

# DISCIPLINARY ACTIONS

**G**eneral questions regarding attorney discipline should be directed to the Chief Disciplinary Counsel's Office, toll-free (877)953-5535 or (512)453-5535. The Board of Disciplinary Appeals may be reached at (512)475-1578. Information and copies of actual orders are available at [www.txboda.org](http://www.txboda.org). The State Commission on Judicial Conduct may be contacted toll-free, (877)228-5750 or (512)463-5533. Please note that persons disciplined by the Commission on Judicial Conduct are not necessarily licensed attorneys.

## REINSTATEMENTS

**Carol A. Birdwell** [#02333685], 47, of Fort Worth, has petitioned the 141st District Court of Tarrant County for reinstatement as a member of the State Bar of Texas.

**Keith E. Jagmin** [#10530700], 55, of Dallas, has petitioned the 68th District Court of Dallas County for reinstatement

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## SUSPENSIONS

On April 17, 2006, **Johnny Joe Colley, Jr.** [#00796382], 47, of Fort Worth, received a three-year, active suspension effective May 1, 2006. The District 7-A Grievance Committee found that on Aug. 9, 2000, a default judgment of partially probated suspension was executed against Colley. On Jan. 4, 2002, an agreed judgment of fully probated suspension was executed against him. The terms and conditions in both judgments required Colley to pay restitution, attorney's fees, annual bar dues, and occupation tax, and to keep his MCLE current. Colley failed to abide by the terms and conditions of the suspensions. He was notified of the complaints by certified mail, return receipt requested, but failed to respond in writing as required and failed to assert any grounds for his failure to respond.

Colley violated Rules 8.04(a)(7) and (a)(8). He was ordered to pay \$2,185 in restitution and \$3,240 in attorney's fees and costs.

On May 2, 2006, **Donald W. Linnenbank** [#00786064], 51, of Sugar Land, accepted a two-year, fully probated suspension effective May 15, 2006. An evidentiary panel of the District 5-A Grievance Committee found that Linnenbank was retained to represent two clients in a personal injury matter. When the clients made several attempts to contact Linnenbank regarding the status of their legal matter, Linnenbank either provided an insufficient or confusing answer

or failed to respond at all. Linnenbank failed to timely file a lawsuit on behalf of his clients or return their file. Linnenbank ignored three requests from the Client-Attorney Assistance Program.

Linnenbank violated Rules 1.01(b)(1) and (b)(2), 1.02(a)(1), 1.03(a) and (b), and 1.15(a)(3) and (d). He was ordered to pay \$500 in attorney's fees.

On May 8, 2006, **Francisco R. Yeverino** [#00793076], 35, of Houston, accepted a six-month, active suspension effective July 1, 2006. An evidentiary panel of the District 4-F Grievance Committee found that Yeverino was retained to represent a client in a personal injury matter. After filing suit on his client's behalf, Yeverino failed to file a motion for default judgment once the defendant in the case failed to file an answer. As a result of Yeverino's inaction, his client's case was dismissed for want of prosecution. Yeverino failed to communicate with his client or keep his client adequately informed about the status of the case.

Yeverino violated Rules 1.01(b)(2) and 1.03(a) and (b). He agreed to pay \$1,000 in attorney's fees.

On Feb. 20, 2006, **Rickey A. Watson** [#20959500], 50, of Houston, accepted a two-year, partially probated suspension effective May 15, 2006, with the first year actively served and the remainder probated. The 164th District Court of Harris County found that in three separate matters Watson neglected legal matters entrusted to him. Watson failed to carry out completely the obligations owed his clients, keep his clients reasonably informed of the status of their matter, promptly reply to reasonable requests for information, or make reasonable efforts to ensure that a non-lawyer's conduct was compatible with the professional obligations of the lawyer.

Watson violated Rules 1.01(b)(1) and (b)(2), 1.03(a), 5.03(a) and (b)(1), and 8.04(a)(1). He agreed to pay \$1,700 in restitution and \$2,000 in attorney's fees.

On April 25, 2006, **Christopher J. Cafiero** [#24031784], 42, of Plano, received a five-year, partially probated suspension effective April 17, 2006, with the first 18 months actively served and the remainder probated. The District 6-A Grievance Committee found that in one matter, the complainant hired Cafiero's law firm to represent him in a personal injury matter in October 2002. Cafiero received a settlement check a year later but did not advise the complainant until several months later. Cafiero failed to provide an accounting, disburse the funds, respond to the complainant's requests for information, or respond to the grievance.

In a second matter, the complainant employed Cafiero to represent him in a negligent bailment action in July 2003. After receiving a settlement check, Cafiero wrote the complainant a check for his portion of the proceeds, but the bank returned the check twice due to insufficient funds. The check was not written on a designated trust account. Cafiero did not respond to a request for information by the State Bar investigator.

In a third matter, the complainant employed Cafiero in March 2004 to defend a civil lawsuit. Cafiero performed no meaningful legal services. He failed to respond to the complainant's requests for information, keep the complainant informed about the status of the legal matter, or respond to the grievance.

Cafiero violated Rules 1.01(b)(1), 1.03(a) and (b), 1.14(a), (b), and (c), 8.01(b), and 8.04(a)(3) and (a)(8). He was ordered to pay \$20,250 in restitution, \$6,156 in attorney's fees, and \$1,147.68 in costs. Cafiero has appealed the decision.

On April 24, 2006, **Kenneth R. Holzman** [#24013920], 41, of El Paso, received a five-year, fully probated suspension effective May 1, 2006. The District 17-A Grievance Committee found that in one matter, Holzman neglected a construction litigation case and failed to

respond to the client's reasonable requests for information, return unearned legal fees, or respond to the grievance. In a second matter, the panel found Holzman neglected a divorce case and failed to communicate with his client, return the unearned portion of the fee upon termination, or respond to the grievance.

Holzman violated Rules 1.01(b)(1) and (b)(2), 1.03(a), and 8.04(a)(8). Holzman was ordered to pay \$1,000 in attorney's fees and costs and \$1,000 in restitution.

On March 6, 2006, **Timothy W. Sorenson** [#18848400], 60, of Dallas, received a 58-and-one-half-month, partially probated suspension effective March 15, 2006, with the first four and one half months actively served and the remainder probated. The District 6-A Grievance Committee found that on June 2, 2002, Sorenson, on behalf of the complainant and an associate, filed an answer in a lawsuit that had been filed by a telecommunications corporation against the complainant, his associate, and other corporate defendants in the 285th Judicial District of Bexar County. Sorenson represented both the complainant and an associate despite the knowledge that each was a guarantor of one of the corporate defendant's debt obligations and had joint liability in the case of a default. Sorenson failed to advise the complainant and his associate of the possible adverse consequences of the common representation in the lawsuit and failed to obtain the complainant's consent for such representation. Sorenson failed to notify the complainant that he had filed an answer on his behalf in the lawsuit and failed to provide the complainant with any information regarding the lawsuit until May 2004, when Sorenson sent the complainant correspondence advising him of his withdrawal from the representation. During the period of representation, Sorenson failed to advise the complainant that Sorenson had filed suit against the corporation in federal court

on behalf of the complainant and several other plaintiffs and had filed bankruptcy on behalf of one of the corporate defendants. Sorenson failed to send the complainant discovery that had been propounded by the corporation, including interrogatories that required the complainant's verification.

Sorenson violated Rules 1.03(a) and (b) and 1.06(b)(1), (b)(2), and (c)(2). He was ordered to pay \$4,400 in attorney's fees and \$255.31 in costs. Sorenson has appealed the decision. The suspension is stayed pending the appeal.

On May 4, 2006, **John Mann** [#12926500], 58, of Pampa, received an 18-month, fully probated suspension effective May 1, 2006. The District 13-A Grievance Committee found that the

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complainants hired Mann in July 2001 on a contingency fee basis to take action against the operators of an oil lease on property in which the complainants' family retained a royalty interest. In September 2001, Mann filed a lawsuit against the operators of the lease. The defendants filed a motion for summary judgment in August 2002, and a hearing was held in November 2002, at which time the motion was granted. Mann did not file a response to the motion for summary judgment and did not appeal the decision. Further, Mann did not inform the complainants that the motion had been granted and that there would be a hearing regarding an award of attorney's fees to the defendants. In September 2003, Mann's associate, after consulting with

Mann, entered into a Rule 11 agreement whereby plaintiffs agreed to pay \$21,000 in attorney's fees to the defendants. Such agreement was entered into without the complainants' knowledge or permission. The court entered a final judgment on Jan. 26, 2004, awarding \$21,000 in attorney's fees to the defendants. The complainants were not apprised of this fact and did not receive a copy of the final judgment until January 2005, when a demand letter along with the abstracted judgment was received from defendants' counsel.

Mann violated Rules 1.01(b)(1) and (b)(2), 1.02(a)(2), 1.03(a) and (b), and 8.04(a)(3). Mann was ordered to pay \$7,500 in attorney's fees and \$1,189 in costs.

On May 15, 2006, **Laura Holliday** [#09876770], 62, of Houston, received a 27-month, partially probated suspension effective May 5, 2006, with the first three months actively served and the remainder probated. An evidentiary panel of the District 4-B Grievance Committee found that Holliday was hired to prepare a last will and testament. In the will, Holliday named herself executrix and hired herself as an attorney to represent the estate in the probate of her client's will. Holliday did not discuss her fees with the beneficiaries of her client's estate. She charged \$13,825 in fees, as both executrix and attorney for the estate. The value of the estate was \$17,653.98. Her fees as executrix were in excess of the amounts allowed for executrix fees permitted by the Texas Probate Code. Holliday failed and refused to comply with each request until well after the probate matter had closed.

Holliday violated Rules 1.03(a), 1.04(a) and (c), 1.14 (a), and 8.04 (a)(1). She was ordered to pay \$5,000 in restitution and \$6,722.87 in attorney's fees. Holliday has appealed the decision.

On April 28, 2006, **Bird Old III** [#15244100], 57, of Mount Pleasant,

received a 42-month, partially probated suspension effective June 30, 2006, with the first six months actively served and the remainder probated. The District 1-B Grievance Committee found that Old was hired to represent the complainant in a modification action to increase child support. A settlement was reached and the agreement was read into the record in open court. Old failed to prepare a modification order, prepare a withholding order, or respond to the complainant's requests for information.

Old violated Rules 1.01(b)(1) and 1.03(a). He was ordered to pay \$3,000 in restitution, \$3,592.75 in attorney's fees, and \$345.77 in costs.

On May 19, 2006, **Michelle Lorraine Smith** [#18651500], 41, of Edinburg, accepted a four-year, fully probated suspension effective May 1, 2006. The District 12-B Grievance Committee found Smith neglected a legal matter and failed to advise her client she was closing her office and relocating her practice. Smith failed to timely respond to the grievance or state legal grounds for her failure to timely respond.

Smith violated Rules 1.10(b)(1), 1.03(a), and 8.04(a)(8). Smith was ordered to pay \$1,500 in attorney's fees and costs.

## PUBLIC REPRIMANDS

On April 19, 2006, **W. Stacey Mooring** [#14412000], 53, of Conroe, accepted a public reprimand. The District 3-B Grievance Committee found that Mooring was hired for representation in pursuing appellate remedies in a criminal matter as detailed in a written agreement between Mooring and the complainant. After the motion for new trial was denied, Mooring failed to file the appellant's brief. Additionally, Mooring failed to respond to the numerous requests for information made by the complainant and further failed to return documentation or a refund of fees to the com-

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plainant upon request.

Mooring violated Rules 1.01(b)(1) and (b)(2), 1.03(a) and (b), and 1.15(d). He agreed to pay \$12,937.50 in restitution and \$1,050 in attorney's fees.

On May 18, 2006, **Jerry Hanson** [#08933000], 66, of Palestine, received an agreed judgment of public reprimand. The District 2-C Grievance Committee found that on Nov. 14, 1997, the complainant hired Hanson on a contingent fee basis to represent her in a personal injury case stemming from an Oct. 8, 1997 car accident. Thereafter, Hanson failed to advise the complainant that he failed to file a lawsuit in the complainant's personal injury matter prior to the expiration of the statute of limitations. Hanson failed to keep the complainant informed regarding the status of her case or respond to her telephone calls and inquiries.

Hanson violated Rule 1.03(a). He was ordered to pay \$1,287.50 in attorney's fees.

On May 18, 2006, **Marvin Williams, Jr.** [#21603700], 53, of Lubbock, accepted a public reprimand. The District 16-A Grievance Committee found that in July 2004, Williams was hired for a misdemeanor criminal case in Ochiltree County. Williams failed to attend an arraignment hearing scheduled for the complainant, failed to file a waiver of arraignment, and wrongly advised the client there was no need to attend the arraignment setting resulting in an arrest warrant being issued. Williams failed to return telephone calls from the client.

Williams violated Rules 1.01(b)(1) and 1.03(a) and (b). He was ordered to pay \$500 in attorney's fees.

On May 18, 2006, **Christopher J. Simpson** [#18399610], 53, of Washington, D.C., accepted a public reprimand. The District 17-A Grievance Committee found Simpson was employed to repre-

sent a client in a civil suit against the City of El Paso. During the representation, Simpson stopped working on the case and moved to Washington, D.C., without notifying his client. Simpson failed to keep the client informed about the status of the case or comply with the client's reasonable requests for information.

Simpson violated Rules 1.01(b)(1), 1.03(a) and (b), and 1.15(d). Simpson was ordered to pay \$250 in attorney's fees and \$5,000 in restitution.

On May 17, 2006, **John C. Hampton** [#08873200], 50, of Houston, accepted a public reprimand. An evidentiary panel of the District 4-D Grievance Committee found that Hampton, in two separate matters, failed to keep his clients informed of the status of their case. Although Hampton initially notified his clients that he was relocating his law practice, he failed to maintain active communication with his clients after the move.

Hampton violated Rules 1.03(a) and (b). He was ordered to pay \$300 in attorney's fees.

### JUDICIAL ACTIONS

On June 9, 2006, the State Commission on Judicial Conduct issued a public admonition to **Jim L. Powers**, justice of the peace for Precinct 5, Timpson, Shelby County. The commission found that Powers violated Canons 2B and 5(2) of the Texas Code of Judicial Conduct by authorizing his name to be used in an endorsement of a candidate for public office. In reaching this conclusion, the commission noted that it would have been immaterial if the advertisement in question had appeared as a letter to the editor signed by "Jim Powers," a private citizen, since it can be assumed, given the small community in which Powers holds elected office, that the voters in Timpson know that he is a judge whether he uses the title or not. While the commission

acknowledged that judges do have private lives and many of the rights afforded to private citizens, it remains an unavoidable consequence that, as a member of the judiciary, Powers should expect to be the subject of public scrutiny, even in his private life, and should accept certain restrictions on his conduct that a private citizen might find burdensome. All judges, whether serving full-time or part-time, should accept these restrictions freely and willingly in order to enhance and maintain public confidence in the integrity, impartiality, and independence of the judiciary.

On May 4, 2006, the State Commission on Judicial Conduct issued a public admonition to **Michael Peters**

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[#15823500], 61, Criminal County Court at Law No. 2, Houston, Harris County. The commission found that Peters failed to comply with the law and failed to act at all times in a manner that promotes public confidence in the integrity of the judiciary by issuing orders that he knew or should have known were unenforceable and in violation of state law. Such conduct constituted willful and persistent violations of Canon 2A of the Texas Code of Judicial Conduct. Moreover, as a public official charged with upholding the honor and integrity of the judiciary, Peters' actions cast public discredit upon the integrity of the judiciary and the administration of justice, in violation of Article V, §1-6(A) of the Texas Constitution.

On May 10, 2006, the State Commission on Judicial Conduct issued a public admonition to **Nathan Hecht** [#00000002], 56, Supreme Court of Texas, Austin, Travis County. The commission found that Hecht allowed his name and title to be used by the press and the White House in support of his close friend, Harriet Miers, a nominee for the office of U.S. Supreme Court Justice. Such public support by a judicial official elected to the highest court in Texas, in the eyes of the public and the rest of the judiciary, would be construed as an endorsement of Miers' candidacy, as those terms are commonly used and understood. Because the commission views Miers' desire for a lifetime appointment to the U.S. Supreme Court to be a private interest, the efforts of Hecht in promoting his friend's candidacy by responding to media inquiries and assisting the White House in its efforts to convince powerful special interest groups to support her candidacy, constituted an improper use of his office and position to promote Miers' private interest. In reaching these conclusions, the commission recognizes that as a judicial candidate himself, Hecht enjoys a much broader range of First Amendment protections for his own campaign speech than ever before. See *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002). However, neither *White* nor the numerous "free speech" cases that have followed in the wake of that case support Hecht's proposition that the political activities of a judge or judicial candidate on behalf of another, as opposed to those activities that support his or her own candidacy, constitute protected campaign speech. In fact, the holding in *White* can be easily distinguished here since that case did not involve any of the restrictions on the political activity at issue in this case. The commission further concludes that even if a strict scrutiny test were applied in this case, both Canon 2B and Canon 5(2) would survive a constitutional challenge

because they are narrowly tailored to address the state's compelling interests in promoting public confidence in an independent and impartial judiciary, free of political influence and corruption and the appearance of political influence and corruption. See *In Re Raab*, 793 N.E.2d 1287, 1291 (N.Y. 2003). As the court noted in *Raab* when addressing the constitutionality of a similar provision restricting public endorsements found in the New York Code of Judicial Conduct: "Not only must the State respect the First Amendment rights of judicial candidates and voters but also it must simultaneously ensure that the judicial system is fair and impartial for all litigants, free of the taint of political bias or corruption, or even the appearance of such bias or corruption. In our view, the rules at issue, when viewed in their totality, are narrowly drawn to achieve these goals." *Id.* at 1292. Based on the circumstances surrounding this matter, the commission concludes that Hecht's actions on behalf of Harriet Miers constituted persistent and willful violations of Canons 2B and 5(2) of the Texas Code of Judicial Conduct.

On May 30, 2006, the State Commission on Judicial Conduct issued a public warning to **Britt Plunk** [#16078700], 59, 356th District Court, Kountze, Hardin County. The commission found that Plunk's close relationship with opposing counsel, Rebecca Walton, the daughter of his longtime court coordinator, Rita Peterson, influenced his conduct and judgment in two cases, causing litigants and their counsel to form legitimate concerns that Plunk would not be fair, neutral, and impartial in proceedings involving Walton. Because of this relationship, Plunk failed to diligently review and question the pleadings presented to him by Walton, which effectively deprived a father of possession and custody of his child on the eve of her mother's funeral, without any opportunity for

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a hearing to determine whether the representations made by the child's stepfather were true or what was in the best interests of the child. In taking this action, the commission declined to address whether Plunk acted within his legal authority to enter the orders presented to him by Walton. Absent extraordinary circumstances, that authority lies with the appellate courts, not the commission. However, because the consequences of Plunk's actions in this instance were so egregious and because of the admitted relationship among the key players — Plunk, Walton, and Peterson — the commission concluded that Plunk's actions constituted a willful violation of Canon 2B of the Texas Code of Judicial Conduct.

In addition, the commission acknowledged that in any legal community, rela-

tionships exist between judges and attorneys. However, no matter how widely known the relationship may be, there remains an ethical responsibility owed by the judge to publicly disclose the nature and extent of this relationship so that all litigants and attorneys are able to make informed decisions about whether the judge is capable of fairly and impartially deciding their cases. It is not enough that judges act fairly and impartially, they must also appear to act fairly and impartially in order to maintain and enhance public confidence in the judiciary. Despite statements from numerous witnesses who observed the incident in question and assured the commission that Plunk's tone was courteous and patient, the fact remains that Plunk's statements about sanctioning the movant's attorney,

made in open court, were perceived as a threat and confirmed to the out-of-town lawyer that Walton was in a special position to influence Plunk. That kind of threat, when combined with the close relationship with Walton, demonstrated a lack of patience, courtesy, and the dignity required of a judicial officer, in violation of Canon 3B(4) of the Texas Code of Judicial Conduct. In condemning Plunk's conduct toward Gregory, the commission reminded judges of the historic role that the judiciary has played in mentoring lawyers in order to foster the continually high ethical standards of the legal profession. In this regard, Plunk's conduct has undermined that goal, as well as the public's confidence in the integrity, impartiality, and independence of the Texas judiciary.



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