NO. 53021

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

ELENE B. GLASSMAN,

APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

On Appeal from the Evidentiary Panel
For the State Bar of Texas District 4-6
No. H0051132998

BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE
(ORAL ARGUMENT REQUESTED)

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IDENTITY OF PARTIES AND COUNSEL

Pursuant to Rule 4.06(c)(1) of the Board's Internal Procedural Rules, the undersigned counsel of record certifies that the following listed persons and parties have an interest in the outcome of this case.

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TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits this brief in response to the brief filed by Appellant, Elene B. Glassman. For clarity, this brief refers to Appellant as "Glassman" and Appellee as "the Commission." References to the record are labeled CR (clerk's record), RR Vol. I (reporter's record from hearing on December 14, 2012), RR Vol. II (reporter's record from hearing on March 13, 2013), RR Vol. III (first volume of reporter's record from evidentiary

hearing on June 12, 2013), and RR Vol. IV (second volume of reporter's record from evidentiary hearing on June 12, 2013). 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 2009).

STATEMENT OF THE CASE

Type of Proceeding:	Attorney Discipline
Petitioner/Appellee:	The Commission for Lawyer Discipline
Respondent/Appellant:	Elene B. Glassman
Evidentiary Panel:	4-6
Judgment:	Judgment of Disbarment
Violations found (Texas Disciplinary Rules of Professional Conduct):	**Rule 3.01:** A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous. **Rule 3.02:** In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

STATEMENT OF THE ISSUES

Whether a party must always prove that a tribunal possesses subject-matter jurisdiction in order to pursue a claim before the tribunal.

Whether an appellant may obtain reversal of a judgment by providing a list of complaints without any substantive analysis or citation to relevant legal authority and without showing that any error was harmful.

STATEMENT OF FACTS

The Fourteenth Court of Appeals determined that Glassman filed a frivolous appeal and ordered her to pay damages of $2,500.00 as sanctions (Pet. Ex. 9). The facts underlying the Court's decision to sanction Glassman included that she served as trustee of an inter vivos trust that was to be discharged with the assets distributed to Glassman and her sister (Goodfriend) upon the death of their last surviving parent (Pet. Ex. 9). In 2004 after the last parent died, Goodfriend filed a petition to compel an accounting, which the trial court granted (Pet. Ex. 9). Goodfriend later filed a motion for contempt contending that Glassman had not complied with the order for an accounting (Pet. Ex. 9). After Goodfriend moved for contempt a second time, the trial court signed an order requiring Glassman to provide the accounting within seven days or serve time in jail (Pet. Ex. 9). Glassman failed to comply, so the trial court jailed her for three days (Pet. Ex. 9).

After extensive additional proceedings (including Glassman's motion to recuse two judges based on claims that they committed various procedural irregularities, engaged in ex parte communications, and lacked impartiality) and two sanctions orders, the trial court signed a final judgment on June 27, 2006, that included awards to Goodfriend of $307,948.63 in damages, $45,114.47 in pre-judgment interest, and $50,000.00 in exemplary damages (Pet. Ex. 9). Glassman did not file a timely appeal of the judgment (Pet. Ex. 9).

On April 30, 2009, Goodfriend obtained a final order in garnishment based on the 2006 judgment (Pet. Ex. 9). Glassman subsequently appealed the garnishment order based primarily on her argument that the 2006 judgment was void (Pet. Ex. 9). After considering Glassman's appeal, the Court of Appeals determined that it was frivolous and awarded damages to Goodfriend (Pet. Ex. 9).

Goodfriend's attorney, John Fason, filed a grievance based on Glassman's actions in her litigation with Goodfriend (CR 7-8; RR Vol. III 14-28). The Chief Disciplinary Counsel's office (CDC) classified the grievance as a "complaint," investigated the complaint, and determined on September 13, 2011, that the complaint provided just cause to believe that Glassman had committed professional misconduct (CR 7-8). On September 23, 2011, CDC sent Glassman a letter to notify her of the just-cause finding, as well as the specific allegations underlying the finding (CR 7-8).

In response to CDC's notification letter, Glassman certified that her principal place of practice was in Harris County, and she elected to have an evidentiary panel of a district grievance committee hear the complaint (CR 7-9, 12). Panel 4-6 subsequently heard the case and, after a full evidentiary hearing, rendered judgment disbarring Glassman (CR 865-67, 890-94).

SUMMARY OF THE ARGUMENT

The Judgment of Disbarment is valid. It is based on the facts underlying the Fourteenth Court of Appeals' determination that Glassman filed a frivolous appeal in a probate matter. The Court awarded damages of $2,500.00 to Glassman's opponent because it determined that Glassman, to avoid garnishment, launched a baseless collateral attack on a probate judgment that was more than three years old. On its face, the Court of Appeals' opinion demonstrates that Glassman violated Rules 3.01 and 3.02.

As she did in the Court of Appeals and in the proceedings before the Evidentiary Panel below, Glassman continues to rely heavily on a frivolous argument that a plaintiff must always prove subject-matter jurisdiction in order to proceed on a claim. She argues that the absence of such proof renders a judgment void. The Court of Appeals explicitly rejected Glassman's argument, and she offers no relevant legal authority to support it.

Glassman also provides a laundry list of procedural errors that supposedly occurred in the proceedings below. But she does not point to any evidence that the errors actually occurred or that she was harmed by them. She also fails to show that she took proper steps to complain about the supposed errors and preserve them for appeal.

An appellant's burden to show that reversible error occurred is a fundamental aspect of appellate procedure. An appellant cannot satisfy her burden by reciting a list of perceived errors without any real analysis of them, any citation to authority in support of the claim that error occurred, or the identification of any harm that the she supposedly suffered. Far more is required to obtain the reversal of a judgment. The law favors finality so that litigation will come to a certain end and the judicial system will not be clogged by litigants who would pursue baseless claims indefinitely.

ARGUMENT

I. Neither the appellate record nor relevant legal authority supports Glassman's complaints regarding subject-matter jurisdiction, just cause, and fair notice.

Glassman first complains about alleged "administrative and procedural errors" in the proceedings underlying this appeal. Appellant's Br. 9-12. She makes vague references to subject-matter jurisdiction, the absence of just cause, and a lack of fair notice. The exact nature of her complaints is unclear because she offers no substantive analysis to explain her positions.

Instead, Glassman provides a laundry list of perceived errors without any explanation of the factual or legal basis for her complaints or the identification of any actual harm that she supposedly suffered. She also fails to cite to meaningful legal authority in support of her complaints, and her only citations to the record are offered without explanation of their significance. As such, Glassman's brief is inadequate to present error to the Board.[2] *See* TEX. R. APP. P. 38.1(h) (requiring that an appellate brief "contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record"); *Smith v. Comm'n for Lawyer Discipline*, 42 S.W.3d 362, 364 (Tex.App.—Houston [14th Dist] 2001, no pet.) (affirming judgment because appellant presented "nothing" for review in that he failed to specify how the evidence did not support the judgment

[2] The remainder of Glasman's brief is similarly inadequate to present error to the Board.

and failed to provide legal authority, argument, or evidence demonstrating how the trial court erred as a matter of law); *Meachum v. Comm'n for Lawyer Discipline*, 36 S.W.3d 612, 615 (Tex. App. – Dallas 2000, pet. denied) (explaining that it is an appellant's "burden to establish reversible error").

Moreover, it is clear from the record that the Evidentiary Panel had subject-matter jurisdiction, the Commission properly found just cause to proceed with a disciplinary action against Glassman, and the Commission provided Glassman with fair notice of its claims.

A. The Texas Rules of Disciplinary Procedure (TRDPs) vest evidentiary panels with jurisdiction to preside over disciplinary proceedings and enter disciplinary judgments against Texas attorneys, including Glassman.

"[S]ubject-matter jurisdiction traditionally consists of a power, conferred by constitutional or statutory authority, to decide the type of claim alleged in the plaintiff's petition and to award an authorized form of relief." *Save Our Springs Alliance, Inc. v. City of Kyle*, 382 S.W.3d 540, 544 (Tex.App.—Austin 2012, no pet.) (citation omitted). In clear and express language, the Texas Rules of Disciplinary Procedure (TRDPs) conferred power for the Evidentiary Panel to hear the Fason complaint and render judgment disbarring Glassman.

1. The TRDPs establish a specific process for attorney grievances.

When a grievance is filed with the State Bar of Texas, the TRDPs govern the grievance process. *See generally* TEX. R. DISCIPLINARY P. 2.01-2.28. The TRDPs

have the same force and effect as statutes. *In re Caballero*, 272 S.W.3d 595, 599 (Tex. 2008); *O'Quinn v. State Bar of Tex.*, 763 S.W.2d 397, 399 (Tex. 1988). The Texas Supreme Court promulgated the TRDPs pursuant to the Court's inherent and statutory authority to regulate the practice of law. *In re State Bar of Tex.*, 113 S.W.3d 730, 732 (Tex. 2003) (orig. proceeding); *State Bar of Tex. v. Gomez*, 891 S.W.2d 243 (Tex. 1994).

An evidentiary panel's power to adjudicate a grievance flows from the provisions of the TRDPs that the Supreme Court promulgated to govern the grievance process. *See generally* TEX. R. DISCIPLINARY P. 2.01-2.28. The grievance process generally begins with the filing of a grievance against an attorney.[3] TEX. R. DISCIPLINARY P. 2.10. Within thirty days of receiving a grievance, the Office of the Chief Disciplinary Counsel (CDC) must categorize it as either (1) an "inquiry" that alleges conduct which does *not* constitute professional misconduct or (2) a "complaint" that alleges conduct which *does* constitute professional misconduct. TEX. R. DISCIPLINARY P. 2.10, 1.06G, 1.06S. CDC dismisses grievances that are classified as inquiries. TEX. R. DISCIPLINARY P. 2.10. If a grievance is classified as a complaint, CDC sends a copy of the

[3]"'Grievance' means a written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyer, or lawyer Disability, or both, received by the Office of Chief Disciplinary Counsel." TEX. R. DISCIPLINARY P. 1.06R.

grievance to the respondent attorney with notice to provide a written response to the allegations within thirty days. TEX. R. DISCIPLINARY P. 2.10.

Within sixty days after the deadline for a respondent attorney to provide a written response to a complaint, CDC must investigate the complaint and determine whether there is "just cause" to proceed. TEX. R. DISCIPLINARY P. 2.12. The just-cause phase allows for a preliminary determination that is intended to weed out complaints that appear to be unsupportable.

When CDC determines that just cause exists, CDC gives the respondent attorney written notice of the allegations of misconduct. TEX. R. DISCIPLINARY P. 2.14D. The respondent attorney may elect to have the matter heard in district court or in an administrative setting before an evidentiary panel of a grievance committee. TEX. R. DISCIPLINARY P. 2.15. Unless the respondent attorney timely elects to proceed in district court, the disciplinary matter automatically proceeds before an evidentiary panel. *Id.*

If a respondent attorney chooses the administrative process, or fails to elect, litigation of the case begins when CDC files a disciplinary petition with an evidentiary panel assigned by the chair of the grievance committee with venue over the case. TEX. R. DISCIPLINARY P. 2.17A. Venue is proper in the county of the respondent attorney's principal place of practice. TEX. R. DISCIPLINARY P. 2.11B. Once assigned, the evidentiary panel presides over the disciplinary matter

and generally functions as an administrative tribunal. *See generally* TEX. R. DISCIPLINARY P. 2.07, 2.17.

After the evidentiary hearing, the evidentiary panel must issue a judgment within thirty days. TEX. R. DISCIPLINARY P. 2.17P. If the evidentiary panel determines that misconduct occurred, the judgment includes findings of fact and conclusions of law and identifies the sanction(s) to be imposed. *Id.* Available sanctions include disbarment, suspension, probation of suspension, public reprimand, private reprimand, restitution, attorneys' fees, and direct expenses. TEX. R. DISCIPLINARY P. 1.06Y.

2. The grievance against Glassman proceeded in accordance with all relevant provisions of the TRDPs.

In this case, the record shows that John S. Fason filed a grievance against Glassman in her capacity as a licensed Texas attorney and the Chief Disciplinary Counsel's office (CDC) classified the grievance as a "complaint," investigated the complaint, and determined on September 13, 2011, that the complaint provided just cause to believe that Glassman had committed professional misconduct (CR 7-8). On September 23, 2011, CDC sent Glassman a letter to notify her of the just-cause finding, as well as the specific allegations underlying the finding, namely that Glassman had filed a frivolous appeal of a garnishment order and thereby unreasonably increased the cost and unreasonably delayed resolution of the garnishment proceeding (CR 7-8). CDC's letter noted that the court of appeals had

found that Glassman's appeal was frivolous and sanctioned her (CR 7-8; Pet. Ex. 9).

In response to CDC's notification letter, Glassman certified that her principal place of practice was in Harris County, and she elected to have an evidentiary panel of a district grievance committee hear the Fason complaint (CR 7-9, 12). Pursuant to Glassman's election, a grievance committee chair appointed a Harris County evidentiary panel (Panel 4C) to hear the complaint (CR 20-21). Glassman objected to the panel assignment, and the committee chair transferred the case to another Harris County panel (Panel 4-6) to alleviate Glassman's concern even though the chair found that there was no good cause for Glassman's objection (CR 268-96, 322-29, 369-70, 377-78; RR 12/14/12). Panel 4-6 subsequently heard the case and rendered judgment disbarring Glassman (CR 865-67, 890-94).

Based on these undisputed facts, Panel 4-6 indisputably had subject-matter jurisdiction to hear the Fason complaint and render judgment. The Commission's allegations of misconduct and Glassman's denial of those allegations provided a justiciable controversy that was ripe for determination. *See Empire Life Ins. Co. of America v. Moody*, 584 S.W.2d 855, 858 (Tex. 1979) (explaining that a justiciable controversy exists when the issues presented to the court are not contingent or

hypothetical but instead present an actual controversy between the parties). As such, there is no plausible merit in Glassman's complaint regarding jurisdiction.

B. CDC made a just-cause finding in accordance with the TRDPs.

The record shows that CDC investigated the Fason complaint and determined on September 13, 2011, that there was just cause to believe that Glassman had committed professional misconduct (CR 7-8). On September 23, 2011, CDC sent Glassman a letter to notify her of the just-cause finding and the specific allegations of misconduct (CR 7-8). In response, Glassman explicitly elected to have an evidentiary panel hear and determine the allegations (CR 12). Glassman does not dispute these facts.

Nothing in the rules governing disciplinary proceedings required the Commission to plead facts regarding the just-cause finding, the filing of the grievance, correspondence related to the investigation, or any other aspect of the administrative processing of the grievance. *See Favaloro v. Comm'n for Lawyer Discipline*, 13 S.W.3d 831 (Tex.App.—Dallas 2000, no pet.) (holding that disciplinary petition need not allege that all prerequisites to a disciplinary action have been satisfied). Rule 2.17A of the Texas Rules of Disciplinary Procedure governs the contents of a disciplinary petition, and Glassman does not argue that the Commission's petition in this case failed to satisfy any provision of Rule

2.17A. In fact, on its face, the petition clearly satisfied each of the requirements set forth in Rule 2.17A (CR 32-37).

C. The detailed allegations in the Commission's petition provided fair notice to Glassman.

Finally, CDC provided Glassman with fair notice. In Texas, a pleading is sufficient if the opposing party can ascertain from the pleading the nature and basic issues of the controversy and the type of evidence that might be relevant. TEX. R. DISCIPLINARY P. 2.17A.4; *Low v. Henry*, 221 S.W.3d 609, 612 (Tex. 2007); *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 230 (Tex. 2004). The "fair-notice" standard does not require that evidentiary matters be pled with "meticulous particularity." *State Fid. Mortg. Co. v. Varner*, 740 S.W.2d 477, 480 (Tex.App.—Houston [1st Dist.] 1987, writ denied).

The live disciplinary petition included a five-paragraph detailed summary of the factual allegations underlying the claim that Glassman violated the disciplinary rules (CR 34-35). It described Glassman's unsuccessful probate dispute with her sister and the subsequent garnishment order that Glassman unsuccessfully appealed (CR 34-35). It also described the basis for Glassman's appeal, as well as the court of appeals' decision to sanction Glassman because it found that her appeal was frivolous (CR 34-35). And it identified the two rules that Glassman's conduct allegedly violated (CR 35).

The petition satisfied the fair-notice standard because it notified Glassman that the conduct underlying the Commission's allegation that she violated the disciplinary rules was her frivolous appeal of the garnishment order that her sister obtained after her probate battle with Glassman. The allegations were sufficient to put Glassman on notice regarding the nature and basic issues involved in the disciplinary proceeding, as well as the type of evidence that was relevant because they informed her that her alleged pursuit of a frivolous appeal of the garnishment order would be at issue and that evidence regarding the appeal would be relevant. Therefore, the petition satisfied the fair-notice standard. If Glassman had offered evidence that showed her appeal was not frivolous or otherwise provided a reasonable explanation for her conduct, the outcome of this case would likely be different. Glassman's failure to offer such evidence cannot be blamed on any absence of notice regarding the Commission's allegations.

II. The evidence of record, which includes proof that the Court of Appeals sanctioned Glassman for filing a frivolous appeal, provides a reasonable basis for the findings of misconduct.

A. The substantial evidence standard of review applies.

Glassman next argues that the evidence is insufficient to support the judgment. The Board reviews the sufficiency of the evidence under the standard of substantial evidence. TEX. GOV'T CODE ANN. § 81.072(b)(7) (West 2011) (State Bar Act); TEX. R. DISCIPLINARY P. 7.11, *reprinted in* TEX. GOV'T CODE ANN. tit. 2,

subtit. G app. A-1 (West 2011); *Comm'n for Lawyer Discipline v. Schaefer*, 364 S.W.3d 831, 835 (Tex. 2012).

Under the substantial evidence standard, 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, 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).

"At its core, the substantial evidence rule is a reasonableness test or a rational basis test." *City of El Paso*, 883 S.W.2d at 185. It focuses on whether there is any rational basis in the record for the administrative body's findings. *Id.* Anything more than a scintilla of evidence is sufficient to support a finding. *Tex. Dep't of Pub. Safety v. Cuellar*, 58 S.W.3d 781, 783 (Tex.App.—San Antonio 2001, no pet.). Even if there is only slightly more than a scintilla of evidence to support a finding, the finding must be affirmed. *Id.* 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.

B. Substantial evidence supports the findings of misconduct.

In this case, the Court of Appeals' *en banc* opinion, standing alone, is sufficient to support the findings set forth in the judgment, namely that Glassman brought a proceeding which was frivolous and, in the course of litigation, took a position that unreasonably increased the costs and unreasonably delayed resolution of the matter (CR 890-94; App. 1).

In reviewing Glassman's untimely challenge to a probate judgment that was more than three years old, the Court of Appeals held that Glassman filed an appeal under circumstances where "she had no reasonable grounds to believe the case could be reversed" (Pet. Ex. 9; App. 3). The Court found that sanctions were justified because Glassman explicitly took a position in order to advance her claims in the trial court and subsequently took the opposite position on appeal, which supported a conclusion that the appeal lacked a reasonable foundation (Pet. Ex. 9; App. 3).

In addition to the Court of Appeals' opinion, the Commission offered the testimony of John Fason, the attorney who represented Glassman's opponent in the probate matter (her sister). Mr. Fason's testimony provided further support for the allegations that Glassman filed a frivolous appeal and unreasonably increased the costs and delayed the resolution of the probate matter (RR Vol. III 14-47).

Glassman did not dispute that the Court of Appeals sanctioned her for filing a frivolous appeal. Instead, she defended the allegations of misconduct by offering her own testimony that the probate judgment was void (RR Vol. III 61-79). She relied on the argument that had served as the primary basis for her unsuccessful appeal and had been explicitly rejected by the Court of Appeals, and she refused to acknowledge the Court's holding that the argument had no merit (RR Vol. III 61-66). Instead of identifying any reasonable basis for commencing the appeal in the first place, Glassman's only factual testimony regarding the appeal was aimed at excuses for delays that occurred *after* she filed the appeal (RR Vol. III 63-64).

When the Panel attempted to refocus Glassman's testimony on relevant issues by asking her to describe the basis for her decision to file the appeal, she continued to insist that, despite the Court of Appeals' explicit rejection of her argument regarding subject-matter jurisdiction, it was meritorious (RR Vol. III 66-75). And startlingly, when the Panel asked Glassman whether she was suspended from the practice of law at the time she filed the frivolous appeal, she answered that she was not suspended because even though a judgment of suspension was in place, the judgment was void because, according to Glassman, the evidentiary panel that entered it did not have subject-matter jurisdiction (RR Vol. III 79-83). In other words, Glassman asserted that not only did the probate court and the Court of Appeals render judgments that were void for lack of subject-matter jurisdiction,

the Evidentiary Panel in this disciplinary action and the one that suspended Glassman's law license in 2009 likewise lacked subject-matter jurisdiction. And as a result of her conclusion that the 2009 disciplinary judgment was void, Glassman chose to ignore it (RR Vol. III 81-83).

In short, Glassman offered no meaningful evidence to counter the allegations of misconduct. She attempted to defend herself by continuing to pursue specious arguments without any legal authority to support them. Glassman pursues those same specious arguments on appeal, and like the Evidentiary Panel below, the Board should reject them.

III. Glassman provides no support for her claim that the Evidentiary Panel abused its discretion.

Like the first section of Glassman's argument, the third consists of a collection of vague references to perceived errors. It is difficult to decipher the point of most of her references, and she does not identify any harm that she supposedly suffered due to the perceived errors. Most of her complaints clearly have nothing to do with the substantive issues decided by the Evidentiary Panel. Instead, she recites list of procedural issues without any meaningful explanation of their relevance to her appeal. For example, she complains about matters related to the qualifications of members of the Evidentiary Panel, including oaths of office, organizational meetings, and proper appointments. But she does not point to any evidence of actual irregularities or show that she took proper steps to bring them to

the Evidentiary Panel's attention. Thus, her complaints provide no basis for reversal. *See* TEX. R. APP. P. 33.1 (requiring an appellant to take proper steps to preserve error before complaining on appeal).

Glassman focuses heavily on her ill-conceived notion that the Commission was required to plead and prove that the Panel possessed subject-matter jurisdiction. However, her jurisdictional pleas and the transcript from the hearing on them show that she never actually demonstrated any rational basis for questioning the Panel's jurisdiction.

Glassman raised the issue of subject-matter jurisdiction by filing two pleadings – Respondent's Original Challenge to Jurisdiction/Motion to Dismiss Petitioner's Evidentiary Petition and/or Motion to Strike Pleadings and General Denial (CR 44-70) and Respondent's First Amended General Denial and Challenge to Jurisdiction (CR 460-98), both of which were heard by the Evidentiary Panel on March 13, 2013 (RR Vol. II). As demonstrated by the Commission in response to Glassman's pleadings, there was no basis for contesting subject-matter jurisdiction because Glassman admitted that she was a Texas lawyer and did not dispute that a complaint had been filed against her, the Chief Disciplinary Counsel conducted a preliminary investigation and determined that the complaint provided just cause to believe that Glassman had violated the

disciplinary rules, and Glassman elected to have the complaint heard by an evidentiary panel (CR 500-619).

Nevertheless, Glassman persisted in her specious argument that the Panel lacked jurisdiction because the probate judgment at issue in the appeal that the Court of Appeals deemed frivolous was, according to Glassman, void. But the Court of Appeals had soundly rejected Glassman's argument (Pet. Ex. 9; App. 3). Their decision provided a valid basis for the disciplinary complaint that the Evidentiary Panel heard and which ultimately resulted in Glassman's disbarment. Thus, there is no question that the Panel had jurisdiction to enter the Judgment of Disbarment.

Moreover, even if Glassman were correct in her assertion that the probate judgment was void, such voidness would not affect the subject-matter jurisdiction of the Evidentiary Panel. It would merely provide a defense to the allegation that she filed a frivolous appeal that unreasonably increased the cost and unreasonably delayed resolution of the probate litigation and related garnishment proceeding.

A plea to the jurisdiction, which is what Glassman's pleadings essentially constitute, is a dilatory plea, the purpose of which is to establish a reason why the merits of a claim should not be reached. *Bland Independent School Dist. v. Blue*, 347 S.W.3d 547, 554 (Tex. 2000). Although the merits of a claim might be relevant to provide context to the jurisdictional issue, a plea to the jurisdiction

generally does not focus on whether the claim is meritorious. *Id.* at 554-55. In fact, a plea to the jurisdiction often may be decided based solely on the pleadings. *Id.*

A party may contest subject-matter jurisdiction by attacking the pleadings or the jurisdictional facts. *Miranda*, 133 S.W. 3d at 226-27. With a challenge to the pleadings, the tribunal construes the pleadings liberally in favor of the pleader and looks to the pleader's intent to determine if the pleadings allege facts that, if true, are sufficient to affirmatively demonstrate the tribunal's jurisdiction. *Id.*

With a challenge to jurisdictional facts, the tribunal considers relevant evidence submitted by the parties regarding the jurisdictional complaint. *Id.* at 227. If the evidence is undisputed or fails to raise a fact question on the jurisdictional issue, the tribunal rules on the plea as a matter of law. *Id.* The applicable standard "generally mirrors that of a summary judgment under Texas Rule of Civil Procedure 166a(c)." *Id.* at 228. An important feature of the proceeding is that the party complaining about jurisdictional facts must support its claim with evidence in order to shift the burden of proof to the opposing party. *Id.* And if the complaining party provides evidence to support its claim such that the tribunal must proceed to review the facts, all evidence favoring the nonmovant is taken as true and every reasonable inference is indulged and any doubt resolved in

favor of the nonmovant. *Id*.; *see also City of Waco v. Kirwan*, 298 S.W.3d 618, 621-22 (Tex. 2009) (discussing procedure for reviewing plea to jurisdiction).

In this case, the Commission's pleadings are sufficient. The petition states the undisputed facts that Glassman was a licensed Texas attorney whose principal place of practice was in Harris County and Fason filed a grievance against her complaining that she filed a frivolous appeal, which the Commission alleged violated Rules 3.01 and 3.02 of the Texas Disciplinary Rules of Professional Conduct (CR 32-37; App. 2). Thus, as an evidentiary panel of a Harris County grievance committee, Evidentiary Panel 4-6 possessed authority to hear and determine the allegations of misconduct underlying the petition. TEX. R. DISCIPLINARY P. 2.07, 2.14, 2.15, 2.17.

Glassman's jurisdictional plea claimed that the Panel nonetheless lacked jurisdiction because (1) the Commission failed to demonstrate the satisfaction of procedural requirements, (2) the Commission failed to demonstrate the satisfaction of conditions precedent, and (3) the probate judgment underlying the Court of Appeals' determination that Glassman filed a frivolous appeal is void (CR 44-70, 460-98). None of the three claims provides a basis for finding that the Evidentiary Panel did not possess subject-matter jurisdiction.

First, in response to Glassman's jurisdictional pleas, the Commission demonstrated that all proceedings satisfied the procedural requirements set forth in

the Texas Rules of Disciplinary Procedure (CR 500-619). Glassman has not shown otherwise

Second, Glassman failed to show any plausible basis for concluding that any condition precedent relevant to the underlying disciplinary action was not satisfied. "'A condition precedent is an event that must happen or be performed before a right can accrue to enforce an obligation.'" *Solar Applications Engineering, Inc. v. T.A. Operating Corp.*, 327 S.W.3d 104, 108 (Tex. 2010). In the proceedings below, Glassman provided no evidence of any mandatory event that did not happen or was not performed, and her brief identifies no such event. Thus, there is no basis for her complaint regarding conditions precedent (assuming for the sake of argument that any "condition precedent" to a disciplinary action actually exists).

Third, despite Glassman's continued protestations regarding the supposed voidness of the probate judgment, the opinion of the Court of Appeals provides ample evidence to refute her claim. Thus, assuming for the sake of argument that the Evidentiary Panel had authority to consider whether the probate judgment was void, there is a reasonable basis for the Panel's conclusion that the judgment was not void.

Finally, despite the obvious lack of merit in Glassman's jurisdictional pleas, the Panel nonetheless conducted a hearing on them. During the hearing, Glassman was unable to articulate any plausible basis for questioning subject-matter

jurisdiction, much less provide evidence to support her claim that the Panel lacked jurisdiction. The Panel asked, "What is it that makes you think – what evidence do you have that this panel does not have proper jurisdiction?" (RR Vol. II 11). Glassman answered by articulating her opinion that the probate judgment was void and that CDC could not have made a valid finding of just cause because the Court of Appeals withdrew its original opinion and issued a new one in its stead (RR Vol. II 11-12).[4]

The Panel then pressed Glassman to identify any other basis for her jurisdictional complaint, and she answered by again complaining about the supposed absence of a valid just-cause finding and arguing that a just-cause finding is a condition precedent to a disciplinary proceeding (RR Vol. II 13-14). She also reiterated her belief that CDC could not have made a valid just-cause finding because of the Court of Appeals' withdrawal of its original opinion (RR Vol. II 14-16).

The Panel pointed out to Glassman that during a prior hearing, they had informed her that she would have to come forward with some evidence to support her jurisdictional complaints and that if she had any such evidence, she needed to

[4]Glassman's argument was illogical because the Commission relied on the facts underlying the *en banc* opinion that the Court of Appeals issued on rehearing, in which it held that Glassman filed a frivolous appeal and imposed sanctions (Pet. Ex. 9; App. 3). The Court's withdrawal of its prior opinion was simply irrelevant.

offer it immediately (RR Vol. II 16-18, 26). The Panel also explained that it was ready to consider evidence of the types of procedural irregularities that Glassman's pleas alluded to, such as evidence of the lack of proper oaths (RR Vol. II 18-19). Nonetheless, Glassman persisted in her failure to submit any such evidence, instead indicating that she planned to rely on proof of the Court of Appeals' withdrawal of its original opinion, as well as "a bunch of cases" (RR Vol. II 18-21).

In short, despite ample opportunity to do so, Glassman never offered any evidence to support her jurisdictional pleas. She simply continued to erroneously assert that the Commission was required to plead and prove that jurisdiction existed despite her failure to provide any support for her jurisdictional pleas and the lack of any other evidence or information in the record to indicate any jurisdictional problem.

CONCLUSION AND PRAYER

Because substantial evidence supports the Judgment of Disbarment and Glassman has failed to demonstrate that any reversal error occurred, the Commission prays that the Board affirm the judgment in all respects.

RESPECTFULLY SUBMITTED,

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CHIEF DISCIPLINARY COUNSEL

LAURA BAYOUTH POPPS
DEPUTY COUNSEL FOR ADMINISTRATION

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/s/ Cynthia Canfield Hamilton
CYNTHIA CANFIELD HAMILTON
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ATTORNEY FOR APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Brief of Appellee, the Commission for Lawyer Discipline has been served on Appellant, Ms. Elene B. Glassman, by email to ebglassman@gmail.com on June 9, 2014. The undersigned attorney will mail an additional bound copy by certified mail, return receipt requested, when the bound brief is returned by the printer.

/s/ Cynthia Canfield Hamilton
CYNTHIA CANFIELD HAMILTON
SENIOR APPELLATE COUNSEL
STATE BAR OF TEXAS

NO. 53021

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

ELENE B. GLASSMAN,

APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

On Appeal from the Evidentiary Panel
For the State Bar of Texas District 4-6
No. H0051132998

APPENDIX TO BRIEF OF APPELLEE COMMISSION FOR LAWYER DISCIPLINE

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Before the Board of Disciplinary Appeals
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ELENE B. GLASSMAN,

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APPELLEE

On Appeal from the Evidentiary Panel
For the State Bar of Texas District 4-6
No. H0051132998

APPENDIX TO BRIEF OF APPELLEE COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits the following record excerpts in support of its brief:

APPENDIX 1: Judgment of Disbarment (CR 890-94)

APPENDIX 2: Petitioner's Original Evidentiary Petition (CR 33-36)

APPENDIX 3: Opinion of Court of Appeals in *Glassman v. Goodfriend* (Pet. Ex. 9)

Appendix 1

BEFORE EVIDENTIARY PANEL 4-6 OF THE STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE, Petitioner,	§	**H0051132998 [FASON]**
v.	§	
ELENE B. GLASSMAN, Respondent.	§	**HARRIS COUNTY, TEXAS**

JUDGMENT OF DISBARMENT

Parties and Appearance

On the 12th day of June, 2013, came to be heard the above-captioned cause. Petitioner, the Commission for Lawyer Discipline, appeared through its attorney of record and announced ready. Respondent, Elene B. Glassman, Texas Bar Number 08016000, appeared in person and announced ready.

Jurisdiction and Venue

Evidentiary Panel 4-6, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District No. 4, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Professional Misconduct

The Evidentiary Panel, having considered the pleadings, evidence, stipulations, and argument of counsel, finds that Respondent has committed Professional Misconduct as defined by Rule 1.06V of the Texas Rules of Disciplinary Procedure.

Findings of Fact

The Evidentiary Panel, having considered the pleadings, evidence, stipulations, and argument of counsel, makes the following findings of fact and conclusions of law:

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.

2. Respondent maintains her principal place of practice in Harris County, Texas.

3. Respondent brought a proceeding which was frivolous.

4. In the course of litigation, Respondent took a position that unreasonably increased the costs and unreasonably delayed the resolution of the matter.

5. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable and necessary attorneys' fees in the amount of $7,550.00 and direct expenses in the amount of $462.50 associated with this Disciplinary Proceeding.

Conclusions of Law

The Evidentiary Panel concludes that, based on foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 3.01 and 3.02.

Sanction

The Evidentiary Panel, having found that Respondent has committed Professional Misconduct, heard and considered additional evidence and argument regarding the appropriate sanction to be imposed against Respondent. The Evidentiary Panel carefully considered the factors as set out in Rule 2.18 of the Texas Rule of Disciplinary Procedure. Not by way of limitation, the Evidentiary Panel specifically found that factors D, E, G, H, I, and J of Rule 2.18 strongly militated against any of the lesser available sanctions that could have been applied, as those forms of sanction are defined in Rule 1.06(Y)(3-8) of the Texas Rules of Disciplinary Procedure. Accordingly, the Evidentiary Panel finds that proper discipline of the Respondent for each act of Professional Misconduct is DISBARMENT.

Disbarment

It is therefore ORDERED, ADJUDGED, and DECREED that, effective the date of this judgment, Respondent, Elene B. Glassman, State Bar Number 08016000, is hereby DISBARRED

from the practice of law in the State of Texas.

It is further ORDERED that Respondent is prohibited from practicing law in Texas, holding herself out as an attorney at law, performing any legal services for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any administrative body or holding herself out to others or using her name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

Notification

It is further ORDERED that Respondent shall immediately notify each of her current clients in writing of this disbarment. In addition to such notification, Respondent is ORDERED to return any files, papers, unearned monies, and other property belonging to clients and former clients in the Respondent's possession to the respective clients or former clients or to another attorney at the client's or former client's request. Respondent is further ORDERED to file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that all current clients have been notified of Respondent's disbarment and that all files, papers, unearned monies, and other property belonging to all clients and former clients have been returned as ordered herein.

It is further ORDERED Respondent shall, on or before thirty (30) days from the signing of this judgment by the Panel Chair, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is

representing. Respondent is further ORDERED to file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice has received written notice of the terms of this judgment.

Surrender of License

It is further ORDERED that Respondent shall, within thirty (30) days of the signing of this judgment by the Panel Chair, surrender her law license and permanent State Bar Card to the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of the State of Texas.

Attorneys' Fees and Expenses

It is further ORDERED that Respondent shall pay reasonable and necessary attorneys' fees in the amount of $7,550.00 and direct expenses in the amount of $462.50 to the State Bar of Texas. The payment shall be due and payable on or before September 12, 2013, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further ORDERED that all amounts ordered herein are due to the misconduct of Respondent and are assessed as a part of the sanction in accordance with Rule 1.06Y of the Texas Rules of Disciplinary Procedure. Any amount not paid shall accrue interest at the maximum legal rate per annum until paid and the State Bar of Texas shall have all writs and other post-judgment remedies against Respondent in order to collect all unpaid amounts.

Publication

It is further ORDERED this disbarment shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Conditions Precedent to Reinstatement

It is further ORDERED that payment of the foregoing attorneys' fees and expenses shall be a condition precedent to any consideration of reinstatement from disbarment as provided by Rules 2.19, 2.20, and 11.02(D) of the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 18th day of June, 2013.

EVIDENTIARY PANEL 4-6
DISTRICT NO. 4
STATE BAR OF TEXAS

TIMOTHY RILEY
Panel 4-6 Chair

Appendix 2

BEFORE EVIDENTIARY PANEL 4C OF THE STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE, **Petitioner,**	§	**H0051132998 [FASON]**
v.	§	
ELENE B. GLASSMAN, **Respondent.**	§	**HARRIS COUNTY, TEXAS**

PETITIONER'S ORIGINAL EVIDENTIARY PETITION

COMES NOW Petitioner, the Commission for Lawyer Discipline, a committee of the State Bar of Texas, and would respectfully show unto the Evidentiary Panel as follows:

PARTIES

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

2. Respondent is Elene B. Glassman, Texas Bar Card No. 08016000, a licensed attorney and a member of the State Bar of Texas. Respondent may be served at 1715 West Main, No. 1, Houston, Texas 77098.

NATURE OF PROCEEDING

3. Petitioner brings this disciplinary proceeding pursuant to the State Bar Act, Texas Government Code Annotated §81.001, *et seq.* (Vernon 2003); the Texas Disciplinary Rules of Professional Conduct; and the Texas Rules of Disciplinary Procedure. The complaint that forms the basis of this cause of action was filed on or after January 1, 2004.

VENUE

4. Respondent's principal place of practice is Harris County, Texas; therefore, venue is appropriate in Harris County, Texas, pursuant to Rule 2.11B of the Texas Rules of Disciplinary Procedure.

PROFESSIONAL MISCONDUCT

5. The acts and/or omissions of Respondent, as hereinafter alleged, constitute professional misconduct as defined by Rule 1.06V of the Texas Rules of Disciplinary Procedure.

CAUSE OF ACTION

6. Elene B. Glassman (Respondent) was the defendant in a suit filed in 2004 by her sister in statutory probate court in regard to an *inter vivos* trust established by their deceased parents and for which Respondent was the trustee. On June 27, 2006, after a bench trial, a judgment was signed finding, *inter alia*, that Respondent had breached her duty as trustee and assessing monetary damages against Respondent.

7. In August of 2006, as part of her effort to collect on the judgment, Respondent's sister, represented by John S. Fason, filed an application for writ of garnishment directed to JP Morgan Chase Bank (Chase); this application was assigned a separate cause number from the underlying suit. On April 30, 2009, after a hearing, an order was signed requiring Chase to pay to Respondent's sister the funds belonging to Respondent that it was holding.

8. Respondent, representing herself, filed an appeal from the April 30, 2009 garnishment order. However, in her brief she did not directly attack the order itself. Rather, she challenged the order by attacking the June 27, 2006 judgment on which the garnishment order was based. Respondent had not timely appealed the June 27, 2006 judgment, and an appeal of the judgment in 2009 was time-barred. Apparently realizing this, Respondent attacked the judgment by arguing that the statutory probate court had lacked subject matter jurisdiction to enter the judgment, and therefore it was void.

9. However, the statutory probate court clearly had possessed jurisdiction to enter the June 27, 2006 judgment. The record in the case demonstrated jurisdiction existed, and

Respondent's own pleadings contained judicial admissions of the facts necessary to establish the court's jurisdiction. Therefore, there was no reasonable ground to believe that the April 30, 2009 garnishment order could be reversed, and Respondent's appeal was frivolous. By filing the appeal, Respondent unreasonably increased the cost and unreasonably delayed the resolution of the matter.

10. The 14th Court of Appeals affirmed the April 30, 2009 garnishment order and imposed $2,500.00 in sanctions on Respondent for filing a frivolous appeal. The Supreme Court of Texas denied Respondent's Petition for Review. Respondent is seeking a rehearing of that decision.

RULE VIOLATIONS

11. The acts and/or omissions of Respondent described above violate the following Texas Disciplinary Rules of Professional Conduct:

3.01 A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous.

3.02 In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

COMPLAINT

12. The complaint that forms the basis of this cause of action was brought to the attention of the Office of the Chief Disciplinary Counsel of the State Bar of Texas by Mr. Fason's filing of a grievance on or about May 5, 2011.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner, the Commission for Lawyer Discipline, respectfully prays that this Evidentiary Panel discipline Respondent, Elene B.

Glassman, by reprimand, suspension, or disbarment, as the facts shall warrant; and grant all other relief, general or specific, at law or in equity, including injunctive relief, to which Petitioner may show itself to be justly entitled, including, without limitation, expenses and attorneys' fees.

Respectfully submitted,

STATE BAR OF TEXAS

LINDA A. ACEVEDO
Chief Disciplinary Counsel

Timothy R. Bersch

TIMOTHY R. BERSCH
State Bar No. 02254500
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600 Jefferson Street, Suite 1000
Houston, Texas 77002
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ATTORNEYS FOR PETITIONER, COMMISSION FOR LAWYER DISCIPLINE

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 2.09A of the Texas Rules of Disciplinary Procedure, a true and correct copy of the foregoing instrument was forwarded on the 21st day of December, 2011, to the following:

Mr. Elene B. Glassman
Attorney at Law
1715 West Main, No. 1
Houston, Texas 77098
Pro se

CMRRR 7005 2570 0000 1444 4069

Timothy R. Bersch

TIMOTHY R. BERSCH

Appendix 3

Motion for Rehearing Denied; Motion for Rehearing En Banc Denied As Moot; Memorandum Opinion of February 24, 2011 Withdrawn; Affirmed and En Banc Opinion filed June 2, 2011.

In The

Fourteenth Court of Appeals

NO. 14-09-00522-CV

ELENE B. GLASSMAN, Appellant

V.

MERYL B. GOODFRIEND, Appellee

On Appeal from Probate Court No. 1
Harris County, Texas
Trial Court Cause No. 350,750-403

E N B A N C O P I N I O N

Appellant Elene B. Glassman's motion for panel rehearing is denied, and her motion for rehearing en banc is denied as moot. On its own motion, this court grants en banc rehearing to secure uniformity in the court's precedent regarding the legal standard for imposing sanctions under Texas Rule of Appellate Procedure 45.

Glassman appeals from a final order in garnishment obtained by appellee, Meryl B. Goodfriend, to satisfy an underlying judgment. Glassman, an attorney, appears *pro se*

in this appeal. Goodfriend contends this appeal is frivolous and requests sanctions. We affirm the final order in garnishment and assess $2,500 in sanctions against Glassman.

BACKGROUND

Glassman and Goodfriend are sisters. Their parents established an inter vivos trust with Glassman appointed as trustee. Under its provisions, the trust was to be discharged and the assets distributed equally to Glassman and Goodfriend upon the last surviving parent's death. In 2004 (after the last parent died), Goodfriend filed a petition to compel an accounting, which she later amended to also compel distribution of trust assets, alleging Glassman had failed to comply with Goodfriend's requests for performance of these duties. Goodfriend also applied for injunctive relief to preserve the status quo of trust property, alleging she believed Glassman might wrongfully disburse assets or remove them beyond the court's jurisdiction.

On January 31, 2005, the trial court signed an order requiring an accounting by a date certain.[1] The court also ordered the parties to mediate following the accounting. Goodfriend subsequently filed a motion for contempt, contending Glassman had not complied with the order for the accounting. The parties then mediated and signed an agreement on various matters. On May 4, 2005, the trial court reduced to interlocutory judgment several items of this agreement, including Goodfriend's willingness to pass an upcoming hearing set on her previous motion for contempt in exchange for Glassman's providing the accounting by another date certain.

Goodfriend later again moved for contempt, alleging Glassman failed to provide the accounting as specified in the May 4, 2005 judgment. The trial court signed an order requiring Glassman to provide the accounting within seven days or serve three days in jail. When Glassman failed to comply with that order, Goodfriend filed a motion to

[1] The trial court referred some matters for hearing by an associate judge, and the court then signed the recommended order or judgment. However, we will refer to all actions as taken by "the trial court," except when the fact that a ruling was recommended by the associate judge is pertinent to Glassman's appellate complaints.

enforce. On July 20, 2005, after a hearing, the trial court found Glassman in contempt of the May 4, 2005 judgment and ordered her confined for three days.[2]

Subsequently, Goodfriend amended her request for injunctive relief, alleging Glassman had mismanaged the trust and still refused to provide the accounting. Glassman then filed a motion to recuse both the trial judge and associate judge, suggesting they had committed various procedural irregularities, engaged in ex parte communications, and lacked impartiality. Another judge assigned to decide the recusal matter denied the motion, found it was filed to delay a hearing originally scheduled on Goodfriend's application for injunctive relief, and sanctioned Glassman $2,000.

The trial court then resumed proceedings in October 2005 on the application for injunctive relief. On October 24, 2005, after having issued a temporary restraining order, the trial court signed a temporary injunction and order removing Glassman as trustee, terminating the trust, and appointing a successor trustee to wind up the trust. The court also enjoined Glassman from exercising control over any trust assets and ordered her to relinquish the assets and records to the successor trustee. Thereafter, the successor trustee performed her duties, partial distributions of assets were made to Goodfriend, and the trust was ultimately closed in August 2007 after a final accounting.

In the meantime, on the same day that the trial court issued the temporary injunction, Goodfriend filed a second amended petition alleging claims against Glassman for breach of fiduciary duty based on her various actions and omissions as trustee and breach of contract for her failure to comply with several provisions in the parties' mediation agreement. Goodfriend requested an accounting, distribution of trust assets, damages, attorneys' fees, removal of Glassman as trustee, and a ruling that Glassman must forfeit all trustee fees, profits, and improper benefits she obtained by breach of the fiduciary relationship.

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[2] Glassman filed a habeas corpus petition which became moot when she was released early.

While these claims were pending, the trial court again sanctioned Glassman $9,624.09, finding she had engaged in "a pattern of discovery abuse and misconduct," including disregarding prior court orders compelling discovery, failing to provide the accounting as previously ordered, disobeying the temporary injunction by refusing to produce trust records, filing the groundless motion to recuse, and failing to pay the sanctions assessed for filing the motion to recuse. As requested by Goodfriend, the trial court converted both sanctions orders to an enforceable money judgment for $11,624.09. This judgment was satisfied via a garnishment proceeding instituted by Goodfriend for funds held by Glassman at Raymond James & Associates, Inc.

On June 9, 2006, a bench trial was conducted on the remaining claims asserted in Goodfriend's second amended petition. Although notified of the setting, Glassman did not attend. Goodfriend presented evidence supporting her claims. On June 27, 2006, the trial court signed a final judgment (1) finding that Glassman "knowingly and willfully breached her fiduciary duty as Trustee . . . including malfeasance and defalcation," (2) awarding Goodfriend $307,948.63 in damages (the total damages found minus partial distributions of trust assets already made), $45,114.47 in pre-judgment interest, $50,000 in exemplary damages, conditional appellate attorneys' fees, and post-judgment interest, (3) ruling that Glassman's liability under the judgment exceeded her beneficial interest in the trust and thus her interest was awarded to Goodfriend, (4) ruling that Glassman take nothing on her counterclaim for declaratory judgment that a condominium owned by the parties' mother (which passed under her will) should be an asset of the trust, and (5) ordering Glassman to relinquish to Goodfriend, and refrain from exerting control over, any trust property. Glassman did not file a timely motion for new trial or equivalent and did not timely appeal.

Thereafter, the June 27, 2006 judgment was partially satisfied via garnishment proceedings of funds held by Glassman at Raymond James and Charles Schwab & Co. Goodfriend then instituted the garnishment proceeding that resulted in the order at issue in this appeal. Specifically, in August 2006, Goodfriend filed an original application for

writ of garnishment after judgment directed to JP Morgan Chase Bank ("Chase"), which was assigned a separate cause number from the underlying suit. Chase answered that it was indebted to Glassman for $3,723.31 and she held one or more safe deposit boxes at the institution. In March 2009, Goodfriend filed a motion for final order in garnishment.[3] Glassman moved to set aside the garnishment, arguing the trial court had no jurisdiction to order the underlying accountings, render the underlying judgment, or issue a writ of garnishment. On April 30, 2009, after a hearing, the trial court signed a final order in garnishment, ordering that Chase pay Goodfriend the $3,723.31 and the contents of the safe deposit box be sold to satisfy the judgment. Subsequently, Chase complied with the order, and the funds were applied toward satisfaction of the judgment.

Glassman then filed the present appeal. In her original notice of appeal, Glassman mentioned only the garnishment order. Subsequently, in an amended notice of appeal, Glassman reiterated she is appealing the garnishment order but also suggested the June 27, 2006 judgment is void.[4] She also filed in the trial court a motion for rehearing of the garnishment order and to declare the underlying judgment void. After a hearing, the trial court denied this motion.[5]

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[3] Apparently, the following circumstances contributed to the lengthy period between the application for writ of garnishment and the motion for final order of garnishment: Glassman refused to open the box on a certain date, in defiance of a court order; between service of the writ of garnishment on Chase and the time Glassman was required to open the box (per the court order), Chase did not place the box on "restriction," Glassman accessed it four times, and she added a signatory, who accessed it once; and Goodfriend had to obtain another court order allowing Glassman's daughter to open the box.

[4] Although Glassman referenced the "June 9, 2006" judgment, we presume she meant the June 27, 2006 judgment because the action on June 9, 2006 was the bench trial.

[5] As demonstrated above, Goodfriend's seemingly straightforward request for an accounting and distribution, as clearly required under the trust, spawned trial court proceedings that lasted almost five years, due in part to Glassman's defiance of various court orders and failure to fulfill her duties as trustee. We have detailed only the proceedings necessary to present a complete background. However, we note that there were numerous other filings, mostly by Glassman, which are not germane to this appeal, such as motions for rehearing of various court orders; at least four motions for judgment nunc pro tunc (some filed several years after the applicable order or judgment), which the trial court denied because the complaints raised were not clerical errors but challenges to the substance of the orders or judgments; objections to the denial of these motions; and a request that the court review testimony provided by Goodfriend and her attorney in a State Bar of Texas disciplinary proceeding against Glassman.

GLASSMAN'S APPEAL

In her four stated appellate issues, Glassman contends the trial court erred by violating Glassman's due process rights under the United States and Texas constitutions and by rendering the April 30, 2009 final order in garnishment (hereinafter "the garnishment order"), the June 27, 2006 judgment (hereinafter "the judgment"), and the initial January 31, 2005 order requiring an accounting from inception of the trust (hereinafter "the initial accounting order").

Preliminarily, with respect to Glassman's first issue, she generally suggests the trial court violated her constitutional rights by engaging in "a pattern of disregard of facts, law and jurisdictional standards" and other "irregularities," exhibiting bias against Glassman, and disregarding the "Judicial Canons of Ethics." This argument seems to be based solely on Glassman's other contentions in this appeal. Although these other contentions are not exactly clear, we have endeavored to glean her complaints.

Glassman presents no independent complaints regarding the garnishment order. Rather, she challenges the garnishment order by assailing the judgment on which the garnishment order was based, as well as the initial accounting order and the July 20, 2005 contempt order (hereinafter "the contempt order"). However, she did not timely appeal the judgment because she filed her amended notice of appeal, first mentioning the judgment, more than three years after it was signed. *See* Tex. R. App. P. 26.1 (providing notice of appeal must be filed within thirty days after judgment is signed or within ninety days if any party timely files motion for new trial, motion to modify, motion to reinstate, or request for findings of fact and conclusions of law).[6] Glassman's timely appeal of the garnishment order cannot also be deemed a timely appeal of the judgment; although a garnishment action is ancillary to an underlying suit, the action is a separate proceeding

[6] An amended notice of appeal correcting a defect or omission in an earlier filed notice may be filed in the appellate court at any time before the appellant's brief is filed. Tex. R. App. P. 25.1(f). To the extent Glassman's failure to mention the judgment in her original notice of appeal could be considered a "defect or omission," which she was permitted to correct via an amended notice, she nonetheless did not timely appeal the judgment via her original notice because it was filed two years and ten months after the judgment was signed. *See* Tex. R. App. P. 26.1.

and thus appeal from a final judgment in garnishment lies independently of the underlying suit. *See Varner v. Koons*, 888 S.W.2d 511, 513 (Tex. App.—El Paso 1994, orig. proceeding).

Apparently acknowledging she failed to timely appeal the judgment, Glassman argues the trial court lacked subject matter jurisdiction to render the judgment and it is therefore void. *See Alfonso v. Skadden*, 251 S.W.3d 52, 55 (Tex. 2008) (recognizing that lack of subject matter jurisdiction may be raised at any time, including in action to enforce underlying judgment, if void for lack of jurisdiction); *Browning v. Prostok*, 165 S.W.3d 336, 346 (Tex. 2005) (stating that only void judgment, which includes judgment rendered by court lacking subject matter jurisdiction, may be collaterally attacked); *Stewart v. USA Custom Paint & Body Shop, Inc.*, 870 S.W.2d 18, 20 (Tex. 1994). (recognizing that party seeking to dissolve writ of garnishment by assailing underlying judgment is waging collateral attack and must show judgment is void).

Although pertinent provisions have since been recodified, Texas Probate Code section 5(e) was the statute governing jurisdiction in this case. Under the version of section 5(e) in effect when Goodfriend filed her original petition, a statutory probate court had concurrent jurisdiction with a district court in "all actions involving an inter vivos trust." *See* Act of May 28, 2003, 78th Leg., R.S., ch. 1060, § 2, 2003 Tex. Gen. Laws 3052, 3053 (amended 2005 and 2009), *repealed by* Act of June 1, 2009, 81st Leg., R.S., ch. 1351, § 12(h), 2009 Tex. Gen. Laws 4273, 4279. Goodfriend's claims in the underlying suit were actions "involving an inter vivos trust." Further, by the time Goodfriend filed her second amended petition adding claims for damages against Glassman, the Legislature had amended section 5(e) to also provide that a statutory probate court has concurrent jurisdiction with a district court in all actions "against a trustee." *See* Act of May 23, 2005, 79th Leg., R.S., ch. 551, § 1, 2005 Tex. Gen. Laws

1476, 1477 (amended 2009), *repealed by* Act of June 1, 2009, 81st Leg., R.S., ch. 1351, § 12(h), 2009 Tex. Gen. Laws 4273, 4279.[7]

In all of Goodfriend's petitions, she alleged the trial court had jurisdiction under Probate Code section 5(e) and specifically referred to Glassman as "trustee" of the "inter vivos trust." Glassman does not seem to dispute that a statutory probate court has jurisdiction over a suit involving an inter vivos trust and a suit against a trustee, and she acknowledges that Goodfriend pleaded these jurisdictional grounds. Nevertheless, Glassman argues that Goodfriend failed to prove the trial court's jurisdiction. However, the Supreme Court of Texas has stated,

> In order for a collateral attack to be successful the record must affirmatively reveal the jurisdictional defect. It seems to be the settled rule that if the record in the cause does not negative the existence of facts authorizing the court to render the judgment, the law conclusively presumes that such facts were established before the court when such judgment was rendered, and evidence dehors the record to the contrary will not be received.

Alfonso, 251 S.W.3d at 55 (quoting *White v. White*, 179 S.W.2d 503, 506 (Tex. 1944)).

The record in this case actually demonstrates the existence of jurisdiction; Goodfriend attached to her original petition the trust instrument showing Glassman was trustee and the nature of the trust was inter vivos because it benefitted the parents during their lifetimes. *See Black's Law Dictionary* 1651 (9th ed. 2009) (defining "inter vivos trust" as "[a] trust that is created and takes effect during the settlor's lifetime").

Glassman cites no evidence negating these facts, as indeed she cannot because they were never in dispute. In Glassman's own pleadings, such as her original answer to the underlying action and her counterclaim, she referred to herself as "trustee" and to the "inter vivos trust." These clear and unequivocal statements constitute judicial admissions of the underlying facts necessary to establish the trial court's jurisdiction. *See*

[7] When repealing section 5(e), the Legislature enacted Probate Code sections 4G and 4H, which likewise grant a statutory probate court jurisdiction over actions involving an inter vivos trust and actions against a trustee. *See* Tex. Prob. Code Ann. §§ 4G, 4H (West Supp. 2009). However, the former codification—section 5(e)—is applicable to the present case, although the law remains the same. *See id.*

Horizon/CMS Healthcare Corp. v. Auld, 34 S.W.3d 887, 905 (Tex. 2000) ("A judicial admission must be a clear, deliberate, and unequivocal statement . . . and occurs when an assertion of fact is conclusively established in live pleadings . . . .").

Glassman also contends the trial court lacked jurisdiction to sign the initial accounting order and the contempt order. Glassman has not directly appealed these orders; thus, she apparently assails them to support her ultimate contention that the garnishment order, from which she does appeal, was invalid. Because the garnishment order was rendered to aid Goodfriend in collecting the judgment, we can discern no reason why an attack on the initial accounting order or contempt order, even if successful, would affect validity of the garnishment order. However, Glassman generally asserts that the initial accounting order "tainted everything that followed." Therefore, she apparently suggests that the alleged invalidity of the initial accounting order, as well as the contempt order, somehow caused the judgment which followed to be void, which would in turn require reversal of the garnishment order. Again, we discern no reason why any invalidity of these orders would negate the trial court's jurisdiction to render the judgment that followed.

Nevertheless, Glassman argues the initial accounting order did not conform to the oral ruling by the associate judge who conducted the hearing on the request for accounting because the written order required an accounting from "the date of [the trust's] inception to current date" whereas the associate judge purportedly required only an "updated accounting." This complaint is not an attack on the trial court's jurisdiction. "Jurisdiction" refers to a court's authority to adjudicate a case. *Reiss v. Reiss*, 118 S.W.3d 439, 443 (Tex. 2003) (citing *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000)). Errors that would not make a judgment void, such as a court's action contrary to a statute, constitutional provision, or rule of civil or appellate procedure, make a judgment merely voidable and must be attacked within prescribed time limits. *BancorpSouth Bank v. Prevot*, 256 S.W.3d 719, 728 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (citing *Reiss*, 118 S.W.3d at 443; *Mapco, Inc. v. Forrest*, 795 S.W.2d 700,

703 (Tex. 1990) (orig. proceeding); *Cook v. Cameron*, 733 S.W.2d 137, 140 (Tex. 1987)). The alleged error cited by Glassman would fall into this category and does not pertain to the trial court's authority to adjudicate the case, including the order at issue. Instead, for the reasons discussed above, we conclude the court, as a statutory probate court, had jurisdiction to render the initial accounting order.

The contempt order was based on Glassman's failure to comply with the trial court's May 4, 2005 judgment, which memorialized several items in the parties' mediation agreement. According to Glassman, the mediation agreement, as a contract, could not be reduced to judgment (notwithstanding that Glassman agreed to rendition of this judgment) and purportedly provided the parties would mediate further disputes. Glassman also suggests she was improperly incarcerated on the recommendation of the associate judge while an appeal of its ruling was pending in the trial court. However, we may not entertain these contentions because a court of appeals lacks jurisdiction to consider a trial court's contempt order even when it is "appealed along with a judgment that is appealable." *See In re Office of Att'y. Gen. of Tex.*, 215 S.W.3d 913, 915–16 (Tex. App.—Fort Worth 2007, orig. proceeding) (quoting *Cadle Co. v. Lobingier*, 50 S.W.3d 662, 671 (Tex. App.—Fort Worth 2001, pet. denied)). Moreover, even if we could review the contempt order, Glassman's contentions do not pertain to the trial court's authority to find contempt; instead, she effectively alleges the trial court committed various procedural or substantive errors, which would merely render the contempt order voidable.

In sum, we reject Glassman's contention that the trial court lacked jurisdiction to render the underlying judgment on which the garnishment order was based. Accordingly, we overrule her four issues and affirm the garnishment order.

APPELLATE SANCTIONS

Goodfriend asserts that this appeal is frivolous and requests sanctions under Texas Rule of Appellate Procedure 45. *See* Tex. R. App. P. 45. On its own motion, we have granted en banc rehearing to resolve a conflict among opinions of this court on whether a

determination that an appeal was taken in bad faith is required before this court may award sanctions under Rule 45. *See* Tex. R. App. P. 41.2(c), 45. *Compare Hatton v. Grigar,* No. 14-03-01210-CV, 2004 WL 583045, at *2 (Tex. App.—Houston [14th Dist.] Mar. 25, 2004, no pet.) (mem. op.), *with Azubuike v. Fiesta Mart, Inc.,* 970 S.W.2d 60, 66 (Tex. App.—Houston [14th Dist.] 1998, no pet.).

Under former Texas Rule of Appellate Procedure 84, appellate courts in civil appeals were authorized to award "damages for delay" only if they found that an appellant had taken an appeal "for delay and without sufficient cause." *See* former Tex. R. App. P. 84. Courts construing this rule, including this court, determined that, before an appellate court could award Rule 84 damages, it must conclude the appeal was both objectively frivolous and subjectively taken in bad faith. *See Winrock Houston Assocs. Ltd. P'ship v. Bergstrom*, 879 S.W.2d 144, 152 (Tex. App.—Houston [14th Dist.] 1994, no writ). Effective September 1, 1997, the Supreme Court of Texas revised the appellate rules and changed the language regarding the prerequisites for appellate sanctions. Rule 45, the new rule governing appellate sanctions, does not contain any language that would make bad faith a prerequisite for appellate sanctions. *See* Tex. R. App. P. 45.

Nonetheless, this court continued to follow the legal standard from former Rule 84 (requiring both a frivolous appeal and bad faith) in Rule 45 cases. *See Azubuike,* 970 S.W.2d at 66 (denying request for Rule 45 sanctions because record did not show appeal was frivolous and brought in bad faith). Once this court had applied the standard from former Rule 84 to Rule 45, many panels of this court followed suit based upon horizontal stare decisis.[8] *See, e.g., Anderson v. Matthews*, No. 14-05-01286-CV, 2007 WL 2447263, at *4 (Tex. App.—Houston [14th Dist.] Aug. 30, 2007, no pet.) (mem. op.) (following *Azubuike* precedent). Other panels of this court concluded that an objectively frivolous appeal is the only prerequisite for sanctions under Rule 45. *See, e.g., Hatton,*

[8] *See Chase Home Fin., L.L.C. v. Cal. W. Reconveyance Corp.*, 309 S.W.3d 619, 630 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (stating that a panel of this court is bound by prior holding of another panel of this court absent a decision from a higher court or this court sitting en banc which is on point and contrary to the prior panel holding or an intervening and material change in the statutory law).

2004 WL 583045, at *2. The Supreme Court of Texas has not yet addressed this issue, which we now consider en banc.

Texas Rule of Appellate Procedure 45 provides:

> If the court of appeals determines that an appeal is frivolous, it may—on motion of any party or on its own initiative, after notice and a reasonable opportunity for a response—award each prevailing party just damages. In determining whether to award damages, the court must not consider any matter that does not appear in the record, briefs, or other papers filed in the court of appeals.

Tex. R. App. P. 45. Under the plain meaning of Rule 45, this court may award just damages if, after considering everything in its file, this court makes an objective determination that the appeal is frivolous. *See* Tex. R. App. P. 45; *Smith v. Brown,* 51 S.W.3d 376, 381 (Tex. App.—Houston [1st Dist.] 2001, pet. denied) (en banc). This determination may be made on the motion of any party or on this court's own initiative, after notice and a reasonable opportunity for a response. *See* Tex. R. App. P. 45. Unlike former Rule 84, there is no language in Rule 45 requiring a determination that the appeal was taken in bad faith before this court may award sanctions. *See id.* Therefore, we hold that such a determination is not required for this court to award just damages under Rule 45. *See Smith,* 51 S.W.3d at 381. We disapprove of all portions of prior opinions of this court to the extent the court concluded otherwise, including, but not limited to, the Rule 45 analysis in the following cases: *Alexander v. Alexander*, No. 14-09-01092-CV, 2011 WL 1123530, at *5 (Tex. App.—Houston [14th Dist.] Mar. 29, 2011, no pet. h.) (mem. op.); *Vance v. Tamborello*, No. 14-09-00798-CV, 2010 WL 4217527, at *3 (Tex. App.—Houston [14th Dist.] Oct. 26, 2010, no pet.) (mem. op.); *Osaka Japanese Restaurant, Inc. v. Osaka Steakhouse Corp.*, No. 14-09-01031-CV, 2010 WL 3418206, at *4 (Tex. App.—Houston [14th Dist.] Aug. 31, 2010, no pet.) (mem. op.); *Young v. Galveston Bleak House Realty*, No. 14-08-00698-CV, 2010 WL 2784339, at *6 (Tex. App.—Houston [14th Dist.] Jul. 15, 2010, no pet.) (mem. op.); *Vance v. Tamborello*, Nos. 14-09-00231-CV, 14-09-00315-CV, 2010 WL 1655489, at *4 (Tex. App.—Houston [14th Dist.] Apr. 27, 2010, no pet.) (mem. op.); *Hamilton v. Childs*, No. 14-09-00719-CV, 2009

WL 5149918, at *1 (Tex. App.—Houston [14th Dist.] Dec. 31, 2009, no pet.) (mem. op.); *Cantu v. Maher*, No. 14-07-00584-CV, 2009 WL 2589253, at *4 (Tex. App.—Houston [14th Dist.] Aug. 25, 2009, pet. denied) (mem. op.); *Lively v. Henderson*, No. 14-05-01229-CV, 2007 WL 3342031, at *5–6 (Tex. App.—Houston [14th Dist.] Nov. 13, 2007, pet. denied) (mem. op.); *Anderson v. Matthews*, No. 14-05-01286-CV, 2007 WL 2447263, at *4 (Tex. App.—Houston [14th Dist.] Aug. 30, 2007, no pet.) (mem. op.); *Yazdchi v. Chesney*, No. 14-05-00817-CV, 2007 WL 237697, at *2 (Tex. App.—Houston [14th Dist.] Jan. 30, 2007, no pet.) (mem. op.); *Nguyen v. Intertex*, 93 S.W.3d 288, 299–300 (Tex. App.—Houston [14th Dist.] 2002, no pet.); *Chapman v. Hootman*, 999 S.W.2d 118, 124–25 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

Nonetheless, this court still may consider a party's bad faith in taking an appeal, for example, when determining the amount of just damages to award under Rule 45. *See Smith*, 51 S.W.3d at 381. Rule 45 does not mandate that this court award just damages in every case in which an appeal is frivolous; rather the decision to award such damages is a matter within this court's discretion, which we exercise with prudence and caution after careful deliberation. *See* Tex. R. App. P. 45; *Smith*, 51 S.W.3d at 381. To determine whether an appeal is objectively frivolous, we review the record from the viewpoint of the advocate and decide whether the advocate had reasonable grounds to believe the case could be reversed. *See Smith*, 51 S.W.3d at 381.

The right to appeal is most sacred and valuable. *Id.* However, spurious appeals unnecessarily burden parties and our already crowded docket, and we will not permit them to go unpunished. *Id.* No litigant has the right to put an opposing party to needless burden and expense or to waste this court's time, which otherwise would be spent on the important task of adjudicating valid disputes. *Id.*

Considering the record, particularly the totality of the following factors, we conclude that this appeal is frivolous because, reviewing the record from Glassman's viewpoint, she had no reasonable grounds to believe the case could be reversed:

- she presents no independent basis for reversing the garnishment order from which she appeals;
- instead, she attempts to challenge the underlying judgment on which the garnishment order was based although an appeal of the judgment is clearly time-barred;
- she tries to circumvent her failure to timely appeal the judgment by arguing the trial court lacked jurisdiction although the record clearly demonstrated jurisdiction, she admitted in her pleadings the underlying facts demonstrating jurisdiction, she reiterated these facts at the outset of her appellate brief before proceeding to challenge the trial court's jurisdiction, and she directly acknowledged the court's jurisdiction in her counterclaim;[9]
- the various attacks on the underlying orders cannot possibly be characterized as jurisdictional arguments and nonetheless do not affect validity of the judgment or garnishment order;
- the law is well established that we may not consider the contempt order.

We recognize that Glassman's acknowledgement in her counterclaim of the trial court's jurisdiction, as distinguished from her admission of the underlying facts, would be insufficient alone to establish jurisdiction if it did not otherwise exist because subject matter jurisdiction cannot be conferred by consent or waiver. *See Dubai Petroleum Co.*, 12 S.W.3d at 76. However, this acknowledgement at least reflects Glassman knew the trial court otherwise had jurisdiction and thus influences our decision that sanctions are justified based on her now advancing the opposite position. Moreover, Glassman is an attorney, albeit appearing *pro se* on appeal; therefore, she cannot claim ignorance of the law to excuse her unmeritorious attack on the trial court's jurisdiction or to negate her acknowledgement of jurisdiction in the counterclaim she personally signed.

[9] In her counterclaim, Glassman pleaded, "Jurisdiction of this suit lies in Harris County, Texas for the following reasons: a. In accordance with Tex. Civ. Pract. & Rem. Code Ann. Ch. 37.005 because it relates to a Trust *that is subject to the jurisdiction of this Court*." (emphasis added).

Accordingly, pursuant to Rule 45, we award just damages to Goodfriend against Glassman in the amount of $2,500.

/s/ Charles W. Seymore
Justice

En banc.