be labeled CR (clerk’s record) or RR (reporter’s record). All references to

rules are references to the Texas Disciplinary Rules of Professional Conduct<sup>1</sup> unless otherwise noted.

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<sup>1</sup> *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app A (Vernon 2011).



STATEMENT OF THE CASE

*Type of Proceeding:* Attorney Discipline

*Petitioner/Appellee:* The Commission for Lawyer Discipline

*Respondent/Appellant:* Hugh M. Hodges, Jr.

*Evidentiary Panel:* 6-B2

*Judgment:* Judgment of Active Suspension

*Violations Found:* Rule 1.03(b): A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.14(a): A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a trust or escrow account, maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 1.15(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.

Rule 8.04(a)(11): A lawyer shall not engage in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated, including but not limited to situations where a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education.

## **STATEMENT REGARDING ORAL ARGUMENT**

The Commission believes that both the factual record and the law are clear with regard to the issues raised in this appeal and that this case can be decided properly without the necessity of oral argument. Thus, the Commission does not request oral argument unless the Board allows Hodges to appear and present oral argument to the Board.

## STATEMENT OF THE ISSUES

Whether evidence that provides a reasonable basis for an evidentiary panel's finding of fact is sufficient to support a judgment.

Whether an evidentiary panel may impose discipline for a lawyer's practicing law while his law license was administratively suspended regardless of the subsequent reinstatement of the lawyer's license.

## SUMMARY OF THE ARGUMENT

Hodges attacks the Judgment of Active Suspension through four issues that have no merit. Two issues question the sufficiency of the evidence, but a review of the testimony of record refutes any notion that the evidence is insufficient to provide a reasonable basis for the Evidentiary Panel's conclusions that Hodges violated the disciplinary rules in question.

Hodges also complains that the Evidentiary Panel improperly identified Rule 1.14(a) as the basis for a finding of misconduct because, according to Hodges, the live disciplinary petition did not allege that he violated Rule 1.14(a). However, the live petition clearly alleged that Hodges violated Rule 1.14(a). Thus, there is no basis for Hodges' complaint.

Hodges' final complaint is based on a misunderstanding of the rules that apply to a lawyer's practice of law at a time when his law license is administratively suspended. Hodges incorrectly assumed that the reinstatement of his license would cure any unauthorized practice that occurred while his license was suspended. But the plain language of the disciplinary rules makes it clear that a lawyer is subject to discipline for practicing law during an administrative suspension despite the subsequent reinstatement of his law license.

Because each of the issues raised by Hodges has no merit and the evidence supports the judgment, the Board should affirm the judgment in all respects.

## ARGUMENT

### **I. The evidence of record is sufficient to support the findings regarding Rule 1.03(b) and Rule 1.15(d).**

In his first and third issues, Hodges argues that the Evidentiary Panel erred by finding that he violated Rule 1.03(b) and Rule 1.15(d). He does not fully brief these issues, so his arguments are unclear. However, it appears that he is questioning the sufficiency of the evidence to support the Panel's findings regarding Rule 1.03(b) and Rule 1.15(d).

#### **A. The substantial evidence standard of review applies.**

In attorney disciplinary cases, the substantial evidence standard of review applies. TEX. GOV'T CODE ANN. § 81.072(b)(7) (Vernon 2011) (State Bar Act); TEX. R. DISCIPLINARY P. 7.11, *reprinted in* TEX. GOV'T CODE ANN. tit. 2, subtit. G app. A-1 (Vernon 2011); *Comm'n for Lawyer Discipline v. Schaefer*, 364 S.W.3d 831, 835 (Tex. 2012). Under the substantial evidence test, the findings of an administrative body are presumed to be supported by substantial evidence, and the party challenging the findings must bear the burden of proving otherwise. *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994). The reviewing court 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).

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*, 883 S.W.2d at 185. 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 in the record for the finding. *City of El Paso*, 883 S.W.2d at 185.

Questions of law are always reviewed de novo. *Schaefer*, 364 S.W.3d at 835.

**B. Witness testimony provides far more than a scintilla of evidence to support the findings regarding Rule 1.03(b) and Rule 1.15(d).**

Well more than a scintilla of evidence supports the Panel's findings regarding Rule 1.03(b), which provides:

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

TEX. DISCIPLINARY R. PROF'L COND. 1.03(b). In this case, testimony by Byron Ware, Hodges' client, and his mother Wanda Ware proved that Hodges did not provide the information necessary for Byron to make an informed decision regarding the payment of fees to Hodges for his representation of Byron.

Mrs. Ware testified that she understood that she was giving Hodges \$750.00 to represent Byron in seeking the reduction of his bond (RR 34-35). She also

understood that Hodges was attempting to get Byron's bond reduced from \$50,000.00 to \$20,000.00 and that it was necessary for her to give him an additional payment of \$2,000.00 so that he could pay for Byron's release once the bond was reduced (RR 25-28, 35-37, 39). She further understood that if Hodges was unable to get the bond reduced, he would refund the \$2,000.00 payment that she had given him for the bond (RR 37). Byron likewise testified as to his understanding that his mother had given Hodges money that was specifically designated to pay for his release on bond (RR 41-43, 46-49).

Hodges told an entirely different story in his testimony. He testified that the \$2,000.00 payment from Mrs. Ware was never a refundable payment (RR 58-60). He described it as a payment that would be applied to bond Byron out of jail if the court reduced the bond, and he said that the payment was to be applied toward his legal fees for representing Byron in defense of the criminal charges if it was not used for the bond (RR 60, 64-65). Hodges never put anything in writing to explain his intention regarding the terms of his agreement to represent Byron (RR 65, 78-79).

The testimony by Mrs. Ware and Hodges provided a reasonable basis for the conclusion that Hodges did not explain the terms of representation to the extent reasonably necessary for his client to understand that the \$2,000.00 payment to Hodges was not refundable and, therefore, would not be returned if Hodges was



unable to get the bond reduced. And Byron's testimony corroborated his mother's testimony regarding the information that was provided by Hodges to explain the terms of the agreement. Based on the testimony, it was reasonable for the Evidentiary Panel to conclude that Hodges violated Rule 1.03(b).

Similarly, the evidence is sufficient to support the findings regarding Rule 1.15(d), which provides:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned.

TEX. DISCIPLINARY R. PROF'L COND. 1.15(d). Based on the plain language of Rule 1.15(d), a lawyer must return any of the client's property that is in the lawyer's possession at the time representation is terminated.

In this case, Hodges admitted that he did not refund the \$2,000.00 payment that Mrs. Ware gave to him on Byron's behalf. Instead, he retained it as a non-refundable attorney's fee (RR 64-65, 76-77). But as discussed above, the payment was provided to Hodges for the specific purpose of bonding Byron out of jail (RR 25-28, 35-37, 39). Because Hodges admittedly was unable to bond Byron out of jail, Rule 1.15(d) required that he return the \$2,000.00 payment. He did not have authority to unilaterally determine that the \$2,000.00 payment constituted a non-refundable fee. *See Wilson v. Comm'n for Lawyer Discipline*, BODA No. 46432

(January 30, 2011) (holding that “[f]unds, once entrusted to the lawyer for a particular purpose, can be used only for that purpose, and any unused portion must be returned to the client with a full accounting”). Thus, the \$2,000.00 belonged to his client, and his admitted failure to return the payment provided a sufficient basis for the Panel’s determination that he violated Rule 1.15(d).

**C. Hodges’ brief is inadequate to provide a basis for reversal.**

Hodges does not offer any substantive analysis to explain his arguments. He also fails to cite to any legal authority in support of his position, and his citations to the record do not include any explanation as to their significance. As such, his brief is inadequate to present error to the Board. *See* TEX. R. APP. P. 38.1(h) (requiring that appellate brief “contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record”); *Smith v. Comm’n for Lawyer Discipline*, 42 S.W.3d 362, 364 (Tex.App.—Houston [14th Dist] 2001, no pet.) (affirming judgment because appellant presented “nothing” for review in that he failed to specify how evidence did not support judgment and failed to provide legal authority, argument, or evidence demonstrating how trial court erred as a matter of law). By failing to brief his issues adequately, Hodges has waived them. *Smith*, 42 S.W.3d at 364; *Dolenz v. State Bar of Tex.*, 72 S.W.3d 385, 388 (Tex.App.—Dallas 2001, no pet.); *Meachum*

*v. Comm'n for Lawyer Discipline*, 36 S.W.3d 612, 616 (Tex.App.—Dallas 2000, pet. denied).

**II. The live petition is sufficient to support the judgment.**

Hodges' second issue is soundly refuted by the record. In a single sentence, he argues that “[a]lthough testimony was allowed regarding a possible violation of Rule 114(A), this rule was not properly considered as it was not pled.” Appellant’s Br. 5. Contrary to Hodges’ complaint, the Second Amended Evidentiary Petition, which was the live petition in this case, alleged that Hodges “failed to deposit the fees paid by Mrs. Ware into his IOLTA account” (CR 98; App. 2). And the live petition specifically identified Rule 1.14(a) as one of the rules that Hodges allegedly violated (CR 99; App. 2). Therefore, Hodges’ second issue has no merit.

In addition, before raising an issue on appeal, the record must show that the appellant preserved the issue by properly raising it with the trial court. TEX. R. APP. P. 33.1. There is no indication in the record that Hodges raised this issue at any point in the proceedings below.

**III. Hodges was subject to disciplinary action for practicing law while his law license was administratively suspended regardless of the subsequent reinstatement of his license.**

Hodges’ final issue reflects a fundamental misunderstanding of a lawyer’s culpability for practicing law while his law license is administratively suspended. His argument rests on the presumption that the reinstatement of his law license

insulated him from disciplinary action for practicing while his license was suspended. He offers no support for his argument, which is contrary to the plain language of Rule 8.04(a)(11):

A lawyer shall not engage in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated including but not limited to situations where a lawyer's right to practice has been administratively suspended. . . .

TEX. DISCIPLINARY R. PROF'L COND. 8.04(a)(11). Moreover, the State Bar Rules are clear regarding the fact that discipline may be imposed despite a lawyer's reinstatement to the practice of law:

When a member, who has been suspended for nonpayment of fees or assessments, removes such default by payment of fees or assessments then owing, plus an additional amount equivalent to one-half the delinquency, the suspension shall automatically be lifted and the member restored to former status. Return to former status shall be retroactive to inception of suspension, *but shall not affect any proceeding for discipline of the member for professional misconduct.*

State Bar Rules art. III, § 7A (emphasis added).

Because Hodges admitted that his law license was administratively suspended for nonpayment of his membership dues and that he practiced law during the suspension (RR 68-71), the Evidentiary Panel correctly concluded that he violated Rule 8.04(a)(11) regardless of his subsequent reinstatement.

**CONCLUSION AND PRAYER**

Because Hodges has shown no reversible error and the evidence provides sufficient support for the judgment, the Commission prays that the Board affirm the Judgment of Active Suspension entered by the Evidentiary Panel for District 6-B2 of the State Bar of Texas.

RESPECTFULLY SUBMITTED,

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STATE BAR CARD No. 00790419  
ATTORNEY FOR APPELLEE  
COMMISSION FOR LAWYER DISCIPLINE

**CERTIFICATE OF SERVICE**

This is to certify that the above and foregoing Brief of Appellee, the Commission for Lawyer Discipline, has been served on Mr. Hugh M. Hodges, Jr. by certified mail, return receipt requested, by depositing same, enclosed in a postpaid, properly addressed wrapper, in an official depository under the care and custody of the United States Postal Service on the 20<sup>th</sup> day of February 2014.



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CYNTHIA CANFIELD HAMILTON  
SENIOR APPELLATE COUNSEL  
STATE BAR OF TEXAS

No. 52673

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COMMISSION FOR LAWYER DISCIPLINE

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APPENDIX TO BRIEF OF APPELLEE  
COMMISSION FOR LAWYER DISCIPLINE

---

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, a committee of the State Bar of Texas, submits the following record excerpts in support of its brief:

**APPENDIX 1:** Judgment of Active Suspension (CR 273-78)

**APPENDIX 2:** Second Amended Evidentiary Petition (CR 97-101)



# **Appendix 1**

BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE  
EVIDENTIARY PANEL 6-B2  
STATE BAR OF TEXAS

COMMISSION FOR LAWYER  
DISCIPLINE,  
Petitioner

V.

HUGH M. HODGES, JR.,  
Respondent

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CASE NO. D0021244955

JUDGMENT OF ACTIVE SUSPENSION

Parties and Appearance

On April 11, 2013, came to be heard the above-styled and numbered cause. Petitioner, Commission for Lawyer Discipline ("Petitioner"), appeared by and through its attorney of record, Tana K. Van Hamme, Assistant Disciplinary Counsel, and announced ready. Respondent, HUGH M. HODGES, JR. ("Respondent"), Texas Bar Number 09767000, appeared in person and announced ready.

Jurisdiction and Venue

The Evidentiary Panel 6-B2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 6, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Professional Misconduct

The Evidentiary Panel, having considered all of the pleadings, evidence, stipulations, and argument, finds Respondent has committed Professional Misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure.

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### Findings of Fact

The Evidentiary Panel, having considered the pleadings, evidence and argument of counsel, makes the following findings of fact and conclusions of law:

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 and maintains his principal place of practice in Dallas County, Texas.
3. Respondent failed to explain the criminal matter to the extent reasonably necessary to permit Complainant Wanda Ware ("Ware") and her son Byron Ware to make informed decisions regarding the representation of Byron Ware.
4. Respondent failed to keep the fees paid by Ware in a separate trust account.
5. Upon termination of representation, Respondent failed to refund advance payments of fee that had not been earned.
6. Respondent engaged in the practice of law when his right to practice had been administratively suspended for failure to timely pay required fees.
7. Respondent owes restitution in the amount of Two Thousand Seven Hundred Fifty and no/100 Dollars (\$2,750.00) payable to Wanda Ware.
8. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees associated with this Disciplinary Proceeding in the amount of Three Thousand Three Hundred Twenty-Eight and 75/100 Dollars (\$3,328.75).
9. 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 Ninety-Seven and 35/100 Dollars (\$297.35).

### 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: Rules 1.03(b), 1.14(a), 1.15(d) and 8.04(a)(11).

### 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 an active suspension.

Accordingly, it is **ORDERED, ADJUDGED** and **DECREED** that Respondent shall be actively suspended from the practice of law for a period of three (3) years, beginning April 11, 2013, and ending April 10, 2016.

### Terms of Active Suspension

It is further **ORDERED** that during the term of active suspension ordered herein, Respondent shall be prohibited from practicing law in Texas; holding himself out as an attorney at law; performing any legal services for others; accepting any fee directly or indirectly for legal services; appearing as counsel or in any representative capacity in any proceeding in any Texas or Federal court or before any administrative body; or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

It is further **ORDERED** that, on or before May 1, 2013, Respondent shall notify each of Respondent's current clients and opposing counsel in writing of this suspension.

In addition to such notification, it is further **ORDERED** Respondent shall return any files, papers, unearned monies and other property belonging to current clients in

Respondent's possession to the respective clients or to another attorney at the client's request.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before May 1, 2013, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein.

It is further **ORDERED** Respondent shall, on or before May 1, 2013, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before May 1, 2013, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court.

It is further **ORDERED** that, on or before May 1, 2013, Respondent shall surrender his law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary

0276

Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) to be forwarded to the Supreme Court of Texas.

**Restitution, Attorneys' Fees and Expenses**

It is further **ORDERED** Respondent shall pay restitution on or before April 10, 2016, to Wanda Ware in the amount of Two Thousand Seven Hundred Fifty and no/100 Dollars (\$2,750.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Wanda Ware, 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 attorneys' fees to the State Bar of Texas in the amount of Three Thousand Three Hundred Twenty-Eight and 75/100 Dollars (\$3,328.75). The payment shall be due and payable on or before April 10, 2016, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the 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 direct expenses to the State Bar of Texas in the amount of Two Hundred Ninety-Seven and 35/100 Dollars (\$297.35). The payment shall be due and payable on or before April 10, 2016, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the 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(Y) 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 22<sup>nd</sup> day of April, 2013.

**EVIDENTIARY PANEL 6-B2  
DISTRICT NO. 6  
STATE BAR OF TEXAS**



**Kent C. Krause  
District 6-B2 Presiding Member**

## **Appendix 2**



FILED

FEB 25 2013

NO. D0021244955

COMMISSION FOR LAWYER  
DISCIPLINE

v.

HUGH M. HODGES, JR.

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§  
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§  
§

EVIDENTIARY PANEL EVIDENTIARY CLERK-STATE BAR OF TEXAS  
DALLAS/FORT WORTH

OF DISTRICT 6

GRIEVANCE COMMITTEE

**SECOND AMENDED EVIDENTIARY PETITION**

COMES NOW, the Commission for Lawyer Discipline ("Petitioner"), and would respectfully show the following:

**I. Parties**

The Commission for Lawyer Discipline is a committee of the State Bar of Texas. Respondent, **HUGH M. HODGES, JR.** ("Respondent"), State Bar No. 09767000, is an attorney licensed to practice law in the State of Texas. Respondent has entered an appearance in this matter.

**II. Jurisdiction & Venue**

This Disciplinary Proceeding is brought pursuant to the State Bar Act, Tex. Gov't. Code Ann. Sec. 81.001, et seq., the Texas Disciplinary Rules of Professional Conduct, and the Texas Rules of Disciplinary Procedure. The complaint that forms the basis of this Disciplinary Proceeding was filed by Wanda Ware on or after January 1, 2004. Venue is proper in Dallas County, Texas, pursuant to Rule 2.11(B) of the Texas Rules of Disciplinary Procedure, because Dallas County is the county of Respondent's principal place of practice.

**III. Professional Misconduct**

The acts and omissions of Respondent, as hereinafter alleged, constitute professional misconduct.

#### IV. Factual Allegations

On November 14, 2011, Respondent was hired to bond Byron Ware ("Byron") out of jail in connection with a criminal matter. The bond was set at \$50,000. Mrs. Ware, Byron's mother, paid Respondent \$750 on November 14, 2011 for a bond reduction. Respondent was unable to get the bond reduced and told Mrs. Ware total fees for the representation would be \$4,250. Mrs. Ware paid Respondent an additional \$2,000 on December 14, 2011. Respondent was administratively suspended for failure to pay State Bar dues and the Attorney Occupation Tax on September 1, 2011, and not reinstated until January 2012.

Respondent failed to explain to Mrs. Ware to the extent that she could understand that he would not perform any legal services on Byron's behalf until the entire \$5,000 was paid. Respondent failed to deposit the fees paid by Mrs. Ware into his IOLTA account. Mrs. Ware made no further payments of fees. Mrs. Ware made numerous phone calls to Respondent that were not returned.

Respondent failed to appear at court hearings for Byron Ware on January 20, 2012, and on February 6, 2012 and did not inform Mrs. Ware that he would not appear at those hearings.

Mrs. Ware retained other counsel for Byron in February 2012. Despite requests from Mrs. Ware, Respondent failed to refund the \$2,000 that had not been earned.

#### V. Disciplinary Rules of Professional Conduct

The conduct described above is in violation of the following Texas Disciplinary Rules of Professional Conduct:

- 1.01(b)(1) A lawyer shall not neglect a legal matter entrusted to the lawyer.
- 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.

- 1.03(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- 1.14(a) A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a trust or escrow account, maintained in the state where the lawyers office is situated, or elsewhere with the consent of the client or third person. Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
- 1.15(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.
- 8.04(a)(11) A lawyer shall not engage in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated, including but not limited to situations where a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education.

## VI. Complaint

The complaint that forms the basis of the cause of action hereinabove set forth was brought to the attention of the Office of the Chief Disciplinary Counsel of the State Bar of Texas by Wanda Ware filing a complaint on or about February 1, 2012.

**VII. Prayer**

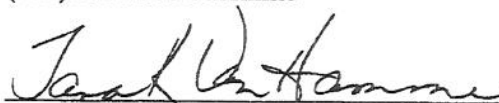
**WHEREFORE, PREMISES CONSIDERED,** Petitioner prays that a judgment of professional misconduct be entered against Respondent and that this Evidentiary Panel impose an appropriate sanction against Respondent as warranted by the facts. Petitioner further prays to recover all reasonable and necessary attorneys' fees and all costs associated with this proceeding. Petitioner further prays for such other and additional relief, general or specific, at law or in equity, to which it may show itself entitled.

Respectfully submitted,

**Linda A. Acevedo**  
Chief Disciplinary Counsel

**Tana K. Van Hamme**  
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel  
State Bar of Texas  
The Princeton  
14651 Dallas Parkway, Suite 925  
Dallas, Texas 75254  
(972) 383-2900 Telephone  
(972) 383-2935 Facsimile

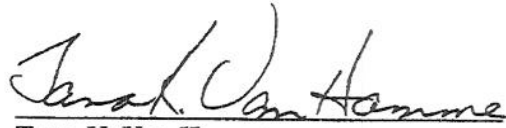


**Tana K. Van Hamme**  
State Bar No. 20494960

ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Second Amended Evidentiary Petition has been served on Respondent Hugh M. Hodges, Jr., 8035 E. RL Thornton Freeway, Suite 517, Dallas, Texas 75228, on this the 25th day of February, 2013, via certified mail, return receipt requested.



**Tana K. Van Hamme**