NO. 62242

Before the Board of Disciplinary Appeals Appointed by The Supreme Court of Texas

RONALD T. SPRIGGS,
APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

On Appeal from the Evidentiary Panel
For the State Bar of Texas District 13-2
No. 201407032

BRIEF OF APPELLEE COMMISSION FOR LAWYER DISCIPLINE

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BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits this brief in response to the brief filed by Appellant, Ronald T. Spriggs. For clarity, this brief refers to Appellant as "Spriggs" and Appellee as "the Commission." References to the record are labeled CR (clerk's record), RR (reporter's record), Pet. Ex. (Petitioner's exhibit to reporter's record),

Resp. Ex. (Respondent's exhibit to reporter's record), and App. (appendix to brief). References to rules refer to the Texas Disciplinary Rules of Professional Conduct[1] unless otherwise noted.

[1] *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app A-1. (West 2013).

STATEMENT OF THE CASE

Type of Proceeding:	Attorney Discipline
Petitioner/Appellee:	The Commission for Lawyer Discipline
Respondent/Appellant:	Ronald T. Spriggs
Evidentiary Panel:	13-2
Judgment:	Judgment of Partially Probated Suspension dated July 18, 2019 Judgment Nunc Pro Tunc of Partially Probated Suspension dated October 28, 2019
Violations found (Texas Disciplinary Rules of Professional Conduct):	**Rule 1.01(b)(1):** In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer; **Rule 1.03(a):** A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. **Rule 1.15(d):** Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers

relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.

STATEMENT OF THE ISSUES

I. Can a challenge to the racial composition of a panel be raised for the first time on appeal, and is such a challenge cognizable where CDC has no control over the composition of the panel, and where applicable policies specifically encourage diversity?

II. Did the filing of the clerk's record by CDC violate Spriggs's right to due process where he had the record for over 30 days prior to the filing of his brief, and where he failed to request a longer extension?

III. Was the panel's finding of professional misconduct supported by sufficient evidence under the substantial evidence standard of review?

IV. Did the panel hear arguments of counsel before it retired to deliberate, and did Spriggs preserve any error with regard to closing arguments where he made no formal objection?

V. Did the panel act within its wide-ranging discretion in awarding attorneys' fees to the Commission as an ancillary sanction?

STATEMENT OF FACTS

Ronald T. Spriggs appeals a finding of professional misconduct by an evidentiary panel. The panel found violations of Rules 1.01(b)(1) (neglect), 1.03(a) (failure to communicate), and 1.15(d) (failure to return unearned fee (CR at 472-81) and imposed a two-year partially probated suspension with 90 days of active suspension. (1st Supp. CR at 59-66) The panel also ordered restitution to the complainant in the amount of $3,000 and attorneys' fees to the Commission in the amount of $4,000. (*Id.*)

In 2013, the complainant, Cleveland Gustin was facing a criminal charge of assault on a public servant. (RR V.1 at 15, RR Pet. Ex. 4) After his first attorney had to withdraw from the case, he hired Spriggs. (RR V.1 at 43) He sought out Spriggs because his wife had known Spriggs's daughter growing up. (RR V.1 at 38) Gustin hired Spriggs in March of 2013 and Spriggs filed a notice of appearance on March 22, 2013. (RR V.1 at 15; RR Pet. Ex. 2) Gustin paid Spriggs $5,000. (RR V.1 at 16; RR Pet. Ex. 1) A few days later, Gustin and his wife paid an additional $1,000 in cash. (RR V.1 at 16-17)

Spriggs later informed Gustin that he had negotiated a potential plea deal with the district attorney that would allow Gustin to enter the Substance Abuse Felony Punishment Facility (SAFPF) program. (RR V.1 at 21) The program allows for detoxification while incarcerated.[2] Gustin rejected this offer because, according to his doctor, Gustin might die unless he went through detoxification in a hospital. (RR V.1 at 18-19) Over the course of the representation, Gustin only met with Spriggs twice. (RR V.1 at 20)

In April of 2013, Gustin received a call from his bail bondsman informing him that he needed to be in court the following day. (RR V.1 at 26) Gustin reported to court expecting his case to go to trial, but Spriggs did not appear. (RR V.1 at 25-26) Spriggs did not communicate with Gustin about the trial or tell him he was not going to be present. *Id.* The judge asked Gustin whether his lawyer was present and who represented him. (RR V.1 at 22-23) Gustin answered and asked the judge if he should find a new lawyer. The judge told him, "I can't answer that." (*Id.*) Court records comported with Gustin's account with the docket sheet noting the following: "Case called for trial. Δ appeared

[2] https://www.tdcj.texas.gov/divisions/rpd/substance_abuse.html

but not the Δ attorney, Ron Spriggs. The office tried several times to call Spriggs into his trial setting for today. D.A. reported to Court that Spriggs had called this morning and stated to Dave Blout that he (Spriggs) would not be here." (RR Pet. Ex. 2; App. 1)

Gustin terminated the representation and retained another lawyer. (RR V.1 at 28-29) Gustin requested the return of any unearned fees, but Spriggs never provided any refund, nor did he provide any invoices to account for how he earned the fees Gustin had already paid. (RR V.1 at 39-30) Gustin later filed a grievance (with assistance of counsel). (RR V.1 at 15) Ultimately, subsequent counsel was able to negotiate a plea agreement for deferred adjudication with additional conditions. (RR V.1 at at 33; Pet. Ex. 4)

For his part, Spriggs testified that when he initially met with Gustin, he informed him (and his family members) that he had a conflict with the anticipated trial date. (RR V.1 at 96) Spriggs was scheduled to be in court in San Antonio. (*Id.*) He filed a motion for continuance on April 12, 2013. (RR Pet. Ex. 6) It was not until the morning of trial that Spriggs learned that his motion for continuance had been denied. (RR V.1 at 101-02) The order denying the motion was

not signed until April 19, 2013. (RR Pet. Ex. 7) Spriggs maintained he was in San Antonio attending court on another matter. (RR V.1 at 106) Spriggs did not have any follow up conversations with Gustin about not attending the trial because he had told him in their initial meeting that he might have a conflict on the date of trial. (RR V.1 at 106)

Spriggs also testified that he was in constant communications with Gustin's wife and mother. (RR V.1 at 130-31) In addition, he claimed he only received $5,000 and denied receiving any subsequent payments. (RR V.1 at 76-77) He testified that he earned all of his fees. When asked what tasks he performed, he testified that he spent ten hours performing legal research on whether Gustin would be entitled to admittance into the SAFPF program. (RR V.1 at 78-79) He also did legal research on the charge, assault. (RR 80-82) He also communicated with the DA's office and got a plea offer for admittance into the SAFPF program. (85-86) That took approximately an hour and a half. (*Id.*) The motion for continuance took half an hour. (RR V.1 at 86) He spent three hours reviewing Gustin's medical records. (RR V.1 at 86-87) He also spent half an hour each on the motion to substitute and the initial letter of representation. (RR V.1 at 87) He also wrote two letters to the client,

one about rejecting the SAFPF plea offer and one about an upcoming court date after the April 2013 setting. (RR V.1 at 88-90) He spent a half hour on each letter. (RR V.1 at 90) He billed an hour for meetings with Gustin's wife and mother. (RR V.1 at 91) Finally, Spriggs billed an hour for his son's time (also an attorney) who researched treatment facilities for Gustin. (RR V.1 at 92) He agreed the final total was 17 or 18 hours at a rate of $300 per hour. (RR V.1 at 125)

None of this was based on contemporaneous time records. Spriggs testified that he recorded his time by writing it down on sticky notes or other papers, but that he either got rid of those notes, or he did not bring them to the hearing (or produce them in discovery) because he "figured y'all wouldn't want me to bring a bunch of notes in here." (RR V.1 at 137-38)

Spriggs also disputed whether the case was actually called for trial. He elicited testimony from the court reporter for the 251st District Court. She testified that she reviewed her notes and saw no indication that Gustin's case was called for trial on April 17, 2013 or

any of the surrounding days.[3] (RR V.1 at 155-56) But on cross-examination, she testified that it was possible that the case was called, but that she did not make a record because one of the attorneys was not present. (RR V.1 at 164-65, 180-81) She also noted that there were trial subpoenas issued for April 15, indicating that a trial was anticipated. (RR V.1 at 186)

At the conclusion of the hearing, the panel indicated that closing arguments were unnecessary. (RR V.1 at 264) Spriggs asked, "If I asked for it, you wouldn't give it to me?") (*Id.*) The panel chair replied in the negative. (*Id.*) Spriggs offered no objections. (*Id.*) The panel deliberated and determined that it wished to view additional records. (*Id.*) It sought the court's file for Gustin's criminal case and court records from Spriggs's San Antonio proceeding that conflicted with Gustin's trial. (RR V.1 at 264-65)

The Commission obtained the records and supplied them to the panel. (*See* 2nd Supp. CR) The panel reconvened and heard arguments

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[3] The record is unclear whether the trial was set for April 15, 2013, or April 17, 2013. The docket notes the case was called for trial on April 17, 2013, but Spriggs's motion for a continuance as well as the State's trial subpoenas indicate trial on April 15, 2013. (Compare Pet. Ex. 2 *with* Pet. Ex. 6, 2nd Supp. CR at 31-32) Ultimately, this is immaterial as Spriggs admitted he was not present on either date.

from both sides on the additional records and the case generally. (RR V.2 at 4-25) The panel was particularly concerned with what efforts Spriggs took to protect Gustin's rights if he could not attend the trial. (RR V.2 at 14-23) The panel found violations of Rules 1.01(b)(1), 1.03(a), and 1.15(d).

During the sanctions phase of the hearing, the Commission introduced Spriggs's prior disciplinary record, and trial counsel's affidavit regarding attorney's fees. (RR V.2 at 27-28; RR Pet. Ex. 17) Spriggs objected that the affidavit was not accurate and was not a "proper business record." (RR V.2 at 28) In addition, Spriggs argued that the affidavit specified that the hourly rate for trial counsel ($225 per hour) was appropriate for Dallas, but not Amarillo. (RR V.2 at 29) Spriggs noted his hourly rate in Amarillo is $350 per hour based on his 24 years of experience. (RR V.2 at 30) Trial counsel for the Commisson has 14 years of experience. (*Id.*) The panel imposed a two-year partially probated suspension with 90 days of active suspension. (RR V.2 at 36-37; 1st Supp. CR at 59-66) The panel also ordered restitution to the complainant in the amount of $3,000 and attorneys' fees to the Commission in the amount of $4,000. (*Id.*) This appeal followed.

SUMMARY OF THE ARGUMENT

The Board should affirm. Spriggs raised no arguments with regard to the composition of the evidentiary panel. Even if he had, these arguments fail as a matter of law. Under *Batson* and its progeny, a litigant is not entitled to any specific racial composition of a jury. In addition, CDC does not control who is appointed as panel members, and does not control which panel members hear a particular case. Finally, SBOT policy specifically encourages diversity.

Nothing about the handling of the clerk's record amounts to a violation of Spriggs's due process rights. He had the record for over 30 days prior to the filing of his brief, and he did not ask for a more lengthy extension.

The panel's findings were supported by ample evidence under the substantial evidence test. The court records and the complainant's testimony were more than sufficient to establish that Spriggs failed to appear for a scheduled trial or provide sufficient communication with his client prior to trial. The panel could also easily make a credibility determination in finding that Spriggs did not spend 17-18 hours on the representation to earn the entirety of the advance fee he was paid.

Spriggs's arguments regarding closing arguments are also baseless. The panel heard arguments of counsel during the second portion of the evidentiary hearing prior to issuing its ruling. Even if it did not, Spriggs did not formally object to the lack of closing arguments.

Finally, the panel acted well within its wide-ranging discretion in awarding attorneys' fees to the Commission. Rule 1.06(X) does not require any mandatory elements of proof, and the panel's conclusion that an hourly rate of $225 per hour for a fourteen-year attorney was reasonable and supported in the record. The Board should affirm.

ARGUMENT

I. Spriggs raised no issues with regard to the composition of the panel, and his arguments asserted here are baseless.

Spriggs's arguments regarding the racial composition of the panel were not raised before the panel, nor were any other equal protection arguments related to racial discrimination. Well-established error-preservation rules preclude a party from seeking appellate review of an issue that the party did not properly raise in the trial court. TEX. R. APP. P. 33.1(a)(1) ("As a prerequisite to presenting a complaint for appellate review, the record must show that ... the complaint was made to the trial court ...."); *see also*, *In re B.L.D.,* 113 S.W.3d 340, 350 (Tex. 2003) (listing cases for proposition that "error [must be] preserved in the trial court").

Even if such an argument had been raised, it contains no merit. The principal case on this issue is *Batson v. Kentucky*, 476 U.S. 79 (1986), which holds that a prosecutor may not exercise peremptory strikes of prospective jurors on the basis of race. In *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991) the Supreme Court applied the same rule to civil trials, and in *Powers v. Palacios*, 813 S.W.2d 489, 490 (Tex. 1991) the Texas Supreme Court applied this rule in Texas.

While litigants may not strike potential jurors on the basis of race, this does not mean that a litigant has a right to a jury composed in whole or in part of persons of his/her own race (or any other race): "[A] defendant has no right to a petit jury composed in whole or in part of persons of his own race…But the defendant does have the right to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria." *Batson*, 476 U.S. at 85.

A *Batson* challenge to a peremptory strike consists of three steps: (1) the opponent of the strike must establish a *prima facie* showing of racial discrimination; (2) the proponent of the strike must then articulate a **race**-neutral explanation; and (3) finally, the trial judge must decide whether the opponent has proved purposeful racial discrimination..

A *Batson* challenge to an evidentiary panel fails under any or all of the applicable three prongs. First, *Batson* does not guarantee the right to a specific racial composition of a jury (or here, a panel). It is not enough to show that the panel does not contain a member of the respondent's race. Second, there is no showing that CDC struck or otherwise prevented a person from serving on the panel based on race.

CDC does not decide who gets to be on an evidentiary panel or what panel is selected to hear a particular case. Members of the grievance committee are nominated by the State Bar Director from their district. The State Bar President makes the appointments. TEX. RULES DISCIPLINARY P. R. 2.02; State Bar Board Policy Manual 6.4.2 CDC is not involved in this process, and therefore cannot engage in racial discrimination. In addition, CDC is not involved in deciding which members of a committee will form specific panels, or what cases are assigned to what panel. These decisions are made by the chairperson of the district grievance committee. TEX. RULES DISCIPLINARY P. R. 2.06, 2.17 Again CDC is not involved in this process. Finally, SBOT policy in the nomination of grievance committee members specifically encourages diversity:

> (A) Diversity. It is in the best interest of the public and the lawyers of Texas for the racial, ethnic, and gender makeup of the district grievance committees to fairly represent as closely as reasonably practicable, the racial, ethnic, and gender makeup of the districts they serve. Directors are encouraged to make their district grievance committee appointments so as to continue the fulfillment of this goal and to ensure that lawyer members reflect the various sizes of practice groups. State Bar Board Policy Manual 6.4.2(A)

Even if preserved, Spriggs's equal protection arguments have no merit.

II. Spriggs's due process arguments with regard to access to the clerk's record contain no basis in law or fact.

Spriggs's arguments regarding receipt of the clerk's record are legally and factually baseless. As an initial matter, Spriggs cites to no authority supporting his argument. TEX. R. APP. P. 38.1(i). "[An appellant's] briefing requirements are not satisfied by merely uttering brief, conclusory statements unsupported by legal citations." *Canton-Carter v. Baylor Coll. of Med.*, 271 S.W.3d 928, 931 (Tex. App.—Houston [14th Dist.] 2008, no pet.) "Failure to cite legal authority or to provide substantive analysis of the legal issues presented results in waiver of the complaint. *Id.*; *see also*, *Bohannan v. State*, 546 S.W.3d 166, 180 (Tex. Crim. App. 2017), reh'g denied (Feb. 14, 2018) ("It is incumbent upon Appellant to cite specific legal authority and to provide legal arguments based upon that authority. We will not make novel legal arguments for him."). Thus, this issue was waived.

Factually, this argument also lacks merit. Each and every document contained in the clerk's record was either delivered or otherwise received by Spriggs during the course of the litigation. In addition, Spriggs received the clerk's record on October 8, 2019. His brief was filed on November 13, 2019. Thus, Spriggs had possession of

the record more than 30 days, which is the standard amount of time to file a brief following receipt of the record on appeal. TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.05(a); TEX. R. APP. P. 38.6(a).

Legally, Spriggs's due process arguments are equally meritless. "Due process at a minimum requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Univ. of Texas Med. Sch. at Houston v. Than*, 901 S.W.2d 926, 930 (Tex. 1995) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). Here, Spriggs sought and received a seven day extension to complete his brief. The Commission did not—and does not—oppose reasonable requests for extension. If the late-received record, regardless of the cause, caused an issue in preparing his brief, Spriggs had every ability to request a longer extension, which the Commission would not have opposed. There is no showing he was denied an opportunity to be heard at a meaningful time and in a meaningful manner.

III. Substantial evidence supports the panel's findings.

The panel's ruling was supported by substantial evidence. In attorney disciplinary cases, the substantial evidence standard of review applies. TEX. GOV'T CODE § 81.072(b)(7) (State Bar Act); TEX. RULES

DISCIPLINARY P. R. 7.11; *Comm'n for Lawyer Discipline v. Schaefer,* 364 S.W.3d 831, 835 (Tex. 2012). Under the substantial evidence test, the findings of an administrative body are presumed to be supported by substantial evidence, and the party challenging the findings must bear the burden of proving otherwise. *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994). In determining whether there is substantial evidence to support the findings, the reviewing court may not substitute its judgment for that of the administrative body and must consider only the record upon which the decision is based. *R.R. Comm'n of Tex. v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995); *Tex. State Bd. of Dental Exam'rs v. Sizemore*, 759 S.W.2d 114, 116 (Tex. 1988). The substantial evidence standard focuses on whether there is any reasonable basis in the record for the administrative body's findings. *City of El Paso*, 883 S.W.2d at 185. Substantial evidence is something more than a mere scintilla, but the evidence in the record may preponderate against the decision and still amount to substantial evidence. *Wilson v. Comm'n for Lawyer Discipline*, BODA Case No. 46432, 2011 WL 683809, at *2 (January 30, 2011). The ultimate question is not whether a finding is correct, but only whether there is

some reasonable basis in the record for the finding. *City of El Paso*, 883 S.W.2d at 185. Arguments regarding the credibility of witnesses do not provide a basis for reversal under the substantial evidence standard.

Here, Spriggs's principal argument is that the complainant was not credible. (App. Br. at 15) Under the substantial evidence standard, this is insufficient to reverse. But the panel's findings rest on far more.

A. Rule 1.01(b)(1) – Neglect

Rule 1.01(b)(1) prohibits a lawyer from neglecting a legal matter entrusted to the lawyer. TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01(b)(1). "'Neglect' signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients." TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01(c). A violation of Rule 1.01(b) does not require proof of any particular quantum of harm. *See* TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01(b)(1), (c).

Here, both the documentary evidence and the testimony establishes that Gustin's case was set for trial in April of 2013. (Pet. Ex. 2); 2nd Supp. CR at 31-32) Spriggs knew his motion for continuance was denied. (RR V.1 at 101) Yet he did not appear at the trial, or make

other arrangements to have substitute counsel present to reurge the motion for continuance or otherwise protect Gustin's rights.

Spriggs's arguments on appeal seem to center on the contention that the court did not actually formally call the case for trial. He principally relied on the testimony of the court reporter for this fact as she had no notes of the case being called for trial. But she also testified that it was possible that this occurred, but that she would not make a record because one of the attorneys was not present. (RR V.1 at 164-65, 180-81) Regardless of whether the court formally called the case, or simply inquired of Gustin why he was in court with no attorney is of no consequence. Spriggs was aware of the setting and that his continuance had been denied, but he took no further action to protect Gustin's rights. This is sufficient to establish neglect regardless of whether Gustin suffered harm, or whether the court formally called the case.

B. Rule 1.03(a) – Failure to communicate

Rule 1.03(a) requires a lawyer to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.03(a). The adequacy of the communication will vary

based on the particular circumstances. TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.03 cmt. 2.

Here, Gustin testified that the only notice he received was from his bail bondsman calling him and instructing him to appear for trial. Spriggs did not discuss the upcoming trial, engage in any witness preparation or take any other actions to prepare Gustin for trial. This testimony was more than sufficient under the substantial evidence standard to support a violation of Rule 1.03(a).

C. Rule 1.15(d) – Failure to return unearned fee

Upon termination of a representation, the lawyer must return any unearned fees. TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.15(d). "When a lawyer receives from a client monies that constitute a prepayment of a fee and that belongs to the client until the services are rendered…" TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.14 cmt. 2.

Here, Spriggs was initially paid $5,000. (RR Pet. Ex. 1) He testified that the full retainer was $7,500. (RR V.1 at 76-77) There was a dispute as to whether he was paid an additional $1,000. (RR V.1 at 77) Ultimately, records showed Spriggs received an additional $800 and $200 payment. (RR V.2 at 24-25) When asked to account for what

work he performed on the case, Spriggs testified he worked approximately 17 -18 hours. (RR V.1 at 125) However, ten of those hours were legal research to determine if Gustin was eligible to enter the SAFPF program. (RR V.1 at 78-81) As for records, Spriggs testified that he recorded his time by writing it down on sticky notes or other papers, but that he either got rid of those notes, or he did not bring them to the hearing (or produce them in discovery) because he "figured y'all wouldn't want me to bring a bunch of notes in here." (RR V.1 at 137-38) Based on this record, the panel could easily make a credibility determination and determine that Spriggs did, in fact, receive the additional $1,000 payment, and the hours he reported to the panel did not accurately reflect the actual work performed on the case.

IV. The panel heard argument of counsel.

The record shows Spriggs failed to object to the lack of argument of counsel during the first disciplinary hearing:

MR. SPRIGGS: You want closing arguments?

MR. BELL: I do not.

MR. SPRIGGS: Sir?

MR. BELL: I do not.

> MR. SPRIGGS: If I asked for it, you wouldn't give it to me?
>
> MR. BELL: No, sir. It's not that I don't like you, because I do, but I don't think closing arguments will be beneficial at this point in the proceeding. Okay. Off the record. (RR V.1 at 264)

A similar exchange took place in *In re M.A.*, 2004 WL 1284019, at *2 (Tex. App.—El Paso June 10, 2004, no pet.). There, as here, the attorney did not make any objections to the lack of closing arguments, and thus waived the issue on appeal. *Id*. (citing *Ruedas v. State*, 586 S.W.2d 520, 523 (Tex. Crim. App. 1979)). Here, while Spriggs asked for a closing argument, he did not object to the denial of closing argument.

In addition, the panel did, in fact, hear closing arguments of counsel. After the panel indicated it did not wish to hear closing arguments, it did not decide the matter, but continued the case to allow for the parties to obtain additional evidence. (RR V.1 at 264-67) When the panel reconvened, it heard arguments of counsel before deliberating. (RR V.2 at 1-25) Thus, Spriggs's argument is also factually incorrect.

V. The panel acted within its discretion in awarding fees.

The panel's award of attorneys' fees as an ancillary sanction was proper. A reviewing court will not overturn a trial court's allowance of

attorney fees unless the award constitutes a clear abuse of discretion. *Brown v. Comm'n for Lawyer Discipline*, 980 S.W.2d 675, 683 (Tex. App.—San Antonio 1998, no pet.). The term "Reasonable Attorneys' Fees" is defined as "a reasonable fee for a competent private attorney, under the circumstances." TEX. RULES DISCIPLINARY P. R. 1.06(X). Among the factors that may be considered in determining the reasonableness of the fee are the time, labor, and skill required; the novelty and difficulty of the issues; the customary fee in the locality; the amount involved and the results obtained; the time limitations imposed by the circumstances; and the experience, reputation, and ability of the lawyers performing the services. *Id.* Per the Rules, none of these factors are specifically required, as they are merely factors the panel "may" consider. *Id.* ("Relevant factors that *may be* considered in determining the reasonableness of a fee include *but are not limited to* the following…") (emphasis added).

Here, the Commission offered the affidavit of trial counsel which details the time spent by trial counsel and the costs incurred by CDC to bring the case to a hearing. The affidavit more than suffices under Rule 1.06(X). Spriggs summarily argues that the affidavit "is not a proper

business record under the TRCP." (App. Br. at 22) As the panel correctly pointed out, the document was not offered as a business record, and that trial counsel was present and able to testify regarding the fees sought. (RR V.2 at 28-29) Even if adequately briefed, this argument has no merit.

In addition, Spriggs argues that the award of fees must be reversed because the affidavit states that the $225 per hour rate is reasonable for Dallas, but not Amarillo. (App. Br. at 22) First, such proof is not required under the Rules. Rule 1.06(X) lays out several permissive factors, but none are specifically required as the matter is left to the discretion of the panel. But even if it were, Spriggs admitted that his hourly rate with 24 years of experience is $350 per hour. (RR V.2 at 30) The panel had ample evidence to conclude that the rate of $225 for trial counsel with fourteen years of experience was reasonable. *Id.* The Board should affirm the award of attorneys' fees.

CONCLUSION AND PRAYER

For these reasons, the Commission prays that the Board affirm the judgment of the District 13-2 Evidentiary Panel of the State Bar of Texas.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COMPLIANCE

Pursuant to the Board of Disciplinary Appeals Internal Procedural Rules, the foregoing brief on the merits contains approximately 4,530 words (total for all sections of brief that are required to be counted), which is less than the total words permitted by the Board's Internal Procedural Rules. Counsel relies on the word count of the computer program used to prepare this petition.

Matthew J. Greer
MATTHEW J. GREER

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing brief of Appellee, the Commission for Lawyer Discipline has been served on Ronald T. Spriggs, 1011 S. Jackson Street, Amarillo, Texas 79101, by email to spriggslawronald@gmail.com on the 13th day of January, 2020.

Matthew J. Greer
MATTHEW J. GREER
APPELLATE COUNSEL
STATE BAR OF TEXAS

NO. 62242

Before the Board of Disciplinary Appeals
Appointed by
The Supreme Court of Texas

RONALD T. SPRIGGS,
APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

On Appeal from the Evidentiary Panel
For the State Bar of Texas District 13-2
No. 201407032

APPENDIX TO BRIEF OF APPELLEE COMMISSION FOR LAWYER DISCIPLINE

APPENDIX 1: Docket, *State of Texas v. Cleveland Kellum Gustin III*, Cause No. 023087C, 251st District Court (Pet. Ex. 2)

APPENDIX 2: Motion for Continuance (Pet. Ex. 6)

APPENDIX 3: Order Denying Motion for Continuance (Pet. Ex. 7)

Appendix 1

CRIMINAL DOCKET

NO 023087C

NUMBER OF CASE	STYLE OF CASE	ATTORNEYS	KIND OF ACTION	DATE OF FILING
023087C	THE STATE OF TEXAS VS. GUSTIN, CLEVELAND KELLUM III Defendant	FARREN, JAMES A. Plaintiff: Defendant:	ASSAULT PUBLIC SERVANT §22.01 F3 pleaded to lesser class A misd.	01/18/12

DATE OF ORDER			ORDERS OF COURT	COMMENTS
Month	Day	Year	Was a Stenographer Used? _____	
1	3	12	BAIL BONDS BY JUDY, $ 5,000.00	
2	16	12	David Willett retained	
3	22	13	Order on Sub Service s/e - Ron Spriggs	
4	17	13	Case called for trial. Δ appeared but not the Δ Atty Ron Spriggs. The office tried several times to contact Spriggs as to his trial setting for today. D.A. reported to Court that Spriggs had called this morning & stated to Dave Blount that he (Spriggs) would not be here.	
5	14	13	Order on MIWID (Ron Spriggs) s/e	
5	23	13	Def is in Hospital in Critical Care in a coma	
7	11	13	LOR: Bill Kelly	
10	1	13	Pleaded to lesser included offense Class A assault - causing bodily injury;	

CERTIFIED TRUE AND CORRECT COPY

EXHIBIT 2

COPY

Appendix 2

POSTED

NO. 23,087

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
vs.	§	251st JUDICIAL DISTRICT
	§	
CLEVELAND GUSTIN	§	RANDALL COUNTY, TEXAS

MOTION FOR CONTINUANCE

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Cleveland Gustin, Defendant, and files this Motion for Continuance of this cause from its present setting of April 15, 2013 and shows the following:

1. This motion is filed in accordance with Article 29.03 of the Texas Code of Criminal Procedure.

2. Counsel for Defendant is involved in a hearing on April 15, 2013, State of Texas v. Robyn Gonzales, cause number 2013-CR-2058W in the 437th District Court of Bexar County, Texas.

3. This motion is not made for purposes of delay but that justice may be done.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court enter its order continuing this cause until some future date, or, in the alternative, sets this motion for hearing.

Respectfully submitted,

RONALD T SPRIGGS
1011 South Jackson
Amarillo, Texas 79101
Tel: (806) 376-7260
Fax: (806) 372-3298
Email: spriggslaw@gmail.com

CERTIFIED TRUE AND CORRECT COPY
The above and foregoing is a full, true and correct photographic copy of the original on file and of record in my office, containing 2 pages.
ATTEST: June 21 2013
Jo Carter, District Clerk
Randall County, Texas
By: Amy Jones Deputy

FILED
2013 APR 19 PM 4:10
JO CARTER, DISTRICT CLERK
RANDALL COUNTY, TEXAS
DSB DEPUTY

EXHIBIT
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By: Ronald T. Spriggs

Ronald T. Spriggs
State Bar No. 00792853
Attorney for Cleveland Gustin

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF RANDALL §

ON THIS DAY personally appeared Ronald T. Spriggs, who, after being placed under oath, stated the following:

"My name is Ronald T. Spriggs and I am the attorney of record for Cleveland Gustin and have been so at all material times relevant to this proceeding.

"I have read the Motion for Continuance and every statement is within my personal knowledge and is true and correct."

Ronald T. Spriggs

Sworn to and subscribed before me on Noelia V. Hernandez. April 12, 2013

NOELIA VASQUEZ HERNANDEZ
Notary Public, State of Texas
My Commission Expires
March 22, 2014

NOTARY PUBLIC

CERTIFICATE OF SERVICE

This is to certify that on April 12, 2013, a true and correct copy of the above and foregoing document was served on the District Attorney's Office, Randall County, 2309 Russell Long Blvd., Suite 120, Canyom, Texas 79015, by facsimile transmission to (806) 468-5566.

Ronald T. Spriggs

CERTIFIED TRUE AND
CORRECT COPY
Jo Carter, District Clerk
Randall County, Texas

Appendix 3

POSTED

NO. 23,087C

STATE OF TEXAS	§	**IN THE DISTRICT COURT**
	§	
vs.	§	**251st JUDICIAL DISTRICT**
	§	
CLEVELAND GUSTIN	§	**RANDALL COUNTY, TEXAS**

ORDER

On April 12, 2013, the Court heard the Motion for Continuance of Cleveland Gustin.

The Court finds the Motion should be and the same hereby is:

_____ Granted. _____Denied.

Signed on April 19th 2013.

Dee Gray by assignment
JUDGE PRESIDING

CERTIFIED TRUE AND CORRECT COPY
The above and foregoing is a full, true and correct photographic copy of the original on file and of record in my office, containing 1 pages.
ATTEST: June 2, 2018
Jo Carter, District Clerk
Randall County, Texas
By: _____ Deputy

DISTRICT COURT OF RANDALL COUNTY TEXAS

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RANDALL COUNTY, TEXAS
DSB DEPUTY

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