



**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.

## BODA ACTIONS

On March 23, the Board of Disciplinary Appeals issued an opinion and order conditionally granting the petitioner's writ of mandamus. The petitioner asked the Board to vacate two orders of an evidentiary panel arising from his evidentiary panel proceeding. The first order, an order compelling the petitioner to produce all his trust account records for a period of six years, was found by the Board to be overbroad and an abuse of discretion. The Board denied relief on the petitioner's request to vacate the sec-

ond order, an order denying the petitioner's motion to strike the Commission for Lawyer Discipline's amended petition.

Because this matter is a confidential proceeding before an evidentiary panel in accordance with Texas Rule for Disciplinary Procedure 2.16, no identifying information will be reported. A copy of the opinion and order is available on BODA's web site: [www.txboda.org](http://www.txboda.org).

mishandling of a small claims case.

Pursuant to the order, Judge Torres must obtain six hours of instruction with a mentor in addition to his required judicial education. In particular, the Commission directs that Judge Torres receive instruction in the areas of small claims suits and related provisions in the Texas Government Code and the Texas Rules of Civil Procedure. Judge Torres shall complete the instruction within 60 days from the date of written notification of the assignment of a mentor. Upon the completion of the instruction, Judge Torres shall sign and return the Respondent Judge Survey indicating compliance with the order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

## JUDICIAL ACTIONS

On March 9, the State Commission on Judicial Conduct issued a public warning to Judge Tony Torres, justice of the peace for Precinct 2, Place 2, in Brownsville, and ordered him to additional education. The Commission concludes that Judge Torres failed to follow the law and failed to maintain professional competence in the law, in violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, when he (a) failed to provide notice to the plaintiff or hold a hearing before ruling on the defendant's attorney's untimely motion to set aside default judgment; (b) failed to expressly grant or deny defendant's attorney's motion to set aside default judgment, but instead simply set the case for trial "as if a new trial had been granted"; (c) failed to review the case file prior to conducting the July 23, 2007, trial in the case; (d) conducted the July 23, 2007, trial in the case after the court had lost jurisdiction over the matter; (e) entered a second judgment in the case after the default judgment in favor of the plaintiff became final; and (f) prevented the plaintiff from testifying about the car wreck or the damage to her vehicle. In reaching this decision, the Commission has also taken into account that Judge Torres has received two prior public sanctions, one that involved similar

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STATEWIDE REPRESENTATION

On March 9, 2009, the State Commission on Judicial Conduct issued a public warning to Judge **Gustavo Garza** [#07731700], 55, justice of the peace, Precinct 6, Place 1, in Los Fresnos. The Commission concludes that Judge Garza willfully and/or persistently failed to follow the law, in violation of Canon 2A of the Texas Code of Judicial Conduct, by (a) proceeding against students and their parents under the same case number even when the parents were charged separately for a different offense; (b) requiring parents to discharge the fine assessed against the students in the failure to attend cases; (c) failing to inquire into the students' or their parents' ability to pay a fine or to provide them with the options of a payment plan, performing community service in satisfaction of a fine or court costs, or waiving the fine or costs after a determination of indigency; (d) failing to properly document or issue



a written judgment or order of probation or deferred disposition, including conditions for compliance, in the students' cases; (e) failing to properly document or issue a written judgment or order assessing a fine, court costs, or special fee in the students' cases; (f) failing to document or issue a written order of probation or deferred disposition, including conditions for compliance, in any case filed against the parents; (g) failing to properly document or issue a written judgment or order assessing a fine, court costs, or special fee in any case filed against the parents; (h) requiring the students and their parents to return to court after the parents had discharged the fine through paddling; (i) requiring the students and their parents to return to court more than 180 days beyond the date of their first appearance in court and/or beyond the end of the school year that the court order was entered; (j) holding a student in contempt of court without providing evidence of the violation of a written order or judgment of the court; (k) holding a student in contempt of court without affording her adequate due process, including the right to be represented by counsel; and (l) ordering the confinement of a student, who was 16 years old when charged with the offense of failure to attend school, for contempt of an unwritten court order.

In reaching this conclusion, the Commission notes that Judge Garza's position that he never ordered the corporal punishment of students charged with failure to attend school could not be reconciled with his assertion that he had the legal authority to permit corporal punishment as a "reasonable condition" of probation under Article 45.051 of the Texas Code of Criminal Procedure. Further, the Commission concludes that Judge Garza exceeded his authority by providing parents and the school district with a "safe haven" for the administration of corporal punishment. While acknowledging that the Legislature had not provided the courts with any legal authority to impose corporal punishment as a sanction under

the Texas Education Code or the Texas Code of Criminal Procedure, Judge Garza routinely facilitated and permitted the paddling of juveniles in his courtroom thereby clothing the practice with an improper judicial blessing. This court-sanctioned paddling, which subjected the students and their parents to public embarrassment, humiliation, fear, and pain, failed to maintain proper order and decorum in the courtroom as required by Canon 3B(3) of the Texas Code of Judicial Conduct.

## DISBARMENTS

On Nov. 24, 2008, **Gary J. Derer** [#05770100], 66, of Plano, was disbarred. An evidentiary panel of the District 6-A Grievance Committee found that on Sept. 26, 2005, Derer received \$277,032.18 from the complainant. Derer advised the complainant in writing that he would hold the funds in an account reserved for "client trust fund monies." However, Derer did not place the funds in a client trust account. Subsequently, Derer withdrew legal fees from the funds he was holding for the complainant without the complainant's knowledge or consent. On multiple occasions, the complainant requested an accounting, but Derer failed to render a prompt accounting of the funds.

Derer violated Rules 1.14(a) and (b) and 8.04(a)(3). He was ordered to pay \$4,052.30 in attorney's fees and costs and \$20,000 in restitution.

## SUSPENSIONS

On Dec. 31, 2008, **Hoagie L. Karels** [#11098600], 50, of Marlin, received a five-year, partially probated suspension effective Oct. 7, 2008, with the first three months actively served and the remainder probated. An evidentiary panel of the District 8-B Grievance Committee found that in one matter, Karels failed to furnish a response to the Office of the Chief Disciplinary Counsel. In a second matter, Karels failed to communicate either the total amount of

his fee as a flat fee or the basis or rate of his fee as an hourly fee and induced the client to convey her share in real property to him as further legal fees without communicating the dollar amount of his fee. Karels failed to convey a plea offer from a prosecutor and failed to furnish a response to the Office of the Chief Disciplinary Counsel.

Karels violated Rules 1.02(a), 1.03(b), 1.04(c), and 8.04(a)(8). He was ordered to pay \$17,349.95 in attorney's fees.

On Jan. 29, **Monica Ann Capuano** [#00796302], 42, of Austin, received a three-year, partially probated suspension effective Jan. 23, with the first year actively served and the remainder probated. An evidentiary panel of the District 9-A Grievance Committee found that in a civil matter involving the draft-

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ing of a will, Capuano failed to draft the will, failed to keep the client reasonably informed about the status of the case, failed to refund any unearned fee, and engaged in legal work while administratively suspended from the practice of law. The panel further found that in a bankruptcy matter, Capuano engaged in legal work while administratively suspended from the practice of law.

Capuano violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8) and (a)(11). She was ordered to pay \$2,227.25 in attorney's fees and \$7,200 in restitution.

On Feb. 17, **Frederick D. Kelly** [#11218600], 49, of Houston, accepted a one and a half-year, fully probated suspension effective March 1. The District 4-E Grievance Committee found that

Kelly failed to hold funds belonging in part to a client separate from his own property and failed to properly account to the client for funds that the client was entitled to receive.

Kelly violated Rules 1.14(a) and (b). He agreed to pay \$783.20 in attorney's fees and costs.

On Feb. 19, **Steven D. Grossman** [#08547800], 51, of Houston, accepted a two-year, fully probated suspension, effective Feb. 15. An evidentiary panel of the District 4-A Grievance Committee found that Grossman, in two matters, neglected legal matters entrusted to him and failed to keep his clients reasonably informed about the status of their cases. Grossman also failed to timely furnish to the Chief Disciplinary Counsel's office responses to his clients' grievances as required by the Texas Rules of Disciplinary Procedure.

Grossman violated Rules 1.01(b)(1), 1.03(a), and 8.04(a)(8). He was ordered to pay \$3,999.35 in attorney's fees and expenses and \$740.75 in restitution.

On Feb. 7, **Thomas A. Willbern III** [#21507700], 57, of Houston, accepted a six-month, fully probated suspension effective March 1. An evidentiary panel of the District 4-D Grievance Committee found that, in the first matter, Willbern neglected the legal matter entrusted to him and frequently failed to carry out completely the obligations owed to the client. In the second matter, Willbern neglected the legal matter entrusted to him and failed to timely furnish to the Chief Disciplinary Counsel's office a response. In the final matter, Willbern neglected the legal matter entrusted to him, and, upon termination of representation, failed to surrender papers and property that the client was entitled to receive. He failed to refund advance payment of fees that had not been earned.

Willbern violated Rules 1.01(b)(1) and (b)(2), 1.15(d), and 8.04(a)(8). He agreed to pay \$3,318.95 in attorney's fees and costs and \$1,000 in restitution.

On Dec. 2, 2008, **O. Wayne Crocker** [#05087500], 61, of San Antonio, received a five-year, partially probated suspension effective Jan. 1, with the first three years actively served and the remainder probated. The District 10-A Grievance Committee found that in representing a client on a homeowner's insurance claim, Crocker failed to explain the basis for his fee, converted the client's insurance proceeds, failed to maintain client funds in a trust account, failed to provide an accounting, failed to deliver funds owed to the client, and failed to respond to the grievance. In a criminal law representation, Crocker misrepresented facts regarding the use of client funds, failed to account for client funds, and failed to respond to the grievance. In a third matter, Crocker failed to appear for trial and failed to return unearned fees. Crocker has filed a notice of appeal.

Crocker violated Rules 1.01(b)(1); 1.03(a); 1.04(c); 1.14(a), (b), and (c); 1.15(d); and 8.04(a)(3) and (a)(8). He was ordered to pay \$11,078.92 in attorney's fees and expenses and \$160,647.96 in restitution.

On Jan. 20, **Bryan H. Hutson** [#00795441], 40, of Magnolia, received a two-year, fully active suspension effective Jan. 15. An evidentiary panel of the District 4-A Grievance Committee found that on March 3, 2006, a client retained Hutson to represent her son in a child visitation matter. The client paid a retainer fee in the amount of \$500 to handle the case. The client made several attempts to check the status of the case. Hutson failed to comply with these requests for information and failed to perform any meaningful legal services on behalf of the client. Hutson failed to return the unearned fees. Hutson failed to respond to the grievance. In a second case, Hutson accepted representation of a client in a divorce case. He was paid \$1,000. After an attempted reconciliation, the client instructed Hutson to proceed with the divorce. Thereafter,

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Hutson failed to provide any meaningful legal services on behalf of the client and failed to return an unearned fee. Hutson also failed to respond to the grievance.

Hutson violated Rules 1.01(b)(1) and (b)(2), 1.03(a), 1.15(d), and 8.04(a)(8). He was ordered to pay \$1,495 in attorney's fees and costs and \$1,500 in restitution.

On Jan. 29, **John C. Lagrappe** [#11819580], 43, of Houston, accepted a two-year, fully probated suspension effective Nov. 1. The 129th District Court of Harris County found that Lagrappe neglected his client's case, frequently failed to carry out completely the obligations owed to his client, failed to abide by the client's decisions concerning the objectives and general methods of representation, and failed to keep the client reasonably informed about the status of his legal matter.

Lagrappe violated Rules 1.01(b)(1) and (b)(2), 1.02(a)(1), and 1.03(a). He agreed to pay \$843.73 in attorney's fees and costs and \$5,700 in restitution.

On Feb. 24, **Elaine Watson** [#20945900], 53, of Wimberley, agreed to a two-year, partially probated suspension effective Feb. 1, with the first 30 days actively served and the remainder probated. The District 15-C Grievance Committee found Watson neglected a legal matter entrusted to her, failed to keep her client reasonably informed, and failed to provide a full accounting upon request by the client. In addition, Watson failed to advise her client in writing of a prior suspension and did not timely furnish a grievance response to the Chief Disciplinary Counsel's office.

Watson violated Rules 1.01(b)(1), 1.03(a), 1.14(b), and 8.04(a)(7) and (a)(8). She was ordered to pay \$750 in attorney's fees and expenses.

On Feb. 25, **Luciano Maldonado** [#12855250], 57, of Houston, accepted a three-year, fully probated suspension effective March 15. An evidentiary panel of the District 4-A Grievance Commit-

tee found that Maldonado neglected a legal matter entrusted to him, frequently failed to carry out completely the obligations owed to his client, failed to keep the client reasonably informed about the status of his legal matter, and, upon termination of representation, failed to refund fees that had not been earned. Maldonado engaged in the practice of law when his right to practice had been administratively suspended.

Maldonado violated Rules 1.01(b)(1) and (b)(2), 1.03(a), 1.15(d), and 8.04(a)(11). He agreed to pay \$500 in attorney's fees and costs.

On Dec. 12, 2008, **Weldon W. Brady** [#02853000], 70, of Fort Worth, received a one and a half-year, fully probated suspension effective Dec. 15, 2008. On May 9, 2007, Brady's client borrowed money from Complainant Law Cash in advance of the client's personal injury settlement. The personal injury matter later settled. On Aug. 9, 2007, Brady remitted a check to Law Cash written on his IOLTA trust account in repayment of the funds loaned to his client. Thereafter, Brady's check was returned by the bank due to insufficient funds.

Brady violated Rules 1.14(a) and (b). He was ordered to pay \$1,300 in attorney's fees.

On Feb. 18, **Lori D. Mack** [#24004786], 43, of Houston, accepted a one-year, fully probated suspension effective Dec. 15, 2010. An evidentiary panel of the District 4-A Grievance Committee found that Mack failed to keep her client reasonably informed about the status of his legal matter and, upon termination of representation, failed to refund an advanced payment of fees that had not been earned.

Mack violated Rules 1.03(a) and 1.15(d). She agreed to pay \$600 in attorney's fees and costs and \$205 in restitution.

On March 3, **Sean F. O'Neill** [#15288150], 53, of San Antonio,

accepted a two-year, probated suspension effective March 1. The District 12-B Grievance Committee found that in connection with funds withheld to pay health care providers in personal injury cases, O'Neill failed to notify the providers of the receipt of settlement funds timely, failed to pay the sums withheld to the providers timely, failed to maintain the funds in trust, and commingled the withheld funds with his own funds.

O'Neill violated Rules 1.14(a), (b), and (c). He was ordered to pay \$2,000 in attorney's fees and expenses.

On March 5, **Charles R. Herbeck** [#09500000], 69, of Texas City, accepted a one-year, fully probated suspension effective Feb. 23. The District 11-A Grievance Committee found Herbeck revealed

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confidential information of a client, neglected his client's representation, and counseled a witness to testify falsely.

Herbeck violated Rules 1.01(b)(2), 1.05(b), and 3.04(b). He was ordered to pay \$750 in attorney's fees and expenses.

On March 5, **Ben B. Boothe, Jr.** [#24006871], 38, of Fort Worth, accepted a six-year, partially probated suspension effective March 15, with the first two and a half years actively served and the remainder probated. The 48th District Court found that Boothe, in connection with his representation of eight clients, neglected the legal matters, frequently failed to carry out completely the obligations owed to the clients, failed to keep the clients informed about the status of their matters, failed to respond to the clients' reasonable requests for

information, and failed to respond to the grievances filed against him.

Boothe violated Rules 1.01(b)(1) and (b)(2), 1.03(a), and 8.04(a)(8). He was ordered to pay \$10,470 in attorney's fees and costs and \$800 in restitution.

On Feb. 8, **Neal Y. Pickett** [#15981000], 70, of Houston, received a five-year, partially probated suspension, effective April 1, with the first three years actively served and the remainder probated. The District 4-B Grievance Committee found that Pickett was hired for representation in a personal injury matter. During the course of the representation, Pickett was suspended from the practice of law pursuant to a disciplinary judgment, but continued to represent his client and further failed to inform his client of his suspension.

Pickett violated Rules 1.03(a) and 8.04(a)(7). He was ordered to pay costs in the amount of \$426.

## REPRIMANDS

On Jan. 16, **T.W. Schueller** [#17823200], 60, of Wichita Falls, received a public reprimand. An evidentiary panel of the District 14-A Grievance Committee found that Schueller made false representations to the complainant during a phone call on June 14, 2007, where he stated that he was co-counsel in a criminal case with the defendant's court-appointed counsel and that he was calling with the approval of court-appointed counsel.

Schueller violated Rule 8.04(a)(3). He was ordered to pay \$3,515.25 in attorney's fees and costs.

On Jan. 22, **David Turner Duncan, Jr.** [#06211100], 50, of Austin, received a public reprimand. An evidentiary panel of the District 9-A Grievance Committee found that in a civil matter, Duncan failed to send letters as requested, failed to respond to requests for information, failed to provide an accounting for his fees, and failed to timely refund unearned fees. The committee further

found that in a family law matter, Duncan failed to reduce a judgment to writing and no written judgment was filed with the court.

Duncan violated Rules 1.01(b)(1), 1.03(a), 1.14(b), 1.15(d), and 8.04(a)(1). He was ordered to pay \$967.55 in attorney's fees.

On Feb. 11, **Thomas B. Greene III** [#08395500], 60, of Houston, accepted a public reprimand. The District 4-F Grievance Committee found that Greene was hired for representation in a bankruptcy matter. Greene thereafter filed a petition on behalf of his client, but failed to pay the required filing fees. Greene received notice of the oversight from the court, but still failed to pay. As a result, the case was dismissed. Greene filed a new petition, but again failed to pay the filing fee and again failed to correct the oversight. As a result of Greene's errors, the second case was also dismissed. Furthermore, during the course of the representation, Greene was administratively suspended from the practice of law for non-compliance with the Minimum Continuing Legal Education requirements.

Greene violated Rules 1.01(b)(1) and 8.04(a)(11). He was ordered to pay \$587.70 in attorney's fees and costs.

On Feb. 23, **William E. Trantham** [#20187000], 65, of Denton, accepted a public reprimand. In March 2005, Trantham represented the complainant in a divorce. The divorce was finalized in November 2005. Thereafter, Trantham represented the complainant's ex-husband in a matter against the complainant involving a modification of the prior divorce decree. The ex-husband's interests in the matter were materially and directly adverse to the interests of the complainant, Trantham's former client. The complainant did not consent to the representation or waive the conflict of interest.

Trantham violated Rules 1.09(a)(2) and (a)(3). He was ordered to pay \$2,492.50 in attorney's fees. ☐

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