



Oct. 05, 2018

Board of Disciplinary Appeals

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

**IN THE MATTER OF
RICHARD E. SMITH
STATE BAR CARD NO. 18669550**

§
§
§

CAUSE NO. 60519

AGREED JUDGMENT OF PARTIALLY PROBATED SUSPENSION

On this day, the above-styled and numbered reciprocal disciplinary action was called for hearing before the Board of Disciplinary Appeals. Petitioner appeared by attorney and Respondent appeared in person 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 solely for the purposes of this proceeding which has not been fully adjudicated. 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, Richard E. Smith, Bar Card No. is 18669550, is an attorney who is licensed but not currently authorized to practice law in the State of Texas.
- (2) On or about October 16, 2017, an Order/Per Curiam was entered by the Supreme Court of the State of Louisiana in a matter styled: *In Re: Richard E. Smith*, No. 2017-B-1537, which states in pertinent part as follows:

... IT IS ORDERED that the Petition for Consent Discipline be accepted and that Richard E. Smith, Louisiana Bar Roll number 27723, be suspended from the practice of law for a period of one year and one day. It is further ordered that all but sixty days of this suspension shall be deferred. Following completion of the active portion of the suspension, respondent shall successfully complete a two-year period of unsupervised probation governed by the conditions set forth in the petition for consent discipline...
- (3) In the Joint Petition for Consent Discipline Pursuant to Rule XIX, § 20 it was established that Respondent, in ODC complaint number 033708, ODC received information indicating that the Respondent had been declared

ineligible to practice law, effective May of 2014. Information further confirmed that the Respondent had filed multiple disputed claims and other pleadings in the Office of Workers' Compensation district offices during his period of ineligibility, and continued to practice before OWC judges, despite his ineligibility. It was further established that in ODC complaint number 0033965, ODC received correspondence from JPMorgan Chase Bank in November 2015, regarding an overdraft in Respondent's trust account. ODC's review of the Respondent's trust accounts records found evidence of commingling of personal funds in the Respondent's client trust account, as well as several procedural errors associated with the Respondent's handling of his trust account; specifically, the Respondent failed to maintain the safety of the client funds deposited into his trust account and did not transfer attorney's fees as earned.

Respondent admitted to having violated the following of the Louisiana Rules of Professional Conduct:

- 1.15(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property; and
- 5.5 A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (4) Respondent, Richard E. Smith, is the same person as the Richard E. Smith, who is the subject of the Order/Per Curium filed before the Supreme Court of the State of Louisiana; and
- (5) The Order/Per Curium filed before Supreme Court of the State of Louisiana is final.

Conclusions of Law. Based upon the foregoing findings of facts 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) ("TRDP");
- (2) Reciprocal discipline identical, to the extent practicable, to that imposed by the Supreme Court of the State of Louisiana is warranted in this case. TRDP 9.03
- (3) Respondent should be suspended from the practice of law for a period of one year and one day. It is further ordered that all but sixty days of this

suspension shall be deferred. Following completion of the active portion of the suspension, respondent shall successfully complete a two-year period of unsupervised probation.

- (4) This Board retains jurisdiction during the full term of probation imposed by this judgment to hear a motion to revoke probation.

It is, accordingly, **ORDERED, ADJUDGED, and DECREED** that Respondent, Richard E. Smith, State Bar Card No. 18669550, is hereby suspended from the practice of law for a period of sixty (60) days beginning October 8, 2018, and ending December 6, 2018, followed by a two (2) year period of probated suspension beginning on December 7, 2018 and ending on December 6, 2020, under the following terms and conditions:

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, within ten (10) days of the signing of this judgment, 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** 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 Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within fifteen (15) days of the signing of this judgment, 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.

It is further ORDERED Respondent shall, within ten (10) days of the signing of this judgment, 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 Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within fifteen (15) days of the signing of this judgment, 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, within ten (10) days of the signing of this judgment, Respondent shall surrender his law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 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 1.06(W) of the Texas Rules of Disciplinary Procedure.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep 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.

Probation Revocation

Upon determination that Respondent has violated any term or condition of this judgment or of the disciplinary order or judgment entered in Louisiana, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to TRDP 2.23 with this Board and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

This Board will conduct an evidentiary hearing to determine by a preponderance of the evidence whether Respondent has materially violated any term or condition or requirement of any applicable disciplinary judgment. If this Board finds grounds for revocation, it will enter an order revoking probation and placing Respondent an active suspension from the date of such revocation order without 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.

Signed this 8 day of Oct. 2018.



Chair Presiding
Board of Disciplinary Appeals

APPROVED AS TO FORM AND CONTENT:



Amanda M. Kates
Assistant Disciplinary Counsel
State Bar Card No. 24075987
Attorney for Petitioner



Richard E. Smith
State Bar Card No. 18669550
Attorney for Respondent