BODA CASE NO. 58401
SBOT CASE NO. 201306674

IN THE
BOARD OF DISCIPLINARY APPEALS
DALLAS, TEXAS

CHRISTOPHER L. GRAHAM
Appellant

v.

COMMISSION FOR LAWYER DISCIPLINE
Appellee

On appeal from Evidentiary Panel 6
of Dallas County, Texas

MOTION FOR LEAVE TO SUPPLEEMENT BRIEF/RESPONSE TO APPELLEE BRIEF/ APPELLANT BRIEF SUPPLEMENT

TO THE HONORABLE COURT:

CHRISTOPHER GRAHAM, Appellant, brings this MOTION FOR LEAVE TO SUPPLEEMENT BRIEF/ RESPONSE TO APPELLEE BRIEF/APPELLANT BRIEF SUPPLEMENT according to Board of Disciplinary Appeals Internal Procedural Rules 4.05(e) and asks the court for leave to supplement appellant brief in order to respond to Appellee brief in support of this motion shows:

I. DE NOVO REVIEW IS THE CORRECT STANDARD TO APPLY IN THIS CASE:

The de novo review is the correct standard to apply in this case, since the evidentiary panel applied incorrect law to the facts of this case. *In re Caballero*, 272 S.W.3d 595, 599 (Tex. 2008) (citing *O'Quinn v. State Bar of Tex.*, 763 S.W.2d 397, 399 (Tex. 1988) (observing that "our disciplinary rules should be treated like statutes"); *MCI Sales & Serv., Inc. v. Hinton*, 329 S.W.3d 475, 500 (Tex. 2010) (noting that a "question of statutory construction is a legal one which we review de novo"). Appellee's brief and the facts in this case make clear that the character of the funds paid by Thomas were disputed. Appellee's brief paragraph 4 p. 15 states the nature of the dispute: Graham claimed that the funds were for a consultation fee and Thomas claimed they were for representation of her son in his case. Furthermore it was disputed whether the funds had been earned. Graham's position was that the funds had been earned: (RR. p.28 l. 21-22); (RR p. 28 l. 23-25; RR p. 29 l. 1-3); (RR p.32 l. 2-6); (RR p.53 l.9-11). Whereas Thomas believed she was entitled to a refund, (RR p.20 l. 20-15). The disputed nature of the funds implicated Tex. Disp. R. Prof. Conduct. 1.14(c); which the evidentiary was remiss not to apply. As a result, de novo is the appropriate standard for the review of this case.

II. EVIDENCE DOES NOT PROVIDE A REASONABLE BASIS FOR FINDING THAT GRAHAM FAILED TO RETURN UNEARNED FEES

Even hypothetically assuming that the substantial evidence standard were to apply in this case, the evidence does not reasonably to support a finding that Graham failed to refund unearned fees. The evidence clearly supports that the fees were refunded. The testimony from

Graham, Thomas and the plain language of the settlement agreement make clear that the funds were paid back to Thomas. (RR p. 21 l. 6-11); (RR p.22 l. 13-14); (RR Respondent Exhibit 2, p 62-65).

Furthermore, it is unreasonable to make a determination that the $900 was unearned when the evidence from Graham and Thomas clearly supports that legal consultative work was performed by Graham for Thomas. Testimony showed that Thomas' questions and legal concerns were answered (RR. p.28 l. 21-22); (RR p. 28 l. 23-25; RR p. 29 l. 1-3); (RR p.32 l. 2-6); (RR p.53 FOR l.9-11); Evidence also shows Thomas had contacted Respondent almost 40 times for information (RR Respondents Exhibit 1 p. 60-61); that Graham discussed with her the possibility of bail, of substituting attorneys, of the relationship between the state jail felony case and the federal case; the steps in a criminal case; the wire fraud statute and sentencing. Graham also conducted research on these issues (RR. p.54 l. 22-25; p.55 l.1-9). Thus it is unreasonable to say that the $900 was unearned when Graham consulted so many times with Thomas and where Thomas agrees that she received answers to her legal questions.

Additionally, the decision is unreasonable since it is based on a finding of a representation agreement between Graham and Rasberry that did not exist. There was no signed representation contract between Rasberry and Graham because Rasberry was not a client of Graham's. Thomas indicated that she did not have the funds to secure Graham as Rasberry's attorney (RR p.31 l.8-10; RR p. 17 l. 21-23). Graham indicated that the funds were for consultation services (RR p. 50 l.10-14). Graham never represented Rasberry. The evidence

points against a representation agreement between Graham and Rasberry. It was unreasonable for the panel to invent an agreement where there was none. If the parties had intended for there to be a representation relationship, then it would have been reduced to writing with clear language as to the terms and scope of the agreement.

III. GRAHAM'S SETTLEMENT AGREEMENT WITH THOMAS SHOULD BE A BAR TO DISCIPLINE

Thomas and hence the Commission should not have been able to continue with the grievance since the matter had been settled (RR Respondent Exhibit 2, p 62-65). Tex. R. Disp. Proc. 1.08(g) states: A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith. Graham and Thomas settled the matter as to the disputed $900 via a full and final settlement and release judgment. Furthermore, she was represented by independent counsel, Charles Grantham when she entered into the agreement as required by Tex. R. Disp. Conduct 1.08(g) (RR p.21 l.21-23). And Thomas received a refund in accordance with the settlement agreement (RR p. 21 l. 6-11). Tex. R. Disp. Conduct 1.08(g) allows such agreements if the requisites have been followed; the settlement agreement should have been given effect.

Furthermore, Appellee refers to Tex. Disp. R. Prof. Conduct 15.04 as providing justification for the Commission's position. There is no Rule 15.04 in the Tex. Disp. R. Prof. Conduct, so this claim too must fail.

IV. QUANTUM MERUIT DOES APPLY BECAUSE THE CLIENT THOMAS RECEIVED VALUABLE SERVICE

Appellee's brief misses the mark since it repeatedly refers to valuable services from Graham to Rasberry. Rasberry was not the client because no agreement had been signed and the funds had not been paid. The evidence from Thomas and Graham supports that there were valuable services performed. Thomas has consultation questions concerning her son's case that were answered, testimony showed that those concerns were answered (RR. p.28 l. 21-22); (RR p. 28 l. 23-25; RR p. 29 l. 1-3); (RR p.32 l. 2-6); (RR p.53 l.9-11); Evidence also shows Thomas had contacted Respondent almost 40 times for information (RR Respondents Exhibit 1 p. 60-61); that Respondent discussed with her the possibility of bail, of substituting attorneys, of the relationship between the state jail felony case and the federal case; the steps in a criminal case; the wire fraud statute and sentencing. Graham also conducted research on these issues (RR. p.54 l. 22-25; p.55 l.1-9). Thomas admits to her questions being answered during consultation. Thus there is no evidence to support that Respondent did not provide legal services to Thomas. In its brief, Appellee states that Thomas never "set out to find a consultant." It is irrelevant what she she may or may not have set out looking for because a consultant was the only price she was able to pay. She did not have the money to retain Graham as her son's attorney. (RR p.31 l.8-10; RR p. 17 l. 21-23). The evidence from Graham and Thomas show that Graham provided valuable legal services to Thomas during consultation.

V. APPELLEE FABRICATES THE REQUIREMENTS FOR APPLICATION OF TEX. DISP. R. PROF. CONDUCT 1.14(c)

The Commission in its brief has invented additional requirements for the application of Tex. Disp. R. Prof. Conduct 1.14(c). The rule simply requires that there be a dispute concerning a fee. There is no requirement that there be a written fee agreement, invoice for services or that the dispute be bona fide or otherwise as Appelle claims. The matter between Thomas and Graham was settled in court and the funds were distributed, as the rule requires. (RR Respondent Exhibit 2, p 62-65).

VI. ADMISSION OF EVIDENCE OF PRIOR INADMISSIBLE SANCTION WAS HARMFUL

Appellee contends that the prior, non-final probated suspension order from October 19, 2016 was cumulative, was not material and did not "drive the outcome" of the decision made in this case. This assertion by the Commission is unsupported from the transcript in this case. The panel crafted the sanction here as a direct result of this inadmissible, non-final sanction. Page 90 line 14-17 of the reporters record of the transcript states as follows:

> PANEL CHAIR: What is the effect, assuming
> the Panel were to entertain a reprimand of some sort, what
> would be the effect of the probation in the other
> unrelated case that is existing or probation?

This statement shows that the previous inadmissible, non-final probation determination was the main factor in the determination of the resulting outcome and sanction in this case. Therefore the admission of the previous judgment was harmful to Graham and warrants that the result in this case be overturned.

WHEREFORE PREMISES CONSIDERED Graham requests that the Board of Disciplinary Appeals grant the motion for leave to supplement its brief and consider this filing in its determination; reverse the finding of the Evidentiary Panel of misconduct by Graham; reject the arguments adduced by the Commission in its reply brief; and render a decision of no finding of misconduct; that the complaint against Respondent be dismissed; that the Commission take nothing by way of attorneys' fees or any other fees against the Respondent; that Graham's public attorney profile be changed to reflect no disciplinary sanction in this case and for all further relief in law or inequity.

Respectfully submitted,

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