

CAUSE NO. 2013-56866

COMMISSION FOR LAWYER DISCIPLINE,	§	IN THE DISTRICT COURT OF
Petitioner,	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
ROBERT S. BENNETT,	§	
Respondent.	§	334th JUDICIAL DISTRICT

FINAL JUDGMENT OF PARTIALLY PROBATED SUSPENSION

History of the Case

On September 5, 2013, pursuant to Rule 3.02 of the Texas Rules of Disciplinary Procedure, the Supreme Court of Texas appointed the Honorable Carmen Kelsey, judge of the 289th District Court of Bexar County, to preside over this attorney disciplinary proceeding.

On March 17-19, 2014, this case was tried before Judge Kelsey. Petitioner, the Commission for Lawyer Discipline, appeared through its attorney of record, Timothy R. Bersch, and announced ready. Respondent, Robert S. Bennett, Texas Bar Number 02150500, appeared in person and through his attorney of record, Jeffery D. Wagnon, and announced ready. The parties waived a jury, and all matters of fact and law were submitted to Judge Kelsey for determination.

On March 21, 2014, Judge Kelsey signed a Final Judgment of Disbarment. After stating that she had considered "the testimony and documentary evidence, arguments of counsel, and applicable law," Judge Kelsey found and concluded as follows:

1. 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 Houston, Harris County, Texas. Therefore, this Court has jurisdiction over the parties and subject matter of this case, and venue is appropriate in Harris County, Texas.
2. Respondent has committed professional misconduct as defined by Rule 1.06W of the Texas Rules of Disciplinary Procedure and in violation of one or more of the Texas Disciplinary Rules of Professional Conduct; Article X, Section 9, of the State Bar Rules.

3. Respondent violated the following Texas Disciplinary Rules of Professional Conduct: Rules 1.15(d) and 3.02.

4. Respondent's affirmative defenses are denied.

Based on those findings and conclusions, Judge Kelsey ordered Respondent disbarred.

Respondent appealed the Final Judgment of Disbarment to the 14th Court of Appeals. On March 24, 2016, the 14th Court issued an Opinion and a Judgment, reversing the finding of a violation of Rule 1.15(d), affirming the finding of a violation of Rule 3.02, reversing the sanction of disbarment, and remanding the case to the trial court. Neither Petitioner nor Respondent sought review of the 14th Court's decision by the Supreme Court of Texas. As a result, on June 9, 2016, the 14th Court of Appeals issued its Mandate, which provided, in pertinent part, as follows:

We have inspected the record and find the trial court erred when it concluded that appellant, Robert S. Bennett, violated Rule 1.15(d) of the Texas Disciplinary Rules of Professional Conduct. We therefore order that the portion of the judgment concluding that appellant violated Rule 1.15(d) of the Texas Disciplinary Rules of Professional Conduct **REVERSED**. Further, we find no error in the trial court's conclusion that appellant violated Rule 3.02 of the Texas Disciplinary Rules of Professional Conduct and order that part of the judgment **AFFIRMED**. We therefore order the part of the trial court's judgment disbaring appellant **REVERSED** and **REMAND** the case to the trial court for reconsideration of the appropriate sanction to impose on appellant as a result of his violation of only Rule 3.02 of the Texas Disciplinary Rules of Professional Conduct.

(Emphasis in original.)

By the time that the 14th Court of Appeals issued its Mandate, Judge Kelsey was no longer an active judge. Therefore, on August 3, 2016, pursuant to Rule 3.02 of the Texas Rules of Disciplinary Procedure, the Supreme Court of Texas appointed the Honorable Craig Smith, judge of the 192nd District Court of Dallas County, to preside over this proceeding.

Sanction

After receiving the appointment to preside over this action, this Court was provided copies of the Clerk's Record and the Reporter's Record that were part of the appellate record in this case.

In order to obtain additional assistance in meeting the directive of the Court of Appeals to reconsider the appropriate sanction to impose on Respondent, the Court held a hearing on May 24, 2017, to receive argument of counsel regarding that issue. Petitioner appeared through its attorney of record, Timothy R. Bersch. Respondent appeared in person and through his attorney of record, Jeffery D. Wagnon.

After considering the evidence, stipulations, and argument of counsel from the trial; the rulings made by Judge Kelsey; the Mandate issued by the 14th Court of Appeals; the argument of counsel from the May 24, 2017 hearing; and applicable law, specifically including the factors set forth in Rule 3.10 of the Texas Rules of Disciplinary Procedure for a court to consider in determining sanctions, the Court finds that the appropriate sanction for Respondent's violation of only Rule 3.02 of the Texas Disciplinary Rules of Professional Conduct is a **PARTIALLY PROBATED SUSPENSION**.

Accordingly, it is **ORDERED, ADJUDGED, and DECREED** that Respondent be suspended from the practice of law for a period of two (2) years, six (6) months, and three (3) days. Of that total period, Respondent is hereby given an active suspension of two (2) years and three (3) days. However, credit is allowed to Respondent for the two (2) years and three (3) days that he was not allowed to practice while he was subject to the Final Judgment of Disbarment, so he will not be required to serve an additional period of active suspension. The six (6) month period of probated suspension shall begin on July 1, 2017 and end on December 31, 2017.

Terms of Probated Suspension

It is further **ORDERED** that during his period of probated 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 1.06W of

the Texas Rules of Disciplinary Procedure.

3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep the State Bar of Texas membership department notified of his current mailing, residence, and business addresses and telephone numbers.
5. Respondent shall comply with all Minimum Continuing Legal Education requirements.
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.

Probation 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 the Court and serve a photocopy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

The Court shall conduct an evidentiary hearing. At the hearing, the Court shall determine by a preponderance of the evidence whether Respondent has violated any term of this Judgment. If the Court finds grounds for revocation, the Court shall enter an order revoking probation and imposing an active suspension upon Respondent from the practice of law for a period of six (6) months commencing on or after the date of revocation. 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.

Publication

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


Other Relief

IT IS FURTHER ORDERED that the Clerk of this Court shall forward a certified copy of the current Disciplinary Petition on file in this case, along with a copy of this Judgment to the following: (1) Clerk of the Supreme Court of Texas, Supreme Court Building, Austin, Texas 78711; (2) Office of the Chief Disciplinary Counsel, State Bar of Texas, P. O. Box 12487, Austin, Texas 78711; and (3) Respondent, through his attorney of record, Jeffrey D. Wagnon, 525 N. Sam Houston Parkway E., Suite 570, Houston, Texas 77060.

IT IS ORDERED that all costs of court incurred in the prosecution of this lawsuit shall be taxed against Respondent, for which the Clerk may have execution if they are not timely paid.


All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 1 day of June, 2017.



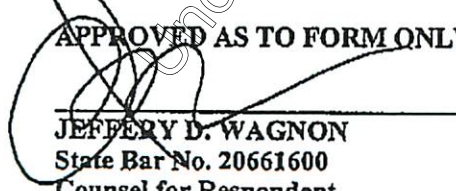
HONORABLE CRAIG SMITH
Specially Assigned Judge

APPROVED AS TO BOTH FORM AND SUBSTANCE:



TIMOTHY R. BERSCH
State Bar No. 02254500
Counsel for Petitioner

APPROVED AS TO FORM ONLY:



JEFFERY D. WAGNON
State Bar No. 20661600
Counsel for Respondent