No. 52049

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

JOHN O. MUKORO,

APPELLANT

v.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

On Appeal from Evidentiary Panel 4-3
For the State Bar of Texas District No. 4
Nos. D0030936871 and D0050937419

BRIEF OF APPELLEE COMMISSION FOR LAWYER DISCIPLINE

(ORAL ARGUMENT REQUESTED)

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IDENTITY OF PARTIES AND COUNSEL

Pursuant to Rule 4.06(c)(1) of the Board's Internal Procedural Rules, the undersigned counsel of record certifies that the following listed persons and parties have an interest in the outcome of this case.

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BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits this brief in response to the brief filed by Appellant, John O. Mukoro. For clarity, Appellant will be referred to as "Mukoro," Appellee as "the Commission," and Evidentiary Panel 4-3 as "the Panel." Any reference in this brief to any matter contained in the record before the Board shall be labeled CR (clerk's record); RRI (reporter's

record from the hearing on October 3, 2012)[1]; RRII (reporter's record from the hearing on December 5, 2012); RRIII (reporter's record from the hearing on February 26, 2013); Pet. Ex. (Petitioner's exhibit to reporter's record); or Resp. Ex. (Respondent's exhibit to reporter's record). References to rules are references to the Texas Disciplinary Rules of Professional Conduct (TDRPC)[2] and to the Texas Rules of Disciplinary Procedure (TRDP)[3] unless otherwise noted.

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[1] This reporter's record contains (on pages 46-104) excerpts read from the November 14, 2011, deposition of John O. Mukoro. Although the record states that the deposition answers were read by a "Mr. Law," the answers were actually read by Timothy J. Baldwin, an attorney in the State Bar's Office of Chief Disciplinary Counsel.

[2] *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A (West 2003).

[3] *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A-1 (West 2007).

STATEMENT OF THE CASE

Type of Proceeding:	Attorney Discipline
Petitioner/Appellee:	The Commission for Lawyer Discipline
Respondent/Appellant:	John O. Mukoro
Evidentiary Panel:	4-3
Judgment:	Modified Judgment of Partially Probated Suspension
Texas Disciplinary Rules of Professional Conduct Violated:	Rule 5.03(a): A lawyer having direct supervisory authority over a nonlawyer employed or retained by or associated with the lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer. Rule 5.03(b)(1): A lawyer shall be subject to discipline for the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if: (1) the lawyer orders, encourages, or permits the conduct involved. Rule 5.04(a): A lawyer or law firm shall not share or promise to share legal fees with a non-lawyer.

STATEMENT OF THE ISSUES

1. Does Mukoro's failure to challenge the Panel's holding that he violated TDRPC 5.03(a) mean that the holding must be affirmed?

2. Did the Panel correctly hold that Mukoro violated TDRPC 5.03(b)(1)? (Responding to Sections D and E of Mukoro's Legal Argument, which correspond to Mukoro's Issues 4 and 5.)

3. Did the Panel correctly hold that Mukoro violated TDRPC 5.04(a)? (Responding to Sections A, B, C, and F of Mukoro's Legal Argument, which correspond to Mukoro's Issues 1, 2, 3, and 6.)

4. Has Mukoro failed to demonstrate that he was denied due process? (Responding to Section I of Mukoro's Legal Argument, which corresponds to Mukoro's Issue 9.)

5. Are the sanctions imposed on Mukoro justified? (Responding to Sections G, H, and J of Mukoro's Legal Argument, which correspond to Mukoro's Issues 7, 8, and 10.)

STATEMENT OF FACTS

After studying and then working for years in the field of chemistry (RRI 47-48), Mukoro went to law school and then obtained his license to practice law in Texas in November 2003 (RRI 48). He opened his own firm in Houston and practiced by himself, without even a secretary or legal assistant (RRI 48-49).

Slightly over a year later, in January of 2005, Mukoro added to his practice by opening an office in the Dallas area (RRI 50-51). Both his Houston and Dallas offices operated under the same name – Mukoro & Associates (RRI 66). At that point, Mukoro still had no staff of any kind in his Houston office (RRI 51-52).

To handle the Dallas office, Mukoro hired Stephen Akinnibosun (Akinnibosun), a non-lawyer friend and resident of Dallas who, like Mukoro, was from Nigeria (RRI 52-53). According to Mukoro, Akinnibosun had worked for "a lot of law firms in Dallas" and had "experience in the personal injury area" (RRI 54-55). Akinnibosun's position in the Dallas office was that of legal assistant and office manager, working as an independent contractor for Mukoro without a contract or any written agreement (RRI 55-57). From time to time, Mukoro also staffed the Dallas office with a secretary named Priscilla Aguilar (Aguilar), who also worked as an independent contractor (55-56).

Mukoro had no pending litigation or any business at all to be handled out of his Dallas office when he opened it but was hoping that the Nigerian community in

Dallas would be a client base for him (RRI 58-59). Mukoro wanted Akinnibosun to make the firm's presence known in Dallas and believes that Akinnibosun may have brought cases with him from his former firm and also that Akinnibosun received referrals from other firms (RRI 60-61).

Although Mukoro testified that he told Akinnibosun that he (Mukoro) had to give approval before any piece of work could be accepted by the firm (RRI 62), the files for the Dallas cases were kept in Dallas (RRI 63), and Mukoro had no system by which to keep track of files and clients in that office (RRI 63). According to Mukoro, he would only give a "cursory look" at the files on his trips to Dallas (RRI 63). Because of his relationship with Akinnibosun, Mukoro did not think it was necessary to develop a system to track the Dallas files (RRI 63-64). In retrospect, Mukoro wishes he had done that (RRI 64).

As a result of the absence of such a system, Mukoro does not have any idea how many clients were signed up through the Dallas office in 2005, or during the entire period the office was open (RRI 67-68). According to Mukoro, "I wasn't keeping up with that" (RRI 68). The Dallas office operated as an independent entity, with Akinnibosun and Aguilar keeping track of fees and expenses and depositing checks in a separate firm bank account in Dallas (RRI 67).

As to the handling of lawsuits in the Dallas office, Mukoro drafted some of the pleadings and Akinnibosun and Aguilar drafted some (RRI 78). With

Mukoro's permission, Akinnibosun and Aguilar signed Mukoro's name to pleadings and filed them in court (RRI 78-80). Akinnibosun was also authorized to provide information to and negotiate with insurance companies on behalf of firm clients (RRI 86-87).

Nedra Foster (Foster) was represented by Mukoro's firm in a personal injury lawsuit against Dallas Area Rapid Transit (the Foster lawsuit)(Pet. Ex. 1). The Foster lawsuit was filed in County Court at Law No. 5 in Dallas County in August of 2005, but Mukoro did not become aware of it until after Foster filed her grievance against him in May of 2009 (RRI 70). The signature on page 4 of the Foster petition (Pet. Ex. 1) purports to be that of Mukoro, but Mukoro did not actually sign the document, and he assumes that it was Akinnibosun who signed his (Mukoro's) name (RRI 71-72). Likewise, an Agreed Motion to Substitute Mediator was filed in the Foster lawsuit in August of 2006 (Pet. Ex. 16). The motion carries Mukoro's purported signature, but Mukoro first saw the document in 2009 (RRI 82).

A mediation eventually took place in the Foster lawsuit; Foster and Akinnibosun were both in attendance, but Mukoro had no idea that the mediation was occurring (RRI 77). The Foster lawsuit came to an end in August of 2007, when an order was signed dismissing the case for want of prosecution (Pet. Ex. 15). Again, Mukoro did not see that document at the time (RRI 83). In fact,

throughout the 2005-07 existence of the Foster lawsuit, Mukoro never saw anything in his Dallas office that referenced the case (RRI 84-85).

Tsigereda Teketele (Teketele) was injured in an automobile accident in 2007 (RRI 23). She was originally represented by an attorney named Carl Gaines, but then Akinnibosun called and told her that Gaines was suffering from a brain tumor and that he (Akinnibosun) wanted to take the case (RRI 24-25). On January 26, 2008, Teketele met with Akinnibosun (RRI 29). Akinnibosun gave Teketele his business card (RRI 25-26), which identified Akinnibosun as a "law clerk/advisor" for the "Mukoro & Assoc. Law Firm" (Pet. Ex. 41). Akinnibosun also presented Teketele with a contract on "Mukoro & Associates" letterhead (Pet. Ex. 18), which Teketele signed on the day of their meeting (RRI 28-29). Akinnibosun signed the contract as a "representative" for Mukoro & Associates (Pet. Ex. 18, page 2)(RRI 29). The contract states, in its first paragraph, that Teketele was retaining the services of Mukoro & Associates (Pet. Ex. 18, page 1), and it was Teketele's understanding that Mukoro would be representing her (RRI 30-31). However, Mukoro had no knowledge that Teketele was a client of his firm (RRI 87).

Near the end of 2008, Teketele learned that her claim had been settled (RRI 32). She tried to call Akinnibosun, but could not reach him, so she called Mukoro (RRI 32-33). Mukoro, who had been alerted to this situation by Teketele's brother and had begun an investigation (RRI 87-89), confirmed the settlement and told her

that Deep South Insurance Company (Deep South) had paid $30,000.00 and Safeco Insurance Company (Safeco) had paid $10,000.00 (RRI 34). Mukoro also told her that the settlement of her claim was "not his problem" (RRI 33). Teketele later came to learn that Akinnibosun had forged her name in order to obtain the settlement money (RRI 37).

Neither Akinnibosun nor Mukoro ever sent Teketele any part of the $40,000.00 received in settlement of her claim (RRI 33-34). Teketele hired another attorney to represent her (RRI 33), and in the end she received $17,500.00 from Deep South (RRI 43-44) and $10,000.00 from Safeco (RRI 35). Teketele also sued Mukoro (RRI 35) and filed a criminal complaint against Akinnibosun (RRI 38; Pet. Ex. 40).

Mukoro closed the Dallas office in April or May of 2008 (with Akinnibosun doing no further work for him after that), but he did not actually fire Akinnibosun until August of 2008 (RRI 100-104). (Aguilar was already gone by that time, having left on her own by September of 2007 (RRI 85-86).) During the years that Akinnibosun worked for Mukoro, Akinnibosun was not given a base salary, "but based on his work he got a bonus," according to Mukoro (RRI 94). Akinnibosun did not demand to be paid every month, but rather waited until actual settlements came in and then he would be paid (RRI 94). After all the expenses were paid, Mukoro gave Akinnibosun a percentage of what came into the office, with the

percentage varying depending on the amount of work that Akinnibosun did (RRI 95-96). For example, if Akinnibosun brought a piece of business into the firm and did a lot of work on it, he might receive a higher percentage of the fee, whereas if he did not bring in the business and did less of the work, he might receive a lower percentage (RRI 96). (Aguilar, on the other hand, did not have the same percentage arrangement; her pay was simply based on how many hours she worked (RRI 97).) Due to Akinnibosun's percentage compensation arrangement, he received $154,769.98 in "nonemployee compensation" from Mukoro's firm for the tax year 2005 (Pet. Ex. 33; RRI 98-100).

As the result of grievances filed against Mukoro by Foster and Teketele, the Commission filed an evidentiary petition against Mukoro on February 3, 2010 (CR 60-64). The Commission later filed an amended evidentiary petition on April 24, 2012 (CR 382-386). An evidentiary hearing on the issue of professional misconduct took place on October 3, 2012 (RRI 1). Based on the evidence, the Evidentiary Panel found that Mukoro violated TDRPC 5.03(a), 5.03(b)(1), and 5.04(a). An evidentiary hearing on the issue of sanctions took place on December 5, 2012 (RRII 1). Based on the evidence, the Panel imposed a four-year, partially probated suspension (six months actively served) against Mukoro and ordered him to submit to monitoring of his law practice, to participate in additional Continuing Legal Education, and to pay attorneys' fees and direct expenses to the State Bar.

A Judgment of Partially Probated Suspension was signed on December 31, 2012 (CR 497-504). A hearing on Respondent's post-judgment motions took place on February 26, 2013 (RRIII 1). As the result of that hearing, a Modified Judgment of Partially Probated Suspension was signed on March 5, 2013 (CR 575-582), with the original judgment changed only by the addition of a statement that the Panel was denying Mukoro's affirmative defense of limitations. In addition, an order was signed on that same day staying the six-month active portion of Mukoro's suspension until his appeal of the judgment was decided (CR 584-585). Mukoro filed his Notice of Appeal on March 25, 2013 (CR 590-591).

SUMMARY OF THE ARGUMENT

The Evidentiary Panel held that Mukoro violated three disciplinary rules: 5.03(a), 5.03(b)(1), and 5.04(a).

Mukoro does not challenge the holding that he violated 5.03(a). Therefore, there is no basis for reversal of the holding.

As to 5.03(b)(1), there is much more than a scintilla of evidence that Mukoro permitted conduct by a nonlawyer employed by him that would have been a violation of the rules if engaged in by a lawyer. Therefore, it was not error for the Panel to find that, tracking the language of the rule, Mukoro "ordered, encouraged, or permitted" the conduct.

As to 5.04(a), Mukoro does not argue that the evidence of a violation was insufficient, but rather only asserts that the Panel erred by denying his affirmative defense of limitations. However, the Panel's decision was correct because Mukoro's violation of the rule was ongoing and continued to a point within four years of the time that the violation was brought to the attention of the Office of Chief Disciplinary Counsel.

Mukoro's complaints regarding due process have no merit because he has not shown any error by the Panel.

His complaints regarding sanctions also have no merit. Mukoro was not entitled to advance notice that the members of the Panel were going to participate

in a post-hearing teleconference on the issue of sanctions, and those sanctions ultimately imposed by the Panel were within its discretion pursuant to the factors set forth in TRDP 2.18 and the provisions of TRDP 1.06Z.

Finally, Mukoro has waived any error in the imposition of his partially probated suspension because he does not challenge either the Panel's determination that he violated 5.03(a) or the Panel's finding that a partially probated suspension is the proper discipline for *each* of his acts of professional misconduct.

Because Mukoro has failed to show reversible error, the Board should affirm the judgment in all respects.

ARGUMENT

I. Mukoro has waived his right to appeal the Panel's holding that he violated TDRPC 5.03(a) because he does not challenge the holding or the findings of fact that underlie the holding.

The Panel found that "Stephen Akinnibosun, a non-lawyer, was employed or retained by or associated with" Mukoro. The Panel also found that Mukoro "had direct supervisory authority over Stephen Akinnibosun, but [Mukoro] failed to make reasonable efforts to ensure that Akinnibosun's conduct was compatible with the professional obligations of" Mukoro (CR 576; App. 1). In his brief, Mukoro does not argue that the evidence in support of these findings is insufficient, or challenge the findings in any way.

Based on the findings, the Panel held that Mukoro violated TDRPC 5.03(a)(CR 576; App. 1). In his brief, Mukoro does not challenge the holding in any way.

Since, as noted in *Meachum v. Comm'n for Lawyer Discipline*, 36 S.W.3d 612, 615 (Tex. App. – Dallas 2000, pet. denied), it is an appellant's "burden to establish reversible error," Mukoro's failure to challenge the holding that he violated TDRPC 5.03(a) (or the findings underlying the holding) means that the holding must be affirmed.

II. The Panel correctly held that Mukoro violated TDRPC 5.03(b)(1).

A. The substantial evidence standard of review applies.

In attorney disciplinary cases, the substantial evidence standard of review applies. TEX. GOV'T CODE ANN. § 81.072(b)(7) (West 2007) (State Bar Act); *Comm'n for Lawyer Discipline v. Schaefer*, 364 S.W.3d 831, 835 (Tex. 2012). Under the substantial evidence test, the findings of an administrative body are presumed to be supported by substantial evidence, and the party challenging the findings must bear the burden of proving otherwise. *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994). The reviewing court may not substitute its judgment for that of the administrative body and must consider only the record upon which the decision is based. *R.R. Comm'n of Tex. v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995); *Tex. State Bd. of Dental Exam'rs v. Sizemore,* 759 S.W.2d 114, 116 (Tex. 1988).

The substantial evidence standard focuses on whether there is *any* reasonable basis in the record for the administrative body's findings. *City of El Paso*, 883 S.W.2d at 185. Anything more than a scintilla of evidence is sufficient to support a finding. *Tex. Dep't of Pub. Safety v. Cuellar*, 58 S.W.3d 781, 783 (Tex.App.—San Antonio 2001, no pet.). The ultimate question is not whether a finding is correct, but only whether there is some reasonable basis in the record for the finding. *City of El Paso*, 883 S.W.2d at 185.

B. There is much more than a scintilla of evidence that Mukoro permitted conduct by his legal assistant that would have been a violation of the rules if engaged in by a lawyer.

TDRPC 5.03(b)(1) provides:

> [A] lawyer shall be subject to discipline for the conduct of [a non-lawyer employed or retained by or associated with a lawyer] that would be a violation of these rules if engaged in by a lawyer if the lawyer orders, encourages, or permits the conduct involved.

TEX. DISCIPLINARY R. PROF'L COND. 5.03(b)(1).

In the case at bar, there is clear evidence in the record of each essential element of the rule. Mukoro's own deposition testimony provided much of the evidence proving his misconduct. He testified that Akinnibosun was a non-lawyer working for Mukoro as an independent contractor legal assistant and office manager (RRI 52-53, 55-57). Although Mukoro had only run his solo practice in Houston for slightly more than a year, he opened an office in Dallas and put Akinnibosun in charge (RRI 48-51, 57). Akinnibosun ran the Dallas office with minimal supervision from Mukoro. The files for Dallas cases were kept in Dallas, with no system by which Mukoro could keep track of the files and clients (RRI 63). Mukoro did not think it was necessary to develop a system to track the Dallas files, although in retrospect he wishes he had done that (RRI 63-64). As a result of this lax management, Mukoro does not know how many clients were signed up through his Dallas office (RRI 67-68). According to Mukoro, "I wasn't keeping up with that" (RRI 68).

Mukoro made some effort, while under direct examination by his attorney, to make it appear that he properly supervised Akinnibosun, but Mukoro's deposition testimony had already painted a clear picture. The Dallas office operated as an independent entity, with Akinnibosun and Aguilar keeping track of fees and expenses and depositing checks in a separate firm bank account in Dallas (RRI 67). As to the handling of lawsuits, Mukoro drafted some of the pleadings, and Akinnibosun and Aguilar drafted some (RRI 78). Mukoro allowed Akinnibosun and Aguilar to sign Mukoro's name to pleadings and file them in court (RRI 78-80). Akinnibosun was also authorized to provide information to and negotiate with insurance companies on behalf of firm clients (RRI 86-87).

The effect of Mukoro's inadequate supervision of his Dallas office was that he permitted Akinnibosun to engage in conduct that would have been a violation of the rules if Mukoro had engaged in it. Akinnibosun filed a lawsuit for Foster by signing Mukoro's name to pleadings and later participated in mediation but then neglected the case to the extent that it was dimissed for want of prosecution (RRI 70-72, 77; Pet. Exs. 1, 15). Such conduct on the part of Mukoro would have been a violation of TDRPC 1.01(b)(1).

Akinnibosun signed up Teketele as a client for Mukoro & Associates and quickly settled her personal injury claim with two insurance companies for a total of $40,000.00 (RRI 24-29, 34; Pet. Ex. 18). Akinnibosun forged Teketele's name

in order to obtain the settlement funds, then gave none of the money to Teketele (RRI 33-34, 37). Such conduct on the part of Mukoro would have been a violation of TDRPC 1.14(b).

Contrary to Mukoro's assertion, the Commission did not have the burden of proving that he "knowingly" permitted Akinnibosun's conduct. The rule does not use the word "knowingly," and the rule should be construed according to the ordinary meaning of its language. *See In re Caballero*, 272 S.W.3d 595, 599 (Tex. 2008)(explaining that the disciplinary rules are treated like statutes); *Meritor Auto., Inc. v. Ruan Leasing Co.*, 44 S.W.3d 86, 89-91 (Tex. 2001) (explaining that statutory language should be construed first and foremost according to its plain meaning).

Similarly, the Comment regarding TDRPC 5.03(b)(1) does not use the term "knowingly." It explains that a lawyer has an affirmative duty to take steps to ensure that nonlawyers act appropriately: "Each lawyer in a position of authority in a law firm . . . should make reasonable efforts to ensure that the organization has in effect measures giving reasonable assurance that the conduct of the nonlawyers employed or retained by or associated with the firm . . . is compatible with the professional obligations of the lawyer." TEX. DISCIPLINARY R. PROF'L COND. 5.03 Comment 2. Rather than make such "reasonable efforts," Mukoro's cavalier attitude toward the Dallas office gave Akinnibosun the opportunity to deal with

individuals seeking legal services with little, if any, oversight by a licensed lawyer, resulting in substantial harm to the clients.

As further illustration of the absence of any intent to include a "knowing" standard in Rule 5.03(b)(1), TDRPC 5.01 uses the phrase "knowingly permits." TEX. DISCIPLINARY R. PROF'L COND. 5.01. The difference in the language of the two rules indicates that the same standard is not intended to apply to both rules. *See In re Office of Attorney General*, --S.W.3d--, 2013 WL 854785 (Tex. 2013) (explaining that a court construing a statute should presume that the Legislature enacted what it meant and should rely on the language of the section at issue as well as the statute as a whole). If the drafters had intended to impose a "knowing" standard in TDRPC 5.03(b)(1), they easily could have used the phrase "knowingly permits" as they did in TDRPC 5.01.

Mukoro relies on an analysis of TDRPC 5.03(b)(1) by Bob Schuwerk, a respected law professor. But Schuwerk's extra-textual analysis, which focuses on comments supposedly made by a single committee member during the rulemaking process, cannot serve to alter the language of the rule by adding the word "knowingly." And, in fact, a court should not turn to extra-textual sources like legislative history unless the statute itself is ambiguous. *Id.*

Likewise, the definition of "permit" from BLACK'S LAW DICTIONARY does not carry the day for Mukoro. One variation of the definition, which is quoted by

Mukoro in his brief, is "to acquiesce, by failure to prevent." There is no question that Mukoro's conduct can easily be described as acquiescence by a failure to prevent. Most of the other variations of the definition are also applicable, including, for example, that Mukoro's total mismanagement of the Dallas office gave "leave or license" for Akinnibosun to harm Foster and Teketele.

The only variation of the definition that does not fit the circumstances of this case is "to expressly assent or agree to the doing of an act." It makes sense that the drafters did not intend for that definition to apply to the term "permits" as used in TDRPC 5.03(b)(1) because other language in the rule addresses situations where a lawyer "orders" or "encourages" the conduct at issue. Thus, to define "permits" as "expressly assents or agrees to the doing of an act" would be to define it as a redundant, surplus term. *See State v. Shumake*, 199 S.W.3d 279, 287 (Tex. 2006) (explaining that a court construing a statute should give effect to all of the statute's words). Instead, the Panel properly construed "permits" as a term distinct from "orders" and "encourages." And the Panel properly concluded that Mukoro violated the rule because the evidence provided much more than a scintilla of proof that Mukoro *permitted* Akinnibosun's conduct.

C. It was not reversible error for the Panel to include the words "ordered" and "encouraged" in its findings of fact.

Mukoro complains about the inclusion of the words "ordered" and "encouraged" in the findings of fact. However, the finding in question matches the

language of the rule at issue. Also, Mukoro does not identify any harm resulting from the use of "ordered" and "encouraged," and it does not appear that any actual harm occurred. Thus, even if it was error for the Panel to include the words "ordered" and "encouraged," the error would not provide a basis for reversal because it is harmless. TEX. R. APP. P. 44.1(a). A reviewing court may reverse a judgment only if the complaining party shows that an error probably caused the rendition of an improper judgment or probably hindered the appellant from presenting his case on appeal. *Id.*

III. The Panel correctly held that Mukoro violated TDRPC 5.04(a).

A. The Panel correctly denied Mukoro's affirmative defense of limitations.

The version of TRDP 15.06 applicable to the case at bar provides, in pertinent part:

> No attorney licensed to practice law in Texas may be disciplined for Professional Misconduct occurring more than four years before the time when the allegation of Professional Misconduct is brought to the attention of the Office of Chief Disciplinary Counsel . . . .

TEX. R. DISCIPLINARY P. 15.06.

The allegation that Mukoro violated TDRPC 5.04(a) by sharing or promising to share legal fees with Akinnibosun was brought to the attention of the Office of Chief Disciplinary Counsel when Mukoro testified about his fee sharing during his deposition on November 14, 2011 (RRI 46). Mukoro argues that the allegation is,

therefore, barred by limitations because November 14, 2011, is more than four years after the date of the alleged fee sharing.[4] However, assuming for the sake of argument that Mukoro's restrictive interpretation of TRDP 15.06 is correct, the allegation that Mukoro violated TDRPC 5.04(a) could not have been barred by TRDP 15.06 if the evidence showed that any fee sharing or promise to share fees occurred on or after November 14, 2007.

And, indeed, Mukoro's deposition testimony makes clear that his violation of 5.04(a) continued to and after November 14, 2007. During the years that Akinnibosun worked for Mukoro, which admittedly continued into 2008 (Mukoro concedes April 2008 in his brief[5]), Akinnibosun was not given a base salary, "but based on his work he got a bonus," according to Mukoro (RRI 94). Akinnibosun did not demand to be paid every month, but rather waited until actual settlements came in and then he would be paid (RRI 94). After all the expenses were paid, Mukoro gave Akinnibosun a percentage of what came into the office, with the percentage varying depending on the amount of work that Akinnibosun did (RRI

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[4] Under the relation-back doctrine, if a claim is not barred by limitations when it is filed, any subsequent amendment or supplementation is likewise not barred by limitations unless it is "wholly based on a new, distinct, or different transaction or occurrence." *Lexington Insurance Co.v. Daybreak Express, Inc.*, 393 S.W.3d 242, 243-44 (Tex. 2013) (per curiam). Thus, the relation-back doctrine would allow the fee-sharing allegation to relate back to the timely filing of the original petition. Mukoro's argument regarding limitations fails to account for the relation-back doctrine.

[5] Section H of his Legal Argument (Factor E)

95-96). For example, if Akinnibosun brought a piece of business into the firm and did a lot of work on it, he might receive a higher percentage of the fee, whereas if he did not bring in the business and did less of the work, he might receive a lower percentage (RRI 96).

Under direct examination by his attorney during the hearing, Mukoro tried but failed to soften the impact of his deposition testimony. Mukoro neither denied that Akinnibosun was still working for him on November 14, 2007, nor testified that Akinnibosun's compensation arrangement had changed by that date. In other words, until at least April 2008 Mukoro was still sharing and promising to share fees with Akinninbosun, and therefore his misconduct timely came to the attention of the Office of Chief Disciplinary Counsel on November 14, 2011. Mukoro admitted as much in his motion for new trial (CR 513).

In considering this issue of Akinnibosun's tenure with Mukoro, it is worth noting that Teketele first met with Akinnibosun on January 26, 2008. On that day, Akinnibosun handed Teketele a business card which identified Akinnibosun as a "law clerk/advisor" for the "Mukoro & Assoc. Law Firm" (RRI 25-26, Pet. Ex. 41). On that same day, Akinnibosun also presented Teketele with a contract on "Mukoro & Associates" letterhead (Pet. Ex. 18). Akinnibosun signed the contract as a "representative" for Mukoro & Associates (Pet. Ex. 18, page 2; RRI 29). The

Akinnibosun-Teketele meeting was approximately two-and-a-half months after November 14, 2007.

B. The Panel correctly admitted Petitioner's Exhibit 33 into evidence.

Pursuant to Rule 33.1 of the Texas Rules of Appellate Procedure (TRAP), Mukoro cannot complain about the admission of Petitioner's Exhibit 33 because he did not object to the admission of the exhibit:

> MR. BERSCH: "The last exhibit I have has been marked as CFLD Exhibit No. 33. Is this a true and correct copy of the tax form 1099 for Mr. Akinnibosun's work for your law firm for the tax year 2005?
>
> MR. [BALDWIN] [reading Mukoro's deposition testimony]: "Yes, this is a copy of it."
>
> MR. BERSCH: "A true and correct copy."
>
> MR. [BALDWIN]: "That's correct."
>
> MR. BERSCH: . . . Petitioner offers into evidence CFLD Exhibit No. 33.
>
> MS. HASLEY: No objection.
>
> PANEL CHAIR: It will be admitted.

(RRI 97-98).

C. Mukoro does not argue that the evidence supporting the Panel's holding is insufficient.

TDRPC 5.04(a) provides, in pertinent part:

> A lawyer or law firm shall not share or promise to share legal fees with a non-lawyer . . . .

TEX. DISCIPLINARY R. PROF'L COND. 5.04(a).

Mukoro's request that the holding of a 5.04(a) violation be overturned rests only on the meritless arguments addressed in the previous two sections of this brief – *i.e.*, that Petitioner's 5.04(a) allegation was barred by limitations and that Petitioner should not have been able to make use of its Exhibit 33. Mukoro does not even attempt to explain away his clear deposition testimony (quoted in section III.A, *supra*) as to the nature of his compensation arrangement with Akinnibosun. Nor does Mukoro argue that the evidence supporting the 5.04(a) violation is insufficient. Therefore, the holding that Mukoro violated 5.04(a) must be affirmed.

D. Mukoro has waived his right to complain that the Panel's finding of fact as to fee sharing pertains to both counts in Petitioner's First Amended Evidentiary Petition.

Section F of Mukoro's Legal Argument (corresponding to Mukoro's Issue 6) is unclear. He does not identify the specific complaint that he is attempting to raise or offer any substantive analysis to explain his position. He also fails to cite to legal authority in support of his position, and his only citation to the record is offered without any explanation of its significance. As such, Mukoro's brief is inadequate to present error to the Board. *See* TRAP 38.1(h) (requiring that an appellate brief "contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record"); *Smith v. Comm'n for Lawyer Discipline*, 42 S.W.3d 362, 364 (Tex.App.—Houston [14th Dist] 2001, no

pet.) (affirming judgment because appellant presented "nothing" for review in that he failed to specify how the evidence did not support the judgment and failed to provide legal authority, argument, or evidence demonstrating how the trial court erred as a matter of law). By failing to brief the issue adequately, Mukoro has waived it. *Smith*, 42 S.W.3d at 364; *Dolenz v. State Bar of Tex.*, 72 S.W.3d 385, 388 (Tex.App.—Dallas 2001, no pet.); *Meachum, supra*, at 616.

IV. Mukoro has not shown that he was denied due process.

In Section I of his Legal Argument (corresponding to Issue 9), Mukoro asserts "a due process claim regarding Exhibits 4 and 5." Those exhibits, both offered by Mukoro, are the letters that were sent to Mukoro in 2009 by the Office of Chief Disciplinary Counsel regarding the Foster and Teketele complaints pursuant to TRDP 2.14D (Resp. Ex. 4, 5). According to the letters, a Summary Disposition Panel determined that the complaints should proceed.

There is nothing unusual about the fact that a "proceed" decision was made by a Summary Disposition Panel, which is authorized to make that determination by TRDP 2.13. Although it is not clear from Mukoro's discussion of this issue, apparently he was told in advance by the Office of Chief Disciplinary Counsel that the Foster and Teketele complaints were going to be presented to a Summary Disposition Panel, and he assumed that the complaints would be dismissed. The

fact that they were not dismissed does not mean that Mukoro was denied due process.

Moreover, Mukoro has once again waived any right to complain that he was denied due process, because he has once again failed to show – or even allege – any error on the part of the Panel. *Smith,* 42 S.W.3d at 364. And in fact, it would have been improper for the Panel to act on information regarding the decision of the Summary Disposition Panel. *See* TEX. R. DISCIPLINARY P. 2.13 (providing that "[t]he fact that a Complaint was placed on the Summary Disposition Panel Docket and not dismissed is wholly inadmissible for any purpose in the instant or any subsequent Disciplinary Proceeding or Disciplinary Action").

V. The sanctions imposed on Mukoro by the Panel are justified.

A. The abuse of discretion standard of review applies.

Like a trial court, an evidentiary panel has broad discretion to determine the appropriate sanction to impose in an attorney disciplinary matter. *Molina v. Comm'n for Lawyer Discipline,* BODA No. 35426 (March 31, 2006). An evidentiary panel's decision regarding an appropriate sanction may be overturned on appeal only if it is shown that the sanction is so light or so severe in relation to the attorney's misconduct that it constitutes an abuse of discretion. *Id.* at 7 *(citing McIntyre v. Comm'n for Lawyer Discipline,* 169 S.W.3d 803, 807 (Tex.App.—Dallas 2005, pet. denied)).

In imposing a sanction, an evidentiary panel abuses its discretion when it acts in a manner that is unreasonable, arbitrary, and without reference to guiding principles. *Id.* The guiding principles upon which an evidentiary panel must base a sanction are set forth in TRDP 2.18:

> (1) the nature and degree of the attorney's professional misconduct;
> (2) the seriousness of and circumstances surrounding the misconduct;
> (3) the loss or damage to clients;
> (4) the damage to the profession;
> (5) the assurance that those who seek legal services in the future will be insulated from the type of professional misconduct found;
> (6) the profit to the attorney;
> (7) the avoidance of repetition;
> (8) the deterrent effect on others;
> (9) the maintenance of respect for the legal profession;
> (10) the conduct of the attorney during the course of the disciplinary proceeding; and
> (11) the attorney's disciplinary history.

If an evidentiary panel applies the factors set forth in Rule 2.18 to assess a penalty that is not unreasonable and arbitrary, the sanction should be upheld even if the appellate court decides that a different sanction might be more suitable. *See Love v. State Bar of Tex.*, 982 S.W.2d 939, 945 (Tex.App.—Houston [1st Dist.] 1998, no pet.) (stating that "the mere fact that a trial court may decide a matter differently than an appellate court does not demonstrate an abuse of discretion").

B. Mukoro was not entitled to advance notice of the Panel's post-hearing teleconference.

Although it is not clearly stated in Section G of Mukoro's Legal Argument (corresponding to Mukoro's Issue 7), he appears to be complaining that the Panel

announced at the conclusion of the December 5, 2012, sanctions hearing that it was not awarding attorneys' fees to the Commission but later informed the parties in a December 14, 2012, letter from the Panel chair that it was awarding such fees (CR 448).

The sequence of events began with a December 6, 2012, letter from the Commission's attorney to the Panel chair (with copies to Mukoro's attorney and the other members of the Panel) regarding the sanctions announced by the Panel at the conclusion of the previous day's hearing (CR 445-446). According to the Panel chair's December 14, 2012, letter, the Panel then "reconvened by teleconference" (CR 448). As a result of the teleconference, the Panel withdrew the requirement for Trust Account Reporting and Monitoring but ordered Mukoro to pay "the sum of $3,750.00 in attorney's fees" (CR 448).

Mukoro claims that he was somehow denied due process because the members of the Panel participated in their teleconference without giving him advance notice, but that claim has no merit. There is nothing in the Texas Rules of Disciplinary Procedure that prevented the Panel members, in the days following the hearing, from deliberating further about the case or from changing their initial orders as to the sanctions to be imposed. Likewise, there is nothing in the rules that gave Mukoro the right to be notified of any such post-hearing deliberations. The December 14, 2012, letter from the Panel was addressed to the Commission's

attorney, as the person assigned to draft the judgment (RRII 102), but a copy of the letter was sent to Mukoro's attorney, Jennifer A. Hasley, so (contrary to Mukoro's assertion in his brief) both parties were informed of the Panel's teleconference and its decisions at the same time (CR 448).

It is worth noting that Mukoro does not complain about the Panel's decision to withdraw the requirement for Trust Account Reporting and Monitoring, even though that decision was also made in its unannounced teleconference.

C. The Panel did not abuse its discretion in choosing the sanctions to impose.

The misconduct portion of Mukoro's hearing lasted approximately six hours. The sanctions phase lasted approximately three hours, during which time the Panel heard testimony both from Mukoro and from two other witnesses called by his trial attorney. The attorneys for the Commission and Mukoro presented extensive closing arguments. In its Modified Judgment of Partially Probated Suspension, the Panel specifically noted that it had considered the evidence and argument and "the factors in Rule 2.18 of the Texas Rules of Disciplinary Procedure" before making its decision as to the sanctions to be imposed on Mukoro (CR 575-582; App. 1). Considering this background for its decision, it is clear that the Panel did not act in a manner that was "unreasonable, arbitrary, or without reference to guiding principles" in imposing on Mukoro a four-year, partially probated suspension (with six months actively served).

It is unnecessary to respond in detail to the more than seven pages of argument by Mukoro regarding the suspension imposed on him and the factors set forth in TRDP 2.18. Mukoro's irresponsible behavior in giving Akinnibosun virtually free rein to run Mukoro's Dallas office and abuse individuals needing legal services alone justifies Mukoro's suspension.

Mukoro had a delayed entry into the practice of law, after his career in chemistry, and his eagerness to become as successful as possible as soon as possible led him to open a Dallas office after barely a year of his solo practice in Houston (RRI 47-48, 50-51). Mukoro hired Akinnibosun because the latter had worked at a lot of Dallas firms and Mukoro thought that Akinnibosun brought business with him (RRI 54-55, 60-61). Then Mukoro turned Akinnibosun loose, having no system to keep track of files and clients in the Dallas office and giving only a "cursory look" at files on his visits to Dallas (RRI 63). Mukoro even let Akinnibosun sign his (Mukoro's) name to pleadings that Akinnibosun drafted, with Mukoro stating that it was his understanding that that was an acceptable practice (RRI 78-79). Having heard Mukoro's deposition testimony on these issues, and then having witnessed Mukoro's unsuccessful efforts to explain away his conduct while being questioned by his attorney, the members of the Panel had more than ample justification for the suspension that they imposed and for the orders that Mukoro participate in additional Continuing Legal Education, submit to

monitoring of his law practice, and pay attorneys' fees and direct expenses to the State Bar of Texas.

D. Mukoro does not challenge the holding that a partially probated suspension is the proper discipline for each of his acts of professional misconduct.

The Panel found that "the proper discipline for [Mukoro] for each act of Professional Misconduct is a Partially Probated Suspension" (CR 575-582; App. 1). Mukoro does not challenge the finding. Therefore, it must be affirmed.

CONCLUSION AND PRAYER

Mukoro has failed to show any basis for reversal of the Judgment of Partially Probated Suspension. Therefore, the Commission prays that the Board affirm the judgment in all respects.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Brief of Appellee, the Commission for Lawyer Discipline, has been served on Mr. John O. Mukoro by certified mail, return receipt requested, by depositing same, enclosed in a postpaid, properly addressed wrapper in an official depository under the care and custody of the United States Postal Service on the 7th day of March, 2014.

Timothy Bersch with permission Rebecca Stevens

TIMOTHY R. BERSCH

No. 52049

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

JOHN O. MUKORO,

APPELLANT

v.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

On Appeal from the Evidentiary Panel
For the State Bar of Texas District 4-3
Nos. D0030936871 and D0050937419

APPENDIX TO BRIEF OF APPELLEE COMMISSION FOR LAWYER DISCIPLINE

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APPENDIX TO BRIEF OF APPELLEE COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits the following record excerpt in support of its brief:

APPENDIX 1: Modified Judgment of Partially Probated Suspension (CR 575-582)

Appendix 1

BEFORE EVIDENTIARY PANEL 4-3 OF THE
STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE,	§	**D0030936871 [TEKETELE]**
Petitioner,	§	
	§	
v.	§	**D0050937419 [FOSTER]**
	§	
JOHN O. MUKORO,	§	
Respondent.	§	**HARRIS COUNTY, TEXAS**

MODIFIED JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On October 3, 2012 and December 5, 2012 came to be heard the above-captioned matter. Petitioner, the Commission for Lawyer Discipline, appeared through its attorney of record on each occasion and announced ready. Respondent, John O. Mukoro, Texas Bar Number 24041539, appeared in person and through his attorney of record on each occasion and announced ready.

Jurisdiction and Venue

Evidentiary Panel 4-3, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District No. 4, 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 the pleadings, evidence, stipulations, and argument of counsel, denies Respondent's affirmative defense of limitations and finds that Respondent has committed Professional Misconduct as defined by Rule 1.06V of the Texas Rules of Disciplinary Procedure.

Findings of Fact

The Evidentiary Panel, having considered the pleadings, evidence, stipulations, and

argument of counsel, makes the following findings of fact applicable to both counts in Petitioner's First Amended Evidentiary Petition.

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.

2. Respondent maintains his principal place of practice in Harris County, Texas.

3. Stephen Akinnibosun, a non-lawyer, was employed or retained by or associated with Respondent.

4. Respondent had direct supervisory authority over Stephen Akinnibosun, but Respondent failed to make reasonable efforts to ensure that Akinnibosun's conduct was compatible with the professional obligations of Respondent.

5. Respondent ordered, encouraged, or permitted conduct by Stephen Akinnibosun that would have been a violation of the Texas Disciplinary Rules of Professional Conduct if engaged in by a lawyer.

6. Respondent shared or promised to share legal fees with Stephen Akinnibosun.

7. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable and necessary attorneys' fees in the amount of $3,750.00 and direct expenses in the amount of $811.65 in connection with this proceeding.

Conclusions of Law

The Evidentiary Panel concludes that, based on the foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 5.03(a), 5.03(b)(1), and 5.04(a).

Sanction

The Evidentiary Panel, having found that Respondent committed professional misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing the evidence and argument and considering the factors in Rule 2.18 of the Texas Rules of Disciplinary Procedure, the Evidentiary Panel finds that the proper discipline for Respondent for each act of Professional Misconduct 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 four (4) years, beginning March 1, 2013 and ending February 28, 2017. Respondent shall be actively suspended from the practice of law for a period of six (6) months, beginning March 1, 2013 and ending August 31, 2013. The three year, six month period of probated suspension shall begin on September 1, 2013 and shall end on February 28, 2017.

Terms of Active Suspension

It is further ORDERED that during the term of active suspension ordered herein, or that may be imposed upon Respondent by the Board of Disciplinary Appeals as a result of a probation revocation proceeding, Respondent shall be prohibited from practicing law in Texas; holding himself out as an attorney at law; 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 or Federal court or before any administrative body; or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

It is further ORDERED that, on or before March 1, 2013, Respondent shall notify each of Respondent's current clients and opposing counsel in writing of this suspension.

In addition to such notification, it is further ORDERED that Respondent shall return any files, papers, unearned monies, and other property belonging to current clients in Respondent's possession to the respective clients or to another attorney at the client's request.

It is further ORDERED that Respondent shall file with the Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711-2487 (1414

Colorado Street, Austin, Texas 78701) on or before March 1, 2013, an affidavit stating that all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, unearned monies, and other property belonging to all current clients have been returned as ordered herein.

It is further ORDERED that Respondent shall, on or before March 1, 2013, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing.

It is further ORDERED that Respondent shall file with the Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711-2487 (1414 Colorado Street, Austin, Texas 78701) on or before March 1, 2013, an affidavit stating that Respondent has notified in writing each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court.

It is further ORDERED that, on or before March 1, 2013, Respondent shall surrender his law license and permanent State Bar Card to the Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711-2487 (1414 Colorado Street, Austin, Texas 78701), to be forwarded to the Supreme Court of Texas.

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 1.06V 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 current mailing, residence, and business addresses and telephone numbers.

5. Respondent shall comply with 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.

8. Respondent shall pay reasonable and necessary attorneys' fees in the amount of $3,750.00 and direct expenses in the amount of $811.65 to the State Bar of Texas.

9. Respondent shall submit to monitoring of his law practice twice a year for the entire period of his probated suspension by an attorney monitor acceptable to the State Bar of Texas.

10. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete ten (10) additional hours of continuing legal education in the area of Law Practice Management and six (6) additional hours in the area of Ethics.

11. Respondent shall make contact with the Office of the Chief Disciplinary Counsel's 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 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 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 the Texas Rules of Disciplinary Procedure.

Attorneys' Fees and Expenses

It is further ORDERED that Respondent shall pay reasonable and necessary attorneys' fees in the amount of $3,750.00 and direct expenses in the amount of $811.65 to the State Bar of Texas. The payments shall be due and payable on or before February 28, 2017, 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 Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711-2487 (1414 Colorado Street, Austin, Texas 78701).

It is further ORDERED that all amounts ordered herein are due to the misconduct of Respondent and are assessed as a part of the sanction in accordance with Rule 1.06Y 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.

Law Practice Monitor

Respondent shall submit to monitoring of his law practice for the entire period of his probated suspension— September 1, 2013 to February 28, 2017— by an attorney acceptable to the State Bar of Texas. The monitor shall have no personal or professional relationship with the Respondent that would interfere with the monitor's ability to exercise independent judgment regarding Respondent's compliance with the terms of this judgment. The monitor shall report the status of Respondent's compliance twice a year on the form provided by the State Bar of Texas, with the initial report due by March 1, 2014. Subsequent reports shall be due by the 1st day of the months of September and March for the duration of the monitoring period, with the last report due by March 1, 2017. The reports shall be sent to the Office of Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711 (1414 Colorado Street, Suite 200, Austin, Texas 78701).

Not later than July 1, 2013, Respondent shall submit the name of his proposed monitor to the Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711 (1414 Colorado Street, Suite 200, Austin, Texas 78701). If the proposed monitor is not acceptable, Respondent shall submit the name of a new proposed monitor within two weeks after receiving notice of the disapproval. Respondent shall meet with the monitor at least twice during each September-February and March-August period. The initial meeting shall be held not later than October 1, 2013. Such meetings shall be in person at Respondent's law office.

Additional CLE

In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete ten (10) additional hours of continuing legal education in the area of Law Practice Management and six (6) additional hours

in the area of Ethics. These 16 additional hours of CLE are to be completed between March 1, 2013 and February 28, 2015. Within ten (10) days of the completion of each of these additional CLE hours, Respondent shall verify completion of the course to the Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711-2487 (1414 Colorado Street, Suite 200, Austin, Texas 78701).

Respondent shall make contact with the Office of the Chief Disciplinary Counsel's 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.

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 5th day of March, 2013.

EVIDENTIARY PANEL 4-3
DISTRICT NO. 4
STATE BAR OF TEXAS

SYLVESTER ANDERSON
Panel 4-3 Chair