

BEFORE THE BOARD OF DISCIPLINARY APPEALS
Appointed By
THE SUPREME COURT OF TEXAS

MORRIS JOSEPH KIRSCHBERG

V.

**COMMISSION FOR
LAWYER DISCIPLINE OF THE
STATE BAR OF TEXAS**

§
§
§
§
§
§

CAUSE NO. 47915

**ORDER GRANTING JOINT MOTION TO REVERSE AND REMAND
FOR RENDITION AND ENTRY OF AN AGREED JUDGMENT**

On this day the Board of Disciplinary Appeals considered the Joint Motion to Reverse and Remand for Rendition and Entry of an Agreed Judgment filed by the parties in the above appeal by Kirschberg from a judgment of the evidentiary panel of the State Bar of Texas District 10-4 Grievance Committee in Cause No. S0120821273 dated November 22, 2010. The Board finds that the parties have settled the matter and ask the Board to remand the matter only for the rendition of the agreed judgment pursuant to Texas Rules of Appellate Procedure 43.2(d) and BODA Internal Procedural Rules 4.10(a)(1). The Board finds that the motion should therefore be granted.

It is therefore **ORDERED** that the Joint Motion to Reverse and Remand for Rendition and Entry of an Agreed Judgment be, and hereby is, **GRANTED**.

It is further **ORDERED** that the evidentiary panel enter the judgment which the parties have executed as shown on Exhibit A attached hereto and incorporated herein by reference for all purposes as if set out in full.

All relief not expressly granted is **DENIED**.

SIGNED this 5th day of April, 2010.



CHAIR PRESIDING

**BEFORE THE DISTRICT 10 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 10-4
STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER
DISCIPLINE,**
Petitioner

V.

MORRIS JOSEPH KIRSCHBERG,
Respondent

§
§
§
§
§
§
§
§

FILE NO. S0120821273

AGREED JUDGMENT OF PARTIALLY PROBATED SUSPENSION

On this day, the above styled and numbered cause was brought before an Evidentiary Panel for State Bar District 10-4. This matter was previously heard by an Evidentiary Panel, and a Modified Judgment of Partially Probated Suspension was entered on November 22, 2010. Thereafter, Respondent appealed this matter to the Board of Disciplinary Appeals. The Modified Judgment of Partially Probated Suspension was reversed, and an agreed order was entered by the Board of Disciplinary Appeals, resulting in the rendition and entry of this Agreed Judgment of Partially Probated Suspension. Petitioner, the Commission for Lawyer Discipline, and Respondent, Morris Joseph Kirschberg, Texas Bar Number 11533300, agree to all terms of this Agreed Judgment of Partially Probated Suspension as set forth below.

JURISDICTION AND VENUE

The Evidentiary Panel 10-4, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 10, 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 the agreement of the parties, finds Respondent has committed Professional Misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure.

FINDINGS OF FACT

Petitioner and Respondent agree to the findings of fact set forth below. Accordingly, the Evidentiary Panel finds as follows:

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 Bexar County, Texas.
3. Respondent was hired in July 2005 to represent Phyllis Watkins in a personal injury matter. Respondent had notice prior to settlement that Mrs. Watkins' medical providers, Dr. Hector X. Samaniego, Jr., Trinity Rehabilitation Center, and Buena Vista X-Ray, asserted an interest in her settlement proceeds.
4. An agreement was reached to settle Mrs. Watkins' personal injury claims in December 2007. Respondent failed to provide the client with a written statement describing the outcome of the matter, the remittance to the client and the method of its determination.
5. Respondent failed to promptly notify Mrs. Watkins' health care providers of Respondent's receipt of the settlement funds. Respondent failed to promptly deliver the settlement proceeds owed to the medical providers and failed to notify Phyllis Watkins that the medical bills were not being paid from the settlement and the bills would be her responsibility.
6. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees and direct expenses associated with this Disciplinary Proceeding in the amount of Three Thousand Nine Hundred Twenty and 00/100 Dollars (\$3,920.00).

CONCLUSIONS OF LAW

The Evidentiary Panel concludes that, based on the foregoing findings of fact, Respondent has violated Rules 1.03(b), 1.04(d), and 1.14(b) of the Texas Disciplinary Rules of Professional Conduct.

SANCTIONS

By reason of the agreement between the Commission for Lawyer Discipline and Respondent, the Evidentiary Panel hereby imposes the following sanctions:

SUSPENSION

It is ORDERED, ADJUDGED and DECREED that Respondent be suspended from the practice of law for a period of three (3) years, beginning December 5, 2010, and ending December 4, 2013. Respondent shall be actively suspended from the practice of law for a period of four (4) months beginning December 5, 2010 and ending April 4, 2011. For the final thirty-two (32) months, Respondent's suspension shall be probated as set forth in this Judgment, and Respondent shall be permitted to practice law, provided that **should Respondent fail to comply with all terms and conditions of this judgment timely, Respondent shall remain actively suspended until the date of compliance or until December 4, 2013, whichever occurs first.**

TERMS OF ACTIVE SUSPENSION

It is further ORDERED that during the term of active suspension ordered herein, or that may be imposed upon Respondent by the Board of Disciplinary Appeals as a result of a probation revocation proceeding, Respondent shall be prohibited from practicing law in

Texas; holding himself out as an attorney at law; performing 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 December 5, 2010, Respondent shall notify each of Respondent's current clients in writing of this suspension.

In addition to such notification, it is further ORDERED that 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 that 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 December 10, 2010, an affidavit stating all current clients have been notified of Respondent's suspension and that all files, papers, monies, and other property belonging to all current clients has been returned as ordered herein.

It is further ORDERED that Respondent shall, on or before December 5, 2010, 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 that 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 December 10, 2010, 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 December 5, 2010, Respondent shall surrender his law license and permanent State Bar Card 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), to be forwarded to the Supreme Court of Texas.

TERMS AND CONDITIONS OF PROBATION

It is further ORDERED that the probation of Respondent's suspension shall be subject to the following terms and conditions:

1. Respondent shall pay all reasonable and necessary attorneys' fees and direct expenses to the State Bar of Texas in the amount of Three Thousand Nine Hundred Twenty and 00/100 Dollars (\$ 3,920.00). The payment shall be due and payable on or before June 4, 2011, 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
2. On or before December 5, 2010, Respondent shall schedule a full psychological assessment to be conducted by a mental health professional licensed in Texas as a psychiatrist, a psychologist, a master's level social worker (LCSW), or a licensed professional counselor (LPC). Respondent shall complete the assessment at the earliest practicable date, but in no event later than sixty (60) days after receipt of a copy of this judgment. Although the details of information disclosed during the

assessment shall remain confidential, the conclusions, diagnosis and treatment plan recommendations of the mental health professional shall be reported to the State Bar of Texas within ten (10) days of the completion of the assessment. Respondent shall take all necessary action, including the execution of a valid release of information, to allow and direct the mental health professional to report such results and recommendations.

3. If recommended as part of the above assessment, Respondent shall remain under the care of one or more mental health professionals at the frequency recommended by the treatment plan for the duration of the supervision period or until released in writing by the treatment provider. Each treating mental health professional shall provide written quarterly reports to the State Bar of Texas verifying Respondent's attendance at the sessions and good faith participation in the treatment plan. The initial report(s) shall be due ninety (90) days after completion of the assessment, with subsequent reports due quarterly thereafter. Respondent shall take all necessary action, including the execution of a valid release of information, to permit any treating mental health professional to provide written or oral reports for the duration of the supervision period.
4. Respondent shall be responsible for all costs and expenses incurred, directly or indirectly, by compliance with these terms and shall pay all such costs and expenses as required by the provider, but in no event later than the final day of the supervision period.
5. Any and all reports and evaluations required by these terms of probation **shall be sent to the State Bar of Texas, via USPS: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Austin, TX 78701.**
6. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete three (3) additional hours of continuing legal education in the area of Law Practice Management. These additional hours of CLE are to be completed on or before June 4, 2011. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course to the State Bar of Texas, **via USPS: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Austin, TX 78701.**
7. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete eight (8) additional hours of continuing legal education in the area of Ethics. These additional

hours of CLE are to be completed on or before June 4, 2011. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course to the State Bar of Texas, via USPS: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Austin, TX 78701.

Should Respondent fail to comply with the above terms and conditions timely, Respondent shall remain actively suspended until the date of compliance or until December 4, 2013, whichever occurs first.

ADDITIONAL TERMS OF SUSPENSION

IT IS FURTHER ORDERED that during all periods of suspension, active or probated, Respondent shall abide by the following terms and conditions:

1. Respondent shall make contact with the Texas Lawyers' Assistance Program (TLAP) at its hotline number, 800-343-8527, not later than seven (7) days after receipt of a copy of this judgment to inquire as to services and referrals offered by that program that could aid in Respondent's rehabilitation. Respondent shall additionally send verification of contact with TLAP to the State Bar of Texas within fifteen (15) days such contact.
2. Respondent shall submit to supervision by a rehabilitation monitor acceptable to the State Bar of Texas and selected by the monitoring program of the Texas Lawyers' Assistance Program. The supervision shall begin June 5, 2011 and continue for a period of at least six (6) months. The monitor shall supervise Respondent's compliance with the requirements of the rehabilitation conditions and is under a duty to immediately report to the State Bar of Texas any noncompliance on the part of Respondent. The monitor shall report the status of Respondent's compliance with these conditions on a monthly basis, with the report due by the 5th day of each month for the duration of the monitoring period.
3. Respondent shall meet with the monitor a minimum of two times per month. The initial meeting shall be held not later than ten (10) days after Respondent receives written notification from the State Bar of Texas of the name and phone number of Respondent's assigned monitor, and in no event later than June 1, 2011. Such meetings shall be in person at a place and time determined by the monitor.

Exceptions must be approved in advance by the monitor and noted on the monthly report.

4. If recommended following the mental health assessment ordered herein, Respondent shall remain under the care of one or more mental health professionals at the frequency recommended by the treatment plan for the duration of the supervision period or until released in writing by the treatment provider. Each treating mental health professionals shall provide written quarterly reports to the State Bar of Texas verifying Respondent's attendance at the sessions and good faith participation in the treatment plan. The initial report(s) shall be due ninety (90) days after completion of the assessment, with subsequent reports due quarterly thereafter. Respondent shall take all necessary action, including the execution of a valid release of information, to permit any treating mental health professional to provide written or oral reports for the duration of the supervision period.
5. Respondent shall be responsible for all costs and expenses incurred, directly or indirectly, by compliance with these terms and shall pay all such costs and expenses as required by the provider, but in no event later than the final day of the supervision period.
6. Any and all reports and evaluations required by these terms of probation shall be sent to the State Bar of Texas, via USPS: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Austin, TX 78701.
7. Respondent shall not violate any term of this judgment.
8. Respondent shall not engage in professional misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure.
9. Respondent shall not violate any state or federal criminal statutes.
10. Respondent shall keep State Bar of Texas membership department notified of current mailing, residence and business addresses and telephone numbers.
11. Respondent shall comply with Minimum Continuing Legal Education requirements.
12. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.

13. Respondent shall promptly respond to any request for information from the Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.

PROBATION REVOCATION

It is further ORDERED that, if Respondent violates any term of this judgment, the Board of Disciplinary Appeals (“BODA”) shall enter an order revoking the probation and imposing the active suspension of Respondent from the practice of law to commence on the date of revocation.

Upon determination that Respondent has violated any term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation with BODA and serve a photocopy 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 Judgment. If BODA finds grounds for revocation, BODA shall enter an order revoking probation and placing Respondent on active suspension from the date of such revocation order. Respondent shall not be given 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 Texas Rules of Disciplinary Procedure.

ATTORNEYS' FEES AND EXPENSES

It is further ORDERED that Respondent shall pay all reasonable and necessary attorneys' fees and direct expenses to the State Bar of Texas in the amount of Three Thousand Nine Hundred Twenty and 00/100 Dollars (\$3,920.00). The payment shall be due and payable on or before June 4, 2011, 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 and 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 ____ day of _____, 2011.

**EVIDENTIARY PANEL No. 10-4
DISTRICT No. 10
STATE BAR OF TEXAS**

PRESIDING MEMBER

AGREED AS TO BOTH FORM AND SUBSTANCE:

LINDA A. ACEVEDO
CHIEF DISCIPLINARY COUNSEL

BERNARD WM. FISCHMAN
ATTORNEY AT LAW

CYNTHIA CANFIELD HAMILTON
SENIOR APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY COUNSEL
STATE BAR OF TEXAS
P.O. BOX 12487
AUSTIN, TEXAS 78711
TELEPHONE: 512.427.1350; 1.877.953.5535
FAX: 512.427.4167

THE ARIEL HOUSE
8118 DATAPOINT DRIVE
SAN ANTONIO, TEXAS 78229-3218
TELEPHONE: 210.614.6400
FAX: 210.614.6401



CYNTHIA CANFIELD HAMILTON
STATE BAR CARD No. 00790419
ATTORNEY FOR APPELLEE



BERNARD WM. FISCHMAN
STATE BAR CARD No. 07043500
ATTORNEY FOR APPELLANT