

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-4
STATE BAR OF TEXAS

COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner

V.

ALBERTO POSADA,
Respondent

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CASE NO. D0031142509

JUDGMENT OF PROBATED SUSPENSION

Parties and Appearance

On October 28, 2013, came to be heard the above-styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, **ALBERTO POSADA** ("Respondent"), Texas Bar Number **24039360**, appeared in person and announced ready.

Jurisdiction and Venue

The Evidentiary Panel 7-4, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 7, 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.

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 Tarrant County, Texas.
3. On or about October 9, 2010, Respondent was hired by Complainant Guadalupe Galvan to represent her sons, Fidel and Joel Galvan ("the Galvans"), in a criminal matter seeking a bond reduction.
4. In representing the Galvans in their criminal matter, Respondent neglected the legal matter entrusted to him by failing to appear at a hearing regarding the bond reduction.
5. Respondent failed to keep the Galvans reasonably informed about the status of their criminal matter.
6. Respondent failed to promptly comply with reasonable requests for information from the Galvans about their criminal matter.
7. Upon termination of representation, Respondent failed to refund advance payments of fee that had not been earned.
8. Respondent owes restitution in the amount of Five Thousand and no/100 Dollars (\$5,000.00) to Guadalupe Galvan.
9. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees associated with this Disciplinary Proceeding in the amount of One Thousand Nine Hundred Twelve and 50/100 Dollars (\$1,912.50).
10. The Chief Disciplinary Counsel of the State Bar of Texas has incurred direct expenses associated with this Disciplinary Proceeding in the amount of Three Hundred Sixty-Five and 87/100 Dollars (\$365.87).

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 1.01(b)(1), 1.03(a), and 1.15(d).

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 a Probated Suspension.

Accordingly, it is **ORDERED, ADJUDGED** and **DECREED** that Respondent be suspended from the practice of law for a period of one (1) year, with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on January 1, 2014, and shall end on December 31, 2014.

Terms of Probation

It is further **ORDERED** that during all periods of suspension, Respondent shall be under 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(V) of the Texas Rules of Disciplinary Procedure.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep State Bar of Texas membership department notified of current mailing, residence and business addresses and telephone numbers.

5. 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 between January 1, 2014 and June 30, 2014. 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
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 allegations of professional misconduct.
8. Respondent shall pay restitution on or before June 30, 2014, to Guadalupe Galvan in the amount of Five Thousand and no/100 Dollars (\$5,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Guadalupe Galvan, 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).
9. Respondent shall pay all reasonable and necessary attorneys' fees to the State Bar of Texas in the amount of One Thousand Nine Hundred Twelve and 50/100 Dollars (\$1,912.50). The payment shall be due and payable on or before November 30, 2014, 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).
10. Respondent shall pay direct expenses to the State Bar of Texas in the amount of Three Hundred Sixty-Five and 87/100 Dollars (\$365.87). The payment shall be due and payable on or before November 30, 2014, 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).
11. Respondent shall make contact with the Chief Disciplinary Counsel's Offices' 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 judgment to coordinate Respondent's compliance.

Probation Revocation

Upon information that Respondent has violated a term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals ("BODA") and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

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.

Restitution, Attorneys' Fees and Expenses

It is further **ORDERED** Respondent shall pay restitution on or before June 30, 2014, to Guadalupe Galvan in amount of Five Thousand and no/100 Dollars (\$5,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Guadalupe Galvan 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 the amount of One Thousand Nine Hundred Twelve and 50/100 Dollars (\$1,912.50). The payment shall be due and payable on or before November 30, 2014, 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 direct expenses to the State Bar of Texas the amount of Three Hundred Sixty-Five and 87/100 Dollars (\$365.87). The payment shall be due and payable on or before November 30, 2014, 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

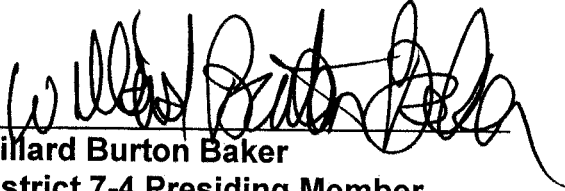
This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 31 day of OCTOBER, 2013.

**EVIDENTIARY PANEL 7-4
DISTRICT NO. 7
STATE BAR OF TEXAS**


**Willard Burton Baker
District 7-4 Presiding Member**