

STATE BAR OF TEXAS
V.
MARK S. SMITH

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BEFORE THE
BOARD OF DISCIPLINARY
APPEALS

JUDGMENT PROBATING DISABILITY SUSPENSION

On March 15, 1993, came on to be heard the Disability Suspension of RESPONDENT MARK S. SMITH and recommendation by the District 16A Disability Committee of the State Bar of Texas that said suspension from the practice of law should be probated pursuant to Texas Rules of Disciplinary Procedure ("TRDP") 12.10.

After reviewing the record, the Board of Disciplinary Appeals ("the Board") finds that RESPONDENT was suspended from the practice of law on October 21, 1992, by order of the District Court of Lubbock County, Texas, in Cause No. 92-540,251, 137th Judicial District, said suspension being extended by further order of that Court on December 3, 1992, until resolution of the disciplinary action pending before this Board.

The Board further finds that RESPONDENT has satisfactorily demonstrated each requirement for probation of his suspension as set forth in TRDP 12.10.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that RESPONDENT MARK S. SMITH'S suspension from the practice of law be, and hereby is, probated until further order of this Board or of the District Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that RESPONDENT'S

probation is expressly conditioned upon RESPONDENT complying with certain terms of probation as follows:

- 1) RESPONDENT shall immediately execute all statements and agreements required by the Monitoring Plan for Impaired Lawyers operated by the Texas Lawyers' Assistance Program of the State Bar of Texas, a copy of which is attached hereto and incorporated herein by reference for all purposes as Exhibit A, and comply fully with all the requirements thereof;
- 2) RESPONDENT shall comply with any treatment plan prescribed by a private physician or health care professional whom Respondent has consulted regarding his disability;
- 3) RESPONDENT shall not violate any Rule of Professional Conduct or other State Bar Rule including, but not limited to, the Interest on Lawyers' Trust Account requirements as set forth in Article XI of the State Bar Rules;
- 4) RESPONDENT shall not violate any law other than minor traffic violations;
- 5) RESPONDENT shall maintain his law license in good standing with the State Bar by timely meeting all requirements thereof including, but not limited to, paying membership dues, completing continuing legal education requirements, and providing the State Bar with current address information at all times; and
- 6) RESPONDENT shall promptly provide any information requested by the General Counsel or any grievance committee in response to any disciplinary action.

IT IS FURTHER ORDERED that the General Counsel of the State Bar of Texas shall supervise RESPONDENT'S probation and report any violation thereof to the Board immediately, whereupon the Board may revoke RESPONDENT'S probation without further notice.

SIGNED this 29th day of March, 1993.



THOMAS H. WATKINS, CHAIRMAN
BOARD OF DISCIPLINARY APPEALS

MONITORING PLAN FOR IMPAIRED LAWYERS

Background: Pursuant to Rule 4.06(L) of the Texas Rules of Disciplinary Procedure, the Commission for Lawyer Discipline is directed to formulate and recommend to the Board of Directors for adoption a system for monitoring disabled lawyers. At the same time, the Texas Lawyers' Assistance Program (TLAP) has established a network of attorneys around the state who have expressed their willingness to serve as monitors in cases where attorneys are determined to be impaired. These attorney monitors have been educated in the purpose and importance of monitoring and undergo on-going training. The following system, utilizing the volunteer resources of TLAP, is an appropriate means of monitoring attorneys who are impaired due to alcohol or drug abuse or other reasons who are being dealt with within the attorney discipline and disability system.

Plan: 1. When a situation arises that calls for an attorney monitor, the General Counsel's office, or other appropriate entity, will contact TLAP with appropriate demographic information concerning the impaired attorney (age, type of impairment, etc.). TLAP will then recommend the name of a proposed monitor.

2. If the monitor proposed is acceptable, TLAP will then contact the attorney to serve as monitor, get his/her consent to serve in the particular case, and inform him/her that someone from the General Counsel's office will be contacting them. At that time, TLAP will also review the monitoring duties and responsibilities with the attorney monitor.

3. TLAP will then contact the General Counsel and provide the name, address and phone number of the attorney monitor.

4. The General Counsel will contact the monitor to arrange for a meeting with the attorney to be monitored, and the General Counsel's Office and to sign the Supervision Agreement, the Oath of Monitor, and the Release of Information and to make certain that all parties understand the expectations and requirements of the monitoring program.

5. The attorney monitor will then meet with the monitored attorney once a week, check the monitored attorney's Meeting Log, call for random drug screens periodically, and provide quarterly (or more often if desired) reports to the General Counsel, the Board of Disciplinary Appeals, or other appropriate entity. The General Counsel or other appropriate entity would also have the right to call for random drug screens whenever desired or deemed necessary. TLAP has an arrangement with a clinical lab to do testing for attorneys under monitoring at a reduced rate. The lab will cover the "chain of custody" issues, proper sample collection, etc., and have labs and offices around the state.

6. If the monitored attorney in any way violates the Supervision Agreement, the attorney monitor will immediately report this violation to the appropriate entity who can then take such action on that information as appropriate.

EXHIBIT A
Page 2 of 8

EXHIBIT C
Page 4 of 10

SUPERVISION AGREEMENT

I, _____, agree to comply with all the terms and conditions of this Supervision Agreement. I further agree and understand that any leniency I may receive from the Grievance Committee for State Bar District No. _____, The State Bar of Texas (the Grievance Committee) is in consideration of such compliance.

1. Attorney Monitor. I agree to submit to supervision by an Attorney Monitor acceptable to or selected by the Grievance Committee. I understand that my Attorney Monitor will supervise my compliance with this Agreement and, to that end, will make written quarterly progress reports under oath to the Grievance Committee and is under a duty to immediately report to the Grievance Committee any non-compliance on my part with the terms and conditions of this Agreement. I further understand my Attorney Monitor is not my advocate before the Grievance Committee.

I agree to contact my Attorney Monitor in person or by telephone weekly, or more frequently if so required by my Attorney Monitor, throughout the duration of this Agreement. My Attorney Monitor may require, from time to time, that such contact be made in person rather than by telephone.

2. Abstinence. I agree to remain abstinent from all alcohol and other mind altering drugs except on rare occasions when medications are prescribed and/or approved by an attending addictionist/M.D. or attending psychiatrist/M.D. On such occasions when such drugs are prescribed or approved, I agree to immediately inform my Attorney Monitor of the name of the drug prescribed or approved, the name and phone number of the prescribing or approving physician, and the medical condition necessitating the use of the medication. I further agree, upon request of my Attorney Monitor, to take any action or execute any documents necessary to allow my Attorney Monitor and the Grievance Committee to obtain information directly from such physician.

3. Program Participation. I agree to attend meetings of Alcoholics Anonymous, Narcotics Anonymous, or Cocaine Anonymous as follows:

a. For the first 90 days of this Agreement, I will attend at least one meeting per day. I will be accompanied by my Attorney Monitor to at least one meeting per week.

b. For the next 275 days of this Agreement, I will attend at least three meeting per week. I will be accompanied by my Attorney Monitor to at least three meetings per month.

c. For the remaining duration of this Agreement, I will attend at least one meeting per week. I will be accompanied by my attorney Monitor to at least one meeting per month.

I agree to attend an Attorneys' Support Group meeting in _____ one time per week throughout the duration of this Agreement. Such Support Group meeting is considered an Alcoholics Anonymous meeting for purposes of this provision.

I agree to document my attendance at all meetings on the Meeting Attendance Log and to provide this log to my Attorney Monitor on his or her request.

Any exception to any requirement of this provision must be approved in writing by my Attorney Monitor.

4. Random Drug Screens. I agree to submit to and pay for surprise random drug screens immediately upon the request of the Grievance Committee or my Attorney Monitor at the drug testing center _____ specified in the request. Failure to present at such site for a random drug screen within 18 hours of any request shall be a violation of this Agreement. If I leave town on business or pleasure, I agree to notify my Attorney Monitor. I will then appear for a drug screen at the drug screening center in _____ specified by my Attorney Monitor within 18 hours of my return to Austin. Copies of results of any drug screen will be delivered immediately to the Grievance Committee and to my Attorney Monitor.

5. Release of Information. I agree to execute a Release of Information and to cooperate in providing all information relevant to this Agreement and my compliance or non-compliance with its terms and conditions to the Grievance Committee and my Attorney Monitor.

6. Duration of Agreement. This Agreement shall remain in effect throughout the term of my probated suspension from the practice of law set forth in the Agreed Judgment of Suspension Before the Grievance Committee for State Bar District No. _____, The State Bar of Texas, No. _____, signed on _____.

Effective Date:_____.

OATH OF MONITOR

STATE OF TEXAS :
COUNTY OF _____ :
 :

BEFORE ME, the undersigned authority, personally appeared _____, who, after being duly sworn, on oath stated:

I am acquainted with _____ and have agreed to become his/her Attorney Monitor under the Supervision Agreement, attached hereto and incorporated herein. I hereby voluntarily accept and undertake all the powers and duties of an Attorney Monitor as stated in the Supervision Agreement. I further agree to file quarterly reports on _____ progress with the Grievance Committee for State Bar District No. _____, State Bar of Texas, and to immediately report any evidence of _____ non-compliance with the terms and conditions of the Supervision Agreement. Any and all required reports shall be made under oath and subject to the penalties imposed by law for perjury, and shall be made to the Grievance Committee without regard to any adverse consequences which may be occasioned to _____.

Signed this _____ day of _____, 19____.

Attorney Monitor

SUBSCRIBED AND SWORN TO BEFORE ME on this _____ day of _____ 19____.

Notary Public, State of Texas

Name Printed: _____

My commission expires: _____

RELEASE OF INFORMATION

I, _____, address: _____
hereby authorize _____, address: _____

_____, my Attorney Monitor under the Supervision Agreement, attached hereto and incorporated herein, to release to the Grievance Committee for State Bar District No.____, State Bar of Texas, any and all information relevant to the Supervision Agreement and my compliance or non-compliance with its terms and conditions. Such information shall include, but is not limited to quarterly reports on my progress under the Supervision Agreement, any immediate reports of any evidence of my non-compliance with the Supervision Agreement, and reports of any random drug screen taken pursuant to the Supervision Agreement. This Release of Information shall remain in effect until _____ unless previously revoked by me in writing. I understand any such revocation shall be forwarded to the Grievance Committee immediately upon its receipt by my Attorney Monitor.

Witness

REPORT OF ATTORNEY MONITOR

Re: _____

Cause #: _____

Attorney Monitor: _____

Report #: _____

Date: _____

Date of Last Report: _____

_____ To the best of my knowledge, since the date of my last report, or since the date of the Supervision Agreement if this is Report #1, _____ has abided by the terms of the Supervision Agreement. This assessment is based on the following:

_____ Weekly contacts

_____ Meeting Attendance Logs

_____ Random Drug Screens (reports of results enclosed)

_____ Other: _____

_____ Since the date of my last report, or since the date of the Supervision Agreement if this is Report #1, _____ has not abided by the terms of the Supervision Agreement. Specifically, _____ is out of compliance with the Supervision Agreement in the following respects:

Attorney Monitor

State of Texas)(
County of _____)(

SUBSCRIBED AND SWORN TO BEFORE ME on this _____ day of _____, 19____.

My commission expires: _____

Notary Public, State of Texas

Name Printed: _____