

14-17-00521-CV

IN THE COURT OF APPEALS FOR THE
FOURTEENTH JUDICIAL DISTRICT AT HOUSTON, TEXAS

ROBERT S. BENNETT,
Appellant,
v.
COMMISSION FOR LAWYER DISCIPLINE,
Appellee.

Appellant's Amicus Letter

On Appeal from the 344th District Court, Harris County, Texas

Cause No. 2013-56866
Hon. Craig Smith, presiding

BOB BENNETT
ATTORNEY AT LAW

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ORAL ARGUMENT REQUESTED

November 6, 2018

Honorable Christopher A. Pine, Clerk
Fourteenth Court of Appeals
301 Fannin Street, Suite 245
Houston, Texas 77002

RE: Robert S. Bennett, Appellant. V. Commission for Lawyer Discipline, Appellee
On Appeal from the 344th District Court, Harris County, Texas Cause No. 2013-56866.
14-14-00740-CV

Dear Mr. Pine:

The purpose of this transmittal letter is to provide the Court with these Amicus Letters (attached hereto) from Attorney Leo Kishinvesky, State Bar of Texas Bar No. 24062526, Address: 10175 Westview Houston, Texas 77043, regarding the case at issue. The Appellant, Robert S. Bennett and Texas Attorney Leo Kishinvesky, files this his two Amicus Letters pursuant to Texas Rule of Appellate Procedure 38.7. Request is hereby made that these letters be submitted to the Panel so that the Court may rule on this request that it supplement the briefing with these letters and consider this Attorney Amicus Letters regarding issues raised in the Appeal.

First, it was wise of the court and we appreciate the considered opinion in: Robert S. Bennett vs. Commission for Lawyer Discipline, No. 14-14-00740-CV, Fourteenth Court of Appeals-Houston, March 24, 2016. This decision vindicated the Appellant's handling of any client funds. It also corrected the serious judicial mistake which abruptly and unfairly deprived the Appellant of his livelihood. Unfortunately, on June 17, 2017 the second trial judge on the case, Judge Craig Smith of Dallas, Texas at the Second Sanction Hearing that this Court ordered, imposed the same sentence as Juvenile Judge Carmen Kelsey did who was removed from the case. This second sanction Hearing partially undid what this Court had tried to accomplish in a just way.

Second, since the Second Sanction Hearing was decided by the second sanction trial Judge, the Honorable Craig Smith, the Appellant Trial Brief was filed on November 20, 2017, the Appellant Reply Brief was filed on January 23, 2018. Amicus letters and briefs were filed on August 16, 2018 August 27, 2018, and September 17, 2018. It is anticipated that additional Amicus Briefs and Letters will be filed.

Third, Texas Attorney Leo Kishinvesky in his attached Amicus Letters joins the other submissions that Oral Argument should be granted, the Disciplinary Rules of Procedure 3.10 were not properly considered or followed, no evidence was offered at the Second Sanction Hearing that would support a 2 years plus six months suspension, that no evidence was offered that any consideration under Tex. R. of Disciplinary Procedure 3.10 was violated, and it was a judicial abuse of discretion to impose a public reprimand of two years plus six months suspension – even with credit for time served. Kishinvesky joins in the request that this Court find that former Disciplinary Assistant Counsel Tim Bersch committed prosecutorial misconduct, and that the Thompson Decision, 455. S. W. 2nd 569 (Tex. 2014) should be followed to invalidate the period of the sanction. The Court should allow oral argument, and if a finding of no sanction is not imposed, then the Court should return the Case for an appropriate Sanction Hearing.

In conclusion and in reference to the attached Amicus Letters, Texas Attorney Leo Kishinvesky joins thousands of other Texas attorneys in requesting that the case be set for Oral Argument and if no Sanction is not entered by this Court that it be returned for a new Sanction Hearing.

Respectfully Submitted,

By: /s/ Robert S. Bennett
Robert S. Bennett

By: /s/ Leo Kishinvesky
Leo Kishinvesky

CC: Amicus Attorney Leo Kishinvesky

CC: Office of Chief Disciplinary Counsel

See Attachments:

Attorney Leo Kishinvesky - CURRENT Letter to Commission

Attorney Leo Kishinvesky - PAST Letter to Commission

Attorney Leo Kishinvesky - RESUME

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October 31, 2018

Honorable Christopher A. Pine, Clerk Fourteenth
Court of Appeals
301 Fannin Street, Suite 245
Houston, Texas 77002

Re: 14-17-00521-CV: Robert S. Bennett v. Commission For Lawyer Discipline, An Appeal from Cause No. 2013-56866, Filed in the District Court of Harris County, Texas 334th District Court

To the Honorable Court:

I am writing regarding the above-referenced pending appeal of a disciplinary proceeding involving Mr. Robert S. Bennett. I have been licensed to practice law in the State of Texas since 2009 and have known Mr. Bennett for approximately nine years, since before I became licensed. In all of my dealings with Mr. Bennett, I have never known him to be anything other than honest, fair, and ethical.

As the Court is aware, this current pending appeal originates from a prior disciplinary proceeding involving Mr. Bennett, Cause No. 2013-56866, in the District Court of Harris County, Texas 334th District Court, which this Court previously reviewed in a prior appeal, 14-14-00470-CV. In the original disciplinary proceeding, the presiding trial judge found that Mr. Bennett violated Rules 1.15 (d) and 3.02 of the Texas Disciplinary Rules of Professional Conduct and disbarred Mr. Bennett. On appeal, this Court found that there was no evidence that Mr. Bennett violated Rule 1.15(d), upheld the finding that Mr. Bennett violated Rule 3.02 and remanded the matter to the trial court for a new sanctions hearing, the result of which forms the basis of this pending appeal.

I believe that this proceeding involves issues of great importance which extend beyond this individual case, not only because it affects the reputation and livelihood of Mr. Bennett, but also because it touches upon the issues of what disciplinary action, if any, is appropriate in a situation such as this one and what factors and evidence should and should not be considered by the trial judge in making these determinations. The results of this proceeding will likely shape and set the expectations and standards for attorney conduct in the future, the manner in which attorney disciplinary proceedings are conducted, what the appropriate (and inappropriate) factors and considerations are to be weighed by the trial court in attorney disciplinary proceedings, and what punishments are appropriate or inappropriate for a given set of facts regarding attorney conduct. I believe these are all highly important issues to the continued development of our profession and the standards we are held to today and will be held to in the future. Likewise, I believe these issues are also important to the public at large, which depends and relies upon the attorney disciplinary process to function correctly, effectively, and justly.

For these reasons, I respectfully ask this Court to grant Mr. Bennett's request for oral hearing to fully consider all of the relevant issues involved, and to give this matter the same thorough attention and detailed analysis as the Court previously did in its review of Mr. Bennett's prior appeal, 14-14-00470-CV.

Thank you very much for taking the time to consider my thoughts on this matter.

Sincerely,
Leonid "Leo" Kishinevsky, Esq.
SBOT: 24062526

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June 2, 2015

Ms. Linda Acevedo, Esq. Chief
Disciplinary Counsel
Commission for Lawyer Discipline PO Box
12487
Austin TX 78711-2487

Mr. Allan K. DuBois, Esq. President, State
Bar of Texas Law Offices of Allan K.
DuBois 112 E. Pecan St. Ste. 1300
San Antonio, TX 78205

Cc: Mr. Robert S. Bennett
Re: Robert S. Bennett disciplinary proceeding and disbarment

Dear Ms. Acevedo and Mr. DuBois,

I am writing to you regarding the disbarment of Mr. Robert S. Bennett and the currently pending appeal thereof. I have been a practicing lawyer in the State of Texas since 2009 and have been acquainted with Mr. Bennett for approximately six years, since before I became licensed to practice law. In all of my dealings with Mr. Bennett, I have never known him to be anything but honest, fair, and ethical. In light of this, I was extremely surprised to learn that he was disbarred as the result of a disciplinary proceeding.

I have reviewed some of the materials from the disciplinary proceeding which have been posted online, and there are several significant questions about the proceeding that stick out in my mind:

- 1) How is it that a judge who was unfamiliar with these types of proceedings ended up presiding over this matter?
- 2) Why did that judge go leaps and bounds above the Prosecutor's recommended punishment to impose the harshest sentence possible in a matter involving an appeal over a fee dispute with a client?
- 3) Most importantly, why is our State Bar allowing this result to stand? How is disbaring an attorney with a long and distinguished track record of success and service and no previous disciplinary history consistent with the Bar's stated mission of upholding and improving the integrity and ethical standards of our profession, especially in light of the alleged violation and the Prosecutor's recommended punishment?

In writing this letter, it is my hope that the State Bar will take a closer look at the result reached in this proceeding and work with Mr. Bennett in good faith to rectify this matter and reach an appropriate outcome that is just and fair.

Please feel free to contact me if you have any questions. Thank you very much for taking the time to consider my thoughts on this matter.

Sincerely,

/s/ Leonid Kishinevsky
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Curriculum Vitae Updated October 2018

Education

Paul M. Hebert Law Center, Louisiana State University, Baton Rouge, Louisiana

Juris Doctor; Diploma of Civil Law – August 2009

• GPA: 3.066; Rank: Top 30 % Chancellor's List, Fall 2007; Fall 2008

South Texas College of Law, Houston, Texas

Visiting Student – Spring 2009

- Dean's List, Spring 2009
- CALI/American Jurisprudence Award (Highest Grade in Texas Pretrial Procedure)
- CALI/American Jurisprudence Award (Highest Grade in Texas Trial and Appellate Procedure)

University of Notre Dame, South Bend, Indiana

Bachelor of Business Administration in Marketing – May 2006

Bachelor of Arts in Political Science – May 2006

Saint John's High School, Houston, Texas

High School Diploma – May 2002

Employment

April 2015-

Present

Managing Attorney- The Kishinevsky Law Firm PLLC, Houston Texas

January 2015-

April 2015

Associate Attorney - The Nielsen Law Firm P.C. Houston, Texas

January 2013-

December 2014

Associate Attorney - Nielsen & Mukerji LLP, Houston, Texas

May 2012 –

January 2013

Associate Attorney - Coane and Associates, Houston, Texas

February 2011-

May 2012

Writing Clerk/Contract Attorney- The Mostyn Law Firm, Houston, Texas

October 2010 –

February 2011

Associate Attorney - The Crim Law Firm, P.C., Houston, Texas

March-

September 2010

Associate Attorney - Rene Gonzalez & Associates, PLLC, Houston, Texas

CERTIFICATE OF SERVICE

I certify that on November 6, 2018, a copy of this letter was served on the parties listed below by electronic service and that the electronic transmission was reported as complete.

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