

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

IN THE MATTER OF DAVID IRWIN, STATE BAR CARD NO. 24091127	§ § §	CAUSE NO. 67817
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AGREED JUDGMENT OF PROBATED SUSPENSION

On this day the above-styled and numbered reciprocal disciplinary action was called for hearing before the Board of Disciplinary Appeals. Petitioner appeared by attorney and Respondent appeared in person as indicated by their respective signatures below and announced that they agree to the findings of fact, conclusions of law, and orders set forth below solely for the purposes of this proceeding which has not been fully adjudicated. Respondent waives any and all defenses that could be asserted under Rule 9.04 of the Texas Rules of Disciplinary Procedure. The Board of Disciplinary Appeals, having reviewed the file and in consideration of the agreement of the parties, is of the opinion that Petitioner is entitled to entry of the following findings, conclusions, and orders:

Findings of Fact. The Board of Disciplinary Appeals finds that:

- (1) Respondent, David Irwin, Bar Card No. is 24091127, is an attorney licensed and authorized to practice law in the State of Texas by the Supreme Court of Texas.
- (2) On or about June 10, 2022, an Order of Admonition with Probation,¹ (CLE), and Costs was entered Before the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona in a matter styled, *In the Matter of a Member of the State Bar of Arizona, David Irwin, Bar No. 026278, Respondent*, No. 21-2190, which states in pertinent part:

¹ Admonition [informal reprimand in Arizona] is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual potential injury to a client, the public, or the legal system." *In re Sodaro*, 2002 Ariz. LEXIS 125,6-7

By a vote of 7-0-2, the Committee finds probable cause exists that Respondent violated the following Rules of the Supreme Court of Arizona: Rule 42, ER 4.4(a), and ER 8.4(d). Respondent is hereby admonished for engaging in improper trial tactics during the prosecution of a criminal case, which resulted in the Court of Appeals reversing the defendant's conviction based on findings of prosecutorial misconduct.

IT IS THEREFORE ORDERED issuing an Order of Admonition with Probation for Respondent's conduct pursuant to Rules 55(c)(1)(D) and 60(a)(4), Ariz. R. Sup. Ct.

IT IS THEREFORE ORDERED that pursuant to Rules 55(c)(1)(D) and 60(a)(5), Ariz. R. Sup. Ct., Respondent is placed on probation under the following terms and conditions:

1) the probation period will begin at the time this Order is served upon Respondent, and will conclude eighteen (18) months from that date.

2) Respondent shall participate in and successfully complete the following programs:

a) CLE: In addition to annual MCLE requirements, Respondent shall complete an additional six (6) hours of Continuing Legal Education ("CLE") program(s) in the area of jury trial practice, to be approved by Bar Counsel. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program by providing a copy of (a) his/her handwritten notes; or (b) typed or electronic notes, accompanied by a declaration, statement or affidavit that complies with Civil Rule 80(c), and which states he/she personally typed the notes while viewing the CLE program. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

3) Respondent shall commit no further violations of the Rules of Professional Conduct.

4) Respondent shall report, in writing, compliance with the terms of probation to the State Bar's Phoenix Office.

5) If Respondent fails to comply with any of the foregoing conditions and the State Bar receives information about non-compliance, bar counsel shall report material violations to the Presiding Disciplinary Judge, who may hold a hearing to determine if the terms of probation have been violated and to determine if an additional sanction should be imposed. In a probation violation hearing, the State Bar must prove a violation by preponderance of the evidence.

IT IS FURTHER ORDERED, pursuant to Rule 60(b), Ariz. R. Sup. Ct., that Respondent shall pay the costs and expenses of these proceedings, as set forth in the attached Statement of Costs and Expenses, within thirty (30) days from the date of service of this Order.

PURSUANT to Rules 60(a)(4) and 70(a)(2), Ariz. R. Sup. Ct., this order will be entered in the Respondent's permanent record at the State Bar and is not confidential. Pursuant to Rule 48(k)(3), Ariz. R. Sup. Ct., it may be considered by the Attorney Discipline Probable Cause Committee, the Presiding Disciplinary Judge, a Hearing Panel, or the Supreme Court in recommending or imposing discipline in a subsequent disciplinary proceeding against Respondent.

- (3) Respondent, David Irwin, is the same person as the David Irwin, who is the subject of the Order of Admonition with Probation, (CLE), and Costs, issued Before the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona; and
- (4) The Order of Admonition with Probation, (CLE), and Costs, issued Before the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona is final.

Conclusions of Law. Based upon the foregoing findings of facts the Board of Disciplinary Appeals makes the following conclusions of law:

- (1) This Board has jurisdiction to hear and determine this matter. TEX. RULES DISCIPLINARY P.R. 7.08(H).
- (2) Reciprocal discipline identical, to the extent practicable², to that imposed by the Supreme Court of Arizona is warranted in this case.

² As Texas does not have an equivalent to an Admonition [informal reprimand in Arizona].

- (3) Respondent should be suspended from the practice of law for a period of eighteen (18) months with the suspension being fully probated.
- (4) This Board retains jurisdiction during the full term of probation imposed by this judgment to hear a motion to revoke probation. TEX. RULES DISCIPLINARY P.R. 2.22.

It is, accordingly, **ORDERED, ADJUDGED, and DECREED** that Respondent, David Irwin, State Bar Card No. 24091127, is hereby suspended from the practice of law for a period of eighteen (18) months with the suspension being fully probated, beginning May 22, 2023, and extending through November 21, 2024, under the following terms and conditions:

- (1) Respondent shall not violate any of the provisions of the Texas Disciplinary Rules of Professional Conduct or any provision of the State Bar Rules.
- (2) Respondent shall not be found guilty of, or plead no contest to, any felony involving moral turpitude or any misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property.
- (3) Respondent must notify both the Office of the Chief Disciplinary Counsel and the Membership Department of the State Bar of Texas of any change in Respondent's address within thirty (30) days of the change of address.
- (4) Respondent shall not violate any of the terms or conditions of probation imposed Before the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona on June 10, 2022, in case styled: *In the Matter of a Member of the State Bar of Arizona, David Irwin, Bar No. 026278, Respondent, No. 21-2190.*
- (5) Respondent shall timely comply with all requirements of the Order of Admonition with Probation, (CLE), and Costs entered Before the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona, on June 10, 2022, in case styled: *In the Matter of a Member of the State Bar of Arizona, David Irwin, Bar No. 026278, Respondent, No. 21-2190.*

Probation Revocation

Upon determination that Respondent has violated any term or condition of this judgment, or if Respondent is adjudged by a tribunal in Arizona to have violated the terms of the disciplinary

order entered in Arizona, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Texas Rule of Disciplinary Procedure 2.22 with this Board and serve a copy of the motion on Respondent pursuant to Texas Rule of Civil Procedure 21a.

Should a motion to revoke probation be filed, this Board will conduct an evidentiary hearing to determine by a preponderance of the evidence whether Respondent has violated any term or condition or requirement of any applicable disciplinary judgment. If this Board finds grounds for revocation, it will enter an order revoking probation and placing Respondent on active suspension from the date of such revocation order without credit for any term 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 independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure.

It is further **ORDERED** that a certified copy of the Petition for Reciprocal Discipline on file herein, along with a copy of this Judgment, be sent to the Office of the Chief Disciplinary Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

It is further **ORDERED** that this Judgment of Probated Suspension shall be made a matter of public record and be published in the *Texas Bar Journal*.

Signed this 22nd day of May 2023.



CHAIR PRESIDING

APPROVED AS TO FORM AND CONTENT:



David Irwin
State Bar Card No. 24091127
Respondent



Amanda M. Kates
Assistant Disciplinary Counsel
State Bar Card No. 24075987
Attorney for Petitioner