

March, 2006

69 Tex. B.J. 280

### Disciplinary Actions

#### REINSTATEMENT

**Richard D. Esper**, 53, of El Paso, has petitioned the 210th District Court of El Paso County for reinstatement as a member of the State Bar of Texas.

#### RESIGNATIONS

On Dec. 15, 2005, the Supreme Court of Texas accepted the resignation, in lieu of discipline, of **Cheryl Gillum Turner**, 48, of Houston.

#### BODA ACTIONS

On Jan. 20, 2006, the Board of Disciplinary Appeals signed a judgment affirming the partially probated suspension in the appeal of **Bartholomew C. Okonkwo**, 48, of Houston, issued by the evidentiary panel for the District 4-B Grievance Committee on Feb. 16, 2005. Okonkwo remains on probated suspension until Sept. 23, 2006.

On Jan. 20, 2006, the Board of Disciplinary Appeals signed a final judgment of disbarment against **Wade Vincent Shang**, 50, of San Francisco, Calif. On May 2, 2005, Shang was found guilty of two counts of tax evasion in violation of 26 U.S.C. §7201, an intentional crime as defined in the Texas Rules of Disciplinary Procedure, in CR02-0239-01 WHA, styled United States of America v. Wade Vincent Shang, in the U.S. District Court for the Northern District of California. Shang was sentenced to 21 months confinement in the U.S. Bureau of Prisons, a fine of \$10,000, and an assessment of \$200. The conviction is final.

#### DISBARMENTS

On Nov. 17, 2005, **Walter D. Bryan**, 45, of Round Rock, was disbarred. An evidentiary panel of the District 8-C Grievance Committee found that Bryan, in five cases, neglected legal matters entrusted to him; failed to carry out the obligations owed to his clients; failed to keep clients reasonably informed about the status of their matters or promptly comply with reasonable requests for information; failed to explain matters to the extent reasonably necessary to permit clients to make informed decisions; failed to take steps to the extent reasonably practicable to protect clients' interests; failed to surrender papers to which the clients were entitled upon termination; and failed to timely respond to notice of the complaint.

Bryan violated Rules 1.01(b) (1) and (b) (2), 1.03(a) and (b), 1.15(d), and 8.04(a) (8). He was ordered to pay \$3,600 in attorney's fees and costs and \$14,555 in restitution.

On Oct. 21, 2005, **Claudia Valles**, 36, of Carlsbad, N.M., received a default judgment of disbarment. The District 7-A Grievance Committee found that on Nov. 14, 2003, Vales was retained to provide legal representation on behalf of the complainant in an immigration matter. The complainant paid Valles a \$1,750 retainer. Thereafter, Valles failed to complete the obligation owed to the complainant when she failed to provide any

meaningful legal services. Valles failed to respond to numerous calls and messages from the complainant or inform the complainant that she had moved.

In a second matter, on June 15, 2002, Valles was employed by the complainant's law firm as a full-time immigration law attorney. On Feb. 15, 2003, Valles left her place of employment and relocated to New Mexico. During her tenure with the complainant's law firm, Valles neglected the legal matters entrusted to her when she failed to provide any meaningful legal work on behalf of her clients. She failed to respond to her clients' calls, letters, or emails, or account for the missing files assigned to her. Valles failed to respond to notice of the complaint.

Valles violated Rules 1.01(b)(1) and (b)(2), 1.03(a) and (b), 1.15(d), and 8.04(a)(8). She was ordered to pay \$1,775 in attorney fees and \$679.46 in costs

On Nov. 4, 2005, **Garry L. Washington**, 52, of Houston, was disbarred. The District 4-B Grievance Committee found that in one matter, Washington was hired for representation in a criminal matter, but failed to perform any meaningful work on behalf of his client and failed to keep his client apprised as to the status of the case.

In a second matter, Washington was hired for representation in a criminal matter, but failed to research or investigate the legal issues relevant to the case. Washington failed to utilize an interpreter to communicate with his client and therefore was unable to adequately communicate with or represent his client.

Washington violated Rules 1.01(b)(1) and (b)(2) and 1.03(a) and (b). He was ordered to pay \$5,000 in restitution, \$2,000 in attorney's fees, and \$586 in costs. The complainant in the first matter filed an appeal seeking restitution.

## SUSPENSIONS

On Oct. 5, 2005, **Everett J. McClain**, 49, of Houston, received a one-year, active suspension modified on Nov. 30, 2005, to begin Dec. 1, 2005. The District 4-C Grievance Committee found that McClain represented a client while administratively suspended from the practice of law. He failed to file a written response to the grievance. McClain has appealed the decision.

McClain violated Rules 8.01(b) and 8.04(a)(11). He was ordered to pay \$2,000 in attorney's fees and \$343 in costs.

On Oct. 18, 2005, **Bill Lance Fitzgerald**, 36, of Lubbock, received a three-year, default judgment of partially probated suspension, effective Nov. 1, 2005, with the first year actively served and the remainder probated.

The District 16-A Grievance Committee found that in January 2003, the complainant hired Fitzgerald to handle a personal injury matter on a contingency fee basis.

Thereafter, Fitzgerald failed to perform any significant legal services on behalf of the complainant. Fitzgerald failed to respond to the complainant's phone calls or return the complainant's file upon request for its return. Fitzgerald failed to respond to notice of the complaint.

Fitzgerald violated Rules 1.01(b)(1) and (b)(2), 1.03(a) and (b), 1.15(d), and 8.04(a)(8). He was ordered to pay \$1,440 in attorney's fees and \$574 in costs.

On Jan. 3, 2006, **Thomas A. Ford**, 36, of Dallas, received a two-year, agreed judgment of fully probated suspension effective Jan. 1, 2006. The District 7-A Grievance Committee found that in three different matters, Ford neglected the bankruptcy cases of his clients by failing to timely file petitions. He failed to communicate with each of these three clients.

In a fourth matter, Ford neglected a client's litigation matter by failing to obtain the judge's signature on an order to reinstate. He failed to respond to notice of the complaint.

In a fifth matter, Ford neglected a client's real estate matter and failed to respond to the complaint.

In a sixth matter, Ford was hired to represent a client who was the defendant in two lawsuits. Ford neglected the client's pending litigation, failed to return any unearned fees when his services were terminated, and failed to timely respond to the complaint.

Ford violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). He made full restitution to each of the above clients. Ford was ordered to pay \$1,500 in attorney's fees and costs.

On Nov. 29, 2005, **David Lashford**, 54, of Texarkana, received a 30-day suspension, with the imposition of the suspension suspended and Lashford placed on probation for a period of six months, effective Dec. 1, 2005.

The evidentiary panel of the District 1-B Grievance Committee found that the complainant hired Lashford to file a motion to modify a custody order, and a hearing was held on Oct. 9, 2000. Thereafter, he failed to review and provide objections to a proposed order prepared by opposing counsel after the hearing. Lashford failed to timely file a motion to set aside judgment after that proposed order was entered. He failed to effectively communicate with the complainant by timely providing the complainant with copies of the proposed order and the entered order. The panel found in mitigation that subsequent to the misconduct in this matter Lashford had modified his office procedures and had attended ethics courses. Lashford violated Rules 1.01(b)(1) and (b)(2) and 1.03(a). He was ordered to pay \$3,983.33 in attorney's fees and costs.

On Jan. 3, 2006, **John David Herrick**, 36, of San Antonio, accepted a five-year, partially probated suspension, effective Feb. 2, 2006, with the first two years actively served and the remainder probated. The 166th District Court of Bexar County found Herrick unreasonably delayed resolution of cases and failed to timely respond to requests for information from an appropriate disciplinary authority. Herrick violated Rules 3.02 and 8.04(a)(8). He was ordered to pay \$1,250 for attorney's fees and costs.

On Jan. 12, 2006, **Howard M. Rubinstein**, 60, of San Diego, Calif., accepted a two-year, fully probated suspension. The Evidentiary Panel of the District 4-F Grievance Committee found that Rubinstein represented clients in an insurance claim involving mold, which required substantial remediation of their home. During the pendency of the claim, numerous insurance payments were directed to Rubinstein by his clients. Although Rubinstein placed the funds in his trust account and disbursed those funds to the contractor providing the remediation, he failed to maintain accurate records of his disbursements and was unable to provide his client with a complete or accurate accounting of the funds paid. Rule 1.14(a) Texas Disciplinary Rules of Professional Conduct requires that an attorney maintain complete records of a client's trust account transactions for a period of five years following termination of the representation. Because Rubinstein failed to maintain these records, it was necessary for the State Bar to obtain records through discovery in order to determine what discrepancy, if any, existed in Rubinstein's trust account.

Rubinstein received \$119,586.87 from the insurance company for satisfaction of claims related to the complainant's mold claim. Rubinstein paid out \$119,046.80, leaving a discrepancy of \$540.07. Rubinstein violated Rules 1.14(a). He agreed to pay \$540.07 in restitution and \$1,500 in attorney's fees.

On Jan. 12, 2006, **Rodney M. Phelps**, 62, of Brentwood, Tenn., accepted a three-year, fully probated suspension, effective Jan. 1, 2006. The District 6A Grievance Committee found that in one matter, the complainant employed Phelps to represent her in a personal injury matter. Phelps neglected the legal matter entrusted to him, failed to keep his client reasonably informed, and failed to comply with reasonable requests for information. Phelps failed to return the complainant's file to her. The complainant subsequently hired new counsel, and Phelps failed to release the complainant's file to her new counsel.

In a second matter, the complainant employed Phelps to represent her in a personal injury matter. Phelps filed a lawsuit on the complainant's behalf, but subsequently allowed it to be dismissed for want of prosecution. Virtually all of the complainant's contact was with staff members, whom Phelps failed to properly supervise. Additionally, Phelps failed to respond to the complainant's requests for information. Phelps violated Rules 1.01(b)(1) and (b)(2), 1.03(a) and (b), 1.15(d), and 5.03(a). Phelps was ordered to pay \$1,200 in attorney's fees.

#### PUBLIC REPRIMANDS

On Dec. 13, 2005, **James Steven Hershberger**, 48, of Midland, received a public reprimand. An evidentiary panel of the District 16-B Grievance Committee found that in April 2003, the complainant's former attorney referred the complainant's case to Hershberger. The former attorney had filed a lawsuit on behalf of the complainant against the Texas Department of Criminal Justice on Nov. 26, 2002. In early May 2003, Hershberger obtained the complainant's file and Hershberger met with the complainant on May 23, 2003, to discuss the case. However, the complainant's case had been dismissed on May 7, 2003, for lack of service. On June 4, 2003, Hershberger filed a motion to reinstate case and a brief in support of motion to reinstate case, in which he asserted that he had succeeded the complainant's former attorney as the complainants' counsel. The panel found that there was, in fact, an attorney-client relationship established. The court reinstated the case on June 6, 2003. On July 1, 2003, the complainant sent Hershberger information that he had requested regarding the matter. Thereafter, Hershberger failed to pursue the matter and allowed the case to be dismissed on Nov. 5, 2003. Hershberger violated Rules 1.01(b)(1), 1.10(b)(2), and 1.03(a). He was ordered to pay \$3,222.26 in attorney's fees and costs. Hershberger has appealed the decision.

On Jan. 10, 2006, **Victor M. Bonner**, 63, of Houston, accepted a public reprimand. The evidentiary panel of the District 4-E Grievance Committee found that Bonner failed to properly communicate with a client who was a claimant against the manufacturers of a drug. In addition, Bonner permitted conduct involving professional misconduct by a non-lawyer employee who failed to properly calendar or follow up on the client's claim. Bonner violated Rules 1.03(a) and 5.03(b)(2)(i). He agreed to pay \$900 in attorney's fees.

On Jan. 4, 2006, **Terry L. Marsaw**, 50, of Dallas, accepted a public reprimand. The District 6-A Grievance Committee found that the complainant hired Marsaw to obtain a divorce and Marsaw filed a petition on her behalf. After the complainant's husband filed an answer, Marsaw told the complainant that he was uninterested in continuing representation in a contested divorce. Thereafter, Marsaw failed to withdraw and failed to take steps to protect the complainant's interests. Marsaw failed to appear at two hearings in the complainant's case. The divorce was granted, but the case was dismissed for want of prosecution because a decree had not been entered. The case was reinstated and counsel for the complainant's husband prepared the final decree at the judge's request. During the course of the representation, Marsaw failed to keep the complainant reasonably informed regarding the status of the matter or promptly comply with reasonable requests for information. Marsaw failed to explain the matter to the extent reasonably necessary to permit the complainant to make informed decisions regarding the representation. Marsaw violated Rules 1.01(b) (1) and (b) (2), 1.03(a) and (b), and 1.15(d). Marsaw was ordered to pay \$750 in attorney's fees and \$450 in restitution.