

# STATE BAR OF TEXAS



*Office of the Chief Disciplinary Counsel*

## INVESTIGATORY HEARING REPORT CONFIDENTIAL

Date: April 5, 2019

Case: [REDACTED] - [REDACTED] - [REDACTED]

Respondent: [REDACTED]

Bar Card Number: [REDACTED]

### COMPLAINANT'S ALLEGATION(S):

Respondent was hired to represent Complainant in a probate matter following the death of Complainant's father in [REDACTED] of 2013. Complainant's mother's estate was also unresolved since her death in [REDACTED] 2010. Complainant alleges that Respondent failed to inform him of certain Estate Code requirements, such as the filing of an inventory. Complainant also alleges that despite being Complainant's resident agent and accepting service on Complainant's behalf, Respondent failed to inform Complainant that a Petition had been filed against him by his father's caretaker, [REDACTED]. [REDACTED] was suspiciously named main beneficiary of the estate during Complainant's father's last stages of life. Complainant also failed to inform Respondent of a Motion to Compel, a Motion for Contempt, and a Show Cause Order also filed by [REDACTED]. Complainant also contends Respondent entered into an Agreed Order in the case without Complainant's knowledge or consent and mislead Complainant regarding [REDACTED] claims and Complainant's rights as heir. Complainant next alleges that upon firing Respondent and hiring new counsel, Respondent has failed to return Complainant's client file. Complainant last alleges that upon hiring new counsel, it was discovered that Respondent was in communication with [REDACTED] days before the drafting of the Decedent's codicil that materially changed the Will to leave everything to her. "In retrospect and as time unlocked certain documents, it has become clear to me that my father's original Will, which mimicked my mom's was altered with the help of [REDACTED] to first give [REDACTED] the [REDACTED] residence, and then altered again during dad's final days to give [REDACTED] an additional annuity."

### RESPONDENT'S RESPONSE:

Respondent and his father represented Complainant's parents with regard to their estate planning matters from the early [REDACTED] until they passed away. During Complainant's father's final years, he grew closer to his caregiver [REDACTED] and wanted to provide for her in his will. After ensuring Complainant's father had the capacity to make decisions of this nature, he carried out his client's wishes. After the passing of Complainant's father, Respondent represented Complainant only in his capacity as independent executor of his father's estate and as successor independent executor of his mother's estate. Respondent denies failing to provide legal advice to Complainant. Rather, Complainant was upset that his father had given a portion of his estate to [REDACTED]. After [REDACTED] brought suit against Complainant, Respondent always kept Complainant informed about the case.

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

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

### **ADDITIONAL CASE NOTES:**

Upon request, Respondent provided the name and contact of three friends and the primary doctor of Complainant's father, which may attest of his capacity to make decisions regarding his estate and, particularly, about naming ██████████ as the main beneficiary of his will. Respondent also provided copy of his notes, regarding all communications related to ██████████. Respondent also provided copy of a letter dated ██████████ 2018 in which Complainant requests copy of his case file. Respondent asserts he read the letter in a later, unspecified date and assures being "aware of his obligation to provide the client file once requested and did not intentionally withhold the file."

Complainant filed a rebuttal admitting that he and his sister were upset when they discovered that he signed a Codicil to his will five days before his death cancelling a 1 million dollar gift to him and his sister to provide an annuity for ██████████. While he is not challenging the Codicil now, he claims Respondent failed to provide sufficient legal advice at the time of his father's death in order for Complainant to be able to timely challenge the codicil by then or at least comply with the law regarding his father's estate. Not only Respondent failed to provide accurate legal advice to Complainant, but also suggested ██████████ to hire an attorney of her own and file suit against Complainant and the interests of the estate.

### **CASE ANALYSIS AND RECOMMENDATION:**

The instant case is basically an issue of credibility on whether Respondent provided sufficient and accurate legal advice to Complainant as executor of his parents' estates. While Respondent asserts that he maintained Complainant informed of all issues regarding the estate, Complainant claims the contrary. While Complainant contends he was never informed of the necessity of filing an inventory in relation to his father's estate, Respondent assures he did communicate with Complainant regarding such and that he was unable to collect all the information necessary to finalize the estate matters due to Complainant's delay. Complainant remains suspicious about his father amending his will █ days before dying just to benefit a person strange to the family who was █ years younger than him, while Respondent insists on defending his former client's decision to benefit his late life caretaker. Complainant also claims Respondent failed to timely produce his case file when requested, while Respondent assures not having had the intention to unnecessarily withhold it. While there is not enough documentary evidence to suggest professional misconduct and consequently summary disposition might have been recommended by the undersigned, the fact that this case is about witness credibility makes it ideal for an Investigatory Hearing. Hence, our recommendation for such course of action.

### **Basis of Recommendation and Rules Violated:**

If Complainant's allegations are substantiated, Respondent's actions would constitute violation of the following rules:

Rule 1.01. Competent and Diligent Representation. [...] (b) In representing a client, a lawyer shall not: [...] (2) frequently fail to carry out completely the obligations that the lawyer owes to a client or

clients.

Rule 1.03. Communication. (a) A lawyer shall keep a client reasonably informed about the status of a matter [...] (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.15. 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 [...] surrendering papers and property to which the client is entitled [...]

Rule 8.04. Misconduct. (a) A lawyer shall not: [...] (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation [...]

**Potential Areas of Inquiry:**

The Panel may wish to direct inquiries to the Complainant, Respondent and any of their witnesses regarding communications and legal advice, if any, provided to Complainant and [REDACTED] regarding the estate of Complainant's father. Inquiries may also be directed upon the attorney-client relationship between Respondent and Complainant's parents, prior to Respondent's representation of Complainant. The Panel might also find useful to inquire upon the modification of Complainant's father estate to benefit [REDACTED] and also about Respondent's loyalty towards the estate and his motivations, if any, to benefit [REDACTED] to the detriment of the estate. Lastly, the Panel might want to look into whether Respondent returned the case file to Complainant in a timely manner when requested to do so.

**Exhibits:**

- A. Complaint
- B. Response
- C. Additional information provided by Respondent
- D. Rebuttal

Prepared by:

Reviewed by



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Luis Marin  
Investigator

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Paul H. Homburg III  
Assistant Disciplinary Counsel