

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

ATTORNEY/CLIENT PRIVILEGED AND CONFIDENTIAL INFORMATION

IN THE STATE OF TEXAS

FILE NO. [REDACTED] [REDACTED]

IN THE MATTER OF:

[REDACTED],

Texas Bar No. [REDACTED]

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STATE BAR OF TEXAS

DISTRICT [REDACTED]

GRIEVANCE COMMITTEE

INVESTIGATORY HEARING REPORT

SUMMARY OF GRIEVANCE:

Complainant, a self-described disabled retiree with a "limited ability to read and write," hired Respondent in 2013 "to help me protect my money, find out who was responsible for missing fund[s], have Power of Attorney, help manage finances, send letters, etc." Complainant claims Respondent had never advised him about the scope of representation or how much Respondent would charge for his services. After 5 years and concerned about his Will and finances, Complainant contacted another lawyer, [REDACTED], in [REDACTED] 2018. Complainant learned from his new lawyer's investigation that Respondent's wife figured as joint tenant with right of survivorship in his personal bank account (which Complainant never consented to). In addition, Respondent and his wife refused to return several powers of attorney signed by Complainant. Respondent did not provide detailed accounting regarding Complainant's funds either, when requested by Complainant's new lawyer. Complainant further complains that Respondent exceeded his authority by calling Complainant's doctor, [REDACTED], and cancelling his prescriptions without providing any explanation.

SUMMARY OF RESPONSE:

Respondent denies misconduct and denies having "any access to or request[ed] to manage any financial affairs" of Complainant. Respondent further denies that Complainant hired him in relation to any "missing funds," although he admits having once advised Complainant to contact the District Attorney regarding this matter. Respondent also denies being an agent of Complainant under any kind of Power of Attorney. He has not drafted any documents or provided legal services for Complainant since his last edit of his Will in 2012, for which Respondent was never paid. Respondent has been friends with Complainant for over [REDACTED] years and, as such, has "always offered

Travis Park Plaza, 711 Navarro Street, Suite 750, San Antonio, Texas 78205

(210) 208-6600 Phone, (210) 208-6625 FAX

[him] my assistance in any form at no cost." Respondent's wife did help Complainant in paying for Complainant's bills but only as a personal favor. Any appointment of Respondent's wife regarding Complainant's bank account was done with Complainant's approval. Respondent further denies having any contact with any physician employed by Complainant. On a side note, Respondent explains that Complainant's new attorney, [REDACTED], was elected [REDACTED] Attorney in the General Election of [REDACTED] 2016 and since then has sought "numerous ways of interfering with the governing body in [REDACTED] County, and my role as [REDACTED]."

SUMMARY OF REBUTTAL:

Complainant and Respondent have had a long-time and ongoing attorney-client relationship. All of his visits with Respondent or his personnel were in Respondent's office. Complainant is not aware of any other business that would office there except for Respondent's law firm. In [REDACTED] 2018, Complainant requested Respondent to return Powers of Attorney signed by him but no answer has been yet received. Regarding his bank account, Complainant was surprised to learn that Respondent's wife figured as a joint owner and would be paid on Complainant's death. Complainant also got copies of his bank statements and checks for 2016 and discovered that several checks were paid to Respondent's wife or made cash. Complainant claims he has never received copy of his bank statements from Respondent nor has he ever received an accounting or receipts for cash purchases.

SUMMARY OF REPLY:

Respondent denies having prepared a Power of Attorney for Complainant, serving as his agent or having met with Complainant on a regular basis. Respondent believes the Complaint "is not a bona fide grievance" filed after Respondent and others voted unanimously to reduce the salary of Complainant's attorney due to his "failure to perform the duties of [REDACTED] and his unavailability as [REDACTED] to the general public of [REDACTED] County." Complainant's attorney has also filed "numerous grievances and complaints" against Respondent and others, including two motions for recusal which were denied and are currently on appeal. Respondent also provided a written "response" by his wife, [REDACTED], explaining her assistance to Complainant regarding his checking account and personal finances while denying Complainant's allegations of mismanagement.

ADDITIONAL CASE NOTES:

Both Respondent and Complainant submitted additional communications reaffirming their respective theories. Complainant insists that Respondent is responsible for the actions of both his wife and another employee of his firm, [REDACTED]. Respondent assures that his wife was acting independently and that [REDACTED] is an employee of his wife, not his. Complainant also affirms that Respondent did not say anything about not representing him back in December 2018, when Complainant terminated Respondent.

ISSUES FOR INVESTIGATION AT HEARING:

Available evidence show that services received by Complainant characterized by their informality

and lack of accountability. If Respondent provided such services directly or via hired personnel --as Complainant contends--, then Respondent might have had engaged in violation of Rule 1.03 (Lack of Communication); Rule 1.14 (Safekeeping) and Rule 1.15 (Failure to return client's papers). Respondent might also have had engaged in violation of Rule 5.03 (Supervision of Nonlawyer assistants). These rules are fully cited below. On the other hand, Respondent would not be liable from a disciplinary perspective if such services were performed by Respondent's wife solely based on a nonprofessional relationship (i.e. a sixty-year-plus friendship), as Respondent contends. In any case, panel members might want to ask both parties and their witnesses on the specifics of such "representation" in light of current case law:

"The attorney-client relationship is a contractual relationship in which an attorney "agrees" to render professional services for a client. Yaklin, 875 S.W.2d at 383; see Parker v. Carnahan, 772 S.W.2d 151, 156 (Tex.App.—Texarkana 1989, writ denied). To establish the relationship, the parties must explicitly or by their conduct manifest an intention to create it. Terrell v. State, 891 S.W.2d 307, 313 (Tex.App.—El Paso 1994, pet. ref'd) (citing Parker, 772 S.W.2d at 156). In other words, an attorney-client relationship may be established either expressly or impliedly from the conduct of the parties. Terrell, 891 S.W.2d at 313; Yaklin, 875 S.W.2d at 383; Kotzur v. Kelly, 791 S.W.2d 254, 257 (Tex.App.—Corpus Christi 1990, no writ); Parker, 772 S.W.2d at 156. To determine if there was an agreement or meeting of the minds one must use objective standards of what the parties said and did and not look to their subjective states of mind. Terrell, 891 S.W.2d at 313 (citing Argonaut Ins. Co. v. Allstate Ins. Co., 869 S.W.2d 537, 540 (Tex.App.—Corpus Christi 1993, writ denied); Adams v. Petrade Int'l, Inc., 754 S.W.2d 696, 717 (Tex.App.—Houston [1st Dist.] 1988, writ denied); American Nat'l Ins. Co. v. Paul, 927 S.W.2d 239, 244 (Tex.App.—Austin 1996, writ requested October 7, 1996). Vinson & Elkins v. Moran, 946 S.W.2d 381, 405 (Tex. App.—Houston [14th Dist.] 1997, writ dismissed by agr.), writ dismissed by agreement (Mar. 26, 1998)

Panel members might also want to inquire Respondent's wife, [REDACTED], regarding management of Complainant's bank account and what kind of accounting report was provided to Complainant or requested by him, if any. [REDACTED], an alleged employee of Respondent, might also be questioned regarding her participation in this case and the terms of her employment. Questions can also be directed towards Respondent's participation and knowledge of his wife's and [REDACTED] actions, particularly in light of Disciplinary Rule 5.05. Complainant's personal motivations for filing the Complainant might also be addressed.

DISCIPLINARY RULES IMPLICATED:

Rule 1.03. Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.14. Safekeeping Property

- (a) A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the

lawyer's own property. Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account, maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation

Rule 1.15. Declining or Terminating Representation

[...]

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.

Rule 5.03. Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer: 82 (a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (b) 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; or (2) the lawyer: (i) is a partner in the law firm in which the person is employed, retained by, or associated with; or is the general counsel of a government agency's legal department in which the person is employed, retained by or associated with; or has direct supervisory authority over such person; and (ii) with knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of that person's misconduct.

REPORT EXHIBITS:

- A. Complaint
- B. Response
- C. Rebuttal
- D. Reply
- E. 2nd Rebuttal
- F. 2nd Reply

Prepared by:



Luis Marin
Investigator

Reviewed by



Paul H. Homburg III
Assistant Disciplinary Counsel