

BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

FILED



October 9, 2015

Board of Disciplinary Appeals

IN THE MATTER OF §
JAMES MICHAEL O'BRIANT, §
STATE BAR CARD NO. 00788875 §

CAUSE NO. 56273

AGREED JUDGMENT OF SUSPENSION

On the 12th day of October, 2015, the above-styled and numbered ^{reciprocal} compulsory disciplinary action was called for hearing before the Board of Disciplinary Appeals.

Petitioner appeared by attorney and Respondent appeared by attorney as indicated by their respective signatures below and announced that they agree to the findings of fact, conclusions of law and orders set forth below. The Board of Disciplinary Appeals, having reviewed the file and in consideration of the agreement of the parties, is of the opinion that Petitioner is entitled to entry of the following findings and orders:

Findings of Fact. The Board of Disciplinary Appeals finds that:

- (1) Respondent, James Michael O'Briant, State Bar Card Number 00788875, is licensed and authorized to practice law in the State of Texas by the Supreme Court of Texas.
- (2) On or about July 21, 2014, a Formal Complaint was filed with the Attorney Discipline Board in a matter styled, *Grievance Administrator, Attorney Grievance Commission, Petitioner, v. James M. O'Briant, P41556, Respondent*, Case No. 14-78-GA.
- (3) On or about November 24, 2014, a Stipulation for Consent Order of Discipline was filed with the State of Michigan Attorney Discipline Board in a matter styled, *Grievance Administrator, Attorney Grievance Commission, Petitioner, v. James M. O'Briant, P41556, Respondent*, Case No. 14-78-GA.

- (4) On or about November 25, 2014, an Amended Formal Complaint was filed with the Attorney Discipline Board in a matter styled, *Grievance Administrator, Attorney Grievance Commission, Petitioner, v. James M. O'Briant, P41556, Respondent*, Case No. 14-78-GA.
- (5) On or about February 9, 2015, an Amended Stipulation for Consent Order of Discipline was filed with the State of Michigan Attorney Discipline Board in a matter styled, *Grievance Administrator, Attorney Grievance Commission, Petitioner, v. James M. O'Briant, P41556, Respondent*, Case No. 14-78-GA.
- (6) On or about February 24, 2015, a Report of Ingham County Hearing Panel #4 was filed with the State of Michigan Attorney Discipline Board in a matter styled, *Grievance Administrator, Attorney Grievance Commission, Petitioner, v. James M. O'Briant, P41556, Respondent*, Case No. 14-78-GA.
- (7) On or about February 24, 2015, an Order of Suspension and Restitution (By Consent) was filed with the State of Michigan Attorney Discipline Board in a matter styled, *Grievance Administrator, Attorney Grievance Commission, Petitioner, v. James M. O'Briant, P41556, Respondent*, Case No. 14-78-GA, that states in pertinent part as follows:

...IT IS FURTHER ORDERED that respondent's license to practice law in Michigan is suspended for one year, effective January 1, 2015....

- (8) In the Report of Ingham County Hearing Panel #4, the Panel found that, in four separate legal matters, Respondent neglected the matters, in violation of MRPC1.1(c); failed to seek the lawful objectives of his clients, in violation of MRPC1.2(a); and failed to act with reasonable diligence and promptness, in violation of MRPC1.3. In three of those four legal matters, Respondent failed to keep his clients reasonably informed about the status of their matters, in violation of MRPC 1.4(a); and failed to explain the matters to the extent reasonably necessary to permit this clients to make informed decisions regarding their representation, in violation of MRPC 1.4(b). In one of those four matters, Respondent failed to take reasonable steps to protect his client's interests upon termination of the representation, in violation of MRPC 1.16(d). In a fifth legal matter, Respondent entered into a business transaction with his client where: a) the terms were not fully disclosed and transmitted to the client in writing; and b) the client did not consent thereto in writing, in violation of MRPC 1.8(a)(1) and (3). The panel further found that Respondent engaged in professional misconduct in violation of MRPC 8.4(a) and MCR 9.104(4); engaged in conduct that was prejudicial to the administration of justice, in violation of

MRPC 8.4(c) and MCR 9.104(1); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, and was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(2) and (3).

- (9) Respondent, James Michael O'Briant, is the same person as the James M. O'Briant who is the subject of the Order of Suspension and Restitution (By Consent) entered by State of Michigan Attorney Discipline Board.
- (10) The Order of Suspension and Restitution (By Consent) entered by State of Michigan Attorney Discipline Board is final.

Conclusions of Law. Based upon the foregoing findings of fact the Board of Disciplinary Appeals makes the following conclusions of law:

- (1) This Board has jurisdiction to hear and determine this matter. Tex. R. Disciplinary P. 7.08(H);
- (2) Reciprocal discipline identical to that imposed by the State of Michigan Attorney Disciplinary Board is warranted in this case.

It is, accordingly, ORDERED, ADJUDGED, AND DECREED that Respondent, James Michael O'Briant, State Bar Card No. 00788875, be and he is hereby SUSPENDED from the practice of law in the State of Texas for a period of one year beginning November 15, 2015 and ending November 14, 2016.

It is further ORDERED, ADJUDGED and DECREED that Respondent, James Michael O'Briant, shall, on or before March 8, 2016, pay restitution as follows: Barbara Kleaveland: \$5,000; Elizabeth Pierce: \$10,000; and Michelle Barlund Smith: \$3,000. Respondent shall file written proof of payment with the Office of Chief Disciplinary Counsel Compliance Monitor within 10 days of the payment of restitution to each person.

It is further ORDERED, ADJUDGED and DECREED that Respondent, James Michael O'Briant, during said suspension is prohibited from practicing law in Texas, holding himself out as an attorney at law, performing any legal service 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 court or before any Texas administrative body, or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney," "counselor," or "lawyer."

It is further ORDERED that Respondent, James Michael O'Briant, by November 15, 2015, shall notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court, if any, in which Respondent, James Michael O'Briant, has any legal matter pending, if any, of his suspension, of the style and cause number of the pending matter(s), and of the name, address, and telephone number of the client(s) Respondent is representing in that court.

It is further ORDERED Respondent shall file with the State Bar of Texas, Statewide Compliance Monitor, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), not later than November 20, 2015, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, 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 Respondent, James Michael O'Briant, by November 15, 2015, shall notify each of his current clients and opposing counsel, if any, in writing, of his suspension. In addition to such notification, Respondent is ORDERED to return all files, papers, unearned fees paid in advance, and all other monies and properties which are in his possession but which belong to current or former clients, if any, to those respective clients or former clients no later than November 15, 2015.

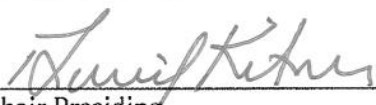
It is further ORDERED Respondent shall file with the State Bar of Texas, Statewide Compliance Monitor, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), not later than November 20, 2015, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein. If Respondent should be unable to return any file, papers, money or other property to any client or former client, Respondent's affidavit shall state with particularity the efforts made by Respondent with respect to each particular client and the cause of his inability to return to said client any file, paper, money or other property.

It is further ORDERED that Respondent, James Michael O'Briant, not later than November 20, 2015, surrender his Texas law license and permanent State Bar Card to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711, for transmittal to the Clerk of the Supreme Court of Texas.

It is further ORDERED that a certified copy of the Petition for Reciprocal Discipline on file herein, along with a copy of this Judgment, be sent to the Office of the Chief Disciplinary Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

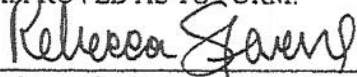
IT IS FURTHER ORDERED that this Judgment of Suspension shall be made a matter of public record and be published in the Texas Bar Journal.

Signed this 13 day of October 2015.

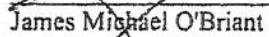


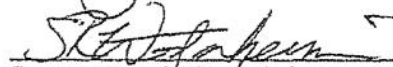
Chair Presiding
BOARD OF DISCIPLINARY APPEALS

APPROVED AS TO FORM:



Rebecca (Beth) Stevens
Assistant Disciplinary Counsel
State Bar No. 24065381
~~ATTORNEY FOR PETITIONER~~


James Michael O'Briant
State Bar No. 00788875
RESPONDENT


Suzanne Raggio Westerheim
State Bar No. 21222250
ATTORNEY FOR RESPONDENT