

**IN THE SUPREME COURT OF TEXAS**

Misc. Docket No. 04- **9123**

**ORDER REVOKING PROBATIONARY LICENSE**

**ORDERED:**

The probationary license issued to KEVIN K. O'BRIEN is revoked, pursuant to the recommendation contained in the attached Order of the Board of Law Examiners. Kevin K. O'Brien must surrender his State Bar Card and Texas law license to the Clerk of the Supreme Court immediately; or, file an affidavit with the Court stating why he cannot.

Consequently, Kevin K. O'Brien is prohibited from the practice of law in the State of Texas. This includes holding himself out as an attorney at law, performing legal services for others, giving legal advice to others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any Texas administrative body (whether state, county, municipal, or other), or holding himself out to others or using his name in any manner in conjunction with the designation "Attorney at Law," "Counsel at Law," or "Lawyer."

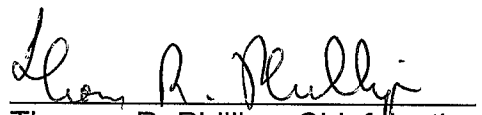
Additionally, Kevin K. O'Brien must provide immediate, written notification of the revocation to each of his clients. He shall return any files, papers, unearned monies, and other property in his possession belonging to any client or former client to the client or former client or to another attorney at the client's or former client's request. Kevin K. O'Brien shall file with the State Bar of Texas,

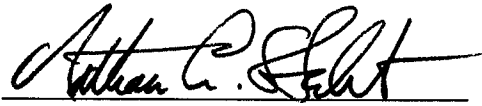
Office of the Chief Disciplinary Counsel, Post Office Box 12487, Austin, Texas 78711-2487, within thirty (30) days after the date of this Order, an affidavit stating that all current clients have been notified of the revocation of his license and that all files, papers, monies, and other property belonging to all clients and former clients have been returned.

Finally, Kevin K. O'Brien shall, within thirty (30) days after the date of this Order, provide written notice of the terms of this Order to each justice of the peace, judge, magistrate, and chief justice of each court in which he has any pending matter and shall therein identify the style and cause number of the pending matter with the name, address, and telephone numbers of each client he represents in each court. Kevin K. O'Brien shall file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, Post Office Box 12487, Austin, Texas 78711-2487, within thirty (30) days after the date of this Order, an affidavit stating that he has provided written notice to each justice of the peace, judge, magistrate, and chief justice of each court in which he has any pending matter the style and cause number of the pending matter with the name, address, and telephone numbers of each client he represents in each court.

This Order shall be effective immediately.

SIGNED on this 14<sup>th</sup> day of June, 2004

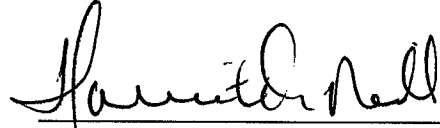
  
Thomas R. Phillips, Chief Justice



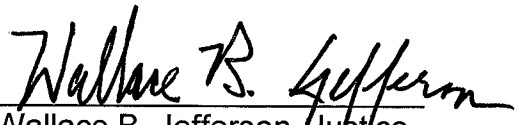
Nathan L. Hecht, Justice



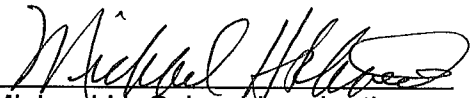
Priscilla R. Owen, Justice



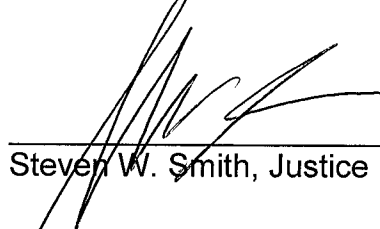
Harriet O'Neill, Justice



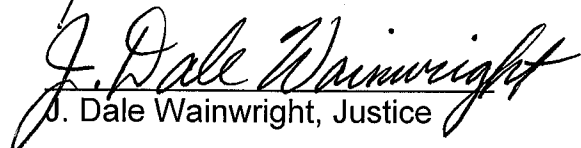
Wallace B. Jefferson, Justice



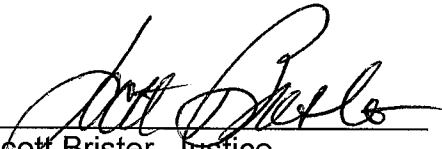
Michael H. Schneider, Justice



Steven W. Smith, Justice



J. Dale Wainwright, Justice



Scott Brister, Justice

BOARD OF LAW EXAMINERS

IN THE MATTER OF

) (

CAUSE NO. 01-04-06

KEVIN K. O'BRIEN

) (

AUSTIN, TEXAS

ORDER

On March 5, 2004, a three-member panel of the Board of Law Examiners ("Board"), with Dan Pozza presiding, heard the matter of Kevin K. O'Brien. Bruce Wyatt, Staff Attorney, represented the Board. Mr. O'Brien failed to appear. The Board considered, among other things, whether Mr. O'Brien possesses the present good moral character required for admission to the practice of law in Texas.

I.

PROCEDURAL HISTORY

On August 22, 2003, Mr. O'Brien appeared in a hearing before the Board. Following that hearing, the Board recommended Mr. O'Brien for a probationary license, subject to conditions set forth in an order signed September 2, 2003. It now appears, however, that Mr. O'Brien has failed to comply with one or more of the conditions of his probationary license.

On December 9, 2003, the Board sent Mr. O'Brien proper and timely notice of a January 8, 2004 hearing. Mr. O'Brien asked for a continuance that was granted. On February 2, 2004, the Board sent Mr. O'Brien proper and timely notice of this hearing. The notice letter stated that the general issues to be considered at the hearing were: 1) whether Mr. O'Brien has failed to comply with one or more of the conditions of his probationary license, 2) if so, whether such failure indicates that he lacks the good moral character required for admission, and 3) if so, whether the Board should recommend that his probationary license be revoked.

II.

JURISDICTION

The Board has jurisdiction over this matter pursuant to V.T.C.A., Government Code, Sections 82.004, 82.022, 82.028, and 82.030 as well as Rules II, IV, IX, X, XV, XVI, and XX of the Rules Governing Admission to the Bar of Texas, adopted by the Supreme Court of Texas, including amendments.

### III.

#### FINDINGS OF FACT

After considering the evidence and testimony, the Board finds:

1. On or about February 2, 2004, the board gave Mr. O'Brien proper and timely notice, by certified mail return receipt requested and first class mail, of a March 5, 2004 hearing (B.E.10 at 1).
2. Condition 1 of Mr. O'Brien's probationary license requires, among other things, that he timely comply with all requests from the Board for information or documentation (B.E.1 at 4).
3. Mr. O'Brien has failed to comply with condition 1 of his probationary license as evidenced by his failure to timely comply with requests from the Board for information or documentation on at least five occasions (B.E.5, 6, 7, 8, and 10).
4. The fact that Mr. O'Brien failed to comply with condition 1 of his probationary license is indicative of a lack of trustworthiness in carrying out responsibilities.
5. Condition 4 of Mr. O'Brien's probationary license requires, among other things, that he file a periodic questionnaire by specified dates (B.E.1 at 4).
6. Mr. O'Brien has failed to comply with condition 4 of his probationary license as evidenced by his ongoing failure to file his first periodic questionnaire that was due December 1, 2003 (B.E.7, 8, 10, and 11).
7. The fact that Mr. O'Brien failed to comply with condition 4 of his probationary license is indicative of a lack of trustworthiness in carrying out responsibilities.
8. Condition 9 of Mr. O'Brien's probationary license requires, among other things, that he inform the Board with in 10 days of any change in his home or work addresses (B.E.1 at 5).
9. Mr. O'Brien has failed to comply with condition 9 of his probationary license as evidenced by his failure to inform the board within 10 days of any change in his home or work addresses (B.E.7).
10. The fact that Mr. O'Brien failed to comply with condition 9 of his probationary license is indicative of a lack of trustworthiness in carrying out responsibilities.
11. Mr. O'Brien's probationary license may be revoked at any time upon the recommendation of the Board if, after notice and a hearing, it is determined that he has violated any condition of the license (B.E.1 at 5).

### V.

#### CONCLUSIONS OF LAW

1. There is a clear and rational connection between Mr. O'Brien's lack of trustworthiness in carrying out responsibilities, as evidenced by his failure to comply with condition 1 of his probationary license, as found herein, and the likelihood that he would harm a client, obstruct the administration of justice, or violate the Texas Disciplinary Rules of Professional Conduct if the Board were not to recommend revocation of his probationary license at this time.

2. There is a clear and rational connection between Mr. O'Brien's lack of trustworthiness in carrying out responsibilities, as evidenced by his failure to comply with condition 4 of his probationary license, as found herein, and the likelihood that he would harm a client, obstruct the administration of justice, or violate the Texas Disciplinary Rules of Professional Conduct if the Board were not to recommend revocation of his probationary license at this time.
3. There is a clear and rational connection between Mr. O'Brien's lack of trustworthiness in carrying out responsibilities, as evidenced by his failure to comply with condition 9 of his probationary license, as found herein, and the likelihood that he would harm a client, obstruct the administration of justice, or violate the Texas Disciplinary Rules of Professional Conduct if the Board were not to recommend revocation of his probationary license at this time.
4. Mr. O'Brien's failure to comply with one or more of the conditions of his probationary license is indicative of a lack of the good moral character required for admission.

IT IS THEREFORE ADJUDGED, ORDERED AND DECREED that Mr. O'Brien has failed to comply with one or more of the conditions of his probationary license, that his failure to comply with one or more of the conditions of his probationary license indicates that he lacks the present good moral character required for admission, and that the Board recommend to the Supreme Court of Texas that his probationary license be revoked.

IT IS FURTHER ORDERED that Mr. O'Brien may petition the Board for a redetermination of his character and fitness following a period of one year from the date of the Supreme Court's revocation of his probationary license as amended, and that any such petition for redetermination shall be accompanied by the re-application and supplemental investigation forms then in effect and all appropriate fees.

IT IS FURTHER ORDERED that, upon Mr. O'Brien's proper and timely filing of any future petition for redetermination, the Board's determination as to his character and fitness at that time shall include an investigation as to whether he has complied with the following curative measures.

V.

CURATIVE MEASURES


1. Mr. O'Brien shall commit no offense against the laws of this state, any other state, or the United States.
2. Mr. O'Brien shall conduct himself in such a way so as to avoid, and not be subject to disciplinary action for, the breach of any regulation, rule, or statute governing any profession in which he may be engaged.
3. Mr. O'Brien shall not engage in any conduct that evidences a lack of good moral character or fitness.
4. Mr. O'Brien shall provide a detailed explanation of his failure to appear for his March 5,

2004 hearing before the Board, with his petition for redetermination, if any.

IT IS FURTHER ORDERED that in the event Mr. O'Brien submits a re-application and petition for redetermination, the burden of proof shall be on him to present evidence addressing not only any character or fitness issues covered in this Order, but also any new character or fitness issues that arise out of the Board's investigation of that documentation.

IT IS FURTHER ORDERED that Mr. O'Brien must re-take and pass the Texas Bar Examination in accord with Rule XVI(i) in order to be re-licensed in the future.

SIGNED this 14 day of March 2004.

  
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Dan Pozza, Presiding Chair