

No. 52673

By: _____
FILED
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Board of Disciplinary Appeals
appointed by the
Supreme Court of Texas

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

HUGH M. HODGES, JR.,

APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

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

JOINT MOTION TO REMAND FOR
RENDITION OF AN AGREED JUDGMENT

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Appellee, the Commission for Lawyer Discipline, a committee of the State Bar of Texas, and Appellant, Hugh M. Hodges, Jr., file this Joint Motion to Remand for Rendition of an Agreed Judgment and ask the Board of Disciplinary Appeals, pursuant to Rule 43.2(d) of the Texas Rules of Appellate Procedure, to set aside the Judgment of Active Suspension without regard to the merits and remand this case to the Evidentiary Panel for State Bar District 6 for rendition of judgment in accordance with their agreement.

The parties have entered into a settlement agreement by which they agree to a new judgment that would dispose of the controversy that is the basis of this disciplinary action. A copy of an Agreed Judgment of Partially Probated Suspension, approved by the parties, is attached hereto as Exhibit A.

PRAYER

Because they have reached an agreement to settle this matter, the parties respectfully ask the Board of Disciplinary Appeals to set aside the Judgment of Active Suspension without regard to the merits and remand this case to the Evidentiary Panel for rendition of judgment in accordance with their agreement.

RESPECTFULLY SUBMITTED,

LINDA A. ACEVEDO
CHIEF DISCIPLINARY COUNSEL

LAURA BAYOUTH POPPS
DEPUTY COUNSEL FOR ADMINISTRATION

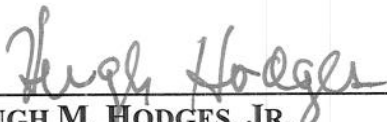
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HUGH M. HODGES, JR.
STATE BAR CARD No. 09767000
APPELLANT

Exhibit A

**BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-2
STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner**

V.

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

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§

CASE NO. D0021244955

AGREED JUDGMENT OF PARTIALLY PROBATED SUSPENSION

This Agreed Judgment of Partially Probated Suspension is entered at the joint request of Petitioner, the Commission for Lawyer Discipline, and Respondent, Hugh M. Hodges, Jr., who agree that all matters of fact and things in controversy between them have been fully and finally compromised and settled.

Background

Evidentiary Panel 6-B2 previously heard this matter and entered a Judgment of Active Suspension ("Original Judgment") on April 11, 2013. Respondent appealed the Original Judgment to the Board of Disciplinary Appeals (BODA). After full briefing and oral argument, BODA ordered the parties to mediation with regard to the sanctions set forth in the Original Judgment. At mediation, the parties entered into a Settlement and Rule 11 Agreement, which is incorporated for all purposes into this Agreed Judgment of Partially Probated Suspension ("Agreed Judgment"). BODA vacated the Original Judgment and remanded this matter for entry of this Agreed Judgment.

Jurisdiction and Venue

The Evidentiary Panel 6-2, having been duly appointed to hear this matter 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 finds that Respondent has committed Professional Misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

The Evidentiary Panel, having considered the parties' agreement, the pleadings, the evidence, and the arguments 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 a 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.

Conclusions of Law

The Evidentiary Panel concludes that, based on the parties' agreement and the 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).

Sanctions

Pursuant to the parties' agreement, the sanctions for Respondent's professional misconduct are a forty-two (42) month partially probated suspension from the practice of law, with the first twenty-four (24) months being an active suspension beginning April 11, 2013, and ending April 10, 2015, and the final eighteen (18) months being a probated suspension beginning April 11, 2015, and ending October 10, 2016; restitution in the amount of \$2,750.00; and attorneys' fees in the amount of \$2,000.00.

Terms of Active Suspension

It is **ORDERED** that Respondent shall be actively suspended from the practice of law for twenty-four (24) months beginning April 11, 2013, and ending April 10, 2015.

During the term of active suspension ordered herein, or that may be imposed upon Respondent by the Board of Disciplinary Appeals as the result of a probation revocation proceeding, Respondent shall be prohibited 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 any legal service; 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.

It is further **ORDERED** that Respondent shall return all files, papers, unearned monies, and other property belonging to clients that is in Respondent's possession to each respective client or to another attorney at the client's request.

It is further **ORDERED** that Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701) on or before October 1, 2014, an affidavit stating that 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 clients have been returned as ordered herein.

It is further **ORDERED** that 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 pending matter of the terms of this judgment, the style and cause number of each pending matter, and the name, address, and telephone number of each client Respondent is representing in the court or tribunal.

It is further **ORDERED** that Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701) on or before October 1, 2014, an affidavit stating that Respondent has notified 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 pending matter of the terms of this judgment, the style and cause

number of each pending matter, and the name, address, and telephone number of each client Respondent is representing in the court or tribunal.

It is further **ORDERED** that, on or before October 1, 2014, Respondent shall surrender his law license and permanent State Bar Card to the State Bar of Texas to be forwarded to the Supreme Court of Texas.

Terms of Probation

It is **ORDERED** that Respondent shall be suspended from the practice of law on a probated basis for eighteen (18) months beginning April 11, 2015, and ending October 10, 2016.

It is further **ORDERED** that during the period of probation, Respondent may practice law subject to 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 statute.
4. Respondent shall keep the State Bar of Texas membership department notified of his 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 allegation of professional misconduct.
8. Respondent shall pay restitution on or before August 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, Texas 78711-2487 (1414 Colorado St., Austin, TX 78701).

9. Respondent shall pay reasonable and necessary attorneys' fees to the State Bar of Texas in the amount of Two Thousand and no/100 Dollars (\$2,000.00). The payment shall be due and payable on or before August 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, Texas 78711-2487 (1414 Colorado St., Austin, TX 78701).
10. Respondent shall make contact with the Chief Disciplinary Counsel'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 signed judgment in order to coordinate Respondent's compliance.

Additional Terms and Conditions of Probation

Respondent shall open and maintain a trust account and hold all funds belonging in whole or part to clients or third persons in the trust account in accordance with Rule 1.14 of the Texas Disciplinary Rules of Professional Conduct. When Respondent receives funds that constitute the prepayment of a fee and belong to a client or third person until legal services are rendered, Respondent may withdraw the funds after advising the client that services have been rendered and the fee earned.

With all clients, Respondent shall utilize written contracts for legal services specifying the services to be provided, the fees to be charged, and the manner of calculating the fees.

Probation Revocation

Pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure, upon information that Respondent has violated any term of this Agreed Judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke

probation with BODA and serve a copy of the motion on Respondent pursuant to Rule 21a of the Texas Rules of Civil Procedure.

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 Agreed Judgment. If BODA finds a ground for revocation, BODA shall enter an order revoking probation and placing Respondent on active suspension for eighteen months from the date of such revocation order. Respondent shall not be given credit for any period 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 an independent ground for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Restitution and Attorneys' Fees

It is further **ORDERED** that Respondent shall pay restitution on or before August 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701).

It is further **ORDERED** that Respondent shall pay reasonable and necessary attorneys' fees to the State Bar of Texas in the amount of Two Thousand and no/100 Dollars (\$2,000.00). The payment shall be due and payable on or before August 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701).

It is further **ORDERED** that all amounts ordered herein are due to the misconduct of Respondent and are assessed as sanctions 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 _____ day of September, 2014.

**EVIDENTIARY PANEL 6-2
DISTRICT NO. 6
STATE BAR OF TEXAS**

**Angeline L. Bain
District 6, Panel 6-2 Presiding Member**

APPROVED AS TO FORM AND SUBSTANCE:

LINDA A. ACEVEDO
CHIEF DISCIPLINARY COUNSEL

NANCY THURSBY
REGIONAL COUNSEL

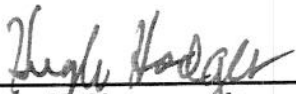
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