

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

EVERETT J. McCLAIN

V.

COMMISSION FOR
LAWYER DISCIPLINE OF THE
STATE BAR OF TEXAS

CAUSE NO. 36831

**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 from a judgment of the evidentiary panel of the State Bar of Texas district 4C5 grievance committee in Cause No. H0110418894 dated November 30, 2005. 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 **GRANTED**.

It is further **ORDERED** that the evidentiary panel enter the judgment to which the parties have agreed 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 16 day of August, 2006.



CHAIRMAN PRESIDING

ORIGINAL

FILED
By: _____
AUG 15 2006
Board of Disciplinary Appeals
appointed by the
Supreme Court of Texas

No. 36831

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

EVERETT J. MCCLAIN,

APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

*On Appeal From the Evidentiary Panel
For the State Bar of Texas District 4C5
No. H0110418894*

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

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EVERETT J. MCCLAIN,

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*On Appeal From the Evidentiary Panel
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**JOINT MOTION TO REVERSE AND REMAND
FOR RENDITION AND ENTRY OF AN AGREED JUDGMENT**

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellant Everett J. McClain and Appellee Commission for Lawyer Discipline jointly ask the Board of Disciplinary Appeals that, pursuant to TEX. R. APP. P. 43.2 (d), this cause be reversed and remanded for the rendition and entry of an agreed judgment and that the Evidentiary Panel for State Bar District 4C5 be directed to enter the Agreed Judgment of Active Suspension attached as "Exhibit A." The parties have made a settlement agreement by which they agree to the new judgment that would dispose of the controversy made the basis of the suit.

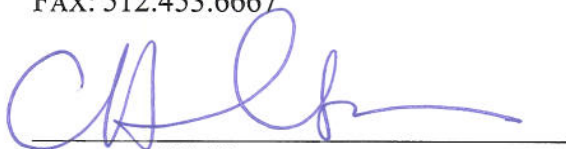
Wherefore, Premises Considered, Appellant Everett J. McClain and Appellee Commission for Lawyer Discipline respectfully request that the Evidentiary Panel's judgment be reversed, that this cause be remanded, and that the Evidentiary Panel be directed to enter the Agreed Judgment of Active Suspension made by the parties.

RESPECTFULLY SUBMITTED,

LINDA A. ACEVEDO
FIRST ASSISTANT DISCIPLINARY COUNSEL

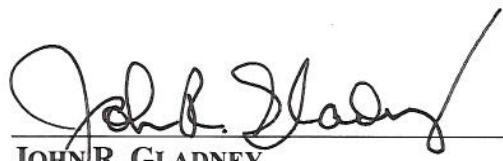
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EVERETT J. MCCLAIN

**BEFORE THE EVIDENTIARY PANEL FOR STATE BAR
DISTRICT NO. 4C5, THE STATE BAR OF TEXAS**

COMMISSION FOR LAWYER DISCIPLINE,	§	H0110418894
	§	
Petitioner	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
EVERETT J. McCLAIN,	§	
	§	
Respondent	§	

AGREED JUDGMENT OF ACTIVE SUSPENSION

On this day, this matter was brought before an Evidentiary Panel of the District 4C5 Grievance Committee. The Evidentiary Panel previously heard this matter and entered a Judgment of Active Suspension on October 5, 2005, followed by a Modified Judgment of Active Suspension on November 30, 2005. Thereafter, Respondent appealed this matter to the Board of Disciplinary Appeals. An Agreed Order of Reversal and Remand was entered by the Board of Disciplinary Appeals, resulting in the rendition and entry of this Agreed Judgment of Active Suspension. Petitioner, the Commission for Lawyer Discipline, and Respondent, Everett J. McClain, Texas Bar Number 00786850, have agreed to all terms of this Agreed Judgment of Active Suspension as set forth below.¹

JURISDICTION AND VENUE

Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent's principal place of practice is Harris County, Texas. Therefore, the

¹During the pendency of his appeal, Respondent was suspended from the practice of law because the sanction imposed by the Modified Judgment of Active Suspension was not stayed. As a result, the dates listed herein reflect a sanction that became effective prior to the entry date of this Agreed Judgment of Active Suspension.



Evidentiary Panel finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper in Harris County, Texas.

PROFESSIONAL MISCONDUCT

The Commission for Lawyer Discipline and Respondent agree to the Findings of Fact and Conclusions of Law set forth below. By reason of said agreed findings and conclusions, the Evidentiary Panel finds that Respondent has committed professional misconduct as defined by Rule 1.06V of the TEXAS RULES OF DISCIPLINARY PROCEDURE and should be suspended from the practice of law.

FINDINGS OF FACT

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
2. Respondent's principal place of practice is Houston, Harris County, Texas.
3. From April 30, 2004, through October 1, 2004, Respondent was administratively suspended from the practice of law for failure to comply with the Minimum Continuing Legal Education requirements.
4. Respondent continued to practice law while on administrative suspension when he represented James Anthony Joiner (hereinafter referred to as "Joiner") in Cause No. 1994-57531, styled *In the Interest of James Anthony Joiner, Jr.* in the 257th Judicial District Court of Harris County, Texas.
5. Respondent represented Joiner on the following occasions: (1) On or about May 27, 2004, Respondent called the court, made representations that he was counsel for Joiner, and requested a reset of the hearing scheduled that day; and (2) on or about August 26,

2004, Respondent appeared in court with Joiner, negotiated with counsel for the Attorney General's Office, and signed a reset form.

6. On or about January 20, 2005, Respondent received notice from the State Bar of Texas of the pending grievance. Said notice required that Respondent file a written response to the allegations of professional misconduct within thirty (30) days of receipt. Respondent failed to respond.
7. Complainant, Debi J. Caffee, Managing Assistant Attorney General, appeared at the hearing. She was a credible witness and corroborated the allegations set forth in the Original Evidentiary Petition.
8. On June 4, 2005, Respondent received a ninety-day partially probated suspension (thirty (30) days active suspension [June 13, 2005, through July 12, 2005] and sixty (60) days probated suspension [July 13, 2005, through September 11, 2005]) in Case No. H0060417823, styled *Commission for Lawyer Discipline v. Everett J. McClain*, Before the District 4D8 Evidentiary Panel. Although an appeal was pending, Respondent did not seek a stay of the suspension, which concluded on September 11, 2005. Respondent testified that he complied with all terms of the judgment.
9. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney fees and direct expenses associated with the proceedings of this matter, which should be paid by Respondent.

CONCLUSIONS OF LAW

The foregoing findings of fact support violations of Rules 8.01(b) [knowingly failing to respond to a lawful demand for information from a disciplinary authority] and 8.04(a)(11) [engaging 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] of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT, Article X, Section 9, STATE BAR RULES.

SANCTION

By reason of the settlement agreement between the Commission for Lawyer Discipline and Respondent, the Evidentiary Panel **ORDERS** that Respondent be suspended from the practice of law beginning on December 1, 2005, and ending on August 31, 2006.

IT IS ORDERED that during the period of suspension as set forth in this Agreed Judgment of Active Suspension, Respondent shall be enjoined from practicing law in Texas, holding himself out as an attorney, 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 court or before any Texas administrative body, or holding himself out to others or using his name in any matter in conjunction with the words "attorney," "counselor," "counselor at law," or "lawyer."

IT IS ORDERED that Respondent shall immediately notify each of his current clients in writing of this suspension. In addition to such notification, Respondent is **ORDERED** to return any files, papers, unearned monies, and other property belonging to clients in Respondent's possession to the respective clients or to another attorney at the client's request. Respondent is **ORDERED** to file with the **State Bar of Texas, Office of the Chief Disciplinary Counsel, 600 Jefferson, Suite 1000, Houston, Texas 77002**, by no later than December 31, 2005, an affidavit

stating that all current clients have been notified of this suspension and that all files, papers, monies, and other property belonging to all clients have been returned as ordered herein.

IT IS ORDERED that Respondent shall immediately notify 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 this suspension, the style and cause number(s) of the pending matter(s), and the name, address, and telephone number of each and every client Respondent is representing in court. Respondent is **ORDERED** to file with the **State Bar of Texas, Office of the Chief Disciplinary Counsel, 600 Jefferson, Suite 1000, Houston, Texas 77002**, by no later than December 31, 2005, an affidavit stating that he 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 this suspension, the style and cause number(s) of the pending matter(s), and the name, address, and telephone number of each and every client Respondent is representing in court.

IT IS ORDERED that Respondent shall, by no later than December 31, 2005, surrender his law license and permanent State Bar Card to the **State Bar of Texas, Office of the Chief Disciplinary Counsel, 600 Jefferson, Suite 1000, Houston, Texas 77002**, for forwarding to the Supreme Court of Texas.

IT IS ORDERED that Respondent pay reasonable and necessary **attorney fees in the amount of Two Thousand and No/100 Dollars (\$2,000.00)**. All payments are to be remitted to the **State Bar of Texas, Office of the Chief Disciplinary Counsel, 600 Jefferson, Suite 1000, Houston, Texas 77002**, by money order, certified check, or cashier's check. Respondent shall pay all attorney fees on or before **December 31, 2005**.

IT IS ORDERED that all costs and expenses in the amount of Three Hundred Forty-Three and No/100 Dollars (\$343.00) shall be taxed against Respondent. Reimbursement for costs is to be remitted to the State Bar of Texas, Office of the Chief Disciplinary Counsel, 600 Jefferson, Suite 1000, Houston, Texas 77002, by money order, certified check, or cashier's check. Respondent shall pay all costs and expenses before December 31, 2005.

All attorney fees and costs ordered herein are due to the misconduct of the attorney, assessed as part of the sanction in accordance with Rule 1.06Y of the TEXAS RULES OF DISCIPLINARY PROCEDURE. In the event any amount of attorney fees and/or costs is not paid as specified in this Agreed Judgment of Active Suspension, all past due amounts shall bear interest in the amount of six and one-half percent (6.5%) 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.

IT IS FURTHER ORDERED that this suspension is to be made a matter of public record and shall be appropriately recorded in accordance with the TEXAS RULES OF DISCIPLINARY PROCEDURE.

All relief not expressly granted in this Agreed Judgment of Active Suspension is **DENIED**.

SIGNED this _____ day of _____ 2006.

**EVIDENTIARY PANEL
DISTRICT NO. 4C5
STATE BAR OF TEXAS**

BY: PRESIDING MEMBER

APPROVED AS TO FORM AND SUBSTANCE:

LINDA A. ACEVEDO
FIRST ASSISTANT DISCIPLINARY COUNSEL

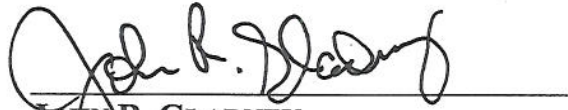
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