

No. 54174



Before the Board of Disciplinary Appeals

Appointed by

The Supreme Court of Texas

CARY WILLIAM SCHULMAN,
APPELLANT,

v.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

*On Appeal from the Evidentiary Panel
For the State Bar of Texas District 6-1
No. D0071246131*

**SWORN MOTION FOR REVIEW OF EVIDENTIARY PANEL'S DENIAL OF
MOTION TO STAY SUSPENSION PENDING APPEAL**

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellant, Cary Schulman, movant, files this his Motion for Review of Evidentiary Panel's Denial of Motion to Stay Suspension Pending Appeal and respectfully and shows as follows:

I.

The Evidentiary Panel entered a two-year active Judgment of Suspension on or about March 25, 2014, effective on May 1, 2014. Movant timely appealed to this Board, and timely filed a Motion to Stay the Judgement of Suspension

Pending Appeal (“Motion to Stay”). After twice calling the Motion to Stay for hearing and unable to have the hearing do to a panel member’s failure to appear (no quorum), a hearing on the Motion to Stay was held on June 3, 2014. Movant presented witness testimony live and by affidavit. The CFLD did not present any evidence or witnesses and did almost no cross examination. On June 5, 2014, the Evidentiary Panel denied movant’s request to stay the suspension pending appeal (see Ex. 1 Order).

II.

The Evidentiary Panel’s denial of the Motion to Stay is error. Movant has ordered the transcript of the hearing and will provide it to the Board upon receipt and by copy of this Motion and by separate request in the communication to the CFLD attorneys, Movant is requesting that the CFLD prepare a “clerk’s record” of the proceedings pertaining to the Motion for Stay. Furthermore, Movant incorporates its Emergency Motion for Stay filed with this Board on the day the appeal was filed with this Board as if fully set forth herein verbatim. Movant also attached hereto, witness affidavits, on file before the hearing and reintroduced during the hearing, on the Motion for Stay (Exhibits 2 & 3).

III.

The denial of the Motion for Stay is erroneous. The incident the basis of the grievance occurred in July of 2012 and involved an unintentional banking error resulting in a client receiving less funds than the client was entitled to. Movant did not deceive the client or hide the error and communicated all

relevant matters regarding this unintentional error to the client. Movant paid the client the funds timely before Movant was aware of any grievance being filed. The evidence at the hearing and contained in the previously filed Motion with this Board, and as attested to here by Movant (see declaration at end of Motion), is that Movant's partner, Damon Mathias, is in control of the IOLTA account and the law firm's bank accounts and handles the deposits and writing of the checks and has for nearly two years and therefore, Movant is not in a position to be a threat to the client's or the public. Further, the incidents surrounding the grievance do not show deceit or fraud or misrepresentation, raising further concern of recidivism.

The evidence at the hearing from clients and vendors who have known Movant for over ten years is that he is not a threat to the public or clients and in fact, provides higher quality, more trustworthy legal representation than the majority of attorneys. A vendor of Movant's who testified and who is familiar with many Dallas area lawyers stated he saw no threat and preferred to hire Movant over other lawyers.

Movant subpoenaed CFLD attorney VanHamme as a witness. This opposing counsel could not testify to any threat to the public or to Movant's clients. Indeed, VanHamme could not think of anything during the litigation of the grievance or any other fact, outside of those which occurred in July of 2012 and isolated to the instant grievance, which would cause one to believe Movant is a threat to his clients or the public.

The testimony regarding movant's character demonstrates he is not a threat to the public or his clients and movant testified as well that he is not a threat to his clients or the public. The testimony by all accounts is that Movant is a highly proficient attorney who does his job well, is competent and is a man of moral character. The evidence establishes that Movant hold utmost respect for his ethical duties and obligations to his clients and that he diligently pursues his client's cases. The evidence establishes Movant highly respects and honors the fiduciary duty a lawyer owes to a client.

Movant also represents multiple clients focusing on government corruption at the highest levels (see previously filed emergency motion in this court and evidence attached thereto).¹ In doing so, Movant testified and explained that he has been the target and subject of retaliation for which undeniable evidence exists, including an expert handwriting report demonstrating that another law firm forged a complaint against Movant and cut

¹ Furthermore, much of the corruption being fought by movant is public and or common knowledge: Cary Schulman interview with Cavuto on Fox: <http://video.foxbusiness.com/v/2472855533001/did-us-ambassador-to-belgium-solicit-prostitutes/#sp=show-clips> CBS story that broke the Aurelia Fedenisn whistleblower case: <http://www.cbsnews.com/news/state-department-memo-reveals-possible-cover-ups-halted-investigations/> Burglary of Movant's Law Firm: http://www.huffingtonpost.com/2013/07/08/schulman-mathias-break-in_n_3561687.html "Did State Departement Employees Commit Perjury" Reporter James Rosen: <http://foxnewsinsider.com/2013/06/18/fox-news-james-rosen-whether-state-dept-officials-committed-perjury> "Hilary Clinton Sex Scandals" by: <http://youtu.be/ZvxUuAl85ho> Whistleblowers Office of law firm representing State Department Whistleblower Burglarized (this Columbian Southern University story has many links to the other stories) <http://www.homelandsecuritynewswire.com/dr20130710-office-of-law-firm-representing-state-department-whistleblower-burglarized> National Enquirer - Cover Page Story: <http://www.nationalenquirer.com/celebrity/world-exclusive-hillary-clinton-sex-scandals-cover> ABA Journal: http://www.abajournal.com/news/article/attorneys_wonder_if_law_firm_break-in_was_politically_motivated/ Peggy Noonan: Wallstreet Journal comparing Fedenisn to Watergate: <http://blogs.wsj.com/peggynoonan/2013/07/09/whistleblowers/> ("Tuesday, in a telephone interview, Schulman told me the break-in was "odd—curious." Adding to the strangeness, the burglars seem to have come not once but three separate times over the weekend of June 28-30. That's "high risk behavior for a burglar," he said. "I have never seen a commercial burglary where they come back multiple times").

and pasted the signature of the client on the complaint and filed it with the State Bar.

The uncontroverted evidence demonstrates that at the time of the events giving rise to the facts made the basis of this grievance, Movant was being subjected to criminal retaliation for reporting and vocalizing criminal activity in the legal profession for which he had become aware. Further, Movant was wrongfully displaced from his residence and his law practice collapsed under the weight of insurance fraud and other criminal activity in an around his aw practice which he became aware of, and involving other members of the State Bar. As such, at the time of the relevant events, Movant no longer had a bookkeeper, an investigator, paralegals, legal assistants and other employees, and instantly was forced to take on an unusually large work load. Also, Movant was working his law firm out of a hotel room and with files that were compromised, destroyed, altered and discombobulated by the fraudster employees who were conspiring with other lawyers in the community to harm Movant and keep in the dark their nefarious activities.

But most significant, the evidence at the hearing and which Movant attests to herein, clearly shows that the CFLD attorney on this case, Tana VanHamme, who was in receipt of the handwriting expert report and the complaints by Movant and the calls for assistance and investigations, failed to properly treat his complaints and then destroyed the original complaint the subject of the fraud after receiving ample requests to preserve the evidence. It

was VanHamme's actions which contributed greatly to the facts and circumstances which VanHamme now complains. This same attorney, VanHamme, admitted at the hearing to breaching Movant's confidentiality in this proceeding as well as another grievance proceeding occurring simultaneously with this one. Movant, as an experienced corruption attorney, testified in these proceedings and the evidence establishes beyond a reasonable doubt before even an investigation, that VanHamme and the Dallas Office of the Chief Disciplinary Counsel have committed official misconduct and other violations of law. This has played a large role in the denial of the stay pending appeal.²

Movant more than met the standard required under the law to permit a stay pending the appeal. If one is not granted, the harm done will not be repairable and the genie cannot be put back into the bottle. But isn't this exactly the desire of VanHamme, unquestionably guilty of official misconduct? This is not a scorn litigant's account of the events, this is the undeniable truth based upon the credible evidence not to mention VanHamme's own admission on the record. The evidence is overwhelming in this regard and ignoring it or

² As movant attests to and as the evidence will mistakenly reveals, Panel Chair, John Jansonius and CDC attorney VanHamme participated in ex parte communications frequently in this proceeding in violation of the rules of ethics and accepted standards of practice and in one instance, lead to the Panel Chair entering an order six minutes after he received a third part witnesses' motion for protection, delivered by the Dallas CDC and without the Movant being permitted an opportunity to respond. In fact, the third party motion filed by an attorney witness, was filed two hours prior to the hearing and the ruling minutes thereafter. Despite VanHamme being subpoenaed to the hearing and requiring documents of VanHamme's communications with this third party witness, VanHamme neglected to produce the most important document, the one where VanHamme transmitted the confidential information to this witness attorney breaching all confidentiality in this and another grievance proceeding. Panel Chair Jansonius ignored Movant's requests to order its production.

believing it may be buried amongst the chaos they create will be impossible in this case. It amounts to trying to hide a basketball in a lunch pail.

WHEREFORE, PREMISES CONSIDERED, Movant prays for attorney's fees in the amount of \$5,000.00 for the necessity of the filing of this motion and prays that the Board grant the stay of the suspension pending the appeal and for any and all further relief to which Movant is justly entitled.

Respectfully Submitted,

SCHULMAN | MATHIAS, PLLC

/s/ Cary Schulman

Cary W. Schulman

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Suite 500 Dallas, Texas 75243

Phone: (214) 739-0100

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RESPONDENT PRO SE

Declaration

"My name is Cary Schulman, my date of birth is January 9, 1966 and my address is 1608 Creek Crest Dr. McKinney Texas 75071 and United States of America. I declare under penalty of perjury that the foregoing is true and correct. Executed in Collin County, State of Texas on the 30th day of April, 2014.

Declarant"

Certificate of Service

This is to certify that the above instrument has been served on the Chief Disciplinary Counsel by serving Tana VanHamme, counsel in this matter for the Chief Disciplinary Counsel, by facsimile and email and by email to Sophia Henderson, legal assistant to Tana VanHamme and further, by email to the Panel Chair of District 6 Panel 1, on this 6th day of June, 2014.

\s\ Cary Schulman _____
Cary W. Schulman
Attorney Pro Se

Certificate of Conference

I conferred with Tana VanHamme, attorney for the CFLD, this morning, June 6, 2014, who was unable to provide an answer on the substance of this motion and promised to get back with me timely. However, despite her representations to call me back, she failed to do so.

\s\ Cary Schulman _____
Cary W. Schulman
Attorney Pro Se

Exhibit A

NO. D0071246131

COMMISSION FOR LAWYER
DISCIPLINE

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EVIDENTIARY PANEL

v.

OF DISTRICT 6

CARY WILLIAM SCHULMAN

GRIEVANCE COMMITTEE

ORDER

On the 3rd day of June, 2014, after reviewing the evidence and pleadings and hearing argument, the Evidentiary Panel finds the following:

Respondent's Motion to Stay Judgment of Suspension in the above-entitled and numbered cause should be:

_____ **GRANTED. IT IS THEREFORE ORDERED** that Respondent's Motion to Stay Judgment of Suspension is hereby granted and the Judgment of Active Suspension entered on March 28, 2014, be, and is hereby, stayed.

 X **DENIED. IT IS THEREFORE ORDERED** that Respondent's Motion to Stay Judgment of Suspension is hereby denied.

SIGNED this 5th day of June, 2014.

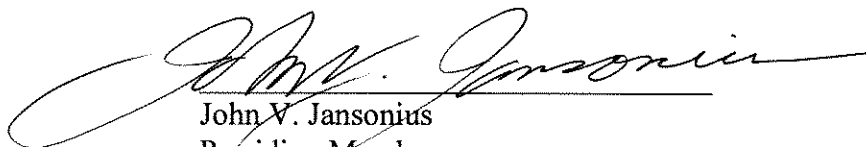

John V. Jansonius
Presiding Member

Exhibit B

COMMISSION FOR LAWYER
DISCIPLINE

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EVIDENTIARY PANEL

v.

OF DISTRICT 6

CARY WILLIAM SCHULMAN

GRIEVANCE COMMITTEE

AFFIDAVIT OF DAMON MATHIAS

BEFORE ME, undersigned authority on this date personally appeared DAMON MATHIAS who, being by me duly sworn upon oath, state upon his oath the following:

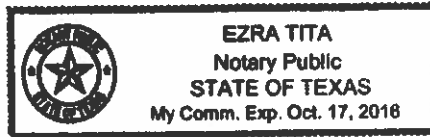
1. "My name is Damon Mathias. I am over the age of 21 years, and am competent to make this Affidavit. I have never been convicted of a felony or other crime involving moral turpitude, and am personally in all respects qualified to make this Affidavit. The facts of this Affidavit as set forth herein are within my knowledge, and are true and correct.
2. I am an attorney and a partner in the law firm Schulman Mathias PLLC. I have been licensed to practice law before the State Courts in Texas since February 2012.
3. I have known Mr. Schulman since 2009 when I was hired as law clerk for the Cary Schulman Law Firm PLLC. I worked with the Cary Schulman Law Firm PLLC until Mr. Schulman and I founded Schulman Mathias PLLC in April 2012.
4. Mr. Schulman and I have worked together on a numerous cases since that time and I am proud of the success we have achieved. The firm prides itself on providing the exceptional legal representation in accordance with the highest ethical standards.
5. I have no reason whatsoever to believe that Mr. Schulman's continued practice of law poses a continuing threat to the welfare of the Mr. Schulman's clients or to the public. In fact, it is my belief that any suspension of Mr. Schulman's license will work to the detriment of Mr. Schulman's clients in addition to the public at large. This firm prides itself on taking difficult cases and Mr. Schulman's skill, experience and ingenuity have led to successful outcomes for clients that had been turned down by other attorneys. Mr. Schulman is simply ready to go the extra mile for clients that many attorneys are simply are not willing to do.
6. Despite being financially devastated over the past few years, Mr. Schulman has continued to represent clients pro bono and/or accept delayed payment from clients who were unable to pay. Mr. Schulman represents these clients with the same fervor and passion that he represents all other clients. If Mr. Schulman were suspended this would leave the many of these clients wholly without representation and/or without adequate representation. The quality of Mr. Schulman's representation is not easily replaced and all of Mr. Schulman's clients would be negatively affected if a suspension were imposed.

FURTHER AFFIANT SAYETH NOT.



DAMON MATHIAS

Damon Mathias personally appeared before me and being known to me swore that the foregoing as true and correct and within his personal knowledge on the 20th day of April 2014.



Notary

Exhibit C

AFFIDAVIT OF RICHARD HIGBIE
FOR PRESENTATION ON: MAY 12, 2014
(SCHEDULED FOR 1PM)

IN CONNECTION WITH CHIEF DISCIPLINARY COUNSEL
ADMINISTRATIVE HEARING IN RE:
STATE BAR OF TEXAS V. CARY SCHULMAN

Introduction

I am executing this declaration as a private citizen and resident of the state of Texas, within the United States of America. Further, I make this statement in connection with the laws governing hearings as described above, specifically with regard to confidentiality. This declaration is consistent with the requirements set forth for unsworn declarations prescribed under the Texas Civil Practices and Remedies Code, Title 6 Chapter 132.

Paragraph A

"My name is Richard P. Higbie and I was born on July 12, 1974, and my work address is resides within the United States Attorneys Office located at 101 East Park Boulevard, Suite 500, Plano Texas 75074. I have provided my work address vice my personal residential address due to my concern that allegations have been raised that the CDC Office in Dallas has violated my attorney's confidentiality in furtherance of its investigation and prosecution of his law license revocation/suspension. Further, a breach of confidentiality in any regard can have very serious implications, especially with regard to my profession as a federal law enforcement agent/officer pertaining to my safety and that of my families safety if not taken seriously."

Paragraph B

"In order to adequately discern my credibility and veracity in making this declaration, I would like the State Bar of Texas to take into consideration my approximately 16 years as a federal agent charged with investigating and prosecuting a multitude of violations of the United States Code. I have testified as the primary case agent, as a matter of routine requirements of my position, under oath to a myriad of federal and state judges as well as various grand jury panels in the course of my employment(s). Prior to joining the federal government, I was employed as a crime analyst/police officer with certifications in crime, investigative, and intelligence analysis as well as an advanced kinesic interviewing certification."

Paragraph C

"I am and have been a client of Attorney Cary Schulman for several years during which time his legal representation for my claims have been exemplary and honorable. He has handled an insurance claim related lawsuit, an administrative and federal labor law & WPA/WPEA lawsuit that is now on appeal with the 5th circuit courts, an federal claim of breach of confidentiality that is now on appeal in the Federal Circuit Court overseeing the Federal Court of Federal Claims, and legal counseling/representation in concert with the U.S. House of Representatives House on Foreign Affairs, the House Committee on Oversight and Reform, and the Senate Foreign Relations Committee and the Senate Judiciary Committee. Additionally, Mr. Schulman has worked extensively with my elected U.S Senator Ted

Cruz and his staff who monitors all constituency requests and oversight. Without Mr. Schulman's past, present, and future representation as to the above legal matters my ability to maintain the institutional knowledge of this high profile and complex litigation will be greatly impacted, harmed, and diminished in its effectiveness and efficiency."

Paragraph D

"Additionally, Mr. Schulman represents me in an ongoing lawsuit initially filed in Tarrant Count at my request to avoid any historical potential for a conflict of interest with Judge Mark Rusch who has apparently filed a bar complaint against my attorney since my medical malpractice complaint was filed. Unfortunately, the case was transferred to Collin County due to a venue order of the Tarrant County Court and that lawsuit is now been assigned to State Judge Mark Rusch. As a result of either an incompetent scheduling protocol or collusion between the Judge's chambers and the CDC, my attorney was forced to miss a Summary Judgment hearing, in Judge Rusch's court, shortly after my daughter suffered a near fatal seizure wherein I was unavailable tending to her emergency needs. The CDC scheduled a hearing in a short time period that conflicted with the aforementioned MSJ hearing. This is very relevant, in my opinion, if this hearing and complaint process is controlled not by the law and judicial procedure and integrity, but rather some kind of political intention aimed to collaterally attack Mr. Schulman's integrity and his business. In the end, if the actions of the CDC counsel are found to be questionable and biased, then she is directly responsible for my representation in Collin County

having suffered and been negatively impacted. It is important to note that Dallas County District Attorney Craig Watkins committed the same technical violations alleged by Judge Rusch against Mr. Schulman but to my knowledge no hearings were conducted and no sanction assessed which begins the question of equal applications of sanctions and those selected for the investigatory/prosecutorial CDC reviews."

Paragraph E

"On April 28, I appeared at a CDC hearing to hear Mr. Schulman's Motion to Stay the judgment of a non-probated suspension wherein he could no longer serve as my counsel without such a stay. The chairman explained in front of me to Mr. Schulman that the person whom they were expecting to attend has not appeared nor called in to explain his absence. It was further articulated on the record that the remaining members of the panel's whereabouts would not be disclosed by the chair or the relevant reasoning why other members were not used as stand in's to assure that is a member could not attend there was a contingency in place for proceeding forward. Instead, the chairman stated that no quorum was achieved so Mr. Schulman could not have his emergency hearing. During the time period wherein we were on the record, neither of the remaining two panel members paid any attention to the attorneys who law license was days from being suspended, rather it appeared to me that typing on an ipad and making childish facial gestures to the panel was more important. The hearing ended with the court reporter asking my name for the record even though I provided no testimony. I observed the panel chair leave the

Paragraph E (continued)

CDC office with the other panel members and I remained in the welcome area with Attorney Daman Mathias for Mr. Schulman. I was quite shocked and somewhat angered when the panel chair returned to the office waiting area and approached me to introduce himself and ask that I do the same. As the panel chair, I believe that such behavior violates the sanctity and integrity of such an important hearing aimed to intimidate or interfere with testimony not yet heard or presented on the record. After alleged scheduling problems yet again, were demonstrating incompetence or purposeful intent to prevent my attorney from being heard on his Motion to Stay, I located and emailed the panel Chair requesting to know when the hearing was set for. Remarkably, he explained to my counsel that speaking with me was now inappropriate and would not comport with the rules or procedure."

Paragraph F

"During the entire time period I have known Mr. Schulman, he has been of sound mind and presented no concern to me as to his integrity or ability to carry out his obligations as an attorney. He has had to endure reporting his employees and attorneys who were found to have been violating his company policies and reporting their behavior to both state and federal law enforcement agencies who handle intellectual property theft and data intrusion as well as insurance fraud. Additionally, Mr. Schulman obtained evidence that corroborated through forensic analysis that other member of the state bar of Texas, at odds with his reporting of violations of law, had committed felonious acts. Once Mr. Schulman began

Paragraph F (continued)

reporting other members of the bar to law enforcement authorities with evidence warranting investigations, his office soon went out of business and his home became the source of heated litigation that resulted in his eviction."

Paragraph G

"Should this Motion for Stay / Suspension Judgment be denied, I believe the grounds for such an action (denial of stay while on appeal) would be meritless and illustrate the political nature of the complaints/investigations/hearings aimed at Mr. Schulman. I further would assure that every member of our state's government has full knowledge of the CDC's behavior in Dallas and its grave harm on my high profile litigation." I will also be required to notify all of the points of contact in the U.S. Congress wherein his representation is essential as well as my elected Senator Ted Cruz."

Paragraph E

"I have already began the process to file complaints of abuse of process, misconduct, and unethical communication with a represented witness in a state proceeding. I would hope the panel chair would recognize the importance of his obligations to the state bar and his oath to the courts he is admitted into with more vigor and integrity. I hope that whatever influence the CDC Office in Dallas has engineered in this matter will be thoroughly reviewed and investigated by a full CDC panel of a statewide panel membership of the State Bar of Texas or by the Texas Commission on Lawyer Discipline directly."

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Collin County, State of Texas, on the 11th, day of May, 2014.

/s/ Richard P. Higbie

Declarant