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

APPELLANT HAMILTON LINDLEY'S SUPPLEMENTAL REPLY BRIEF

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ORAL ARGUMENT REQUESTED

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SUMMARY OF REPLY

The Commission for Lawyer Discipline ("CFLD") distorts facts and law to prop up the disbarment of Appellant Hamilton Lindley ("Mr. Lindley") in its Appellee Brief ("Aee. Br. at __"). Mr. Lindley preserved error for the altered, surprise evidence offered by CFLD. The Panel based its judgment on the cases misrepresented by CFLD, including a quote from a case that did not exist.

No amount of resetting the goalposts can overcome the abuse of discretion committed by the Panel. Nearly three years after the complaint was filed, no other person has filed a complaint about Mr. Lindley. The only person who did had nearly a million reasons to lie. Disbarment is excessive. Suspension instead serves the same purposes. That is the routine sanction for similar misconduct.

CFLD made the below false claims rather than dealing with accuracy. Appellee is capable of better. But CFLD has instead chosen to create a false narrative. It cannot succeed otherwise.

FALSE	TRUE
"Nowhere in the record did [Mr. Lindley] explain why he did not simply do the necessary work to contact the clients to secure their actual signatures." Aee. Br. at 11.	Lindley explained that he did not contact the clients to secure their signatures because it would confuse the former clients. Only the lead plaintiff's counsel had authority to act for them. RR 105, L9-25.
"Out of San Antonio, in a disciplinary proceeding, 'Disbarment confirmed by reason of fabricated document.'" Aee. Br. at 20, fn5; RR 321, L13-14.	The opinion does not contain this quote. *Reyes-Vidal v. Comm'n for Lawyer Discipline*, No. 04-10-00048-CV (Tex. App.—San Antonio Nov. 3, 2010, pet. denied).
CFLD's case law at closing argument was only "a persuasive reference point as to why the Commission sought serious sanctions." Aee. Br. at 19.	CFLD claims disbarment was the only choice according to the cases when it claimed, "…there's nothing else the Commission can ask for. We have to ask for disbarment. There is some case law." RR 321, L4-6.
Lindley also complains that a single case mentioned by the Commission was not mentioned by name. Aee. Br. at 20.	CFLD revealed none of the six case names or citations, even after many requests. App. Br. at 23.[1] CR 482.
The Complainant had "some portions redacted" of a recording between him and Mr. Lindley. Aee. Br. at 22.	There are no indications of redactions. Pet Ex 46. The recording was altered to appear as if Complainant produced the entire recording.

CFLD invents fiction to persuade this Board. This Board should apply the facts—not these falsehoods advanced by the State. CFLD was compelled to create these falsehoods because the true facts and law do not support disbarment.

[1] App. Br. at __ refers to the Appellant's Brief by Mr. Lindley.

ARGUMENT AND AUTHORITIES

I. The Panel applied the wrong legal conclusions

CFLD first disclosed the case law used in its closing argument six months after judgment by its brief to this Board. Aee. Br. at 20. In its brief, CFLD claims it failed to disclose only one case to Mr. Lindley. *Id.*, at fn5. But that is false. RR 321 L9; CR 482. CFLD concealed six case names and citations. *Id*; App. Br. at 23. This avoided scrutiny of the improper legal conclusions.

A. CFLD presented the six secret cases as binding legal authority

Only disbarment was the available choice according to the six cases concealed by CFLD during the Panel hearing. Now CFLD claims the opposite. In its brief, those hidden cases were merely "a persuasive reference point to why the Commission sought serious sanctions." Aee. Br. at 19. That is invention. They were presented to the Panel as if there was no other option. CFLD claimed instead that "…when it comes time to **deliberate** on the appropriate sanctions, there's **nothing else** the Commission can ask for. We **have** to ask for disbarment. There is some case law." RR 321, L4-6 (emphasis added). Then CFLD went on to discuss the six secret cases to the Panel. There is no discretion for any other punishment when the State of Texas claims "there's **nothing else** [it] can ask for" followed by "[w]e **have** to ask for disbarment." CFLD's counsel could have plainly stated at the hearing that those cases were only the "persuasive reference point" for "serious sanctions" like the CFLD now contends. But CFLD did

not. CLFD's attempt to stuff the toothpaste back in the tube reveals that CFLD knows it was wrong to make such a claim at the hearing.

B. CLFD's revelation shows use of improper law

CFLD is correct that Mr. Lindley could not locate the 107-year-old court of appeals case cited in its closing argument. *Howard v. Gulf, C. & S.F. Ry. Co.*, 135 S.W. 707, 710 (Tex. Civ. App. 1911, no writ). Contrary to the inference by CFLD, the *Howard* court did not disbar anyone. *Id.* CFLD's argument is so insufficient that it must use a case decided 78 years before the current ethical rules. And that case—involving railroading—still disbarred no lawyer. The reason CFLD did not reveal this case for six months is transparent. It is frail precedent.

Now CFLD claims that Appellant failed to guess a case. Aee. Br. at 20. That is true. Mr. Lindley did not find it because CFLD distorted a quote from that opinion. CFLD did it twice—once distorting it at closing argument before the Panel and then to this Board in its Appellee Brief. At closing before the Panel, CFLD's counsel claimed the Reyes court of appeals opinion quote was 'disbarment confirmed by reason of fabricated document.' RR 321 L13-14. CFLD again represented to this Board that the quote is from the opinion. Aee. Br. at 20 fn5. That opinion contains no such quote. *Reyes-Vidal v. Comm'n for Lawyer Discipline*, No. 04-10-00048-CV (Tex. App.—San Antonio Nov. 3, 2010, pet denied). It is made up. *Id.* The Panel cannot verify every word said by a prosecutor. So a judge "must be able to take a quotation as a quotation." *State Bar v. Farber*, 408 S.E.2d 274, 281 (W. Va. 1991). It is "completely unacceptable

behavior" even if CFLD's proffered quote is a paraphrase. *Id.*, at 280-81. The State knew there were issues with the citations because these cases remained concealed after several requests. CR 482. CFLD obtained Mr. Lindley's disbarment by convincing the Panel about a non-existent quote from this case.

In *Reyes*, the court emphasized the lawyer's wrongful retention of money belonging to the client as a reason for the disbarment. That did not happen here. Reyes created a contract to submit against his client in a disciplinary matter to retain the client's money. Reyes had converted his client's proceeds of a $5,000 bond to his own use. The attorney promised to pay it back when the client discovered it. When the attorney did not respond to 25 calls after failing to pay it back, the client filed a grievance. The lawyer then created a contract, signed his client's name and then submitted it to the State Bar of Texas in a grievance proceeding. That grievance was then dismissed based on the fabricated document. He was disbarred at the second proceeding when Reyes' conduct was revealed. There, the court of appeals found "facts sufficient to support the trial court's judgment of disbarment on the basis that the appellant wrongfully retained the $5,000." *Id.*, at 8. That did not happen here. Unlike that attorney, Mr. Lindley did not retain money belonging to a client. Mr. Lindley did not submit fabricated documents in a proceeding. And *Reyes* did not involve the same mitigating factors as Mr. Lindley. In fact, Reyes continued to claim the document was authentic despite the impossibility that the client could have signed it on the day as Reyes claimed. That was not the case for Mr. Lindley. He admitted his wrong.

The third case revealed by CFLD is also inapposite. *Matter of Redeker*, 177 Ariz. 305, 310 (Ariz. 1994). Redeker was under active suspension when six clients complained of his misconduct. *Id.*, at 305. Mr. Lindley has yet to receive a complaint from a client. And he was not under suspension. Unlike Mr. Lindley, Redeker failed to cooperate with the State Bar. *Id.*, at 307. He refused to respond to clients or refund money for fees. *Id.* Unlike Mr. Lindley, Redeker denied signing a client's name in the disciplinary process. *Id.*, at 307-308. Unlike Mr. Lindley, he later admitted that he had lied many times in the disciplinary process. *Id.*, at 309. Unlike Mr. Lindley, Redeker was under active suspension for "very similar behavior" at the time of the misconduct. *Id.*, at 310. If Mr. Lindley had possession of this case when it was submitted to the Panel, it would have been clear that the situation was very different than CFLD claimed. But CFLD kept this case secret too. It is clear why.

C. The standard of review for legal conclusions is de novo

CFLD contends that this Board should apply the abuse of discretion standard to legal conclusions instead of de novo review. Aee. Br. at 20. There is not authority for this claim. But CFLD claims, "no authority supports the proposition that the Board should apply a lesser standard of review." Aee. Br. at 20. That argument directly conflicts with this Board's ruling in *Schultz v. Comm'n Lawyer Discipline*, No. 55649, 2015 WL 9855916 (Tex. Bd. Disp. App. Dec. 17, 2015) (citing *In re Humphreys*, 880 S.W.2d 402, 404 (Tex. 1994) (questions of law are always subject to de novo review); *Comm'n for Lawyer Discipline v. A Texas Attorney*, 2015 WL 5130876 *2 (Texas Bd. Disp. App.

55619, August 27, 2015; no appeal); *Weir v. Comm'n for Lawyer Discipline*, 2005 WL 6283558 at *2 (Texas Bd. Disp. App. 32082, June 30, 2005; no appeal)). The Board should apply de novo review of the legal conclusions.

CFLD is conflating the excessive sanction standard which holds that a Panel abuses its discretion by imposing a sanction that is so heavy that it amounts to an abuse of discretion. *Molina v. Comm'n for Lawyer Discipline*, BODA No. 35426 (March 31, 2006). That happened here too. As shown by Mr. Lindley's opening brief, the standard sanction for similar misconduct is a suspension. Lawyers from Texas, the District of Columbia, and Arizona are not inferior because those bars have suspended lawyers for conduct like Mr. Lindley's. Whatever the standard, Mr. Lindley meets it. Disbarment is excessive.

D. The Panel's judgment was based on improper law cited by CFLD

CFLD urges this Board to believe that the only law considered by the Panel was Rule 2.18[2]. Aee. Br. at 18. This is true only if the Board leaves its common sense at home. The Panel considered the case law—awash with error—cited by CFLD. The judgment itself acknowledged that the Panel "considered the…argument of counsel [to] make the following… conclusions of law." CR 445. It also stated that after hearing "all argument" it then considered the Rule 2.18 factors. *Id.* The Panel considered the improper law in CFLD's closing argument. The judgment says it.

[2] The "Rule" or "Rules" refer to the rules in the Tex. Disp. R. Prof'l. Conduct.

E. CFLD's claim that the cases are distinctions without a difference is false

CFLD makes the cliched statement that Mr. Lindley's cases are "distinctions without a difference." Aee. Br. at 20. This seeks to avoid legal scrutiny. According to its brief, CFLD now believes that these allegations are "distinctions without a difference" in attorney discipline matters:

- Multiple disciplinary matters. App. Br. at 26.
- Misappropriating government funds. App. Br. at 26.
- Concealing evidence to convict defendants. App. Br. at 27.
- Discovery sanctions not involving disbarment or suspension. App. Br. at 24.
- Creating altered documents to provide as evidence to a court. App. Br. at 24, 28, 29.
- Lying about creating falsified documents in depositions or trial. App. Br. at 24, 29.
- Profiting by tens of millions of dollars from fraud. App. Br. at 29.
- Lying to a grievance committee. App. Br. at 29.

CFLD's argument is easier to see through than oversized novelty binoculars. These distinctions will be critical to the CFLD's arguments in upcoming matters before this same Board. CFLD is capable of better. This Board can ensure that Panels impose the attorney discipline consistently. But if this Board gives a tacit endorsement to CFLD's arguments, applying the rules will be inconsistent and based on improper law and evidence.

F. Mr. Lindley's misconduct does not warrant disbarment under Rule 2.18

CFLD claims that Mr. Lindley profited from his misconduct. Aee. Br. at 21. This illustrates the improper legal and factual conclusions of the Panel. Profit is the money

obtained after deducting costs of a transaction. *Black's Law Dictionary* 560 (2nd Pocket ed. 2001). There was no money gained by Mr. Lindley. Supp 58; RR 328 L11; CR 452-453. In fact, he did not even plan to profit. RR 175 L 15-20. Mr. Lindley instead sought to secure his right to a fee that he earned. RR 48, L14-16. This Board should give the word "profit" its plain, ordinary meaning. If Rule 2.18(F) was meant to include, as CFLD now claims, the potential amount of future revenue generated by wrongdoing, then that rule should simply say that. But it does not. This Board should not hold that Rule 2.18(F) means anything but what it says. Mr. Lindley did not profit. In fact, he lost hundreds of thousands of dollars. To hold that a loss of hundreds of thousands is really a profit reveals why the Panel's sanction must be reversed.

All the other factors cited by CFLD are achieved by suspension instead of disbarment. Mr. Lindley understands the nature and degree of his misconduct. RR 47 L4-9; RR 82 L5; RR 129 L23; RR 139 L6. It was serious. RR 39 L1; RR 46 L2; RR 47 L8; RR 82 L20; RR 131 L13-25. RR 167 L6-8; RR 172 8-11. But the circumstances included extortion, which mitigate Rule 2.18(B) in his favor. RR 82 L15; Resp Ex 20a, 21b ¶15; RR 291 L23-24. There was no loss or damage to clients. His misconduct included no nonlawyer, so that factor is limited. His damage to the profession is kept by suspension. That is the routine sanction for similar conduct across the land. App. Br. at 38-40. There is assurance that those who seek legal services are insulated. CR 464-465. There was no profit. CR 452-453. There was not repetition—it was confined to the relationship with Complainant. RR 47 L7; RR 127-129; RR 142-152; RR 165-178.

And Mr. Lindley had no prior discipline. Pet Ex 67. The deterrent effect on others is maintained by suspension, and so can the maintenance of the respect for the profession. App. Br. at 38-40. Mr. Lindley's conduct at the disciplinary proceeding was candid, remorseful and cooperative. RR 39 L1; RR 46 L2; RR 47 L8; RR 82 L20; RR 131 L13-25. RR 167 L6-8; RR 172 8-11. This shows he would not engage in the same conduct if given the opportunity. He also presented a disability to the Panel while maintaining a good faith program of recovery. RR 128; 142-185. Rule 2.18 does not support disbarment when evaluating these factors.

Even a case cited by CFLD shows that suspension is the correct sanction. In *Thawer*, a lawyer received a partially probated suspension for, among other things, signing the name of another lawyer without permission. *Thawer v. Comm'n for Lawyer Discipline*, 523 S.W.3d 177, 188 (Tex. App.—Dallas 2017, no pet.). CFLD's own case shows that disbarment is not the only option. This conflicts with CFLD's representation to the Panel.

Implicit in this disbarment is that someone was harmed. But the Complainant received almost one million dollars from Mr. Lindley's work on the Rural Metro case. CR 452-453. Every person reading this pleading worked on the Rural Metro case for as much time as the Complainant. It is not harmful when a lawyer receives almost one million dollars for a case he never worked on.

Texas, the District of Columbia and Arizona have all suspended lawyers under similar circumstances. App. Br. at 37-40. Those jurisdictions have deterred lawyers, kept

the profession from damage, and kept the respect for the legal profession strong through suspension. Three years active suspension is somber punishment. Mr. Lindley invites CFLD to scrutinize his daily affairs for five years to ensure his fitness to practice law. A suspension is serious, fulfills the factors in Rule 2.18, and should be applied here.

CFLD's head is in the sand for Mr. Lindley's mental condition. That is wrong. Mr. Lindley was afraid of sharing the dark nights of his soul with others at the time of his misconduct. It was not mere sadness. His terror was all consuming. He could not think rationally when suicidal desires overwhelmed him. It was years of flight or fight level panic. Suicide seemed like it would unburden everyone while providing for his family. Mr. Lindley's conduct should be viewed through that lens of a depressed mind. By CFLD ignoring depression, it means that fewer lawyers will be honest about their own struggles. That is not right. Today, Mr. Lindley acknowledges his weakness and does not recognize the man he used to be. RR 132 L19-22. Mr. Lindley has a support system that knows his struggle. And Complainant's extortion loses its power by being exposed. This will not happen again.

II. Mr. Lindley preserved error

A. CFLD's case rests on automatically inadmissible evidence

Mr. Lindley's disbarment was based on two pieces of evidence undisclosed until trial: (1) the deposition transcript of his former lawyer, Mark Deitz; and (2) the knowingly inaccurate recording of a phone call. RR 187-190; RR 223 L20-25; RR 224 L1-3. The Panel had no discretion to allow this evidence. It should have, instead, been

automatically excluded. The Panel's decision to disbar Mr. Lindley must be reversed, based on this automatically excluded evidence.

Mark Dietz's deposition transcript and the true phone recording between Complainant and Mr. Lindley were not produced in discovery. When a party fails to respond to discovery timely, the undisclosed evidence is automatically inadmissible unless one of two exceptions applies: (1) good cause for failure to respond, or (2) lack of unfair surprise or prejudice to the other side. Tex. R. Civ. P. 193.6(a). *See*, e.g., *Lopez v. La Madeleine of Tex., Inc.*, 200 S.W.3d 854, 860 (Tex. App.—Dallas 2006, no pet.) (noting absent a showing of good cause or lack of unfair surprise or prejudice, rule 193.6 "is mandatory, and the penalty—exclusion of evidence—is automatic"). CFLD offered the evidence. RR 187. But the Panel improperly required Mr. Lindley to show harm for the Dietz transcript. RR 188, L9. This was an abuse of discretion. Under the rules of civil procedure "[t]he burden of establishing good cause or the lack of unfair surprise or unfair prejudice is on the party seeking to introduce the evidence or call the witness." Tex. R. Civ. P. 193.6(b). The Panel wrongfully placed the burden on Mr. Lindley. RR 188, L9. And "[a] finding of good cause or of the lack of unfair surprise or unfair prejudice must be supported by the record." Tex. R. Civ. P. 193.6(b). CFLD showed no support in the record that for the lack of unfair surprise or unfair prejudice.

Also under that rule, "the trial court possesses no discretion; it must exclude evidence not timely provided, amended, or supplemented in response to a discovery request in the absence of evidence showing good cause for the failure to respond or the

lack of prejudice to the party opposing the admission of the evidence." *White v. Perez*, No. 02-09-00251-CV, 2010 WL 87469, at *2 (Tex. App.—Fort Worth Jan. 7, 2010, pet. denied) (mem. op.). The Panel abused its discretion by failing to exclude the Dietz deposition transcript and including Complainant's altered recording. It possessed no discretion to admit that evidence because it had not been produced before trial.

B. Appellant's objection to the Dietz deposition transcript was implicitly overruled

Although a trial court ordinarily must make a ruling on the objection for the complaint to be preserved, the ruling may be implied if it is clear from the context. Tex. R. App. P. 33.1. Here, the Panel implicitly overruled the objection to the Dietz transcript. Although CFLD claims that the deposition was read as an offer of proof, it was clear that the deposition was already admitted after the Panel unlawfully flipped the burden on Mr. Lindley. Before the transcript was read, the Panel Chair said the deposition could be submitted "However [CFLD] want[s] to do it." RR 189, L12. It was clear that Mr. Lindley's objection was implicitly overruled. CFLD could do it any way it wanted. As shown above, the Panel had no discretion to admit that evidence. So when Complainant later stated that he had also failed to produce a document, it was clear that the Panel was going to assign again the wrong standard to evidence that should be automatically excluded. Additional objections were futile, as discussed below.

CFLD claims that Mr. Lindley later waived his objection. This argument ignores that the objection was already preserved. In *Thomas v. State*, the Court of Criminal

Appeals stated that the general principle of forfeiting an error upon stating "no objection" after having first objected earlier should not be applied so rigidly and that greater flexibility should be given in reviewing the entire record to determine the intention. *Thomas v. State*, 408 S.W.3d 877, 885 (Tex. Crim. App. 2013). The failure to advance consistently an objection to similar evidence is not waiver where additional objections are futile. An objection is not waived where the law is so well-settled that an objection would be futile. *Black v. State*, 816 S.W.2d 350, 368 (Tex. Crim. App. 1991). Here, the law is settled that surprise evidence is automatically excluded and the burden is on the offering party to show otherwise. There was no waiver.

C. Appellant's motion for reduced sanction preserved his legal and factual sufficiency challenges.

Mr. Lindley's filing of a motion for reduced sanction preserved error for all legal and factual sufficiency issues. Tex. R. Civ. P. 279. ("A claim that the evidence was legally or factually insufficient to warrant the submission of any question may be made for the first time after the verdict, regardless of whether the submission of such question was requested by the complainant.") In *Arkoma Basin Exploration Co. v. FMF Associates*, the Texas Supreme Court directed lower courts to construe such objections liberally to protect the right of appeal. 249 S.W.3d 380, 387 (Tex. 2008). This Board should follow the Texas Supreme Court's instruction and construe Mr. Lindley's objections liberally. It cannot admit false, surprise evidence or the wrong law.

Here, the Panel was barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact. *City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005). The case citations offered by CFLD were wrong and easily distinguished had the state prosecutor not kept them concealed from Mr. Lindley. These were the only cases offered for disbarment. The deposition was legally barred from admission because it was based on unfair surprise and the Panel required Mr. Lindley to prove that it was not harmful when that was the burden of the state. The recording was legally barred from admission because it had never been produced in discovery and it was an inaccurate recording. But despite that bar, they were admitted anyway. This is not legally or factually sufficient.

D. It is harmful to admit false evidence.

CFLD claims its offer of altered evidence in a proceeding against Mr. Lindley is harmless. Aee. Br. at 23. It then turns on a dime to claim Mr. Lindley's conduct supports disbarment, despite Mr. Lindley never presenting false evidence in a proceeding. Aee. Br. at 17. CFLD should not have offered the inaccurate recording once Complainant revealed that he had not produced the full recording. *See* App. Br. at 31-32. Complainant earlier testified at a deposition that he had produced all the recordings. *Id.* CFLD has moved to strike that deposition to continue to conceal the basis of this disbarment. The revelation that Complainant submitted false evidence to the state court in another proceeding and false evidence to the grievance Panel did not deter CFLD from offering it. The true recording has never been produced.

CFLD had claimed before this Board that a lawyer's conduct like Complainant's was so egregious that CFLD sought a ten-year partially probated suspension against him. *Scarbrough* v. *Comm'n Lawyer Discipline*, No. 56375 (Tex. Bd. Disp. App. Jul 6, 2016). Scarbrough failed to disclose immediately the existence of a recording. Complainant did the same here. But now CFLD claims that Complainant's conduct was harmless. These two conflicting arguments suggest that CFLD's contention is not motivated by the enforcement of the ethical rules.

Both of Texas' highest courts have recently ruled on the admissibility of recordings. And both are in Mr. Lindley's favor. In *Diamond Offshore*, the Texas Supreme Court held that a court abused its discretion by failing to watch a video before excluding it. *Diamond Offshore Servs. Ltd. v. Williams*, No. 16-0434 (Tex. March 2, 2018). Similarly, the Court of Criminal Appeals recently held that admitting a partial recording was error because partial recordings are inaccurate. The recording thus violated a criminal statute involving recordings, even though the recording was only partial by accident. *Flores v. State*, No. PD-1189-15 (Tex. Crim. App. May 23, 2018). Likewise, this altered recording should have never been admitted. Although the CLFD claims it was "redacted" there are no indications on the recording or the transcript of any redaction. Pet Ex 46. It was instead doctored to appear like a complete recording. It was not.

E. Demonstrative evidence confused witnesses.

Because the demonstratives were not included in the record, it is not apparent when they are used. This is another example of the confusing use of these non-admitted

exhibits. CFLD's counsel performed parts of its examination by standing next to these non-admitted exhibits. Use of these non-admitted exhibits showed that CFLD was granted broader scope than Mr. Lindley in the hearing. For example, a single question asked by CFLD over the non-admitted exhibit spans three pages. RR 157, L 20-159, L14. Mr. Dunnam was confused by the non-admitted exhibits. RR 309 L 12. The demonstratives were used to advance the "text box" gambit employed by CFLD. RR 158 L 22; RR 314 L11. Dr. Mark and Mr. Cole were likewise confused by the demonstratives. RR 164 L1; RR 182 L3. They were puzzling. Because they were not admitted, it makes them also confusing for this Board.

F. Hearsay objection was overruled improperly.

CFLD fails to submit any case law showing that the sustained hearsay objection was proper. To bolster CFLD's failing contention, it makes two opposing arguments. CFLD claims that "Lindley later testified, without objection to what occurred at the mediation." Aee. Br. at 24. And then, in direct contrast to that statement, CFLD claims "the record does not contain an offer of proof." *Id.* These two arguments oppose each other. When the substance of the evidence is made known through the context of the questions, it amounts to an offer of proof. Tex. R. Evid. 103(a)(2). Although the entire context of what was said at the mediation could not be explained because of the sustained objection, the substance of what would have been included was presented. Lindley explained how he was prohibited from discussing the source of the extortion that was the heart of Mr. Lindley's mitigation evidence. These statements were critical

to Mr. Lindley's state of mind. It is apparent from the context of the questions asked that statement included important mitigation evidence. The exclusion was improper. The excluded evidence was harmful error because it affected a material issue and was not cumulative of other evidence. *See Williams Distrib. Co. v. Franklin*, 898 S.W.2d 816, 817 (Tex. 1995). Without that critical evidence, mitigation was not evaluated by the Panel, leading to an excessive punishment.

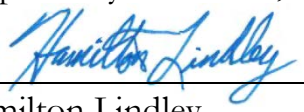
CONCLUSION

A disbarment should not rely on falsified evidence, unfair surprise or the wrong law. Here, all the factors of Rule 2.18 are satisfied through suspension. That is a routine sanction throughout the country for similar misconduct. Mr. Lindley is heartbroken over his misconduct and this disbarment. So he offers the opportunity to get his license back by complete transparency into his personal and business affairs. CFLD can have the access that would make the NSA blush. Nothing is lost if CFLD is right about Mr. Lindley. But if CFLD is wrong—and it is—then Mr. Lindley can return to the profession that has been his lifelong dream after being held under a microscope by CFLD for five years. This disbarment is wrong. It relied on the wrong law and manufactured evidence. CLFD is capable of better than using distorted quotes and false evidence to secure a ruling. It cannot be proud of that. The Panel's judgment must be reversed.

PRAYER

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

Respectfully submitted,



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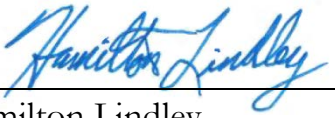
CERTIFICATE OF COMPLIANCE

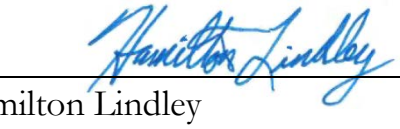
Under the Board of Disciplinary Appeals Internal Procedural Rules, this reply brief contains about 4,849 words (total for all sections of brief that must be counted), which is less than the 7,500 total words permitted by the Board's Internal Procedural Rule 4.05(d). Appellant relies on the word count of the computer program used to prepare this reply.



Hamilton Lindley

CERTIFICATE OF SERVICE

This certifies that the above and foregoing supplemental reply brief of Appellant, Hamilton Lindley, has been served on Mr. Matthew Greer, by email to matthew.greer@texasbar.com on the 15th day of June 2018.



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