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Texas Bar No. 24034380

February 6, 2016

Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 13287
Austin, Texas 78711

Via electronic submission

Re: Warren Kenneth Paxton, Jr.; SBOT #15649200

To Whom It May Concern:

On or about August 1, 2014, Erica Gammill filed a grievance with the Office of Chief Disciplinary Counsel ("OCDC") concerning Warren Kenneth Paxton, Jr. (misabeled "Kenneth Warren Paxton, Jr."), SBOT #15649200. A copy of that complaint is attached as Exhibit 1 (its internal exhibits are marked alphabetically, while the exhibits to this letter are marked numerically). I incorporate Ms. Gammill's grievance and its exhibits by reference.

In her grievance, Ms. Gammill noted that Mr. Paxton admitted in writing and under oath that he had solicited investment clients without being registered as an investment advisor. State law classifies solicitation by an unregistered investment advisor as a third-degree felony. Notwithstanding Mr. Paxton's admission of felony misconduct, OCDC dismissed Ms. Gammill's grievance.

On or about July 28, 2015, after Ms. Gammill's grievance was dismissed, a Collin County Grand Jury indicted Mr. Paxton for soliciting a client without being registered as an investment advisor. *See* Exhibit 2. The grand jury further indicted Mr. Paxton for securities fraud. *Id.* I have attached a copy of my March 6, 2015 letter to the grand jury, *see* Exhibit 3, and I incorporate it herein by reference.

As that letter explains, Mr. Paxton repeatedly violated a statute that he voted for as a legislator, and even after he was sued for violating the statute. In other words, Mr. Paxton's violations appear to be deliberate. In light of the grand jury indictment, and the presiding judge's refusal to dismiss the indictment, it is quite evident that the OCDC should not have dismissed Ms. Gammill's grievance. The 2012 incident named in the indictment occurred less than four years ago, therefore limitations is no obstacle to bringing a disciplinary proceeding. Moreover, the standard of proof for a state bar proceeding is far lower than that for a criminal proceeding. If the grand jury

concluded that there is sufficient evidence to bring a criminal charge, OCDC cannot plausibly claim that it has no basis for opening an investigation.

I request that OCDC initiate disciplinary proceedings against Mr. Paxton for all of the violations alleged in the attached indictments, including the allegations of securities fraud.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger

Exhibit 1

Kenneth Warren Paxton, Jr.
Grievance Narrative

Complainant Erica Gammill submits this Grievance Narrative in support of her Complaint against Kenneth Warren Paxton, Jr. (Texas Bar Card No. 15649200).

I. Introduction

Mr. Paxton has committed multiple violations of the Texas Disciplinary Rules of Conduct over the course of the last decade—including Rules 1.06, 1.08(a), 8.04(a)(2), and 8.04(a)(3). He has engaged in several acts of Professional Misconduct that require an appropriately serious disciplinary sanction, potentially including disbarment.

In sum, Mr. Paxton violated Disciplinary Rule 1.06(b)(2), by representing a client when that representation reasonably appeared to be adversely limited by his own financial interests and by his obligations to a third person; Rule 1.08(a), by entering into a business transaction with a client without fully informing the client of the terms of the transaction and obtaining consent; Rule 8.04(a)(2), by committing a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects; and Rule 8.04(a)(3), by engaging in conduct involving deceit, dishonesty, fraud, or misrepresentation.

Factual Background

Mr. Paxton is a lawyer licensed to practice law in Texas.¹ He represented Teri Goettsche and referred her and her husband to an investment manager who paid him a secret kickback, which he hid from the Goettsches.

In 2006, Teri Goettsche hired Mr. Paxton to represent her to prepare a post-nuptial agreement between herself and her husband, David Goettsche. During the course of this representation, Mr. Paxton encouraged Ms. Goettsche to hire Frederick Mowery (“Mowery”) and Mowery Capital Management, LLC (“MCM”) to manage her financial investments. Ms. Goettsche subsequently entered into an Investment Advisory Agreement with Mowery and MCM, under which MCM managed the stock, bond, and mutual fund investments of Ms. Goettsche. Upon Mr. Paxton’s recommendation, approximately a year later David Goettsche also entered into an Investment Advisory Agreement with MCM and Mowery.

¹ According to the State Bar website, Mr. Paxton was licensed on November 1, 1991. Mr. Paxton also happens to be the Republican nominee for Attorney General. I assume that that status is irrelevant to a fair, impartial evaluation of this grievance by the Office of Chief Disciplinary Counsel (OCDC). All lawyers, famous or infamous, must comply with the Disciplinary Rules. It should also be noted that the OCDC filed a disciplinary petition against another current candidate for Attorney General, Jamie Balagia, the Libertarian Party nominee.

<http://www.expressnews.com/news/local/article/AG-candidate-DWI-Dude-sued-by-State-Bar-5514689.php>. See Exhibit A (Commission for Lawyer Discipline disciplinary petition against Jamie Balagia). Political affiliation also must be irrelevant to the OCDC’s classification and just-cause decisions. For the OCDC to pursue discipline against the Libertarian nominee for Attorney General during the election season, but fail to pursue these obvious violations by the Republican nominee clearly would undermine public trust and confidence in the lawyer-discipline system. The same would be true of any Democratic nominee or the nominee of any other political party. Discipline must be nonpartisan and blind to party affiliation and political status. Moreover, members of both political parties have pointed out Mr. Paxton’s misconduct. See Exhibit B (Dan Branch for Attorney General press release); Exhibit C (Barry Smitherman for Attorney General advertisement, available at <https://www.youtube.com/watch?v=qL0fimGKJpE&feature=youtu.be&noredirect=1>); Exhibit D (Dan Branch for Attorney General advertisement, available at <https://www.youtube.com/watch?v=3MvqaEihwL8>).

At the time that Mr. Paxton solicited his client, Teri Goettsche, to retain Mowery and MCM, he was secretly acting as a paid investment advisor representative for MCM. At the time, both Mr. Paxton and Mowery concealed that relationship and fee arrangement from the Goettsches. As an investment adviser representative, Mr. Paxton received 30 percent of MCM's quarterly investment management fee for referring Ms. Goettsche (and later Mr. Goettsche) to MCM.

Mowery did not disclose the commission arrangement with Mr. Paxton to the Goettsches until approximately July 2006, over two and a half years after Mr. Paxton first steered the Goettsches to MCM.² Mr. Paxton never disclosed the relationship or his fee arrangement with MCM. He dishonestly concealed his MCM fee-kickback from his client.

In July 2009, the Goettsches sued Mr. Paxton for breach of fiduciary duty and breach of duty of loyalty. The Goettsches' Original Petition and Request for Disclosure is attached hereto

² Attached hereto as Exhibit E is a copy of the July 2006 letter from Mowery to the Goettsches informing them that "Ken Paxton has acted as a solicitor and will receive a certain portion of those management fees." Note that some of the acts described in this grievance occurred several years ago, and other acts are very recent. However, Complainant did not learn of Mr. Paxton's misconduct until those acts became public during the 2014 Republican primary. During that process, Mr. Paxton's opponents, State Representative Dan Branch and Barry Smitherman, publicly disclosed that Mr. Paxton had engaged in criminal misconduct. See Exhibit B (Dan Branch for Attorney General press release); Exhibit C (Barry Smitherman for Attorney General advertisement, available at <https://www.youtube.com/watch?v=qL0fimGKJpE&feature=youtu.be&noredirect=1>); Exhibit D (Dan Branch for Attorney General advertisement, available at <https://www.youtube.com/watch?v=3MvqaEihwL8>). Because Complainant learned of those acts only recently, under Texas Rule of Disciplinary Procedure 15.06D, the general four-year limitations provision does not bar any of these charges. As Rule 15.06D states, "[w]here fraud or concealment is involved, the time periods stated in this rule do not begin to run until the Complainant discovered, or in the exercise of reasonable diligence should have discovered, the Professional Misconduct."

as Exhibit F.³ The Petition outlines how Mr. Paxton concealed his financial relationship with MCM with the Goettsches, and therefore never obtained consent from Ms. Goettsche as her attorney to enter into this financial transaction with her.⁴

The Paxton-Mowery scheme severely damaged the Goettsches. At Mowery's suggestion, the Goettsches heavily invested in real estate development and heavy construction equipment purchasing ventures with a company operated and owned in part by James H. "Jim" Moore, III. But Mowery concealed from the Goettsches that he owned a significant percentage of Moore's company and that Moore owed creditors more than \$33 million. In addition, despite Mowery's assurances that their investment funds were being deposited into a limited liability company (or another business entity with liability protection), Mowery invested the Goettsches' funds into general partnerships and joint ventures that he created, making the Goettsches personally liable for the agreements and promissory notes that Mowery then entered into. As a consequence of Mr. Paxton's and Mowery's misrepresentations and concealment of the truth, the Goettsches suffered serious financial losses.

Mr. Paxton acted as an investment adviser representative for MCM. Section 12.B of the Texas Securities Act therefore required Mr. Paxton to register with the Texas Securities Board before he referred the Goettsches (or anyone else) to MCM.⁵ In flagrant violation of his legal duty, Mr. Paxton failed to register and to make that public disclosure as an investment adviser

³ The Petition also alleges causes of action against Mowery and MCM for common law fraud, negligent misrepresentation, breach of fiduciary duty, and breach of duty of loyalty.

⁴ Exhibit F at 4.

⁵ Tex. Rev. Civ. Stat. Ann. art. 581-12.B ("A person may not act or render services as an investment adviser representative for a certain investment adviser in this state unless the person is registered or submits a notice filing as an investment adviser representative for that particular investment adviser as provided in Section 18 or 12-1 of this Act.") (emphasis added). A copy of that statute is attached as Exhibit G.

representative for MCM. He concealed his commission-based affiliation with MCM and his direct financial interest in his referrals of clients to MCM. By failing to register as required by the Texas Securities Act, Mr. Paxton committed a third degree felony under Section 29.I of the Texas Securities Act. Section 29.I provides:

Penal Provisions. Any person who shall: . . . I. Render services as an investment adviser or an investment adviser representative without being registered as required by this Act shall be deemed guilty of a felony of the third degree.⁶

(Emphasis added.)

On May 2, 2014, Texas Securities Commissioner John Morgan signed and entered Disciplinary Order No. IC14-CAF-03, in The Matter of The Investment Adviser Representative Registration of Kenneth Warren Paxton, Jr. A copy of that Disciplinary Order is attached hereto as Exhibit H. Mr. Paxton signed a sworn acknowledgement of this Disciplinary Order on April 30, 2014. He “knowingly and voluntarily consent[ed] to the entry of the foregoing [Disciplinary] Order and the Findings of Fact and Conclusions of Law and Undertaking contained therein” The Findings of Fact in the Disciplinary Order included the following:

- “MCM is . . . a registered investment adviser.”
- Paxton “solicited potential clients for MCM,” including while “MCM was a state-registered investment adviser”
- Paxton “was compensated by MCM for each solicitation resulting in a client relationship with MCM.”
- Paxton “successfully solicited . . . clients for MCM at times when MCM was a state-registered investment adviser but [Paxton] was not registered as an investment adviser

⁶ Tex. Rev. Civ. Stat. Ann. arts. 581-29.I.

representative of MCM. These solicitations occurred in 2004, 2005, and 2012.”
(Emphasis added.)

- “Section 12.B of the Texas Securities Act . . . prohibits a person from acting as an investment adviser representative for a certain investment adviser in Texas unless the person is registered as an investment adviser representative for that particular investment adviser.” (Emphasis added.)

The Conclusions of Law in the Disciplinary Order included the following:

- Paxton “violated Section 12.B of the Texas Securities Act by acting as an investment adviser representative for MCM when MCM was registered as an investment adviser with the Securities Commissioner but [when Paxton] was not registered as an investment adviser representative of MCM.”

(Emphasis added.)

Indisputably, by Mr. Paxton’s sworn acknowledgement to the findings and conclusions in that Disciplinary Order, he admitted to conduct that constitutes a third degree felony. That conclusion is inarguable. As discussed below, Mr. Paxton’s sworn admissions also make crystal clear that he has violated Disciplinary Rule 8.04(a)(2), which prohibits a lawyer from committing a “serious crime or commit[ting] any other criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.”

As the Disciplinary Order makes evident, Mr. Paxton’s secret and illegal exploitation of the Goettsches was not his only violation of the Texas Securities Act. His course of conduct of flouting the Texas Securities Act continued for years. He solicited clients for MCM on various occasions from 2004 to 2012. But Texas Securities Board records confirm that he was registered

as an investment adviser representative for MCM starting only on December 18, 2013.⁷ For over eight years, Mr. Paxton flagrantly violated Texas law. Under those circumstances, his multi-year pattern of criminal violations certainly “reflects adversely” on his “trustworthiness” and “fitness” as a lawyer. Lawyers are not supposed to violate the law—ever—much less for eight years in an ongoing course of conduct that misleads and takes advantage of clients.

II. Disciplinary Rule Violations

A. Violation of Disciplinary Rule 1.06(b)(2) – Conflict of Interest.

By entering into a kickback referral-fee arrangement with MCM while also acting as Ms. Goettsche’s attorney, Mr. Paxton violated the fundamental prohibition against conflicts of interest contained in Disciplinary Rule 1.06. Rule 1.06(b)(2) provides:

In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person . . . (2) reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests.

(Emphasis added.)

In 2001, the Texas Supreme Court’s Professional Ethics Committee (“PEC”) strongly condemned a virtually identical arrangement between a lawyer and an investment adviser in Opinion 536.⁸ In this opinion, an investment advisory firm proposed to enter into an arrangement with a lawyer under which the firm would pay the lawyer a referral or solicitation fee for referring clients to the investment firm. The referral fee was to be a percentage of the investment advisory fee paid to the investment firm—exactly the same type of arrangement that Mr. Paxton

⁷ A copy of Mr. Paxton’s registration record with the Texas Securities Board is attached hereto as Exhibit I.

⁸ A copy of Opinion 536 is attached as Exhibit J.

had with MCM. The Committee ruled that the arrangement violated the conflict-of-interest prohibition of Disciplinary Rule 1.06(b)(2).

The Committee concluded that the lawyer's own financial interest would adversely limit the lawyer's representation of the client. Specifically, the Committee noted that the lawyer had a strong, personal financial incentive to refer the client to the investment firm—even if that was not in the client's interest. That's exactly what happened when Mr. Paxton referred the Goettsches to MCM—Mr. Paxton made a killing through his secret kickback referral-fee—and the Goettsches ended up in a disastrous investment.

B. Violation of Disciplinary Rule 1.08(a) – Conflict of Interest: Prohibited Transaction.

Mr. Paxton also violated Disciplinary Rule 1.08(a) by entering into a business transaction with his client Ms. Goettsche. Disciplinary Rule 1.08(a) provides:

A lawyer shall not enter into a business transaction with a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed in a manner which can be reasonably understood by the client;
- (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
- (3) the client consents in writing thereto.

When he referred Ms. Goettsche to MCM and subsequently received a referral fee, Mr. Paxton entered into a business transaction with Ms. Goettsche. Yet Mr. Paxton concealed the true transaction. He therefore violated the requirements of Disciplinary Rule 1.08(a). Mr. Paxton never disclosed to Ms. Goettsche that he would be receiving a referral fee from MCM or that he was in any way financially affiliated with the investment firm.

Mr. Paxton also failed to give Ms. Goettsche a reasonable opportunity to seek the advice of independent counsel before secretly profiting from her engagement of the investment firm that was paying him. Further, Ms. Goettsche never consented to Mr. Paxton receiving any type of

referral fee as a result of her hiring MCM. In short, Mr. Paxton violated every requirement of Rule 1.08(a).

C. Violation of Disciplinary Rule 8.04(a)(3) – False, Misleading, and Deceptive Statements.

Mr. Paxton also violated Disciplinary Rule 8.04(a)(3). The rule provides:

A lawyer shall not . . . (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation

(Emphasis added.)

By failing to disclose to Ms. Goettsche that he would be receiving a financial kickback for referring her to MCM, Mr. Paxton intentionally hid his relationship and financial interest from Ms. Goettsche. That is the essence of deceit and misrepresentation and dishonesty. Obviously, Mr. Paxton did not want Ms. Goettsche to know of his financial arrangement with MCM because, quite naturally and sensibly, she might have doubted the value and legitimacy of his referral. Therefore, to ensure that Ms. Goettsche entered the investment advisory agreement with MCM and that he received his kickback referral fee, Mr. Paxton deliberately hid the truth. Mr. Paxton's conduct was egregiously dishonest, deceitful, and unethical.⁹ The violation of Rule 8.04(a)(3) is clear.

D. Violations of Disciplinary Rule 8.04(a)(2).

As described above, based upon Mr. Paxton's sworn acknowledgement, the Texas State Securities Board has already found that Mr. Paxton violated Section 12.B of the Texas Securities

⁹ Cf. *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 560-61 (Tex. 2006) ("In Texas, we hold lawyers to the highest standards of ethical conduct in their dealings with their clients. The duty is highest when the attorney contracts with his or her client or otherwise takes a position adverse to his or her client's interests. As Justice Cardozo observed '[a fiduciary] is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.'").

Act by failing to register as an investment adviser representative.¹⁰ That violation fits exactly the terms of the third degree felony under Section 29.I of the Texas Securities Act.¹¹ Accordingly, Mr. Paxton has also violated Disciplinary Rule 8.04(a)(2), which prohibits a lawyer from “commit[ting] any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respect.”

III. Conclusion

For the foregoing reasons, Complainant respectfully submits that Kenneth Warren Paxton, Jr. has engaged in multiple acts of serious Professional Misconduct in violation of the Texas Disciplinary Rules of Professional Conduct, that this grievance should be classified as a complaint, that Just Cause should be found, and that following an evidentiary-panel hearing or district court trial, Mr. Paxton should receive an appropriate disciplinary sanction, including disbarment.

¹⁰ See Exhibit H.

¹¹ Section 29.I of the Texas Securities Act provides as follows: “Penal Provisions. Any person who shall: . . . I. Render services as an investment adviser or an investment adviser representative without being registered as required by this Act shall be deemed guilty of a felony of the third degree.” (Emphasis added.)

CAUSE NO. 2014CI05741

**COMMISSION FOR
LAWYER DISCIPLINE,**
Petitioner

v.

JAMES MORRIS BALAGIA
Respondent

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IN THE DISTRICT COURT

288TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Commission for Lawyer Discipline, Petitioner, and would respectfully show the following:

I.

DISCOVERY CONTROL PLAN

Discovery proceedings in this cause should be conducted pursuant to a scheduling order entered by the Court pursuant to the agreement of the parties or as determined by the Court to be appropriately tailored to circumstances of this disciplinary action, pursuant to Tex.R.Civ.P. Rule 190.4.

II.

PARTIES

The Petitioner is the Commission for Lawyer Discipline, a committee of the State Bar of Texas.

EXHIBIT "A"

The Respondent, JAMES MORRIS BALAGIA, State Bar Number 00783589, is an attorney licensed to practice law in the State of Texas and is a member of the State Bar of Texas. Respondent may be served with citation through his attorney of record, Royal K. Griffin, 1507 Fredericksburg Rd., San Antonio, Texas 78201.

III.

JURISDICTION AND VENUE

The cause of action and the relief sought in this case are within the jurisdictional requirements of this Honorable Court.

Venue of this case is proper in Bexar County, Texas pursuant to Texas Rules of Disciplinary Procedure Rule 3.03, because Bexar County is the county of the Respondent's residence or principal place of practice.

IV.

PROFESSIONAL MISCONDUCT

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex.Govt.Code §81.001 *et seq.*, the Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. The complaint which initiated these proceedings was filed by Jill Marie McKeown. The acts and omissions of Respondent, as hereinafter alleged, constitute professional misconduct.

V.

FACTUAL BACKGROUND

Jill McKeown and her daughter, Veronica Abrams, were stopped by law enforcement for a

traffic violation while driving through Panhandle, Texas in November 2011. A subsequent search of their vehicle resulted in the discovery of \$50,000.00 in cash. McKeown and Abrams were arrested, the vehicle was impounded and the cash was seized by law enforcement. McKeown and Abrams were charged with money laundering and forfeiture actions were soon commenced against the vehicle and the cash.

Respondent was hired to represent McKeown and Abrams on felony federal money laundering charges in state court, in the state court forfeiture action for the vehicle and in a federal forfeiture case referred to the Drug Enforcement Agency ("DEA") regarding the cash. McKeown and Abrams agreed to pay Respondent a total, combined fee of \$10,000.00 for the representation. Respondent accepted an initial payment of \$5,000.00 from a third party and agreed to be paid the additional \$5,000.00 at a later date from funds that may be recovered in the cash forfeiture case.

In July 2012, the DEA paid \$50,000.00 to Respondent, representing the full amount of the cash forfeiture. Respondent failed to promptly notify McKeown and Abrams or any other party that he had received the forfeiture funds. Respondent charged and collected a contingent fee on the cash funds seized by the DEA but failed to have the agreement reduced to writing. Upon the conclusion of the forfeiture case, Respondent failed to provide McKeown and Abrams with a written statement describing the outcome of the matter and showing the remittance to the client and the method of its determination.

In February 2013, after conclusion of the legal matters Respondent was handling for McKeown and Abrams, Respondent paid \$9,500.00 of the cash forfeiture funds to Mike Nolan and retained the balance. Respondent failed to deliver any portion of the cash forfeiture funds to McKeown and Abrams.

VI.

DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

The facts alleged herein constitute a violation of the following Texas Disciplinary Rules of Professional Conduct:

Rule 1.14(b): Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Rule 1.04(d): (d) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (e) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined. If there is to be a differentiation in the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, the percentage for each shall be stated. The agreement shall state the litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement describing the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

PRAYER


WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent, that this Honorable Court determine and impose an appropriate sanction, including an order that Respondent pay reasonable attorneys' fees, costs of court and all expenses associated with this proceeding. Petitioner further prays for such other and additional relief, general or specific, at law or in equity, to which it may show itself entitled.

Respectfully submitted,

LINDA A. ACEVEDO,
Chief Disciplinary Counsel

STEPHANIE STROLLE,
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel
State Bar of Texas
711 Navarro, Suite 750
San Antonio, Texas 78205
Telephone: (210) 208-6600
FAX: (210) 208-6625
Stephanie.Strolle@texasbar.com

A handwritten signature in cursive script, appearing to read "Stephanie Strolle", written in dark ink.

By: _____
STEPHANIE STROLLE
State Bar No. 00785069

ATTORNEYS FOR PETITIONER

ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 14-9070

**Appointment of a District Judge to Preside
in a State Bar Disciplinary Action**

The Supreme Court of Texas hereby appoints the Honorable Pete Gomez, Jr., Judge of the 112th District Court, Upton/Crockett/Pecos/Reagan/Sutton Counties, Texas, to preside in the Disciplinary Action styled:

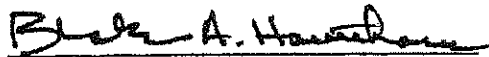
Commission for Lawyer Discipline v. James Morris Balagia

to be filed in a District Court of Bexar County, Texas.

The Chief Disciplinary Counsel shall promptly forward to the District Clerk of Bexar County, Texas, a copy of the Disciplinary Petition and this Order for filing pursuant to Rule 3.03, Texas Rules of Disciplinary Procedure.

As ordered by the Supreme Court of Texas, in chambers,

With the Seal thereof affixed at the City
of Austin, this ~~14~~ day of April, 2014.



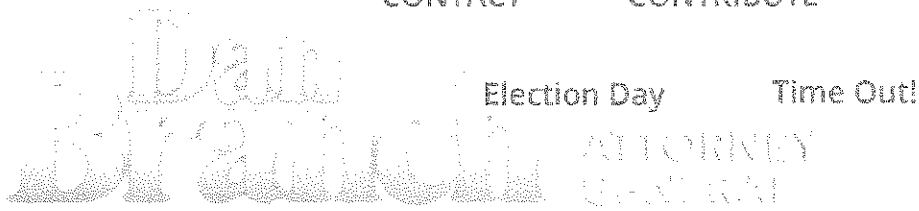
BLAKE HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 14-9070, is also an assignment by the Chief Justice of the Supreme Court of Texas pursuant to Texas Government Code, § 74.057.

Signed this 21st day of April, 2014.

A handwritten signature in black ink, appearing to read "Nathan L. Hecht", written over a horizontal line.

Nathan L. Hecht
Chief Justice

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Smitherman: A Vote For Dan Branch is a Vote for Competence, Integrity and Conservatism

1

A Vote For Dan Branch is a Vote for Competence, Integrity and Conservatism

Dan Branch is the right lawyer—and the right leader—to succeed Attorney General Greg Abbott. Dan Branch offers a three-decade record of excellence as a practicing attorney and, as a conservative lawmaker in the Texas Legislature, has advanced countless limited government solutions for the last twelve years.

Dan Branch is the only candidate in the race who holds the highest possible rating for professional ethics and legal ability. Moreover, Branch has defended Texas values in the United States Supreme Court, pushing back on Obamacare, and defending the right to life in the United States Court of Appeals for the Fifth Circuit, while his opponent, Ken Paxton, is not authorized to argue in

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EXHIBIT “B”

either of these important courtrooms, according to court records.

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Leading lawyers from across our profession have strongly endorsed Dan Branch, including 13 top legal advisers to U.S. Sen. Ted Cruz, the Texas House Tea Party Caucus Chair Allen Fletcher and a Vice-Chair Dwayne Bohac, a unanimous coalition of former top deputies to General Abbott, former Texas Supreme Court justices and 20 district attorneys from across the state. In addition, all of the major statewide law enforcement groups, over 40 Republican sheriffs and virtually the entire Texas business, professional, health care and agricultural communities, including every large newspaper (and every known small newspaper) from every region of the state, have endorsed Branch's campaign. Moreover, thousands of grassroots conservatives and the Texas Alliance for Life have endorsed Branch's campaign. Finally, a strong majority of Branch's peers, 56 Republican members of the Texas House, most of who have worked with both Branch and Paxton, have endorsed Branch.

The bedrock principle of conservative politics is simple: Respect for, and adherence to, the rule of law. It is the single principle on which all others depend and from which all others derive. A vote for Paxton as Republican nominee for Texas Attorney General is a vote against that principle.

Just this month, Paxton was reprimanded and fined for his admitted violations under the Texas State Securities Act. As detailed in the State Securities Board Disciplinary Order and as reported by numerous media outlets, Paxton failed to register as an investment adviser representative, as the Act requires.

To make matters worse, the investment advisor Paxton represented, Fritz Mowery, paid kickbacks to Paxton for his client referrals. Mowery was in bankruptcy when Paxton steered some of his own law clients into

investments and they ultimately lost thousands of dollars in the swindle. As a lawyer, Paxton has an

absolute ethical obligation to disclose to his clients that he was making money on his deal with Mowery—the

very same relationship he kept secret from registration with the State. Several clients sued Paxton—who refused to admit any wrongdoing for years—until the State Securities Board finally forced his recent admission regarding his violations of law.

Contrary to Paxton's claims, these violations are not minor offenses. Rendering services as an investment advisor representative without registering with the State is a felony punishable by up to 10 years in prison. As set forth below in Section 29 of the Texas State Securities Act:

Sec. 29. PENAL PROVISIONS. Any person who shall:

I. Render services as an investment adviser or an investment

adviser representative without being registered as required by this

Act shall be deemed guilty of a felony and on conviction of the

felony shall be sentenced to pay a fine of not more than \$5,000 or

imprisonment in the penitentiary for not less than two or more than

10 years, or by both the fine and imprisonment.

Ken Paxton had to have known it was a felony. Following the 2001 Enron scandal, Paxton voted to establish this as a felony as a lawmaker in the 2003 Legislative Session. Paxton's reprimand and fine may only be the beginning of his legal problems, not the end, because

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the potential for his criminal liability under that statute has been resolved.

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Both the Allen Police Association and Paxton's hometown police, the McKinney Police Association, withdrew their previous endorsement of Paxton, stating, "Given that the attorney general is the chief law enforcement officer in the state of Texas, the McKinney Police Association feels it is necessary to protect the integrity of the AG office and can no longer support Ken Paxton for attorney general."

U.S. Congressmen Ted Poe, Michael McCaul, Pete Olson, Bill Flores and Pete Sessions have all endorsed Dan Branch, as have I. Indeed, not a single current Republican Sheriff or District Attorney in Texas has endorsed Ken Paxton, according to his website, while more than 60 Sheriffs and DAs have endorsed Branch.

It is refreshing to know that the rule of law is a decisive factor with many of our state's elected leaders, however, Paxton and his surrogates shrug off his violation of the law as some sort of minor clerical error. Yet it was Paxton himself who voted to make that very conduct a felony punishable by imprisonment. Recently, Paxton has also argued variants of the theme that he simply didn't know the law and that it's all just too complicated. Really? If Ken Paxton became Attorney General, every defendant he would seek to prosecute could argue the same defense back to him? When has ignorance of the law ever been a valid defense? In any event, this wasn't some unmarked "speedtrap" in a remote town he happened to be driving through. This was a business venture in which Paxton pocketed thousands of dollars. He was required to educate himself about the applicable law.

An ethical cloud hangs over Paxton and that cloud includes the potential for felony violations of both state and possibly federal securities law. These violations are in addition to his numerous amendments to his filings

with the Texas Ethics Commission, only after the Texas
 Tribune reported the admissions on April 23. Bottom
 line, if Paxton secures the Republican nomination, he
 runs the risk of being indicted under Texas law by a
 District Attorney, especially if any of the offenses
 occurred in a county with a Democrat District Attorney,
 like Dallas, or possibly even by the Travis County DA,
 Rosemary Lehmberg. And with the lingering potential for
 federal investigation, and indictment, his ability as
 Attorney General to push back hard against the federal
 government is compromised. Last, while an ethical
 grievance has apparently not yet been filed with the
 State Bar to sanction Paxton, that is also possibly on the
 horizon, which would have Paxton fighting to hold on to
 his license to practice law.

With his recent admissions, Ken Paxton has broken the
 law and would be a compromised nominee if he wins
 the Republican primary on May 27. Paxton has squarely
 centered an "X" on his own back with conduct that is
 plainly contrary to conservative respect for the rule of
 law. Do conservatives actually want to share that bull's-
 eye with him? Can Texas afford to have an ethically
 compromised and legally challenged attorney general?

Texans deserve an Attorney General who knows and
 respects the law because he cherishes the rule of law.
 More than any other statewide office, a candidate for
 Attorney General should be above reproach on this
 issue. Dan Branch is a supremely qualified candidate
 who will defend Texas with conviction. I am proud to
 strongly support his candidacy.

Sincerely,
 Barry Smitherman
 Chairman, Texas Railroad Commission

HOME MEET DAN ISSUES NEWS
ATTORNEY GENERAL CONTACT YouTube CONTRIBUTE

Contact The Campaign
SUPPORTERS
Address: P.O. Box 191149 |
Dallas, Texas 75219
Phone: (214) 745-5444
E-mail:
info@danbranchtexas.com

Political ad paid for by Texans for Dan Branch. 3953 Maple Ave, Suite 105, Dallas, TX 75219

<http://www.danbranch.com/2014/05/27/barry-smitherman-my-closing-argument-in-support-...> 6/2/2014

Exhibit C (Barry Smitherman for
Attorney General advertisement,
available at

[https://www.youtube.com/watch?
v=qL0fimGKJpE&feature=youtu
.be&noredirect=1](https://www.youtube.com/watch?v=qL0fimGKJpE&feature=youtu.be&noredirect=1))

Exhibit D (Dan Branch for Attorney General advertisement, available at <https://www.youtube.com/watch?v=3MvqaEihwL8>)

MOWERY CAPITAL MANAGEMENT, LLC

16650 DALLAS PARKWAY, SUITE 1600, DALLAS, TEXAS 75248
Tel: 972-818-9944 Fax: 972-818-7755

Friday, July 28, 2006

Dear

You have retained Mowery Capital Management, LLC to manage certain assets for you. The Investment Advisory Agreement you signed provided for quarterly fees to be paid to Mowery Capital Management, LLC.

The State of Texas requires that we notify you that Ken Paxton has acted as a solicitor and will receive a certain portion of those management fees. Please acknowledge by signing and returning the attached Solicitor Agreement.

Thank you for your business and please feel free to call with any questions.

Sincerely,



Fritz E. Mowery

9.12.06

Please sign and
return to us
in enclosed
envelope.

Thanks,
Christi M.

Solicitor Agreement

Solicitor will receive a certain portion of the Investment Advisory Fees specified in the Investment Advisory Agreement between the Client and Mowery Capital Management, LLC ("Advisor").

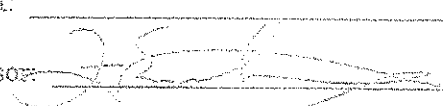
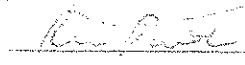
Solicitor's Name: Ken Paxton

Other than this Solicitors Agreement, there are no other relationships or affiliations between Solicitor and Advisor. There are no additional charges or costs for solicitor services.

Solicitor will not manage any assets. All assets are managed by the "Advisor". The Solicitor is acting as a referring party only.

Solicitor may provide investment informational services or statistical information containing no expression of the investment merits of a particular security, but may not give the client any written material or oral statements which purport to meet the financial needs and objectives of the client.

Signatures:

Client:	_____	date:	_____
Advisor:		date:	<u>7-28-06</u>
Solicitor:		date:	<u>7-29-06</u>

MOWERY CAPITAL MANAGEMENT

16660 DALLAS PARKWAY, SUITE 1600, DALLAS, TEXAS 75248
Tel: 972-818-5844 Fax: 972-818-7755

Monday, September 25, 2006

Dear

You have indicated concern with the management of your account; specifically in reference to the fee sharing arrangement we have with Mr. Ken Paxton.

Mowery Capital Management receives a management fee as per your contract. Mr. Paxton receives a percentage of Mowery Capital Management's quarterly investment management fee for certain clients referred to us. This fee arrangement was a verbal arrangement between Mr. Paxton and us and therefore no documentation exists. Mr. Paxton is not now, and never has been, privy to any personal or account information of any Mowery Capital Management client without the client's permission. Mr. Paxton did not direct any investments or participate in the management of your account.

Please find attached a performance report for each of your accounts. This report details the account performance as well as management fees. Mr. Paxton was paid 30 percent of these fees.

You may contact the Texas State Securities Board for the applicable regulations.

We feel we will be unable to resolve your concerns and must resign as the investment manager for your accounts. Your accounts are held at Worth Financial Group, please contact Mr. Clark (469.916.4287) and determine your next steps with him.

This resignation is effective as of the date of this letter. We will prorate and credit your accounts with the remaining 8 days of management fees in this quarter. We thank you for your business and wish you success in your future investment endeavors.

Regards,



Eric Mowery

CAUSE NO. DC-09-09458

DAVID GOETTSCHKE and
TERI GOETTSCHKE,
Plaintiffs,

VS.

MOWERY CAPITAL
MANAGEMENT, LLC; FREDERICK E.
MOWERY a/k/a FRITZ E. MOWERY,
INDIVIDUALLY; and WARREN
KENNETH PAXTON, JR. a/k/a
KEN PAXTON

Defendants.

§ IN THE DISTRICT COURT OF

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DALLAS COUNTY, TEXAS

§-191ST JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW PLAINTIFFS, DAVID GOETTSCHKE and TERI GOETTSCHKE, referred to herein as Plaintiffs, complaining of and against MOWERY CAPITAL MANAGEMENT, LLC; FREDERICK E. MOWERY a/k/a FRITZ E. MOWERY, INDIVIDUALLY; and WARREN KENNETH PAXTON, JR. a/k/a KEN PAXTON, herein referred to as Defendants, and in support thereof would show unto this Honorable Court as follows:

A. DISCOVERY CONTROL PLAN

1. The Plaintiffs in this suit allege discovery should be conducted under Level 2 of the Texas Rules of Civil Procedure.

B. PARTIES

2. Plaintiff, DAVID GOETTSCHKE, is an individual residing in Dallas County, Texas. The last three digits of his Social Security number are [REDACTED]

3. Plaintiff, TERI GOETTSCHKE, is an individual residing in Dallas County, Texas. The last three digits of her Social Security number are [REDACTED]

EXHIBIT "F"

4. Defendant, MOWERY CAPITAL MANAGEMENT, LLC, is a Texas limited liability company, and may be served with process by Certified Mail, Return Receipt Requested, by serving its registered agent, Frederick E. Mowery, at 201 W. Virginia Street #200, McKinney, Texas 75248.

5. Defendant, FREDERICK E. MOWERY a/k/a FRITZ MOWERY, is an individual residing in Collin County, Texas, who may be served with process of service by Certified Mail, Return Receipt Requested, at 2507 Saint Remy Drive, McKinney, Texas 75070-4761.

6. Defendant, WARREN KENNETH PAXTON, JR. a/k/a KEN PAXTON, is an individual residing in Collin County, Texas, who may be served with process of service by Certified Mail, Return Receipt Requested, at 5613 S. Woodcreek Circle, McKinney, Texas 75070.

C. JURISDICTION & VENUE

7. The Court has jurisdiction over the Defendants because Defendants are Texas residents. The court has jurisdiction over the controversy because the damages are within the jurisdictional limits of the Court.

8. Venue is proper in this county as the contract was executed in Dallas County, Texas.

D. FACTUAL ALLEGATIONS

9. Plaintiff Teri Goettsche secured the services of Defendant WARREN KENNETH PAXTON, JR. a/k/a KEN PAXTON (hereinafter referred to as "Paxton") to prepare a post-nuptial agreement. During the course of preparing the post-nuptial agreement, Paxton recommended and encouraged Teri Goettsche to hire FREDERICK E. MOWERY a/k/a FRITZ MOWERY (hereinafter referred to as "Mowery") and MOWERY CAPITAL MANAGEMENT, LLC (hereinafter referred to as "Mowery Capital") to manage both her separate assets and community assets subject to her sole management.

10. Teri Goettsche entered into an Investment Advisory Agreement (the “Investment Agreement”) with Mowery and Mowery Capital. Mowery and Mowery Capital managed stock, bond, and/or mutual fund investments for Plaintiff Teri Goettsche for approximately one year before Plaintiff David Goettsche entered into an Investment Advisory Agreement with Mowery and Mowery Capital.

11. Mowery and Mowery Capital introduced Plaintiffs to and encouraged Plaintiffs to invest in real estate development and heavy construction equipment purchasing ventures owned in part and operated by James H. “Jim” Moore, III. Mowery, however, owned part of at least one of these entities (High Point Construction & Development, LLC) and was at that time and is currently registered with the Texas Secretary of State’s Office as a Manager of High Point Construction & Development, LLC.

12. At the time Mowery and Mowery Capital encouraged Plaintiffs to invest in ventures owned in part by Jim Moore, the United States Bankruptcy Court for the Northern District of Texas supervised Moore’s assets. Moore filed a voluntary petition for relief in the bankruptcy court on May 2, 2006, owing creditors more than \$33 million. Moore’s assets - including heavy earth-moving equipment titled in his name and in which Moore sought outside capital investment - were subject to the bankruptcy court’s automatic stay as of that date. *See* 11 U.S.C. § 362.

13. Moore represented to Plaintiffs that any investment share they took in any of Moore’s ventures would be a percentage interest in a limited liability company or another business entity with liability protection. Rather, Moore created general partnerships and joint ventures with Plaintiffs’ capital contributions and entered into agreements and promissory notes in the entity’s name, making Plaintiffs personally liable on entity debt.

14. On or about July 28, 2006, Mowery Capital and Mowery notified Plaintiffs that, unbeknownst to Plaintiffs, Paxton was a solicitor on behalf of Mowery Capital and had acted as such when advising Plaintiffs to entrust their assets to the management of Mowery and Mowery Capital. In consideration for his services soliciting business on Mowery Capital's behalf, Paxton received a portion of Mowery's fee for managing Plaintiffs' investments. Neither Paxton nor Mowery or Mowery Capital disclosed to Plaintiffs before that time that Mowery shared his fee with Paxton.

15. Upon learning that Paxton had acted as a solicitor on behalf of Mowery Capital, Plaintiffs requested that Mowery provide documentation of the previously undisclosed relationship between Mowery Capital, Mowery, and Paxton, along with the identity of the state agency having oversight of the business conducted by Mowery Capital.

16. On or about September 25, 2006, Mowery and Mowery Capital notified Plaintiffs that the fee agreement between Mowery Capital, Mowery, and Paxton was a verbal agreement and that Paxton received one-third (1/3) of the two percent (2%) management fee paid by Plaintiffs on each of Plaintiffs' accounts held by Mowery Capital. The notice further stated that Mowery did not think that Plaintiffs' concerns could be resolved and Mowery Capital and Mowery resigned as investment manager for Plaintiffs' accounts and transferred all Plaintiffs' accounts to Worth Financial Group. Mowery's notice stated nothing about any sums Plaintiffs invested in entities, ventures, or partnerships in which he or Jim Moore were part-owners.

E. COUNT 1 - COMMON LAW FRAUD

17. Plaintiffs replead and reallege each allegation in paragraphs 1 through 16, as if fully set forth herein.

18. Defendants Mowery and Mowery Capital represented to plaintiffs that Jim Moore's

business ventures were trustworthy investments. Further, Defendants Mowery and Mowery Capital represented that Moore's personal character was sufficiently reliable to make Moore's business ventures a sound investment.

19. Defendants' representations to Plaintiffs were material because they caused Plaintiffs to invest in Moore's business ventures. Had Mowery and Mowery Capital never introduced Plaintiffs to Moore nor encouraged Plaintiffs to invest in Moore's business ventures, Plaintiffs would not have had the opportunity to lose money in Moore's business ventures because they would have kept their savings in more prudent investments.

20. Defendants Mowery and Mowery Capital's representations to Plaintiffs were false statements of opinion that Defendants knew to be false. Defendants Mowery and Mowery Capital represented to Plaintiffs that Jim Moore's business ventures were trustworthy investments. Further, Defendants Mowery and Mowery Capital represented that Moore's personal character was sufficiently reliable to make Moore's business ventures a sound investment. Specifically, they knew because of Mowery's service as a member-manager in High Point Construction & Development, LLC, that Moore owed millions of dollars to various creditors and either had declared or would soon declare bankruptcy.

21. Defendants Mowery and Mowery Capital made the false representation either knowingly or recklessly, as a positive assertion, and without knowledge of its truth. Moore's financial status, of which Mowery should have been aware because of his position as both a director in High Point Construction & Development, LLC, as well as his close personal relationship with Moore, indicated that he was not trustworthy, that his business ventures were not sufficiently capitalized, and that individuals should not invest in his ventures. Mowery and Mowery Capital

knew that other referrals sought refunds of their initial investments and recruited new investors for Moore with false representations to sufficiently capitalize Moore's ventures to refund other investors.

22. Defendants Mowery and Mowery Capital both intended for Plaintiffs to rely on and had reason to expect that Plaintiffs would act in reliance on their representations. Mowery's status as an investment advisor necessarily suggests that his clients would follow his investment advice. Plaintiffs followed Mowery and Mowery Capital's advice and invested in Moore's business ventures.

23. Plaintiffs relied on defendant's false representations when they invested in Jim Moore's business ventures.

F. COUNT 2 - NEGLIGENT MISREPRESENTATION

24. Plaintiffs replead and reallege each allegation in paragraphs 1 through 24, as if fully set forth herein.

25. Defendants Mowery and Mowery Capital represented to plaintiffs that Jim Moore's business ventures were trustworthy investments. Further, Defendants Mowery and Mowery Capital represented that Moore's personal character was sufficiently reliable to make Moore's business ventures a sound investment.

26. Defendants Mowery and Mowery Capital made the representation in both the course of their business and in the course of a transaction in which they had an interest. Mowery and Mowery Capital worked as investment advisors who agree to identify investments for clients and potential clients, assess investments' relative risk, and counsel clients about prudent ways in which they should invest. Additionally, Mowery and Mowery Capital took a two percent (2%) fee on any returns Plaintiffs earned from investments identified by Mowery and/or Mowery Capital. However,

Mowery served as a part owner of at least one of Moore's business entities in which he advised Plaintiffs to invest, receiving at least a 10 percent (10%) ownership interest in the partnership created to develop residential real property near Mineola, Texas.

27. Defendants Mowery and Mowery Capital made its representations about Moore's character and the quality of his business ventures for the guidance of others. Specifically, as alleged above, Mowery and Mowery Capital were in the business of advising clients in which vehicles they should invest their money. Mowery and Mowery Capital made its representations in an attempt to guide the Plaintiffs into investing in Jim Moore's business ventures.

28. Defendants Mowery and Mowery Capital in no way used reasonable care or competence in obtaining information on which to base their representations regarding Jim Moore's character, business expertise, and the quality of Moore's business ventures. Had they performed a background check on Moore, who personally obligated himself on part of the business ventures' debt, they would have found that Moore declared bankruptcy in 2006. Moreover, to the extent Mowery and Mowery Capital advised Plaintiffs to invest funds in Moore's business ventures before Moore filed bankruptcy, they would have known by virtue of Mowery's service as a member-manager in High Point Construction & Development, LLC, that Moore owed millions of dollars to various creditors.

29. Plaintiffs justifiably relied on Defendants Mowery and Mowery Capital's representations when they invested in Moore's residential real estate development in Mineola, Texas.

G. MOWERY & MOWERY CAPITAL'S BREACH OF FIDUCIARY DUTY

30. Plaintiffs replead and reallege each allegation in paragraphs 1 through 29, as if fully set forth herein.

31. A fiduciary relationship existed between Plaintiffs and Defendants Mowery and Mowery Capital at the time of the misrepresentations, omissions, and tortious conduct set forth above, such that Defendants owed Plaintiffs a duty to fairly and honestly advise Plaintiffs. Such a duty prohibits self-dealing.

32. Defendants Mowery and Mowery Capital each breached their respective fiduciary duties when they advised Plaintiffs to invest in business ventures in which Mowery had an ownership interest.

33. In addition to Plaintiffs' damages, set forth more fully below, Defendants Mowery and Mowery Capital's breach of fiduciary duty benefitted Defendants in the following ways:

- a. Mowery's share of Moore's business ventures in which Plaintiffs invested became more profitable;
- b. Business ventures in which Mowery had a personal interest were, as a result, better capitalized;
- c. Business ventures in which Mowery had a personal interest were able to, with Plaintiffs' capital contribution, repurchase ownership interests from other investors; and
- d. Because other investors were able to sell back their ownership interest in Moore's business ventures, Mowery and Mowery Capital were able to avert other potential claimants from filing claims.

H. PAXTON'S BREACH OF FIDUCIARY DUTY

34. Plaintiffs replead and reallege each allegation in paragraphs 1 through 34, as if fully set forth herein.

35. Paxton's liability for breach of fiduciary duty stems from his status as the Plaintiffs' attorney. Paxton's State Bar of Texas number is 15649200.

36. A fiduciary, attorney-client relationship existed between Plaintiffs and Defendant

Paxton at the time of the misrepresentations, omissions, and tortious conduct set forth above, such that Paxton owed Plaintiffs a duty to deal fairly, honestly, and equitably in making decisions regarding any interest in Mowery Capital and to disclose all material facts relating to Paxton's relationship with Mowery Capital and Mowery to Plaintiffs.

37. Paxton breached his fiduciary duty to Plaintiffs by failing to disclose his agreement to share Mowery and Mowery Capital fees that Mowery and Mowery Capital collected from clients Paxton referred.

38. Paxton's breach of fiduciary duty injured Plaintiffs by essentially stripping them of their ability to consent to an agreement to split fees between Paxton and a non-lawyer. Paxton's breach benefitted him by providing him with one-third (1/3) of the two percent (2%) fee Mowery and Mowery Capital collected on the Plaintiffs' capital gains and/or return on investment.

I. BREACH OF DUTY OF LOYALTY

39. Plaintiffs replead and reallege each allegation in paragraphs 1 through 38, as if fully set forth herein.

40. Defendants breached the duty of loyalty owed to Plaintiff under the law when Defendants failed to disclose their interest in Moore's business ventures and their relationship with each other. Defendants' duty of loyalty required that they place Plaintiffs' interests above their own. Defendants' actions are representative of their breach of their duty of loyalty when they utilized their own position to benefit themselves at the expense of the Plaintiffs. Defendants conduct was unfair to Plaintiffs, thus representing a self-dealing transaction further evidencing Plaintiffs' claim of a breach of fiduciary duty.

41. In addition to Plaintiffs' damages, set forth more fully below, Defendants Mowery and Mowery Capital's breach of the duty of loyalty benefitted Defendants in the following ways:

- a. Mowery's share of Moore's business ventures in which Plaintiffs invested became more profitable;
- b. Business ventures in which Mowery had a personal interest were, as a result, better capitalized;
- c. Business ventures in which Mowery had a personal interest were able to, with Plaintiffs' capital contribution, repurchase ownership interests from other investors; and
- d. Because other investors were able to sell back their ownership interest in Moore's business ventures, Mowery and Mowery Capital were able to avert other potential claimants from filing claims.

42. Paxton's breach of the duty of loyalty injured Plaintiffs by essentially stripping them of their ability to consent to an agreement to split fees between Paxton and a non-lawyer. Paxton's breach benefitted him by providing him with one-third (1/3) of the two percent (2%) fee Mowery and Mowery Capital collected on the Plaintiffs' capital gains and/or return on investment.

J. DAMAGES

43. Plaintiffs seek unliquidated damages within the jurisdictional limits of this court.

44. Defendants' fraud, negligent misrepresentation, breach of fiduciary duty, and duty of loyalty caused injury to Plaintiffs, which resulted in the following damages:

- a. Plaintiffs are now personally liable on a promissory note held by Capital One Bank (Hibernia National Bank is the predecessor-in-interest on the note). Plaintiffs received no property from Moore's business ventures with which to collateralize the loan;
- b. Plaintiffs lost the amount of their initial capital investment in Moore's business ventures, specifically those ventures involving the development of residential real property in or near Mineola, Texas;
- c. Because of these liabilities, Plaintiffs paid sums on their obligations to avoid adverse effects to their credit rating. Plaintiffs seek the amounts of payments

- made on these obligations between the time of the fraud or misrepresentation;
- d. Plaintiffs seek a refund of the investment management fees paid to Mowery, Mowery Capital, and/or Paxton as a result of Plaintiffs' investments in Moore's business ventures;
 - e. Time spent investigating the impact of Moore's, Mowery's and Mowery Capital's misrepresentations to Plaintiffs;
 - f. Physical pain and mental anguish in the past and future; and
 - g. Past lost wages.

K. JURY DEMAND

45. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

L. REQUEST FOR DISCLOSURE

46. Pursuant to TEX. R. CIV. P. 194, you are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a)-(l).

M. DOCUMENTS TO BE USED

47. Pursuant to TEX. R. CIV. P. 193.7, Plaintiffs intend to use all documents exchanged and produced between the parties including, but not limited to, correspondence and discovery responses during the trial of the above-entitled and numbered cause.

N. PRAYER

48. Plaintiffs hereby plead for all actual damages, a full accounting, and any remedies allowed by law, including but not limited to forfeiture, for the Defendants' breach of fiduciary duties.

49. Plaintiffs further plead for all attorneys fees incurred at trial or appeal, costs of court, plus pre- and post-judgment interest in the maximum amounts allowed by law.

Respectfully submitted,

BY: 

JOHN D. SLOAN, JR

State Bar No. 18505100

ALAN J. ROBERTSON

State Bar No. 24067952

SLOAN, BAGLEY, HATCHER & PERRY LAW FIRM

101 East Whaley Street

Post Office Drawer 2909

Longview, Texas 75606

Telephone: (903) 757-7000

Facsimile: (903) 757-7574

ATTORNEYS FOR PLAINTIFFS

Art. 581-12. REGISTRATION OF PERSONS SELLING SECURITIES OR
RENDERING INVESTMENT ADVICE.

A. Except as provided in Section 5 of this Act, no person, firm, corporation or dealer shall, directly or through agents, offer for sale, sell or make a sale of any securities in this state without first being registered as in this Act provided. No agent shall, in behalf of any dealer, sell, offer for sale, or make sale of any securities within the state unless registered as an agent for that particular registered dealer under the provisions of this Act.

B. Except as provided by Section 5 of this Act, a person may not, directly or through an investment adviser representative, render services as an investment adviser in this state unless the person is registered under this Act, submits a notice filing as provided by Section 12-1 of this Act, or is otherwise exempt under this Act. A person may not act or render services as an investment adviser representative for a certain investment adviser in this state unless the person is registered or submits a notice filing as an investment adviser representative for that particular investment adviser as provided in Section 18 or 12-1 of this Act.

C. The Board may adopt rules and regulations exempting certain classes of persons from the dealer, agent, investment adviser, and investment adviser representative registration requirements, or providing conditional exemptions from registration, if the Board determines that such rules and regulations are consistent with the purposes of this Act.

Acts 1957, 55th Leg., p. 575, ch. 269, Sec. 12.

Amended by Acts 1995, 74th Leg., ch. 228, Sec. 7, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1091, Sec. 2.08, eff. Sept. 1, 2001.

JOHN MORGAN
SECURITIES COMMISSIONER

RONAK V. PATEL
DEPUTY SECURITIES COMMISSIONER

Mail: P.O. BOX 13167
AUSTIN, TEXAS 78711-3167

Phone: (512) 305-8300
Facsimile: (512) 305-8310



Texas State Securities Board

208 E. 10th Street, 5th Floor
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ALAN WALDROP
MEMBER

IN THE MATTER OF
THE INVESTMENT ADVISER
REPRESENTATIVE REGISTRATION
OF KENNETH WARREN PAXTON, JR.

§
§
§
§

Order No. IC14-CAF-03

TO: Kenneth Warren Paxton, Jr. (CRD No. 4691201)
206 South Kentucky Street, Suite 201
McKinney, Texas 75069

DISCIPLINARY ORDER

Be it remembered that Kenneth Warren Paxton, Jr. ("Respondent"), appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this Order and the Findings of Fact and Conclusions of Law contained herein.

FINDINGS OF FACT

1. Respondent has waived (a) Respondent's right to notice and hearing in this matter; (b) Respondent's right to appear and present evidence in this matter; (c) Respondent's right to appeal this Order; and (d) all other procedural rights granted to the Respondent by The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-43 (West 2010 & Supp. 2013) ("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001 to 2001.902 (West 2008 & Supp. 2013) ("Administrative Procedure Act").

Background

2. On December 18, 2013, Respondent registered with the Securities Commissioner as an investment adviser representative of Mowery Capital Management, LLC ("MCM"). This registration is currently effective.
3. MCM is located in Texas and is a registered investment adviser. From October 13, 2004 to November 6, 2008, MCM was registered with the Securities Commissioner as an investment adviser. In November 2008, MCM transitioned from state registration to federal registration. To that end, on November 6, 2008 MCM registered as an investment adviser with the U.S. Securities and Exchange Commission. On June 25, 2012, MCM transitioned back to state registration and is currently registered as an investment adviser with the Securities Commissioner.

EXHIBIT "H"

Referral of Clients for State-Registered Investment Adviser

4. Respondent occasionally solicited potential clients for MCM. Some of these solicitations occurred when MCM was a state-registered investment adviser and others when it was federally-registered.
5. Pursuant to an agreement with MCM, Respondent was compensated by MCM for each solicitation resulting in a client relationship with MCM. Specifically, MCM agreed to pay Respondent 30% of the asset management fees collected by MCM from each client that Respondent solicited successfully.
6. Respondent successfully solicited three (3) clients for MCM at times when MCM was a state-registered investment adviser but Respondent was not registered as an investment adviser representative of MCM. These solicitations occurred in 2004, 2005, and 2012.
7. Section 4.P of the Texas Securities Act defines an "investment adviser representative", in part, as "each person or company who, for compensation, is employed, appointed, or authorized by an investment adviser to solicit clients for the investment adviser."
8. Section 12.B of the Texas Securities Act, in part, prohibits a person from acting as an investment adviser representative for a certain investment adviser in Texas unless the person is registered as an investment adviser representative for that particular investment adviser.
9. The clients solicited by Respondent for MCM paid annual asset management fees ranging from 1% to 1.95% of assets under MCM's management. Such fees were collected by MCM on a quarterly basis. Thereafter, Respondent was paid a portion of the fees.
10. Respondent relied on MCM to disclose the compensation arrangement to potential clients that Respondent solicited for MCM.

CONCLUSIONS OF LAW

1. At times between 2004 and 2012, Respondent was an "investment adviser representative" of MCM as the term "investment adviser representative" is defined by Section 4.P of the Texas Securities Act.
2. Respondent violated Section 12.B of the Texas Securities Act by acting as an investment adviser representative for MCM when MCM was registered as an investment adviser with the Securities Commissioner but Respondent was not registered as an investment adviser representative of MCM.
3. Pursuant to Section 14.A(6) of the Texas Securities Act, Respondent's violation of Section 12.B of the Texas Securities Act constitutes a basis for the issuance of an Order reprimanding Respondent.

4. Pursuant to Section 23-1.A(3) of the Texas Securities Act, Respondent's violation of Section 12.B of the Texas Securities Act constitutes a basis for the issuance of an Order assessing an administrative fine.

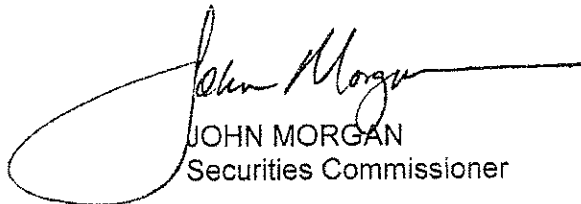
UNDERTAKING

1. If Respondent, for compensation, solicits a potential client for any registered investment adviser, Respondent undertakes and agrees to provide a written disclosure document ("Disclosure Document") to each such client.
2. Respondent further undertakes and agrees that the Disclosure Document will include:
 - a. The name of the investment adviser;
 - b. The nature of the relationship, including any affiliation, between Respondent and the investment adviser;
 - c. A statement that Respondent will be compensated for his solicitation services by the investment adviser; and
 - d. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to Respondent.
3. Respondent further undertakes and agrees that Respondent will provide the Disclosure Document to any potential client before such person becomes a client of the investment adviser.

ORDER

1. It is therefore ORDERED that Kenneth Warren Paxton, Jr. is hereby REPRIMANDED.
2. It is further ORDERED that Kenneth Warren Paxton, Jr. is hereby ASSESSED AN ADMINISTRATIVE FINE in the amount of One Thousand Dollars (\$1,000.00). Payment shall be made by delivery of a cashier's check to the Securities Commissioner in the amount of One Thousand Dollars (\$1,000.00), payable to the State of Texas, contemporaneously with the delivery of this Order.
3. It is further ORDERED that Kenneth Warren Paxton, Jr. comply with the terms of the Undertaking with the Securities Commissioner enclosed herein.

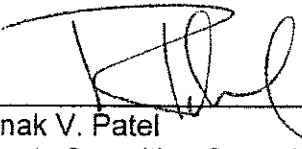
SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 2nd
day of May, 2014.

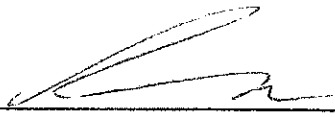

JOHN MORGAN
Securities Commissioner


Respondent:


Kenneth Warren Paxton, Jr.

Approved as to Form:


Ronak V. Patel
Deputy Securities Commissioner

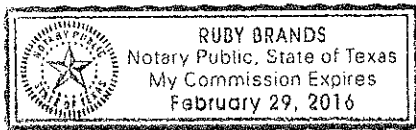

Gene R. Besen
Attorney for Respondent


Clinton Edgar
Attorney
Inspections and Compliance Division

ACKNOWLEDGMENT

On the 30 day of April, 2014, Kenneth Warren Paxton, Jr. ("Respondent") personally appeared before me, executed the foregoing Order, and acknowledged that:

1. Respondent has read the foregoing Order and Undertaking;
2. Respondent has been fully advised of his rights under the Texas Securities Act and the Administrative Procedure Act;
3. Respondent knowingly and voluntarily consents to the entry of the foregoing Order and the Findings of Fact and Conclusions of Law and Undertaking contained therein; and
4. Respondent, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived his rights as set forth therein.



[affix notary seal here]

Ruby Brands
Notary Public in and for
the State of Texas

My commission expires on: 2-29-2016

Individual 4691201 - PAXTON JR., KENNETH WARREN

Administrative Information
Composite Information

Full Legal Name PAXTON JR., KENNETH WARREN
State of Residence TX

Active Employments

Current Employer MOWERY CAPITAL MANAGEMENT, LLC(130761)
Firm Main Address 206 SOUTH KENTUCKY STREET
SUITE 201
MCKINNEY
TX, UNITED STATES
75069

Firm Mailing Address

Business Telephone# 972-818-9944

Independent Contractor Yes

Office of Employment Address

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
IA Main			Yes	No	01/01/2010		Supervised From
Address 206 SOUTH KENTUCKY STREET, SUITE 201 MCKINNEY, TX 75069 UNITED STATES							

Reportable Disclosures? The specified individual has no disclosure that qualifies for reporting under this section (i.e., disclosure required to be reported on Form U-4 or Form U-5).
Regulatory and Broker/Dealer Users: Please note that there are three types of disclosure in Web CRD: Reportable, Legacy and Archive disclosure. An individual with no reportable disclosure may or may not have Legacy or Archive disclosure. Investment Adviser Users: Please note that IARD does not include Legacy disclosure. Information reported on previous form filings through IARD is available under Filing History.

Statutory Disqualification? BLNK

Registered With Multiple Firms? No

Material Difference in Disclosure? No

Registrations with Current Employer(s)

Regulator	Registration Category	Status Date	Registration Status	Approval Date
TX	RA	12/18/2013	APPROVED	12/18/2013

Registrations with Previous Employer(s)

From 08/01/2001 To 06/05/2013 MOWERY CAPITAL MANAGEMENT, LLC(130761)

Reason for Termination

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
-----------	-----------------------	-------------	---------------------	---------------

CRD® or IARD(TM) System Current As Of: 04/17/2014

Snapshot - Individual

CRD® or IARD(TM) System Report provided to: Texas

Request Submitted: 4/18/2014 12:52:12 PM

Page 4 of 8

Individual 4691201 - PAXTON JR., KENNETH WARREN

Administrative Information

Registrations with Previous Employer(s)

Regulator	Registration Category	Status Date	Registration Status	Approval Date
TX	RA	06/05/2013	T_NOREG	

From 07/01/2003 To 12/31/2004 OXFORD ADVISORS CORPORATION(113581)

Reason for Termination

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
TX	RA	12/31/2004	T_NOU5	07/24/2003

Individual 4691201 - PAXTON JR., KENNETH WARREN

Administrative Information

Professional Designations

<<No Professional Designations found for this Individual.>>

Employment History

From	02/2002	To	Present	Name	KEN PAXTON LAW FIRM
				Location	MCKINNEY, TX, USA
				Position	OWNER
				Investment Related	No
From	02/1999	To	01/2002	Name	STRONG, WALKER, DOEPFNER
				Location	DALLAS, TX, USA
				Position	ATTORNEY
				Investment Related	No
From	10/1993	To	01/1999	Name	J.C. PENNEY CO.
				Location	PLANO, TX, USA
				Position	SENOIR ATTORNEY
				Investment Related	No
From	10/1991	To	09/1993	Name	STRASBURGER, PRICE
				Location	DALLAS, TX, USA
				Position	ATTORNEY
				Investment Related	No

Office of Employment History

From 01/2010 To Present

Name MOWERY CAPITAL MANAGEMENT, LLC(130761)

Independent Contractor Yes

Office of Employment Address

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
IA Main			Yes	No	01/01/2010		Supervised From
Address 206 SOUTH KENTUCKY STREET, SUITE 201 MCKINNEY, TX 75069 UNITED STATES							

From 08/2001 To 06/2013

Name MOWERY CAPITAL MANAGEMENT, LLC(130761)

Independent Contractor Yes

Office of Employment Address

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
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CRD® or IARD(TM) System Current As Of: 04/17/2014

Snapshot - Individual

CRD® or IARD(TM) System Report provided to: Texas

Request Submitted: 4/18/2014 12:52:12 PM

Page 6 of 8

Individual 4691201 - PAXTON JR., KENNETH WARREN

Administrative Information

Office of Employment History

Office of Employment Address

No No 08/01/2001 06/05/2013 Located At
Address 201 W VIRGINIA
MCKINNEY, TX 75069 UNITED STATES

From 07/2003 To 12/2004

Name OXFORD ADVISORS CORPORATION(113581)

Independent Contractor No

Office of Employment Address

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	07/01/2003	12/31/2004	Located At
Address 16660 DALLAS PARKWAY , SUITE 1600 DALLAS, TX 75248 USA							

Other Business

KEN PAXTON LAW FIRM - ATTORNEY

CHICAGO TITLE - ATTORNEY; ESCROW OFFICER

Exam Appointments

<<No Exam Appointments found for this Individual.>>

Exam History

Exam	Enrollment ID	Exam Status	Status Date	Exam Date	Grade	Score	Window Dates
S65	34140880	Window Expired	03/27/2014				11/26/2013-03/26/2014
S65	24916628	Window Expired	12/10/2012				08/10/2012-12/08/2012
S65	24916627	Official Result	07/24/2003	08/01/2001	Passed	92	-

CE Regulatory Element Status

Current CE Status NOCESTATUS

CE Base Data

CE Appointments

<<No CE Appointments found for this Individual.>>

Current CE

<<No Current CE found for this Individual.>>

Next CE

<<No Next CE found for this Individual.>>

CE Directed Sequence History

<<No CE Directed Sequence History found for this Individual.>>

Inactive CE History Dates

<<No Inactive CE History Dates found for this Individual.>>

CRD® or IARD(TM) System Report -- See notice regarding CRD Data on cover page.

CRD® or IARD(TM) System Current As Of: 04/17/2014

Snapshot - Individual

CRD® or IARD(TM) System Report provided to: Texas

Request Submitted: 4/18/2014 12:52:12 PM

Page 7 of 8

Individual 4691201 - PAXTON JR., KENNETH WARREN

Administrative Information

Previous CE Requirement Status

<<No Previous CE Requirement Status found for this Individual.>>

Filing History

Filing Date	Form Type	Filing type	Source
11/25/2013	U4	Initial	MOWERY CAPITAL MANAGEMENT, LLC (130761)
08/07/2012	U4	Initial	MOWERY CAPITAL MANAGEMENT, LLC (130761)
07/24/2003	U4	Initial	OXFORD ADVISORS CORPORATION (113581)

CRD® or IARD(TM) System Current As Of: 04/17/2014

Snapshot - Individual

CRD® or IARD(TM) System Report provided to: Texas

Request Submitted: 4/18/2014 12:52:12 PM

Page 8 of 8

Individual 4691201 - PAXTON JR., KENNETH WARREN

Reportable Events

<<No Reportable Events found for this Individual.>>

TX Eth. Op. 536 (Tex.Prof.Eth.Comm.), 2001 WL 557898

The Supreme Court of Texas

Professional Ethics Committee

Opinion Number 536

May 2001

QUESTION PRESENTED

***1** May a lawyer receive referral or solicitation fees from an investment adviser for referring a client to the investment adviser?

STATEMENT OF FACTS

An investment advisory firm ("Investment Adviser") that is registered under the U.S. Investment Advisers Act of 1940 ("Advisers Act") and the Texas Securities Act of 1957 ("Texas Act") and qualified to provide investment advisory services in Texas under the Texas Act proposes to enter into an arrangement with a lawyer concerning an investment advisory program (the "Program") provided by the Investment Adviser. Under the Program, the Investment Adviser will pay the lawyer a referral or solicitation fee for referring clients to the Investment Adviser. The referral fee will be a percentage of the fees paid by the client to the Investment Adviser for investment advisory services throughout the period that the client's funds are invested.

The lawyer's involvement in the Program is proposed to be limited to (i) providing clients with materials describing the Program, (ii) introducing the client to the Investment Adviser's registered personnel and attending meetings at which the Investment Adviser's personnel will explain the Program to the client and assist the client in choosing the investment advisory services that best fit the client's investment advisory needs, and (iii) receiving copies of periodic investment advisory statements so that the lawyer may monitor the client's involvement in the Program. It is assumed for the purposes of this opinion that the participating lawyer and the Investment Adviser comply with all legal requirements under the Advisers Act and the Texas Act and with all other legal requirements applicable to a relationship of this nature.

We have been advised in the opinion request that the Securities and Exchange Commission has taken the position that the person providing solicitation services for a fee (in this situation the lawyer) is not required to register as an Investment Adviser under the Advisers Act if certain conditions are met, including the requirement that the solicitation fee is paid pursuant to a written agreement which: a) describes the solicitor's activities and compensation; b) contains the solicitor's undertaking to perform those duties consistent with the Investment Adviser's instructions; and c) requires the solicitor, at the time of the solicitation, to provide the client with a copy of the Investment Adviser's disclosure document, and a separate written disclosure document that sets forth certain information about the Investment Adviser, the solicitor and the arrangement. Accordingly, the arrangement between the Investment Adviser and lawyer, including the solicitation fees to be received by the lawyer, is disclosed to the client prior to his entering into the Program and the client acknowledges receipt of such information.

DISCUSSION

***2** The referral fee arrangement described above raises conflict of interest issues under the Texas Disciplinary Rules of Professional Conduct (the "Rules"), as discussed below.

Rule 1.06(b)(2) provides that:

"(b) In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person:

...

(2) reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to

a third person or by the lawyer's or law firm's own interests."

Since the lawyer will receive fees from the Investment Adviser for recommending the Investment Adviser to the lawyer's client, the lawyer might advise the client to choose one approach to investing if there were no fee arrangement with the Investment Adviser, while the lawyer might be swayed by the promise of a solicitor's fee to give different advice in order to receive a fee. Comment 4 to Rule 1.06 cautions that loyalty to a client is impaired in any situation when a lawyer may not be able to consider, recommend or carry out an appropriate course of action for a client because of the lawyer's own interests.

The obligation to provide independent advice to each client is an essential element of a lawyer's relationship with the client that is reinforced by Rule 2.01, which provides:

"In advising or otherwise representing a client, a lawyer shall exercise independent professional judgment and render candid advice."

In this regard, the facts indicate that the lawyer will sign an agreement with the Investment Adviser undertaking to perform his duties consistent with the Investment Adviser's instructions. And following the lawyer's initial counseling of the client that results in a referral to the Investment Adviser, if the client agrees to participate in the Program the lawyer thereafter receives from the Investment Adviser copies of periodic investment advisory statements related to the client's investments so that the lawyer may monitor the client's involvement in the Program. A client cannot reasonably expect to receive independent professional judgment from his lawyer when such lawyer is contractually obligated to perform his duties consistent with the Investment Adviser's instructions, and his monitoring of the client's involvement in the Program results in additional solicitation or referral fees to the lawyer.

This referral arrangement constitutes a conflict of interest under Rule 1.06(b)(2) because the lawyer's representation reasonably appears to be adversely limited by the lawyer's own financial interests and by his obligations to a third person, the Investment Adviser.

Before accepting or continuing a representation that involves a conflict of interest under Rule 1.06(b), the lawyer must satisfy the requirements of Rule 1.06(c), which provides:

"(c) A lawyer may represent a client in the circumstances described in (b) if:

*3 (1) the lawyer reasonably believes the representation of each client will not be materially affected; and

(2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any."

Under this Rule, the lawyer must first reasonably determine whether the arrangement with the Investment Adviser will materially affect the lawyer's representation of the client. Comment 5 to Rule 1.06 notes that:

"[A] lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee If the probity of a lawyer's own conduct in a transaction is in question, it may be difficult for the lawyer to give a client detached advice."

With respect to determining whether a client can provide effective consent to a conflict of interest, Comment 7 to Rule 1.06 cautions that:

"[W]hen a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved should not ask for such agreement or provide representation on the basis of the client's consent."

It is the opinion of the Committee that the standards of Rule 1.06(c) cannot be met under these circumstances. Because the client's participation in the Program could continue for a substantial period of time and the lawyer has contractual obligations to the Investment Adviser, the lawyer could not reasonably believe that this arrangement with an Investment Adviser would not materially affect his representation of the client. For example, the on-going fee arrangement to the lawyer from the Investment Adviser would create a financial inducement for the lawyer to avoid a critical appraisal of the Investment Adviser's on-going services that might lead to a recommendation that the client terminate such advisory services. Moreover, the inherent uncertainties involved in a lawyer monitoring his client's involvement in the Program over a period of time would make it impossible for the lawyer to provide full disclosure of the implications and possible adverse consequences resulting from the representation.

CONCLUSION

A lawyer's receipt from an Investment Adviser of solicitation fees that continue while the lawyer's client continues to receive services from the Investment Adviser violates Rule 1.06(b)(2) because the lawyer's representation of the client would be adversely limited by the lawyer's own financial interests and his obligations to the Investment Adviser. Under these circumstances the lawyer could not satisfy the requirements of Rule 1.06(c).

TX Eth. Op. 536 (Tex.Prof.Eth.Comm.), 2001 WL 557898

End of Document

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Exhibit 2

NO. 416-81915-2015

THE STATE OF TEXAS

V.

WARREN KENNETH PAXTON, JR.

IN THE 416TH JUDICIAL DISTRICT COURT
OF COLLIN COUNTY, TEXAS

BOND: _____

OFFENSE: In connection with the sale, offering for sale or delivery of, the purchase, offer to purchase, invitation of offers to purchase, invitations of offers to sell, or dealing in any other manner in any security or securities, engaging in fraud or fraudulent practice in violation of Texas Securities Act, Section 29(C)(Joel Hochberg).

INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY for the County of Collin, State of Texas, duly selected, impaneled, sworn, charged and organized as such by the 416th District Court for the said County at the July Term, A.D. 2015 of the said Court, upon their oaths present in and to said Court that **WARREN KENNETH PAXTON, JR.**, hereinafter styled Defendant, on or about the 26th day of July, 2011, and before the presentment of this indictment, in the County and State aforesaid, did then and there engage in fraud in

At 4:15 PM
FILED
JUL 28 2015
ANDREA STROH THOMPSON
Clerk District Court Collin County, Texas
By [Signature]



connection with the offer for sale and sale of common stock of SERVERGY, INC., being a security to wit: stock, to JOEL HOCHBERG, hereinafter styled the complainant, in an amount involving \$100,000 or more, by intentionally failing to disclose to the complainant, to wit: that **WARREN KENNETH PAXTON, JR.** had not, in fact, personally invested in SERVERGY, INC., and that **WARREN KENNETH PAXTON, JR.** would be compensated, and had, in fact, received compensation from SERVERGY, INC., in the form of 100,000 shares of SERVERGY, INC. stock, the said information being material fact,

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Ray S. Mull
FOREMAN OF THE GRAND JURY

7/28/15
DATE



NO. 416-81914-2015

THE STATE OF TEXAS

V.

WARREN KENNETH PAXTON, JR.

IN THE 416TH JUDICIAL DISTRICT COURT
OF COLLIN COUNTY, TEXAS

BOND: _____

OFFENSE: In connection with the sale, offering for sale or delivery of, the purchase, offer to purchase, invitation of offers to purchase, invitations of offers to sell, or dealing in any other manner in any security or securities, engaging in fraud or fraudulent practice in violation of Texas Securities Act, Section 29(C)(Byron Cook).

INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY for the County of Collin, State of Texas, duly selected, impaneled, sworn. charged and organized as such by the 416th District Court for the said County at the July Term, A.D. 2015 of the said Court, upon their oaths present in and to said Court that **WARREN KENNETH PAXTON, JR.**, hereinafter styled Defendant, on or about the 26th day of July, 2011, and before the presentment of this indictment, in the County and State aforesaid, did then and there engage in fraud in

At **FILED**
4:15 PM
JUL 28 2015
ANDREA STRON THOMPSON
Clerk District Court Collin County, Texas
By D. S. [Signature]



connection with the offer for sale and sale of common stock of SERVERGY, INC., being a security to wit: stock, to BYRON COOK, hereinafter styled the complainant, in an amount involving \$100,000 or more, by intentionally failing to disclose to the complainant, to wit: that **WARREN KENNETH PAXTON, JR.** had not, in fact, personally invested in SERVERGY, INC., and that **WARREN KENNETH PAXTON, JR.** would be compensated, and had, in fact, received compensation from SERVERGY, INC., in the form of 100,000 shares of SERVERGY, INC. stock, the said information being material fact,
AGAINST THE PEACE AND DIGNITY OF THE STATE.



FOREMAN OF THE GRAND JURY

7/28/15

DATE



At **FILED**
2:58 P M

JUL - 7 2015

ANDREA STROM THOMPSON
Clerk District Court Collin County, Texas
By *[Signature]*

NO. 416-81913-2015

THE STATE OF TEXAS

V.

WARREN KENNETH PAXTON, JR.

IN THE 416TH JUDICIAL DISTRICT COURT
OF COLLIN COUNTY, TEXAS

BOND: _____

OFFENSE: Acting as an investment adviser representative without being registered by the Texas Securities Board in violation of Texas Securities Act, Section 29(I).

INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY for the County of Collin, State of Texas, duly selected, impaneled, sworn, charged and organized as such by the 416th District Court for the said County at the July Term, A.D. 2015 of the said Court, upon their oaths present in and to said Court that **WARREN KENNETH PAXTON, JR.**, hereinafter styled Defendant, on or about the 18th day of July, 2012 and before the presentment of this indictment, in the County and State aforesaid, did then and there knowingly and intentionally render services as an investment advisor representative to



James and Freddie Henry and the aforesaid **WARREN KENNETH PAXTON, JR.**, was then and there not duly registered as an investment adviser representative by and with the Securities Commissioner of the State of Texas,

AGAINST THE PEACE AND DIGNITY OF THE STATE.



FOREMAN OF THE GRAND JURY



DATE



Exhibit 3

TY CLEVENGER

Attorney at Law
1095 Meadow Hill Drive
Lavon, Texas 75166

telephone: 979.985.5289
facsimile: 979.530.9523

tyclevenger@yahoo.com
Texas Bar No. 24034380

March 6, 2015

Mr. Isiah Joshua, Jr., Foreman
199th District Court Grand Jury

Mrs. Dixie Jeffers, Vice Foreman
199th District Court Grand Jury

Re: Kenneth Warren Paxton, Jr.

Mr. Isiah and Mrs. Jeffers:

I write to request a grand jury investigation of Kenneth Warren Paxton, Jr., formerly of Collin County. By copy of this letter to District Attorney Greg Willis, and for the reasons set forth below, I request that Mr. Willis recuse his office from any investigation of Mr. Paxton, who now serves as the Attorney General of Texas.

You are probably familiar with recent press reports about the Travis County District Attorney's investigation to determine whether Mr. Paxton criminally violated the Texas Securities Act. On January 29, 2015, Travis County prosecutors announced that they had determined that venue was improper in Travis County, therefore the case would be referred to the district attorneys in Dallas County and Collin County.

Later that day, Dallas County District Attorney Susan Hawk announced that venue was not proper in Dallas County. That, of course, meant venue was only proper in Collin County. When contacted by the *Dallas Morning News*, Collin County First Assistant District Attorney Bill Dobiyanski declined to say whether his office was investigating Mr. Paxton.

I subsequently spoke with Mr. Dobiyanski myself and received the same answer. Under the circumstances of this case, that is not an acceptable response. While prosecutors commonly refuse to acknowledge an investigation when publicity might jeopardize the case, there is no danger of that here because Travis County publicly acknowledged the criminal investigation months ago, and most of the facts are already a matter of public record.

Furthermore, according to a report on the *Dallas Morning News* website, Mr. Willis "is a longtime friend of Paxton." That does not necessitate recusal by law, nor does it necessarily mean that Mr. Willis is trying to bury the case against his friend. Nonetheless, his prolonged silence creates the appearance that he wants to let the case die by keeping matters quiet until the limitations period lapses.

I strongly urge Mr. Willis to recuse his office from the case against Mr. Paxton and ask Judge Angela Tucker to appoint someone from the Travis County District Attorney's Office to serve as special prosecutor in Collin County. Since Travis County has already completed its investigation, there is no need to re-invent the wheel.

Regardless of whether Mr. Willis recuses his office, the grand jury can act independently to investigate Mr. Paxton. "In consideration of the importance of the place occupied by the grand jury in our system of government, Texas courts have long described the grand jury as a separate tribunal, independent of the control of judges and prosecutors, whose proceedings are secret, vested with broad inquisitorial powers." *Whittington v. State*, 680 S.W.2d 505, 512 (Tex.App. - Tyler 1984, *pet. denied*). Grand jurors are free to "act on their own knowledge and ... [are] free to make their presentments or indictments on such information as they deem satisfactory." *Costello v. U.S.*, 350 U.S. 359, 361 (1956), cited with approval in *Whittington*, 680 S.W.2d at 511.

In other words, the grand jury can investigate and indict Mr. Paxton regardless of what Mr. Willis does or does not do. And a grand jury in Collin County can certainly invite the Travis County District Attorney's Office to present the case that it otherwise would have (but for the lack of venue) presented to a Travis County grand jury.

The grand jury should be aware of the seriousness of the allegations against Mr. Paxton as well as the overwhelming evidence against him. He has been accused of violating Chapter 29 of the Texas Securities Act, which declares that violations are a third-degree felony. The relevant statute states as follows:

Any person who shall... [s]ell, offer for sale or delivery, solicit subscriptions or orders for, dispose of, invite offers for, or who shall deal in any other manner in any security or securities without being a registered dealer or agent as in this Act provided shall be deemed guilty of a felony of the third degree.

Vernon's Ann. Texas Civ. St. Art. 581-29(A). I have attached a copy of an agreed order dated May 2, 2014 between Mr. Paxton and Texas Securities Commissioner John Morgan, and frankly I am surprised that Mr. Paxton's lawyer let him sign it. In that order, Mr. Paxton stipulated that he "solicited three (3) clients for MCM at times when MCM was a state-registered investment advisor but [Paxton] was not registered as an investment advisor representative of MCM."

As I interpret Mr. Paxton's signature on the agreed order, he has stipulated that he violated Art. 581-29(A). In other words, it appears to me that he has already admitted that he committed a felony. If so, the agreed order is not only sufficient evidence for an indictment, but a criminal conviction.

Mr. Paxton's spokesmen have repeatedly claimed that his violation of the statute was an honest mistake, but that explanation does not hold water. While he was in the Texas House of Representatives in 2003, Mr. Paxton voted in favor of the statute that outlawed his conduct. In 2011, while he was a member of the Texas Senate, Mr. Paxton voted to amend that statute by clarifying that violations are a third-degree felony.

Worse, Mr. Paxton previously violated the same statute in 2004 and 2005, and in 2009 *he was sued for violating that statute*. Yet he violated it again in 2012, and now he claims that it was all just a good-faith mistake. This is not plausible.

I recently spoke with John Sloan, the attorney in Longview who sued Mr. Paxton in 2009, and he said he would be glad to meet with the grand jury if invited. According to Mr. Sloan, his clients previously were clients of Mr. Paxton, and Mr. Paxton referred them to his friend's investment company without telling them that he was getting a 30 percent kickback on investment management fees.

Mr. Paxton's spokesmen have repeatedly made issue of the fact that Mr. Sloan has previously donated to Democrats, but that should be irrelevant. I am a Republican, and I could not care less what parties Mr. Paxton and Mr. Sloan are affiliated with. The law is the law, and nobody should be above it, especially not the state's highest ranking law-enforcement official.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a stylized, sweeping flourish extending to the right.

Ty Clevenger

cc: Grand Jurors,
199th District Court Grand Jury
The Hon. Angela Tucker, Judge
199th District Court
The Hon. Greg Willis, Collin County District Attorney