No. 60095

THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY THE SUPREME COURT OF TEXAS

Hamilton Lindley
Appellant

v.

The Commission for Lawyer Discipline
Appellee

On Appeal from the Evidentiary Panel 8-3
For the State Bar District 8 Grievance Committee

BRIEF OF APPELLANT HAMILTON LINDLEY

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PRO SE

ORAL ARGUMENT REQUESTED

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BRIEF OF APPELLANT HAMILTON LINDLEY

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellant, Hamilton Lindley, submits this brief in support of his appeal. For clarity, this brief refers to Appellant as "Mr. Lindley," "Appellant," or "Respondent" and the Appellee as "CFLD." References to the record are labeled CR (clerk's record), RR (reporter's record), Pet Ex (Petitioner's exhibit to reporter's record), and Resp Ex (Respondent's exhibits to reporter's record), and Supp (Appellant's supplemental record).

STATEMENT OF THE CASE

This is a disciplinary appeal from the decision of the Evidentiary Panel for the State Bar District Number 08-3, State Bar of Texas ("Panel"). That Panel entered a judgment of disbarment against Appellant Hamilton Lindley on November 15, 2017. CR 432. Mr. Lindley is 41 years of age and has practiced law without any other incident since September 2004. Pet Ex 67. Mr. Lindley was disbarred almost two years after the grievance was filed. There was no report of any misconduct during that time.

Mr. Lindley filed a motion for reduced sanction on December 15, 2017. CR 451. The motion was denied on December 29, 2017. CR 485. A timely notice of appeal was filed on February 12, 2018. CR 494. The reporter's record was filed on February 28, 2018, and the clerk's record was filed on March 7, 2018—making this brief due on April 9, 2018 because April 7 was a Saturday.

STATEMENT REGARDING ORAL ARGUMENT

The decisional process of evaluating the Panel's improper judgment of disbarment will be aided by oral argument.

As illustrated by the extensive record and the years from the complaint to the judgment, this matter presents issues that may create questions by the Board of Disciplinary Appeals ("Board"). There is no prejudice to CFLD because Appellant is no longer practicing law and has complied with all orders of the Panel. Appellant is eager to answer all questions that the Board may have about this appeal.

STATEMENT OF JURISDICTION

The Board of Disciplinary Appeals has jurisdiction over this appeal pursuant to Texas Rule of Disciplinary Procedure § 2.24.

ISSUES PRESENTED

Issue 1: Whether the Panel reversibly erred by considering improper law as referenced by CFLD.

Issue 2: Whether the Panel reversibly erred by admitting surprise and altered evidence while denying important mitigation evidence.

Issue 3: Whether the Panel reversibly erred by ordering disbarment inconsistent with this Board's and other state's precedent.

STATEMENT OF FACTS

Appellant Hamilton Lindley makes no excuses for his misconduct. But he should be afforded the opportunity to fully explain his reasons before a Panel which applies the correct law using unaltered evidence. That did not happen. This appeal was filed so that an appropriate sanction may be imposed after the proper law and facts are evaluated.

Mr. Lindley was a Texas lawyer for 13 years without any disciplinary history before being disbarred over a complaint filed by his former law partner who stood to immediately gain almost $1 million by that disbarment. RR 292-295. Mr. Lindley remorsefully admitted to his misconduct before, during and after the hearing. Supp 1; RR 31, L3; CR 453. He obtained treatment from professionals. RR 145-185. He did not profit. Supp 58; RR 328 L11; CR 452-453. He harmed no clients. Supp 108; RR 303-305. The Complainant was paid almost $1 million. CR 452-453. That is not harm.

Former Law Partner's Long-Time Extortion Scheme

The Complainant, Jeffrey Goldfarb ("Goldfarb"), threatened to ruin Mr. Lindley's life if Mr. Lindley continued to attempt enforcement of Mr. Lindley's agreements with Goldfarb during a mediation. Supp 16. But that blackmail was prohibited from being described at the hearing. RR 124-125. Without that important mitigation evidence, which influenced years of suicidal ideation, Mr. Lindley could not

fairly describe his state of mind at the time of his admitted misconduct before the Panel. Mr. Lindley's conduct was not committed with malice. It was from weakness.

The Decision

What was Mr. Lindley's horrible decision? He signed names to documents to control a fee that Mr. Lindley earned so that Goldfarb would lose power from Goldfarb's years of extortion. That extortion originated at the mediation Mr. Lindley was prohibited from speaking about before the Panel. RR 124-125. It was not by chance that CFLD objected to the disclosure of that information. Mr. Lindley had previously described the importance of that mediation threat in his written response. Supp 16. And at his deposition, Mr. Lindley described that is when he considered suicide over this situation. Supp 72. Mr. Lindley does not excuse his misconduct. RR 82 L5; RR 129 L23; RR 139 L6. It was wrong. Supp 3. And his thoughts at the time were awash with suicide. RR 47 L6; RR 82 L19. In fact, Mr. Lindley's fabricated documents were discovered on the same day as he sent them. RR 81 L11. No money was paid to Mr. Lindley. *Id.* And Mr. Lindley immediately apologized to Mr. Goldfarb for his wrongdoing. RR 81-82. Over that telephone call, Mr. Goldfarb responded that he would not go to the State Bar or Dallas Police Department if he did not have to pay Mr. Lindley any money for originating the matter. RR 82 L14-16. Mr. Lindley, who was attempting suicide at that very moment, relented to Mr. Goldfarb. RR 82-83. Eventually, Mr. Goldfarb was paid nearly $1 million for the matter. CR 452-453.

Goldfarb did not even work 0.1 hour of time. CR 452-453. Instead, it was Mr. Lindley who had originated and worked the matter exclusively from Mr. Goldfarb. *Id.* Mr. Lindley walked away with nothing. *Id.* This lack of profit and harm was not considered by the Panel. What was considered by the Panel was an altered recording of Mr. Lindley. RR 223 L20-25; RR 224 L1-3. The unaltered version has never been produced by Mr. Goldfarb. *Id.* It contains information about the case that was the source of extortion. Pet Ex 46. Altered records should not be used to disbar a lawyer.

Goldfarb's and Lindley's Background

In 2010, Goldfarb Branham LLP hired Lindley as an associate at a $40,000 a year salary plus a 40% origination fee for his cases. RR 89 L13; RR 97 L11; RR 173 L18-22. Branham and Goldfarb had a falling out and entered into a separation agreement less than a year later. RR 90 L13. Then Goldfarb enticed Lindley to stay with him and his successor firm. Goldfarb promised Lindley what he lacked—a higher monthly salary. RR 21 L7; RR 70 L22; RR 92 L21. Appellant joined that firm as a partner while keeping his 40% split for contingency fee cases, including the Rural/Metro and Sun River matters described in this appeal. RR 97 L14; Resp Ex 21b, ¶1.

Mr. Lindley was under Goldfarb's thumb. Shortly after promising Mr. Lindley a law partnership, Goldfarb stopped paying Mr. Lindley that promised monthly salary. RR 94 L13-16; RR 134 L6-14. In fact, he was not timely paid for eight of the twelve

months that the partnership lasted. Resp Ex 21b, ¶3; RR 94 L13-16; RR 135 L1. At the time, Mr. Goldfarb knew that Mr. Lindley could not leave. RR 147 L10-22; Supp 33-34. Mr. Lindley had a wife who was uninsurable, except through a corporate insurance policy, and in ill health. RR 91 L16. Mr. Lindley had just adopted an infant son. Supp 63. And he had bought a new house based on Mr. Goldfarb's promises. He had nowhere to go except to dig in to this partnership. RR 134 L24. Unknown to Mr. Lindley, Goldfarb hired a recruiter just one month after inducing Mr. Lindley into the arrangement. RR 134 L6-14. Resp Ex 21b, at ¶2. It was clear to that recruiter that Goldfarb never had the means to pay Mr. Lindley the promised salary. *Id.* The promised partnership was a fraud. Resp Ex 21b ¶17.

In February 2013, the partnership ended. Ex 21b ¶4. There was a discussion about dividing up matters which Mr. Lindley had originated in securities litigation matters. RR 104 L16. These securities matters involved class action plaintiffs that Mr. Lindley signed up and then referred out to separate counsel. RR 105-107. Those law firms would seek to be appointed lead counsel in control of the case. Resp Ex 21b, ¶4. In those cases, even if multiple attorneys have worked on the case for different plaintiffs, the lead attorney appointed by the court controls the matter once appointed. Resp Ex 21b, ¶4; Supp 11. Only the court can decide if there is a change in lead counsel—not the client. *Id.* As a result, the Goldfarb firm was not in control of the files, did not represent them individually, and had no authority to act as counsel by

court order. *Id.* Any fees that were paid we ordered by the Court and not controlled by the client. *Id.*

Transfer Letters as Extortion Bait

Goldfarb stated that he wished to have all securities cases that Lindley originated transferred out of Goldfarb LLP with Lindley because he wished to avoid liability. RR 107 L16-20. Lindley explained that the files did not need to be transferred because they had already been referred out to other counsel who had since been appointed lead counsel. RR 105-106; Supp 143-146. Goldfarb LLP had no authority to act on their behalf because of the court orders. *Id.* Additionally, many of the clients were not appointed as lead plaintiffs in the class actions and were thereby represented by other lawyers. RR 105 L9. Goldfarb LLP's lawyers were no longer the representatives of the clients that had been referred to other counsel. RR 105 L9; Resp Ex 21b ¶5. There was no file to transfer for this set of clients because the class was being pursued by someone else, the lawyers who had been appointed lead counsel. *Id.*

Mr. Lindley said it was unlikely that hundreds of clients would transfer files that did not exist at the firm due to their small interests in the cases, especially since those cases were controlled by the Court, not Goldfarb LLP or the clients. RR 105 L9; Resp Ex 21b ¶5. In some instances, the cases were not even controlled by anyone to whom Lindley had referred the cases. RR 105 L9-25; Resp Ex 21b ¶5. Goldfarb replied that

he just needed something to show his insurance company. Supp 35-36. Goldfarb said that he did not care if Lindley signed the letters seeking to transfer the file on the clients, he just needed something to reduce his liability. Supp 34; RR 105 L16. He asked Lindley to do so because they were Lindley's cases and because Goldfarb did not believe there was a problem with it. Supp 48; RR 108 L 24; Resp Ex 21b ¶6. Lindley refused for months, but finally relented after Goldfarb's nonstop demands. *Id.* Goldfarb had information and knowledge with he could later extort Lindley because Lindley regrettably followed through with those aggressive demands. Resp Ex 21b ¶6. That is exactly what Goldfarb did.

Sun River Extortion Succeeds

Near the end of the Goldfarb LLP partnership, Lindley originated a shareholder case on behalf of Sun River Energy, Inc. RR 97 L16; Resp Ex 6a; Resp Ex 21b ¶6. This was a matter where the firm was in control. Resp Ex 21b ¶6. The client owed substantial fees to Goldfarb LLP. Resp Ex 7. Mr. Goldfarb wanted the case settled quickly so that those fees could be paid out of the settlement funds from the case because the client lacked money to pay. Resp Ex 21b ¶6. Lindley and his subsequent firm, Deans & Lyons LLP ("Deans & Lyons") devoted substantial resources to the Sun River case. *Id.* However, it did not settle quickly enough for Mr. Goldfarb. *Id.* Therefore, Goldfarb embarked on a plan to sabotage the case and Lindley's ability to obtain attorney's fees from it. *Id.*

Fee negotiations in Sun River were ongoing in late 2013 through early 2014. RR 110 L5. On January 29, 2014, David Clouston—opposing counsel—offered Mr. Lindley attorney's fees of $790,000. RR 110 L7. Goldfarb wanted Lindley to accept. Resp Ex 17. But Mr. Lindley refused because Clouston told Mr. Lindley the insurance company would likely increase the offer to $850,000. Resp Ex 21b ¶9. Additionally, Mr. Lindley had worked almost two thousand hours in the matter. RR 102 L18. In contrast, Goldfarb had worked only one-tenth of that time. Resp Ex 21b ¶9.

Goldfarb made good on his threats. He contacted Clouston on February 4, 2016 and falsely alleged that Mr. Lindley had inflated his time records. Resp Ex. 17; RR 113. Immediately after speaking with Goldfarb, on February 4, 2014, Clouston withdrew the settlement offer, in direct response to Goldfarb's false claims against Mr. Lindley. RR 112 L19-25; RR 114; Resp Ex 17. Sun River, a publicly traded company, issued a proxy statement stating that Mr. Lindley had engaged in fraudulent billing practices, and sought his removal based on Goldfarb's false accusations. RR 115-117. On April 7, 2014, Sun River filed a Motion to Disqualify ("MDQ"). It alleged differences between the Goldfarb invoices and the billing statements sent to Defendants' counsel during settlement. RR 119 L4.

Mr. Lindley filed a response to the MDQ on April 8, 2014, and the next day sought a Temporary Restraining Order ("TRO") against the false and misleading proxy. RR 118-120; Supp 72; Resp Ex 11. Goldfarb appeared with opposing counsel

at the TRO hearing. Supp 72. Mr. Lindley's opposition and TRO application demonstrated that Goldfarb had given Clouston false information and that there was not any evidence that Mr. Lindley had engaged in billing fraud or improper practices. Resp 21b ¶11. The Judge said that the claims against Mr. Lindley were libelous. *Id.* The TRO was granted and Mr. Lindley requested a hearing on the MDQ. Resp Ex 11; RR 117-118; Supp 72. Opposing counsel never set a hearing and the MDQ. RR 119 L4; Resp 21b ¶11; Supp 72. Goldfarb assisted the opposing parties in the Sun River case by manufacturing a false, misleading, and defamatory proxy statement that accused Lindley of fraud and sought Lindley's withdrawal from the case. Resp 21b ¶11. Goldfarb did so in the hope that without Lindley's involvement, the case would settle and he would get paid. Resp 21b ¶11.

Goldfarb resorted to other means because his original efforts to have Lindley removed from the Sun River case did not work. RR 302 L16-22. Goldfarb sent the file transmission letters to Deans & Lyons. Resp Ex 15; Supp 72. This was six months after Lindley sent them to Goldfarb. Resp Ex 15. Goldfarb did so to force Lindley's withdrawal from the Sun River matter and cause Mr. Lindley to lose his job. Resp Ex 15. Goldfarb had the transfer letters forensically examined to be responsive to a Sun River subpoena. RR 120 L9. This illustrates that the transfer letter scheme was designed to remove Mr. Lindley from the Sun River fee. RR 120 L9; Resp Ex 15.

Goldfarb succeeded—Lindley withdrew from the Sun River matter and lost his job. Resp Ex 15; RR 124 L 10. He then interfered with Lindley's agreement with Deans & Lyons. Goldfarb has never paid the 40% origination fee owed to Lindley for the Sun River matter. Supp 18, 67; Resp Ex 21b ¶12. However, Goldfarb did receive a significant payment. *Id.* It was clear that Goldfarb would continue refusing the contingency fee agreement for cases Lindley originated. Goldfarb extorted him by threatening complaints to the state bar and federal authorities if Lindley sought to enforce the origination agreement between the parties. Resp Ex 21b ¶13. Mr. Lindley left Dallas terrified of further extortion. He kept a gun with notes to his family and his life insurance policy in the event Goldfarb attempted further extortion. Mr. Lindley's episode with Goldfarb was not over when he went to work at Dunnam & Dunnam LLP in Waco.

Goldfarb's Extortion Scheme Continues in the Rural Metro Matter

In addition to Lindley's Sun River client, Mr. Lindley originated a client in a shareholder class action suit against Rural/Metro. Resp Ex 21b ¶14. Mr. Lindley was the only lawyer that generated the Rural/Metro client, which resulted in a $34.5 million fee to class counsel. Resp Ex 21b ¶14. Goldfarb was not involved in the case. Supp 22, 57. Lindley was entitled to 40% of the fee. Supp 22; Resp Ex 21b ¶14. But as with the Sun River matter, Goldfarb asserted that Lindley could not enforce his agreements with the firm. Resp 21a; Resp Ex 21b ¶15. He stated that unless Mr.

Lindley gave up the entire fee to which Mr. Lindley was entitled in the case, Mr. Goldfarb would contact federal and state authorities, including filing a grievance with the State Bar. RR 82 L15; Resp Ex 20a, 21b ¶15. Sixty percent of the fee for a case he never worked on was not enough for Mr. Goldfarb. Mr. Lindley gave up the entire fee—which he solely worked and earned. Goldfarb received almost one million dollars for a case he did not originate or work due to that extortion.

Goldfarb confirmed that extortion in writing to Mr. Lindley by an email. Resp Ex 20a. Goldfarb's blackmail was also independently confirmed by Jim Dunnam at Dunnam & Dunnam LLP. Mr. Dunnam was Mr. Lindley's employer at the time of the Rural/Metro fee. He described his meeting with Mr. Goldfarb as "a shakedown meeting. It was a blackmail meeting." RR 291 L23-24. Mr. Dunnam went further in describing that meeting with Mr. Goldfarb. During that meeting, Mr. Goldfarb stated that,

> And he says that it's a fee dispute and no clients were involved. And so – I don't remember exactly how he said it. Basically said, I can go light on him. That's what he said.
>
> And that didn't make me comfortable. I said, look, here is the deal. You need to go get ethics counsel and you need to report to the bar exactly whatever somebody tells you you ought to report. I'm not an ethics lawyer. In fact, our firm, we hire Tom Watkins in Austin to tell us how to handle the situation because we want to do exactly what we're supposed to do.
>
> And he said, no, no, I'll talk to him, he said, because it's a fee dispute. I've got to report it. But I can characterize the fee dispute, you know, and the consequences will not be that extreme.

Again, I told him, I said, you need to do whatever your ethics lawyer tells you to do. We're going to do what Tom Watkins tells us to do. Then he immediately went into, but now Hamilton has told me that he didn't want any interest in this fee.

I said, well, that's not what I understand, but –
Well, he says, now, if he wants an interest in the fee, I'm going to have to rethink how I report this to the bar.

And I said, that's blackmail. I just told him straight up, I said, that's blackmail.

He said, oh, no, no. He said, all I'm saying is if Hamilton is not going to exhibit the appropriate level of contrition, I'm going to have to rethink how I report this to the bar.

I remember it. I mean, it burned in my head. He said it three times, exhibit the appropriate level of contrition. He kept using that phrase, that I'm going to have to rethink how I report this to the bar.

I said, man, what you're telling me is if he doesn't give you this money, you're going to go harder on him than you're required to go or whatever.
Well, no. I just think unless he exhibits the appropriate level of contrition, that I need to rethink how I'm going to do this.

We had some pretty strong words about it. I've never had a lawyer do that. I thought about reporting him to the bar myself. I asked Tom Watkins what to do about that, and he said no.

And I remember telling him, I said, Mr. Lindley has done something wrong. There's no doubt about it. There's consequences. He could go to jail. He could lose his law license. But one of the consequences is not your enrichment. If you had a deal that was a 60/40 split, then you're entitled to 60/40 split. That's all there is to it. If he shouldn't get it, give the money to the Salvation Army, but you don't get it because he made a mistake. And it was as offensive a thing that's ever happened to me in my career. I believe that thing was taped, too, because he left and he came back.

> That's what happened. That's who this man is. That is exactly who that man is. And he's still trying to do it. That's my 10 cents. But that happened. I've already testified to this under oath in the lawsuit, exact same thing.

RR 291-295. This shows the extortion that Mr. Lindley was under for years, which was driving Mr. Lindley's depression, suicidal ideation and avoidance of Mr. Goldfarb. Mr. Lindley's episode with Goldfarb was not over—even years later.

Mr. Dunnam then offered his understanding on the sequence of events involving Sun River and the earlier transfer letters after speaking with, presumably, the district judge in the case who was a former employee of Mr. Dunnam while he was in the Texas Legislature:

> But I do think I understand that sequence now having talked with some people up there.
>
> It was about getting him out of the case and letting Goldfarb make the money out of that case. I believe the district judge ruled for Hamilton initially, and that's why Goldfarb had to pull out those names and try to blackmail him out of that case. Again, none of this –

RR 302 L16-22. It was the extortion from the Sun River case that drove Mr. Lindley further into hiding from Mr. Goldfarb. The conflict between Mr. Lindley and Mr. Goldfarb was not over after Mr. Lindley moved to Waco. In fact, it had not even peaked.

A One Act Play

Mr. Lindley's misconduct was a one-act play—not a sequel. Blackmail's power comes from encouraging secrets. So, Mr. Lindley felt even more pressure to hide from Mr. Goldfarb's extortive threats after leaving Dallas. He was terrified. RR 46-47. After all, Mr. Goldfarb still had power from the secret. Mr. Lindley engaged in the behavior to avoid Mr. Goldfarb. RR 47 L7; RR 139 L2-14; RR 173. This is illustrated by the aberrant nature of Mr. Lindley's conduct. RR 299-305; CR 464-465. The blackmail drove Mr. Lindley's acute depression and suicidal ideation that he has now addressed. RR 127-129; RR 142-152; RR 165-178. Mr. Lindley's coworkers at Dunnam & Dunnam witnessed the suicidal ideation he was experiencing. RR 298 L4-9. They are surprised he is still alive. *Id.* He acted out of weakness to avoid Mr. Goldfarb. RR 47 L7; RR 139 L2-14; RR 173. It was not done to harm. RR 303-304. No harm occurred to Mr. Goldfarb. He received almost $1 million from Mr. Lindley's work. CR 452-453. Mr. Lindley's misconduct was not directed at the public, courts or clients. RR 292 L24. It was limited to Goldfarb. If Mr. Lindley was dishonest at his core, he would not have been candid at his hearing and his deposition. Even CFLD conceded Mr. Lindley's candor. RR 317 L25; Supp 65.

In closing statements, CFLD claimed that Mr. Lindley did not learn from his mistakes. RR 319. But that was wrong. RR 172 L6-21; RR 185. He has learned. The

pain Mr. Lindley has endured is intense. RR 47; RR 298 L4-9; RR 323 L 12; RR 328 L 16; Supp 63. When CFLD accused Mr. Lindley of not taking full responsibility during the hearing, Mr. Lindley responded, "This isn't about Mr. Goldfarb. It's about me and my absolutely just stupid decision to do this. I did it, and I did it alone. I did it, and I admit it." RR 46 L1-3. Those are the words of a man who learned his lesson. Undeterred by that plain answer, CFLD pressed again. Mr. Lindley explained that he did it because,

> I was terrified, and I thought that -- my first thought was my life insurance, that I could pay for my family because it was payable on suicide, and I thought this is the only way out to avoid that. So I did this stupid stuff. Stupid. And I can't express how bad I feel about it.

RR 47 L4-9. Those words still fail to explain remorse to CFLD.

Mr. Lindley's actions must be viewed from the lens of a depressed mind. He was a depressed suicidal man with a family history of suicide. RR 47 L6; RR 82 L19; RR 83 L7-16; RR 85; RR 140 L7; RR 146 L14; RR 167 L1. Mr. Lindley felt that he had no place to turn when he experienced the toxic relationship with Mr. Goldfarb. RR 47 L7. Now, when Mr. Lindley talks about what he did back then, it is "like a stranger talking." Supp 64. He has sought treatment through counseling and medication. Supp 28, 74; Resp Ex 24a; RR 130-131, 146, 148, 150, 167-168, 177. Mr. Lindley feels remorse and shame. RR 39 L1; RR 46 L2; RR 47 L8; RR 82 L20; RR 131 L13-25. RR 167 L6-8; RR 172 8-11. Mr. Lindley felt there was no way to provide for

his family except through the life insurance from taking his own life. RR 47 L5. He wrote more notes to his family, researched the most effective methods of suicide, loaded a weapon and put it in his mouth. RR 82-83. Mr. Lindley realizes today that this was not rational. But at the time, Mr. Lindley was suffering from an undiagnosed disability. His mind was awash with thoughts of his own death to escape Goldfarb's blackmail.

No misconduct was committed after this grievance was filed—almost two years before the disbarment. Mr. Lindley's coworkers were shocked after his shameful conduct with Goldfarb was revealed. RR 287-305; CR 464-465. It did not fit Mr. Lindley's character. *Id.* The revelation allowed Mr. Lindley to speak about the panic he was hiding for years. RR 172 L5. By revealing the secret, Mr. Goldfarb lost his power. Without that blackmail pressure, Mr. Lindley no longer needed to hide. He burned his suicide notes and gave away his gun. RR 128 L19-22; RR 167 L3-4.

A close review of Mr. Lindley's many files at Dunnam & Dunnam showed no issues. RR 287-288; RR 299-305. Neither did the review by his only client at the time of the disbarment. Instead, Mr. Lindley's wrongdoing was confined to avoiding Mr. Goldfarb. Mr. Lindley's only client at the time of his disbarment was The Dwyer Group, where he was in-house counsel. RR 35 L8. That client still employs him today despite the disbarment. CR 464-465. That is a strong endorsement of Mr. Lindley's character. Mr. Lindley's employer and client would be most affected by the public's

perception, chance of repetition, and insulation from future misconduct. The Dwyer Group, an almost 40-year-old billion-dollar franchisor of over 12 brands, has reviewed the matter and is satisfied that Mr. Lindley's conduct was aberrant. *See* CR 464-465.

Mr. Lindley had an unblemished disciplinary record and had never been sanctioned by any state court or any of the twelve federal courts in which he was a member. Supp 30. CFLD took almost two years after the grievance to disbar Mr. Lindley. That is because he was not a threat to anyone. He was, instead, a man with a disability who was avoiding a blackmailer.

SUMMARY OF THE ARGUMENT

The Panel failed to follow the basic guiding principles of Texas law by disbarring Mr. Lindley. It instead applied the wrong law referenced by CFLD. No analysis was conducted by the Panel of Appellant's lack of profit, remorse, conduct at the hearing, loss or damage to clients, insulation from future misconduct, or mental disability. Those factors are in Appellant's favor.

Appellant's important mitigating evidence was not heard by the Panel, creating an information vacuum. Mr. Lindley's admitted conduct cannot be properly assessed without context. Evidence altered by Complainant and trial by ambush were the methods used to secure disbarment. That is not right.

Appellant's disbarment is inconsistent with other cases involving similar facts in Texas and across the country. The result discourages other Texas lawyers suffering depression to admit their faults, show remorse or seek help. Instead, it will embolden others to use the State Bar of Texas to facilitate their extortion.

Mr. Lindley requests this Board order a new punishment hearing consistent with the law or render discipline. Appellant requests a three-year active suspension with requirements that he continue mental health treatment and his moral fitness be actively monitored by CFLD. He also submits that upon his return to the State Bar of Texas he be placed on a two-year probationary status with monitoring by CFLD.

ARGUMENT & AUTHORITIES

Mr. Lindley's extraordinary remorse for his misconduct is clear. His admitted misconduct affected no clients. Appellant experienced no profit, it was committed with a disability, and he is unlikely to reoffend. Still, the Panel rejected evidence illustrating mitigation while admitting unreliable evidence. It entertained law that was inapplicable. For these reasons, the Board should order a new punishment hearing or, alternatively, render a new punishment.

I. THE STANDARD OF REVIEW

Appeals from evidentiary panels must be on the record, determined under the standard of substantial evidence. Tex. Disp. R. Prof'l Conduct § 2.44; *CFLD v. Schaefer*, 364 S.W.3d 831, 835 (Tex. 2012). Because the trial court has no discretion in determining the law or in applying it to the facts, the trial court's failure to analyze or apply the law is an abuse of discretion. *In re American Homestar of Lancaster, Inc.* 50 S.W.3d 480, 483 (Tex. 2001). The de novo review is the correct standard to apply in this case, since the 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"). Legal conclusions are reviewed de novo. *Schultz v. Comm'n Lawyer Discipline*, No. 55649,

2015 WL 9855916 (Tex. Bd. Disp. App. Dec. 17, 2015). The Panel did not apply Texas criminal procedural law, contractual law or Tex. Disp. R. Prof'l. Conduct § 2.18. It instead applied law that was improperly referenced by CFLD.

II. THE PANEL REVERSIBLY ERRED BY IMPOSING ITS SANCTION USING WRONG LAW REFERENCED BY CFLD

Both CFLD and the Panel based Mr. Lindley's disbarment on the wrong law. CFLD revealed that "we have to ask for disbarment" due to case law. RR 321 L5-6. To this day, CFLD has provided no citations despite a promise on the record and repeated requests by Appellant. RR 321 L9; CR 482. CFLD's refusal is transparent. This disbarment is based on flawed legal analysis.

A. LIMITED DEFERENCE SHOULD BE AFFORDED TO A PANEL USING THE WRONG LAW

A trial court has no discretion to determine what the law is or apply the law to the facts. So, a clear failure by the trial court to analyze or apply the law correctly will constitute an abuse of discretion, and may result in reversal. *See Joachim v. Chambers*, 815 S.W.2d 234, 240 (Tex. 1991) (trial court abused discretion by misinterpreting Code of Judicial Conduct); *NCNB Texas National Bank v. Coker*, 765 S.W.2d 398, 400 (Tex.1989) (trial court abused discretion by failing to apply proper legal standard to motion to disqualify counsel); *Eanes ISD v. Logue*, 712 S.W.2d 741, 742 (Tex.1986) (trial court abused discretion by erroneously finding constitutional violation). CFLD's

legal references illustrate its weak arguments for disbarment.

This Board should review the Panel's legal conclusion with limited deference in determining whether the Panel abused its discretion. *Axelson*, *Inc.* v. *Mcllhany*, 798 S.W.2d 550, 555 (Tex. 1990); *Barnes v. Whittigton*, 751 S.W.2d 493, 495-96 (Tex.1988); *Terry v. Lawrence*, 700 S.W.2d 912, 913-14 (Tex. 1985). The Panel's erroneous interpretation of the law constitutes a clear abuse of discretion, requiring a new hearing on punishment.

B. TEXAS CASES AND STATUTES DO NOT SUPPORT THE PANEL'S LEGAL ANALYSIS FOR DISBARMENT

CFLD first referenced a case claiming Appellant's conduct was "most egregious conduct, fraud on the Court" requiring disbarment. RR 321 L 11-12. That matter was a discovery sanction case. *JNS Enterprise*, *Inc. v. Dixie Demolition*, *LLC*, No. 03-10-664 (Tex. App. July 17, 2013). It did not involve attorney discipline. *Id.* In *JNS*, the plaintiffs created documents in responses to discovery requests to lie about them in depositions. Here, Mr. Lindley did not engage in similar conduct. He created no altered documents to be produced in a lawsuit or to a court. Mr. Lindley did not lie about them in depositions. Unlike *JNS*, this record is inundated with examples of Mr. Lindley's honesty about his misconduct. *See*, e.g., Supp 52, 65, 72, 74; RR 31 L3, L13, L24; RR 82-83; RR 132 L19-22. The *JNS* facts fit Mr. Lindley's case like a round peg in a square hole.

CFLD then represented there were additional quotes from cases that cannot be produced by Appellant's search. RR 321 L13-18. Mr. Lindley can only speculate about the potential matters that CFLD referenced. This illustrates the unfairness of the trial. The law upon which Mr. Lindley's livelihood was stripped from him should not be a state secret. Law is shared equally at a fair trial. It was not here.

CFLD referenced Texas Penal Code sections 37.09 and 32.21. RR 322 L3-5. These statutes cannot apply. Tampering with evidence requires an investigation or official proceeding to be in progress. Texas Penal Code § 37.09(a). There was none. Forgery requires an intent to harm or defraud. Texas Penal Code § 32.21(b). Mr. Lindley did not possess that intent. RR 15 L15; RR 60 L21-23; RR 162 L2; RR 175 L13-20; RR 304 L1; RR 325 L7; RR 326 L3-14. Mr. Lindley neither harmed nor deceived anyone. He did not profit. And he had a legal interest in the money. On the other hand, the Complainant received more than the 60% that he was entitled to in the Rural Metro matter. He received 100%.

CFLD mischaracterized the "profit to the attorney" as a non-mitigating financial hardship. CR 476. This was smokescreen. CFLD cannot credibly deny the lack of profit. Mr. Goldfarb received more than $950,000 from Appellant's work in the Rural Metro case that is at the heart of this proceeding. Mr. Goldfarb will also receive future compensation from other matters that Appellant originated and exclusively worked. Mr. Lindley will not. Appellant did not profit from his conduct.

Instead, the Complainant gained almost one million dollars. This was not analyzed as a lack profit.

C. MR. LINDLEY SHOULD NOT BE SANCTIONED AS A REPEAT OFFENDER BECAUSE HE HAS NO PRIOR DISCIPLINE

Mr. Lindley has no prior discipline. But CFLD was undeterred by that fact. It argued Mr. Lindley was repeat offender when he was not. Suggesting that Mr. Lindley was a repeat offender requires the first event to be over and prior discipline. Mr. Lindley's conflict with Goldfarb was not over in 2016. His misconduct was committed under threat of extortion while suffering acute depression and attempting suicide.

CFLD referenced a case where a "[l]awyer was caught twice. That happened here, too." RR 322 L14-15. He was disciplined twice—once in New Mexico and later in the District of Columbia, unlike Mr. Lindley. *In re Howes*, 940 P.2d 159 (N.M.1997); *In re Howes*, D.C., No. 10-BG-938, 3/8/12. Mr. Lindley had no prior discipline. Pet Ex 67. CFLD's claim that it "happened here, too" is false. Appellant should not be compared with a lawyer who has a disciplinary history. CFLD's use of a case with prior disciplinary history to bolster its claim that Mr. Lindley committed these acts twice illustrates the weakness of its contention.

Howes was a prosecutor who misappropriated government funds through fraudulent vouchers. *See* RR 322 L14; *In re Howes*, D.C., No. 10-BG-938, 3/8/12.

Howes was recently reinstated. *In re Howes*, D.C., No. 17-BG-328, 2017 BL 183604, 6/1/17. His disbarment occurred for misusing $42,000 in federal witness voucher funds, misleading the court, juries and defense counsel, and violating his duties as a prosecutor, resulting in substantial reductions in sentences for several convicted felons. Mr. Lindley did not engage in similar activity. Mr. Howes' misconduct stemmed from a review of 719 vouchers where witnesses were secretly paid to give favorable testimony before a court. This revelation led several convicts to obtain substantial reductions in their sentences. During Mr. Howes' hearing, he only admitted to "technical and insignificant violations" without perceiving the "serious substantive and deliberate ethical breaches." In contrast, Mr. Lindley made no such qualifications. Mr. Lindley said that, "This is not the man I want to be. I do not want to be the man that did this stuff. It's horrible, and it was me. I did it, and I own what I did. But I'm never going to do anything like this again." RR 132 L19-22. Also, Mr. Lindley made no misrepresentations to a court to secure a judgment. He did not misuse government funds. He did not use concealment to convict anyone. Mr. Lindley's conduct did not take place in many different cases against many different defendants after already receiving attorney discipline like Mr. Howes. It was to avoid one man. Mr. Lindley was not a repeat offender.

Another important distinction is that, unlike Mr. Howes, Mr. Lindley alleges a disability that led to his admitted misconduct that was directed to avoid one person.

RR 47 L7; RR 139 L4-5; RR 173 L6-13; RR 177 L17. Refusing to view Mr. Lindley's actions from the perspective of his mental condition is misguided. Appellant committed the misconduct to avoid an extortionist. To deny Mr. Lindley's condition is to deny the words on this page.

D. THE PANEL CANNOT ENFORCE THE ABA'S "BASELINE DISCIPLINE" STANDARD

The next matter referenced by CFLD referred to "baseline discipline" under the American Bar Association ("ABA") disciplinary rules. RR 322 L18-20. The ABA rules have baseline discipline—unlike the Texas rules. *Compare* ABA Stds. for Imposing Lawyer Sanctions std. 4.61 with Tex. Disp. R. Prof'l. Conduct § 2.18. CFLD was apparently referring to *In re Sealed Appellant*, No 98-31006 (5th Cir. Nov. 11 1999). A lawyer fabricated financial instruments upon which was the sole basis for his client suing the government in that case. Mr. Lindley, in contrast, did not use any fabricated document to form the basis of a claim in a lawsuit. He immediately apologized and agreed Mr. Goldfarb could have it all. RR 82. Use of such an inapposite case again shows the weak legal position advanced by CFLD for disbarment.

Then CFLD referenced an unnamed Arizona Supreme Court case to the Panel to support disbarring Mr. Lindley. RR 322 L22. Appellant could not find any case matching the facts presented before the Panel. Instead, Mr. Lindley found cases with unfitting factual backgrounds. For example, Jeffrey H. Greenberg was disbarred for

fraudulently profiting by tens of millions from false expense proceeds. *See* Jeffrey H. Greenberg, File Nos. 16-1684; 16-1687; PDJ No. 2016-9099. Mr. Greenberg also secretly settled a matter without his client's consent and kept the money for himself. *Id.* In *Fresquez*, the Arizona attorney obtained his secretary's signature on an affidavit that contained false representations to submit in response to a bar complaint. *In re Fresquez*, 783 P.2d 774, 776-779. That lawyer then repeatedly lied under oath to the hearing committee. *Id.* In contrast, there are no similar allegations against Mr. Lindley. Appellant was honest before the Panel. CFLD's counsel recognized Mr. Lindley's candor at his deposition. Supp 65. And CFLD's counsel credited Mr. Lindley's honesty towards the Panel. RR 317 L25. He even acknowledged that "if Mr. Lindley were to go speak to a group of people interested in the law, he would tell them also, lawyers don't fabricate documents." RR 320 L10-12. This illustrates that CFLD's counsel understands Mr. Lindley is not dishonest at his core. Mr. Lindley did not commit the same misconduct as Greenberg or Fresquez. He should not suffer the same fate.

III. THE PANEL REVERSIBLY ERRED BY REFUSING CERTAIN MITIGATION EVIDENCE AND ADMITTING THAT WAS ALTERED OR UNFAIR SURPRISE

Appellant's conduct was devoid of context due to the exclusion of important mitigation evidence. Mr. Lindley admits that he did engage in conduct over the course of years. But it was a one-act play that was intended to avoid one man while Mr.

Lindley was suffering from acute depression. His conflict with Goldfarb had not ended. This misconduct was an aberration for Mr. Lindley. It was confined to the toxic relationship he had with Mr. Goldfarb. This was not misconduct directed at clients, the public or a court. Respondent was trapped, depressed and suicidal. What he did was reprehensible and wrong. There is no excuse. It was done out of weakness instead of malice. But he should have the opportunity to explain the mitigating factors to the Panel. That opportunity was not properly afforded.

Respondent was prohibited from explaining issues relating to mitigation at trial. Rule 2.18 of the Disciplinary Rules state that the Panel must consider:

> A. The nature and degree of the Professional Misconduct for which the Respondent is being sanctioned;
> B. The seriousness of and circumstances surrounding the Professional Misconduct;
> C. The loss or damage to clients;
> D. The damage to the profession;
> E. The assurance that those who seek legal services in the future will be insulated from the type of Professional Misconduct found;
> F. The profit to the attorney;
> G. The avoidance of repetition;
> H. The deterrent effect on others;
> I. The maintenance of respect for the legal profession;
> J. The conduct of the Respondent during the course of the Disciplinary Proceeding.
>
> In addition, the Respondent's disciplinary record, including any private reprimands, is admissible on the appropriate Sanction to be imposed. Respondent's Disability may not be considered in mitigation, unless Respondent demonstrates that he or she is successfully pursuing in good faith a program of recovery or appropriate course of treatment.

The Panel failed to hear important evidence relating to these factors and admitted evidence that gave a false impression of Mr. Lindley. This deprived Appellant from fairly defending himself from the State's accusations.

A. CFLD USED A KNOWINGLY ALTERED RECORDING TO DISBAR MR. LINDLEY OVER ALTERED RECORDS

Mr. Lindley did not submit altered records to a court. Mr. Goldfarb, however, revealed that he had altered a recording at the hearing where he sought Lindley's disbarment for altering records. RR 223 L20-25; RR 224 L1-3. The admitted recording had a portion of a conversation between Mr. Lindley and Mr. Goldfarb. RR 223 L20. The portion that was removed involved the Sun River case, which is the matter that drove the extortion of Mr. Lindley. Pet Ex 46. This recording does not meet the basic requirements of any rules of evidence because it had been deliberately altered. *See* Tex R. Evid. 901; *See Reavis v. State*, 84 S.W.3d 716, 720 (Tex.App.-Fort Worth 2002, no pet.). It should never have been admitted.

This alteration was first revealed to Appellant at the hearing. Mr. Goldfarb originally claimed he produced all recordings with Mr. Lindley in his earlier deposition:

> Q. Do you have any other tape recordings that relate to this case that you have not produced?
> A. Not to my knowledge.
> Q. Did you record any conversations with Deans & Lyons? I recorded a -- conversations with Mr. Lindley.
> Q. While he was at Deans & Lyons?

A. Right.
Q. And those have been produced, right?
A. Yeah.

Supp 154-155. This was not true. He had another recording that was not produced. Appellant and his counsel learned that for the first time at trial. There, Mr. Goldfarb claimed the records had been "redacted." RR 223 L20-25; RR 224 L1-3. But, unlike a true redaction, there is nothing on the transcript or recording to indicate anything was obscured or removed. Pet Ex 46. It was, instead, altered to appear that the words were never there in the first place. At the end of the transcript it states, "End of digital recording." Pet Ex 46, L20. It makes no reference to additional audio. After all, Mr. Goldfarb earlier claimed under oath that there was none. That is a clear alteration—not a redaction. The entire version has never been produced. It is harmful to Appellant because that unproduced recording apparently relates to mitigation evidence. The last words on the produced recording refer to Sun River. Pet Ex 46, at 15 L15-19 ("as far as Sun River is concerned…"). That is the matter where Mr. Lindley was extorted. CFLD remained undeterred after this revelation. After hearing that it had been altered, it was used anyway. That altered recording was then admitted into evidence to disbar Mr. Lindley for altered documents. This was unfairly prejudicial to Mr. Lindley. It violated the rule of optional completeness and left the Panel with the possibility of receiving a false impression from hearing only a part of the recording. CFLD should not obtain a disbarment alleging Mr. Lindley altered records by using a knowingly

altered recording to bolster its case.

B. STATEMENTS FROM A MEDIATION FORMED THE BASIS OF GOLDFARB'S EXTORTION AND WERE UNLAWFULLY EXCLUDED

Mr. Goldfarb threatened to ruin Mr. Lindley's life if Mr. Lindley continued to attempt enforcement of Mr. Lindley's agreements with Goldfarb during a mediation in Sun River Supp 16. Goldfarb knew Mr. Lindley was a depressed suicidal individual. Supp 7. He said that Lindley could not enforce agreements with his firm any longer due to those transfer letters. The mediation threat made Mr. Lindley terrified of Mr. Goldfarb for years. Mr. Lindley knew contacting Mr. Goldfarb in 2016 would create more blackmail. The Panel could not properly evaluate what Mr. Lindley did without the context of what was said at that mediation.

Even though these statements were the origin of blackmail, they were prohibited from being described at the hearing. RR 124-125. A hearsay objection was made and sustained. *Id.* But the statement was non-hearsay and the objection should never had been made or sustained. It is well established that an extra-judicial statement for showing what was said rather than for the truth of the matter stated therein does not constitute hearsay. *Nixon v. State,* 587 S.W.2d 709 (Tex. Cr. App. 1979); *Norton v. State,* 564 S.W.2d 714 (Tex.Cr. App.1978); *Gholson v. State,* 542 S.W.2d 395 (Tex.Cr.App.1976) cert. denied 97 S.Ct. 2960. The communications between Mr. Goldfarb and Mr. Lindley were not offered for the truth of the matter stated. Instead,

they were offered to show the circumstances leading to the depression, suicidality and extortion. Without this critical evidence, the Panel could not fairly assess that Mr. Lindley's conduct was a continuation of the depression he had for years instead of new misconduct years later. This evidence was critical and admissible. But the Panel rejected hearing it.

C. CFLD MODIFIED DOCUMENTS AT THE TRIAL AND THEN FORCED LINDLEY TO SIGN THOSE DOCUMENTS, CREATING NEEDLESSLY CONFUSING EVIDENCE

After Mr. Lindley already repeatedly admitted his misconduct to the Panel, he was required to physically stand up and sign oversized documents after CFLD wrote "FABRICATED" over Appellant's overruled objection. RR 65-67. Because Respondent already admitted the misconduct, this served two purposes: (1) to humiliate the Appellant; and (2) to confuse later witnesses confronted documents that had been created during the hearing. The CFLD was afforded opportunities for repetitious questioning, cumulative evidence, humiliating the Respondent, and confusing witnesses. Tex. R. Evid 403. Respondent only requests being heard on his mitigation evidence so that the context can be revealed. Excluding mitigation evidence while permitting aggravating evidence exacerbates the unfairness in the exclusion of the Appellant's evidence. *United States v. Biaggi*, 909 F.2d 662, 690-93, 705 (2d Cir. 1990). The cumulative prejudice caused to the Appellant is unfair. *See United States v. Long*, 917 F.2d 691, 697-701 (2d Cir. 1990). Allowing this broad flexibility to the State,

while narrowing Appellant's evidence, created an unfair hearing where the facts could not be properly analyzed.

These oversized documents later confused witnesses. For example, Mr. Dunnam received all the documents with the arbitration demand almost two years ago. RR 309 L 12. He then shared those documents with ethics counsel on whether Mr. Lindley should be reported with the State Bar. Supp 111. CFLD asked whether the Mr. Lindley's psychiatrist and psychologist had seen the oversized documents. They had no desire to see them because investigation and document review is not their role. P 164 L1; P 182 L3. But these witnesses were confused over the confusing evidence.

CFLD claimed that the use of a "text box" in Microsoft Word was evidence of a complex, sophisticated scheme. RR 11 L12; RR 55 L8; RR 158 L 22; RR 314 L11; This is deliberately obtuse. When keys are pressed on a keyboard, the text appears in a "text box." Supp 156-157. This is not evidence of sophistication. A text box only requires a keyboard. The CFLD's response brief will be written in a text box. Mr. Lindley's conduct was less sophisticated than formatting an appellate brief. Mr. Lindley understood Microsoft Word because it was a tool of his trade.

D. DEPOSITION TRANSCRIPT OF MR. LINDLEY'S FORMER LAWYER WAS UNLAWFUL TRIAL BY AMBUSH

A deposition of Mr. Lindley's former attorney was admitted into the record despite Mr. Lindley never seeing that deposition and it never being produced to his counsel. RR 187-190. It was not used as impeachment evidence. A party who fails to make, amend, or supplement a discovery response in a timely manner may not introduce in evidence the material or information that was not timely disclosed, or offer the testimony of a witness (other than a named party) who was not timely identified, unless the court finds that:

> (1) there was good cause for the failure to timely make, amend, or supplement the discovery response; or
> (2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties.

Tex. R. Civ. P. 193.6(a). The rule is mandatory, and the penalty-exclusion of evidence-is automatic, absent a showing of: (1) good cause or (2) lack of unfair surprise or (3) unfair prejudice. *Pilgrim's Pride Corp. v. Smoak*, 134 S.W.3d 880, 902 (Tex.App.-Texarkana 2004, pet. denied) (citing rule 193.6(a)). The sanction of automatic exclusion of undisclosed evidence, subject to the exceptions set forth in the law, is well established. The party offering the undisclosed evidence has the burden to establish good cause or lack of surprise, which must be supported by the record. Tex. R. Civ. P. 193.6(b). Here, CFLD failed to make that showing. Mr. Lindley's former lawyer's testimony was not known to him until it was read at the hearing that

disbarred him. The use of this material was illegal trial by ambush, requiring a new hearing.

IV. THE PANEL REVERSIBLY ERRED BY ORDERING DISBARMENT

The Panel followed CFLD's analysis that the facts of Mr. Lindley's case could only result in disbarment. But this legal conclusion is inconsistent with the application and interpretation of the Texas Rules of Professional Conduct.

A. Mr. Lindley's disbarment is inconsistent with this Board's precedent

It is inconsistent to suspend a lawyer convicted of forgery while disbarring a lawyer never even arrested for that crime. Texas lawyer Patricia Skelton was convicted of forging a client's will. *See Skelton v. State*, No. 04–08–00720–CR, 2010 WL 2298859, at *1 (Tex.App.-San Antonio June 9, 2010, pet. ref'd). This same Board ordered a sanction of suspension instead of disbarment. *In re Skelton*, No. 42223 (Tex. Bd. Disp. App., Sep 27, 2011). Ms. Skelton had been indicted years earlier for theft, money laundering, securing a document by deception and criminal conspiracy involving another client. Supp 114. She was accused of forging her client's ex-husband's signature for an insurance claim. Ms. Skelton was accused by her own secretary of fabricating evidence to make it appear like her client's son lived in the client's home to falsely obtain insurance proceeds. That secretary also claimed that Ms. Skelton directed her to forge another notary's signature on a release so that Ms. Skelton and her client could obtain insurance proceeds. Ms. Skelton then received the insurance

money from those fabricated documents. At her hearing, she introduced evidence mitigating her conduct. Like Ms. Skelton's case, the protection of the public is secured by suspending Mr. Lindley, not disbarring him. To suspend one lawyer convicted of forgery while disbarring the next who was not convicted creates inconsistency in the application of the Texas Rules of Professional Conduct.

B. Precedent from other states also supports suspension instead of disbarment

The Panel followed CFLD's use of cases from outside Texas to bolster its contention that disbarment was the only option for Mr. Lindley. But a review of those states' cases shows that suspension, not disbarment, is a routine sanction in similar situations.

For example, an attorney was suspended for three years due to a finding he had benefited from forging documents to secure a partnership with a law firm over the course of many years. *In re Slaughter*, 929 A.2d 433 (D.C. 2007). That lawyer falsified an attorney-client relationship with the State of Arkansas for his personal benefit. Relying on a variety of forged documents prepared by the attorney, the law firm invested over $1.4 million in attorney time and over $64,000 in expenses. These documents included forgeries filed with courts. Mr. Slaughter expressed no remorse and did not offer to reimburse for any loss. In contrast, Mr. Lindley expressed extreme remorse and forfeited his legal rights to the money he earned in the Rural

Metro matter to the Complainant. Disbarring Mr. Lindley is inconsistent with this case.

The Arizona Supreme Court found that Mr. Fioramonti manufactured evidence to respond to a bar complaint. *In re Fioramonti*, 859 P.2d 1315 (AZ 1993). He committed perjury in his bar deposition. *Id.* He suborned perjury when he obtained false affidavits from other lawyers for the bar proceeding. *Id.* The Arizona Supreme Court held that his conduct was the "aberrational result of panic" and suspended him for three years. *Id.* This Board should do likewise with Mr. Lindley.

The District of Columbia Court of Appeals suspended an attorney for one year after conviction of a "serious crime." *In re McBride*, 642 A.2d 1270 (D.C. Jun 2, 1994). Mr. McBride assisted a client to falsely represent herself to the United States passport office using false identification documents that Mr. McBride prepared. *Id.* Due to the aberrational nature of the misconduct, the remorse expressed and otherwise exemplary record, the court did not require respondent to furnish proof of rehabilitation as a condition of reinstatement. *Id.* Mr. Lindley has never been arrested, indicted or convicted of a crime. But he shares the same remorse, aberrational nature and exemplary record as that lawyer who was suspended for a year.

An attorney with prior disciplinary history was sanctioned with a two-year suspension. *In re Ukwu*, 926 A.2d 1106 (D.C. 2007). The Court found the lawyer engaged in dishonesty, gave false testimony to the Committee to cover up the

misconduct, misrepresented to the Board of Immigration Appeals, and counseled a client to submit falsified documents to the INS. Mr. Lindley was honest in his disciplinary hearing and did not submit any false documents to the government.

A lawyer was suspended for three years when he was found to have committed forgery, misappropriated client funds and showed prejudicial disregard for his client's interests. *In re Kline*, 11 A.3d 261, 263 (D.C. 2011). Mr. Kline forged his client's signature on a settlement agreement for $50,000 after his client rejected a settlement for $7,500. *Id.* The attorney paid the settlement from his firm's trust account. *Id.* In contrast, Mr. Lindley did not affect rights of his clients and did not misappropriate funds.

These cases show that disbarring Mr. Lindley puts the Panel's decision on a distant island. Suspension is the routine sanction for this misconduct, not only in Texas, but across the nation. It sends an odd message to Texas lawyers and the public to disbar a lawyer who was not arrested for the same crime in which a convicted lawyer was suspended. It is disconcerting that Mr. Lindley's expressions of remorse, honesty towards the Panel, and his mental condition were not important factors to CFLD. This disbarment discourages less remorse, honesty and mental illness recognition.

C. The Board should render a suspension instead of disbarment

Suspension is the punishment that should be rendered by this Board. Mr. Lindley acknowledged that nature and degree of the professional misconduct for which he was sanctioned and explained its circumstances. There was no loss or damage to clients. There was no profit to the attorney. There will be no repetition. The deterrent effect on others and maintenance of respect for the legal profession is served by suspension. The conduct of Mr. Lindley at his hearing was cooperative and remorseful. He had no disciplinary record. He was suffering from a disability that he has now addressed by pursuing an appropriate course of treatment.

Mr. Lindley's Waco employers—Dunnam & Dunnam LLP and The Dwyer Group offer strong endorsements of Mr. Lindley's character. Those institutions, in the small community of Waco, are most affected by the public's perception, chance of repetition, and insulation from Mr. Lindley's future misconduct. They put their credibility on the line for him. It is hard to imagine a stronger endorsement of Mr. Lindley's character.

Misconduct will not occur again from Mr. Lindley. He knows what he did was wrong. The pain he feels about it cannot be adequately described. Unlike then, now Mr. Lindley has a network of professionals on which he calls on. He takes medication. He goes to therapy. He has friends and family members who understand his struggle. His secrets are out in the open, where sunshine is the greatest disinfectant. His

conflict with Goldfarb is over. It will not be repeated.

Appellant understands why CFLD, the Panel and this Board may have concerns. That is why this Board should render a three-year suspension followed by two years of probation. That suspension would end five years after the complaint was filed. During that suspension, Mr. Lindley should be closely monitored by CFLD at Mr. Lindley's expense. He should be ordered to attend treatment. That monitoring should continue for two additional years upon his reinstatement, for a total of five years. He agrees to an indefinite disbarment in the event Mr. Lindley has a relapse or encounters additional ethical accusations. This will not happen again.

CONCLUSION

What I did was disgraceful. I cannot believe that I am the same man who made so many good decisions in life and then made those horrible ones. Why did I act that way? It was overwhelming secrets. My conflict with Jeff Goldfarb went on too long. I left Dallas more terrified than ever of blackmail. My mind was trapped inside depression. My suicide notes, videos, life insurance policy and gun were kept beside me always so that I could commit suicide in a moment's notice. CFLD's argument that I did this twice requires my first episode with Goldfarb to be over. It was not. I was right in the middle of it. I have since recognized my weakness and obtained treatment. I am no longer that man.

CFLD and the Panel disbarred me on the wrong law and facts. My brief should not be read as casting aspersions. CFLD and the Panel are unappreciated and overworked. They think that they made the right call. But no one should be disbarred based on secret case law that does not apply and knowingly altered or surprise evidence. There is no way around that. That is not trial. It is theater.

Case precedent used by CFLD remains the State's secret today. It is clear why. That law did not hold what CFLD claimed. CFLD's example of disbarment for two bad acts involved a lawyer who—unlike me—had been disciplined twice. But CFLD did not reveal that double discipline to the Panel. CFLD said it "happened here too." It did not. Then CFLD used the baseline discipline standard from the ABA rules, which do not apply here. The Arizona cases involved tens of millions in profit to the attorney and multiple discipline matters. A common theme in the harsh punishment cases is a lack of remorse. CFLD cannot credibly claim that I lack remorse.

Using my former lawyer's deposition was trial by ambush. It had never been produced to me or my bar counsel. That was unfair surprise. Refusing to admit the Sun River mediation statements, which provided the link between my years of conduct, was critical evidence that was wrongfully denied. Knowingly altered evidence was used at my trial was used to disbar me for me for altering documents. The altered portion dealt with Sun River, which was the source of the blackmail. Nothing on the transcript or audio indicates it was redacted. It was, instead, altered to sound like a

complete recording. Then Mr. Goldfarb caused a transcript to be written based off the altered recording. That transcript contains no redactions because it was not redacted. It was altered.

If this Board does not order a new punishment hearing, it should render a three-year suspension followed by a two-year probationary period. That is consistent with this Board's prior application of the Texas Disciplinary Rules and other state bars dealing with similar discipline issues. Suspension will still serve a significant deterrent effect. That suspension would end five years after the grievance was filed. It is a long time. I offer complete transparency into my personal and business affairs for five years to provide comfort to CFLD and this Board. I will pay for the monitoring. I will attend treatment as directed by therapists and physicians. I agree to be disbarred not just for five years—but for life—if I do not comply as directed.

Being a lawyer was an honor. Standing up in a courtroom to make wrongs right was a dream come true. Advising my client at The Dwyer Group was marvelous. But the most remarkable thing happened the week after I was disbarred. I received two excellent job offers. Both were from clients. They knew my ugly truth. And they wanted me to work for them anyway. It was humbling and liberating. That was God's love revealed, despite my failing to trust in Him. But this is not to get you to believe in God—even though you should. It is to illustrate that I am not a danger to clients, the

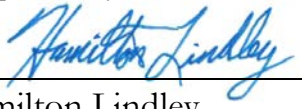
public or this wonderful profession. Those who have worked alongside me trust me without hesitation.

I did things that were not right. This appeal is not an excuse. It is an explanation. Because it was also not right to disbar me by applying the wrong law or using altered, surprise evidence.

PRAYER

Mr. Lindley respectfully requests that the Board reverse the sanction of disbarment, remanding to the Panel for further hearing, or alternatively, render a suspension.

Respectfully submitted,



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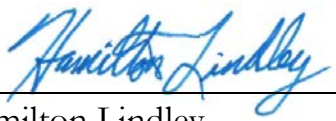
PRO SE

CERTIFICATE OF COMPLIANCE

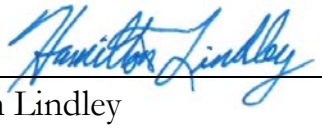
Pursuant to the Board of Disciplinary Appeals Internal Procedural Rules, the foregoing brief on the merits contains approximately 10,174 words (total for all sections of brief that are required to be counted), which is less than the 15,000 total words permitted by the Board's Internal Procedural Rule 4.05(d). Appellant relies on the word count of the computer program used to prepare this brief.



Hamilton Lindley

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing brief of Appellant, Hamilton Lindley, has been served on Mr. Matthew Greer, by email to matthew.greer@texasbar.com on the 9th day of April 2018.



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