

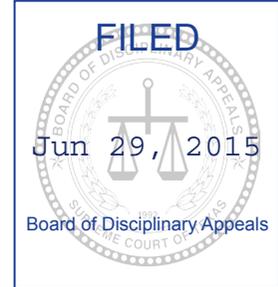
# JERRY SCARBROUGH

**Mailing Address:**  
P. O. Box 690866  
Killeen, Texas 76549

**Office Address:**  
2302 W. Stan Schlucter Loop  
Killeen, Texas 76549

June 26, 2015

**VIA FACSIMILE: 1.512.427.4130**  
State Bar Chief Disciplinary Counsel's Office  
Attn: BODA  
P.O. Box 12426  
Austin, Texas 78711



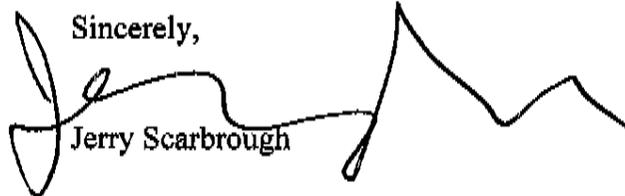
**Re: A0111214896 & A01111214897**  
**Commission for Lawyer Discipline v. Jerry W. Scarbrough**

Dear BODA:

Enclosed please find Relator Jerry Scarbrough's Petition for Writ of Mandamus, Prohibition, and Injunction. Opposing counsel has been forwarded a copy of the enclosed pleading as indicated below.

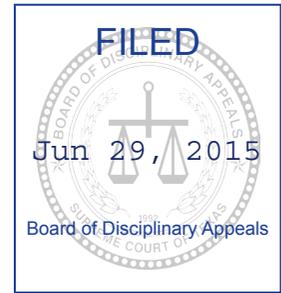
Please schedule an emergency hearing as soon as possible.

If you have any questions, please do not hesitate to contact me.

Sincerely,  
  
Jerry Scarbrough

JS/anx  
Enclosure

cc: **VIA FACSIMILE: 1.512.427.4167**  
Rebecca (Beth) Stevens, Esq.  
Office of the Chief Disciplinary Counsel  
STATE BAR OF TEXAS  
P.O. Box 12487  
Austin, Texas 78711-2487



**EMERGENCY STAY IS REQUESTED**

**DOCKET NO. 56359**

**BEFORE THE BOARD OF DISCIPLINARY APPEALS  
AUSTIN, TEXAS**

**JERRY SCARBROUGH, RELATOR**  
**v.**  
**EVIDENTIARY PANEL FOR THE STATE BAR DISTRICT  
NO. 08-5 STATE BAR OF TEXAS**  
**Respondent**

**Original Proceedings Arising Out of the  
Evidentiary Panel for State Bar District No. 08-5 State Bar of Texas,  
Honorable Lisa Richardson, Presiding Member  
Docket No. A0111214896 & A0111214897**

**PETITION FOR WRIT OF MANDAMUS, PROHIBITION AND INJUNCTION**

Respectfully submitted,

**Jerry Scarbrough, Pro Se**  
P.O. Box 690866  
Killeen, Texas 76549-0866  
Tel.: (254) 634-6266  
Fax.: (254) 634-0516

**ORAL ARGUMENT IS RESPECTFULLY REQUESTED**

**EMERGENCY STAY IS REQUESTED**

**DOCKET NO.**

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**BEFORE THE BOARD OF DISCIPLINARY APPEALS  
AUSTIN, TEXAS**

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**JERRY SCARBROUGH, RELATOR  
v.  
EVIDENTIARY PANEL FOR THE STATE BAR DISTRICT  
NO. 08-5 STATE BAR OF TEXAS  
Respondent**

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**Original Proceedings Arising Out of the  
Evidentiary Panel for State Bar District No. 08-5 State Bar of Texas,  
Honorable Lisa Richardson, Presiding Member  
Docket No. A0111214896 & A0111214897**

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**IDENTITY OF PARTIES AND COUNSEL**

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In accordance with rule 52.3(2) of the Texas Rules of Appellate Procedure, the following list identified all parties and their counsel involved in the underlying lawsuit out of which this original proceeding arises, so that the members of the Honorable Board of Disciplinary Appeals may evaluate the need to recuse or disqualify themselves:

**Relator:** Jerry Scarbrough

**Counsel for Relator:** Jerry Scarbrough

**Respondent:** Lisa Richardson, Evidentiary Panel for State Bar District No. 08-5  
State Bar of Texas

**Counsel for Respondent:** Chief Disciplinary Counsel for the State Bar of Texas

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
IDENTITY OF PARTIES AND COUNSEL.....	2
TABLE OF CONTENTS.....	3
TABLE OF AUTHORITIES.....	4
STATEMENT OF THE CASE.....	7
STATEMENT OF THE JURISDICTION.....	7
ISSUE ONE.....	8
Did Lisa Richardson abuse her discretion by ordering Jerry Scarbrough to begin serving a two year active suspension from his practice of law, notify his clients in writing of the suspension, return their files, notify the courts where he was representing his clients in writing advise them of his suspension before he was afforded a hearing on his Motion to Stay the Suspension and before he was required to give his notice of appeal?	
APPENDIX IN SUPPORT OF PETITION.....	5
STATEMENT OF FACTS.....	8,9
ARGUMENT AND AUTHORITIES.....	9,10,11,12
CERTIFICATE OF SERVICE.....	13
VERIFICATION OF APPENDIX TO PETITION FOR WRIT OF MANDAMUS.....	14

**TABLE OF AUTHORITIES**

**TEXAS RULES OF DISCIPLINARY PROCEDURE**

Texas Rules of Disciplinary Procedure §2.25.....9

Texas Rules of Disciplinary Procedure 3.08.....6

**TEXAS GOVERNMENT CODE**

Texas Government Code §§22.221(a).....6

**TEXAS CONSTITUTION**

TEX. CONST. art. V §6(a).....6

**APPENDIX IN SUPPORT OF PETITION**

Commission’s First Amended Petition.....Exhibit 1

Judgment of Partially Probated Suspension.....Exhibit 2

Jerry Scarbrough’s letter asking for hearings, May 7, 2015.....Exhibit 3

May 21, 2015, letter from CDC.....Exhibit 4

Email from Commission to Panel Chair clarifying Relator’s request for maintaining the  
scheduled hearing on his Motion for Stay.....Exhibit 5

Email message from acting Panel Chair, cancelling the scheduled hearing on Relator’s Motion to  
Stay.....Exhibit 6

Order resetting hearing(s) on Relator’s Motion for New Trial and Motion to Stay.....Exhibit 7

Legal definition Abuse of Discretion.....Exhibit 8

TRAP §26.1(a)(1).....Exhibit 9

Article 1 §19, Texas Constitution.....Exhibit 10

Texas Rules of Disciplinary Procedure §2.25.....Exhibit 11

Affidavit of Relator, Jerry Scarbrough.....Exhibit 12

Affidavits of Brian Brannock, Kim Brannock, Wayne Case, Jr., James Daigle, Byoung Sook  
Lee-Kim, Howard Liles, Michelle Barber Chimene, Esq., Frank Cimino, Esq., Stephen W.  
Sather, Esq., and Amy-Nicole Ximinez.....Exhibit 12-1

Medical Power of Attorney of Gary W. Purser, Sr..... Trial Exhibit 30

**EMERGENCY STAY IS REQUESTED**

**DOCKET NO.**

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**BEFORE THE BOARD OF DISCIPLINARY APPEALS  
AUSTIN, TEXAS**

---

**JERRY SCARBROUGH, RELATOR**  
**v.**  
**EVIDENTIARY PANEL FOR THE STATE BAR DISTRICT  
NO. 08-5 STATE BAR OF TEXAS**  
**Respondent**

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**Original Proceedings Arising Out of the  
Evidentiary Panel for State Bar District No. 08-5 State Bar of Texas,  
Honorable Lisa Richardson, Presiding Member  
Docket No. A0111214896 & A0111214897**

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**PETITION FOR WRIT OF MANDAMUS, PROHIBITION AND INJUNCTION**

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**TO THE HONORABLE SAID MEMBERS OF THE BOARD OF DISCIPLINARY  
APPEALS OF THE STATE BAR OF TEXAS:**

Relator, Jerry Scarbrough, petitions this Board for a writ of mandamus, prohibition and injunction complaining of the order of the Honorable Members of the Evidentiary Panel for State Bar District No. 08-5 and the Honorable Lisa Richard, Presiding Member. For clarity, relator is referred to as Jerry Scarbrough; respondent, the Honorable Lisa Richardson is referred to by name; and the real party in interest is referred to as "Commission".

## STATEMENT OF JURISDICTION

The Board of Disciplinary Appeals has jurisdiction to issue a writ of mandamus, prohibition, and injunction, *Texas Rules of Disciplinary Procedure* 3.08 B., *Tex. Gov't Code* §22.221 (a); *see Tex. Const.* art. V, §6 (a).

## STATEMENT OF THE CASE

Relator was sued in a grievance action by the Commission before the Respondent, Evidentiary Panel for State Bar District No. 08-5, Honorable Lisa Richardson, Presiding Member.<sup>1</sup>

Honorable Lisa Richardson, signed a Judgment of Partially Probated Suspension on April 7, 2015. It called for Jerry Scarbrough to be actively suspended from the practice of law in Texas for two (2) years, beginning on May 1, 2015, and ending on April 30, 2017. Relator was to be placed on probation for eight years thereafter from May 1, 2017 until April 30, 2025. The terms of his suspension requires him to notify each of his clients in writing and advise them of his suspension, return their files, and any monies or property he was holding for them, on or by April 30, 2015, and certify in an affidavit to CDC that he had complied with the order by May 15, 2015. Relator was ordered to notify in writing "each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which he had any matter pending of the terms of the judgment", on or before April 30, 2015. Relator was ordered to prepare and deliver an affidavit to the CDC which stated he had complied with the order by notifying the judges, justices and magistrates or officers and justices of the peace where he was representing clients of the suspension, on or before May 15, 2015. Relator was also required to surrender his license and bar card to the CDC before May 1, 2015.

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<sup>1</sup> Commission's First Amended Petition.

## ISSUES PRESENTED

Did Lisa Richardson abuse her discretion by ordering Jerry Scarbrough to begin serving a two year active suspension from his practice of law, notify his clients in writing of the suspension, return their files, notify the courts where he was representing his clients in writing advise them of his suspension before he was afforded a hearing on his Motion to Stay the Suspension and before he was required to give his notice of appeal?

## STATEMENT OF FACTS

On April 7, 2015 Lisa Richardson, entered a Judgment of Partially Probated Suspension which required Jerry Scarbrough, to notify his clients opposing counsel and judges of the courts where he had cases pending, that his right to practice was suspended, in writing, surrender his license and bar card to the CDC, return any monies, files and property belonging to his clients to them on or before April 30, 2015, and, beginning on May 1, 2015, cease to practice law for two (2) years.<sup>2</sup>

On May 7, 2015, Jerry Scarbrough timely filed his motions to stay and a motion for new trial, and requested hearings on both.<sup>3</sup>

On May 21, 2015, CDC informed Jerry Scarbrough that the active suspension began May 1, 2015 and lasts through April 30, 2017. It also confirmed that he had filed his motions as described above, and went on to say, "our office is working on setting a hearing for your motions to be heard. In the meantime, the judgment is in full effect and you are not allowed to practice law until and unless your Motion to Stay is granted."<sup>4</sup>

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<sup>2</sup> Judgment of Partially Probated Suspension, a true copy is attached hereto and incorporated herein as Exhibit 2 for all purposes.

<sup>3</sup> Jerry Scarbrough's letter asking for hearings, May 7, 2015 attached hereto and incorporated herein as Exhibit 3 for all purposes.

<sup>4</sup> May 21 2015, letter from CDC, attached hereto and incorporated herein as Exhibit 4 for all purposes.

The Panel scheduled a hearing on Relator's Motion for Stay, and Motion for New Trial for June 5, 2015. On June 4, 2015, Relator filed a Motion for Continuance for his Motion for New Trial, but asked the Panel to hear his Motion for Stay, which was scheduled for the same time.<sup>5</sup> At 5:58 P.M. June 4, 2015, Eric Stuebner, acting Panel Chair, emailed the Commission and advised the parties that he would sign an order granting Relator's Motion for Continuance, and reset the hearing on his Motion to Stay.<sup>6</sup>

On June 5, 2015, the Presiding Member signed an Order resetting both Relator's Motions for New Trial and Motion for Stay, "to a date not earlier than June 22, 2015."<sup>7</sup>

On June 23, 2015, the panel scheduled a hearing on Relator's Motion to Stay for July 6, 2015. Relator's Motion for New Trial is overruled as a matter of law.

On June 22, 2015, Relator's Motion for New Trial was overruled as a matter of law.<sup>8</sup>

### ARGUMENT

Abuse of discretion is a failure to take into proper consideration the facts and law relating to a particular matter; an arbitrary or unreasonable departure from precedent and settled judicial custom. Where a trial court must exercise discretion in deciding a question, it must do so in a way that is not clearly against logic and the evidence.<sup>9</sup>

In this case the Judgment of Partially Probated Suspension fails to consider the facts that Relator has a right to have his suspension stayed during his appeal if he shows by competent

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<sup>5</sup> Email from Commission to Panel Chair clarifying Relator's request for maintaining the scheduled hearing on his Motion for Stay. See Exhibit 5, attached hereto and incorporated herein for all purposes.

<sup>6</sup> See email message from acting Panel Chair, cancelling the scheduled hearing on Relator's Motion for Stay, attached hereto as Exhibit 6 and incorporated herein for all purposes.

<sup>7</sup> A true copy of the Order is attached hereto and incorporated herein as Exhibit 7 for all purposes.

<sup>8</sup> TRCP 329b(b).

<sup>9</sup> Legal definition Abuse of Discretion <http://> Legal dictionary. A true copy is attached hereto as Exhibit 8 for all purposes.

evidence that his continued practice of law will not pose a continuing threat to the welfare of his clients or to the public. Suspending Relator's license to practice law in Texas for two (2) years beginning on May 1, 2015, without first giving him a hearing on his Motion to Stay is arbitrary or an unreasonable departure from precedent and settled legal custom. Here logic and evidence clearly dictate that the Relator should be given the opportunity to put on evidence that supports his Motion to Stay the order of suspension until a final decision is rendered on his appeal. This case is important to the profession in this state. If allowed to stand a lawyer can be sanctioned for practicing law in a manner his advisory doesn't like. It will uphold and condone the illegal acquisition of evidence by opposing counsel from the lawyer's office, shield the lawyer who illegally acquires the evidence from disclosing the things taken, exempt him from ordinary requests for disclosure and production, and allow the offender to introduce the things taken into evidence without authenticating it. It will also shield the wrongdoer from producing harmful evidence contrary to his pleaded allegations, and allow the complainant to interject private grievances into a trial in order to gain the upper hand on his advisory. If BODA does not correct the wrong done here every attorney's right to practice law in this state will be impaired. Their rights to practice law and effectively advocate for their clients is just illusory.

The *Texas Rules of Disciplinary Procedure*, §2.25, provides that in cases of suspension, "An order of suspension must be stayed during the pendency of any appeals therefrom if the Evidentiary Panel finds that the Respondent has meet his burden of proof." It goes on to say that, "The Respondent carries the burden of proof by preponderance of the evidence to establish by competent evidence that the Respondent's continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public." Relator has asked for a hearing on his timely filed Motion to Stay the judgment herein, but as of the date of this filing he has not

been given a hearing. Relator intends to file his notice of appeal if his Motion for New Trial is overruled. The deadline for filing it is July 7, 2015.<sup>10</sup>

Requirements of the Judgment to notify his clients, opposing counsel, and the courts of his suspension deprives the Relator of his rights under the law and Constitutions of the United States, and Texas. It also denies him due process under the law.<sup>11</sup>

Requiring Relator to surrender his license and bar card deprive him of his liberty to practice law, under the law. The Texas Rules of Disciplinary Procedure provides the Relator with rights to appeal and pursue legal remedies which include a right to a hearing on his Motion to Stay.<sup>12</sup> The Respondent and Commission's attempt to deprive Relator his rights under the law by requiring him to surrender his license and stop practicing law before the judgment of suspension becomes final deprives him and his clients of their rights to retain counsel of their choice. They should have a right to give evidence of their relationship with the Relator also by offering their opinion that his continued practice of law does not pose a continuing threat to them or the public.

It is unfair for the Commission and Respondent, Lisa Richardson, to suspend his right to practice law before he is given a hearing on his Motion to Stay the judgment. They have denied Jerry Scarbrough and his clients of their opportunity to be heard on the Motion for New Trial, and Motion to Stay the Judgment of suspension. The suspension of Relator's privilege to practice law while the Panel and CDC has demanded he wait until July 6, to have his hearing is unconscionable. Relator and his clients have been and will be irreparably harmed if BODA does

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<sup>10</sup> See *TRAP* §26.1(a)(1), a true copy is attached hereto as Exhibit 9 for all purposes.

<sup>11</sup> See Article 1 §19, *Texas Constitution*, a true copy is attached hereto as Exhibit 10 for all purposes.

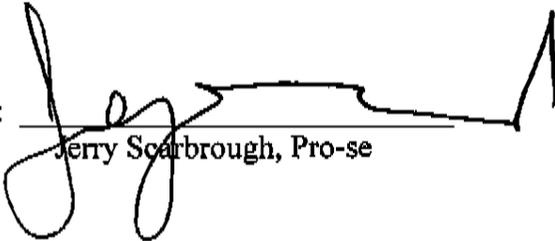
<sup>12</sup> See *Texas Rules of Disciplinary Procedure*, §2.25 attached hereto as Exhibit 11 for all purposes.

not immediately enter an order staying the suspension. There is no adequate remedy at law to correct the damage that will be done to them if the suspension is not stayed.<sup>13</sup>

### PRAYER

**WHEREFORE PREMISES CONSIDERED**, Relator, Jerry Scarbrough, prays that this Honorable Board of Disciplinary Appeals hear this writ of mandamus, prohibition and injunction consider the evidence attached hereto and enter immediate temporary orders staying the Panel's Order of Suspension, while Relator's appeal is pending, or order the Panel stay Relator's suspension until a hearing is held, and a ruling is made on the Relator's Motion for Stay, and at the conclusion of the hearing, and if the Relator meets his burden grant the stay until a final ruling on his appeal is made, further Relator asks the Board to enter an order prohibiting and enjoining the Commission from enforcing the suspension ordered by the Respondent, Lisa Richardson, Presiding Member of the Evidentiary Panel, for District 08-5, where she required the Relator to stop practicing law, surrender his license and bar card, and certify to the CDC that he had complied with the order, until a final decision is made on Relator's appeal of the Panel's final decision.

Respectfully submitted

By: 

Jerry Scarbrough, Pro-se

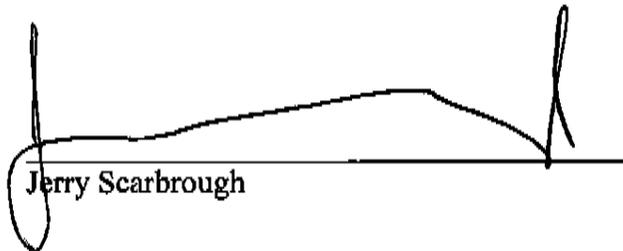
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<sup>13</sup> Affidavit of Relator, Jerry Scarbrough.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26 day of June 2015 a true and correct copy of the foregoing document was served, as indicated below, on the following:

**VIA FACSIMILE: 1.512.427.4167**  
Rebecca (Beth) Stevens, Esq.  
Office of the Chief Disciplinary Counsel  
STATE BAR OF TEXAS  
P.O. Box 12487  
Austin, Texas 78711-2487



Jerry Scarbrough

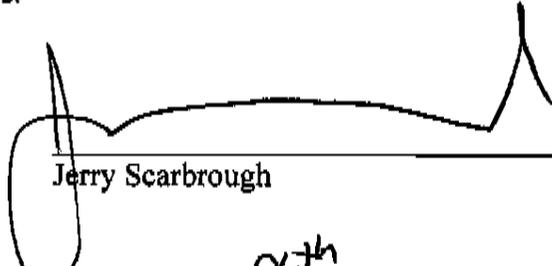
**VERIFICATION**

STATE OF TEXAS           §  
COUNTY OF BELL         §

Before me, the undersigned notary, on this day personally appeared, Jerry Scarbrough, a person whose identity is known to me. After I administered an oath to him, upon his, oath he said the following:

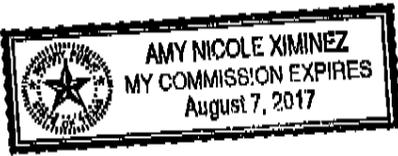
“My name is Jerry Scarbrough, and I am capable of making this affidavit. The facts in this affidavit are within my personal knowledge and are true and correct.

I am the Pro Se Relator. All documents included with the petition for writ of mandamus, prohibition, and injunction are true copies.”

  
\_\_\_\_\_  
Jerry Scarbrough

SWORN TO AND SUBSCRIBED before me on the 26<sup>th</sup> day of June 2015.

  
\_\_\_\_\_  
Notary Public, State of Texas



# EXHIBIT "1"

# STATE BAR OF TEXAS



**FILED**

*Office of the Chief Disciplinary Counsel*

Austin Office  
Chief Disciplinary Counsel  
State Bar of Texas

March 17, 2014

Jerry Scarbrough  
P.O. Box 690866  
Killeen, Texas 76549

Via CMRRR 7012 3460 0001 0081 5408  
and Via Facsimile (254) 634-0516

Re: A0111214896 & A0111214897  
Commission for Lawyer Discipline v. Jerry W. Scarbrough

Dear Mr. Scarbrough:

Enclosed please find a copy of the First Amended Evidentiary Petition that has been filed in this matter. Also enclosed you will find a Notice of Setting in the above-referenced disciplinary matter for Thursday, May 15, 2014, at 9:30 a.m. at the Texas Law Center, 1414 Colorado, Hatton Sumners Conference Room, Austin, Texas 78701.

Please note that there is no public parking at the Texas Law Center, but there are several public parking garages available close to the Law Center and I have enclosed information on those for you.

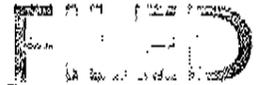
Thank you for your attention in this matter.

Sincerely,

Rebecca (Beth) Stevens  
Assistant Disciplinary Counsel  
Office of the Chief Disciplinary Counsel  
State Bar of Texas

REs/smh  
Enclosures

**BEFORE THE EVIDENTIARY PANEL FOR  
STATE BAR DISTRICT NO. 08-5 STATE BAR OF TEXAS**



**COMMISSION FOR LAWYER  
DISCIPLINE,  
Petitioner**

**V.**

**JERRY W. SCARBROUGH,  
Respondent**

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Austin Office  
Chief Disciplinary Counsel  
State Bar of Texas

**A0111214896  
A0111214897**

**FIRST AMENDED EVIDENTIARY PETITION**

COMES NOW, the Commission for Lawyer Discipline, Petitioner, and would respectfully show the following:

**I.**

**Parties**

Petitioner is the Commission for Lawyer Discipline, a committee of the State Bar of Texas. Respondent, Jerry W. Scarbrough State Bar No. 17717500, is an attorney licensed to practice law in the State of Texas. Respondent may be served with process at:

Jerry Scarbrough  
P.O. Box 690866  
Killeen, Texas 76549

**II.**

**Jurisdiction & Venue**

This Disciplinary Proceeding is brought pursuant to the State Bar Act, Tex. Gov't. Code Ann. Sec. 81.001, et seq., the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. The complaints which form the basis of this Disciplinary Proceeding were filed by Elizabeth Tipton and Alice Oliver-Parrott on or after January 1, 2004.

Venue is proper in Bell County, Texas, pursuant to Rule 2.11(B) of the Texas Disciplinary Rules of Procedure, because Bell is the county of Respondent's principal place of practice.

III.

**Professional Misconduct**

The acts and omissions of Respondent, as hereinafter alleged, constitute professional misconduct.

IV.

**Factual Allegations**

**A0111214896 Elizabeth Tipton and A0111214897 Alice Oliver-Parrott**

In 2009, Clayton Olvera, a former business associate of Gary Purser, Sr. ("Gary Purser"), filed a lawsuit against Gary Purser and the Purser family (Helen Purser, Sue Purser, JoAnn Purser and Bubba Purser). On or about June 18, 2010, the Purser family filed a third-party petition against Melissa Deaton ("Deaton"), and Deaton hired Respondent, Jerry Scarbrough, to represent her. Deaton, through prior counsel, counter-claimed against the Purser family and, through Respondent, filed a third-party petition against Elizabeth Purser Tipton.

Throughout the litigation, Respondent responded to various discovery requests on behalf of Deaton. In two of those responses, sent prior to Deaton's first deposition, Respondent (1) denied the existence of "any discoverable witness statements" as witness statement is defined by Texas Rules of Civil Procedure 192.3(h) and (2) denied the existence of "photographs, video, surveillance and/or other forms of recording/documentation depicting and/or concerning any party to this litigation" and any "written or recorded statement in this lawsuit taken from...any party to this litigation." On January 7, 2011, during Deaton's first deposition, she disclosed the existence of two such recordings: (1) "the Sister recording" and (2) "the Reddington recording."

Thereafter, Respondent retrieved the recording device ("the device") used to make the Sister recording from Deaton and took the device to an IT specialist. After the IT specialist copied the recordings onto a computer, he burned the recordings onto a CD-ROM and gave same to Respondent. The CD-ROM contained the Sister recording disclosed by Deaton in her deposition and several additional recordings. Respondent sent the Sister recording and the Reddington recording to the Purser family but failed to disclose the additional recordings, through discovery or any other means, to the Purser family. Additionally, although the recordings were material and relevant to the claims at issue in the lawsuit, neither Respondent nor Deaton preserved the device, which eventually resulted in a spoliation instruction to the jury. At a hearing on May 27, 2011, Respondent and Deaton, who both testified, continued to deny the existence of the additional recordings.

Respondent contacted Gary Purser's niece, Carolyn Bolling, after Gary Purser's death, and, when asked whom he represented, he said he represented himself and Gary "probably more than anyone else in the world right now." This left Ms. Bolling with the impression that Respondent represented her deceased uncle. At no time did Respondent represent Gary Purser.

A confidentiality order was entered by the Court regarding, *inter alia*, Gary Purser's medical records. Respondent twice violated the confidentiality order. First, he disclosed Gary Purser's medical records to a detective for the Killeen Police Department. He was subsequently sanctioned for his "willful violation" of the order. After being sanctioned the first time, Respondent then disclosed the contents of Gary Purser's medical records to Ms. Bolling in the conversation discussed above. He was again sanctioned for his "willful violation" of the order and was held in criminal contempt for the second violation.

## V.

**Disciplinary Rules of Professional Conduct**

The conduct described above is in violation of the following Texas Disciplinary Rules of Professional Conduct:

- 3.03(a)(1) A lawyer shall not knowingly make a false statement of material fact or law to a tribunal;
- 3.04(a) A lawyer shall not unlawfully obstruct another party's access to evidence; in anticipation of a dispute unlawfully alter, destroy or conceal a document or other material that a competent lawyer would believe has potential or actual evidentiary value; or counsel or assist another person to do any such act;
- 3.04(d) A lawyer shall not knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal except for an open refusal based either on an assertion that no valid obligation exists or on the client's willingness to accept any sanctions arising from such disobedience;
- 8.04(a)(1) A lawyer shall not violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship; and
- 8.04(a)(3) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

## VI.

**Prayer**

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent and that this Evidentiary Panel impose an appropriate sanction against Respondent as warranted by the facts. Petitioner further prays to recover all reasonable and necessary attorney fees and all direct expenses associated with this

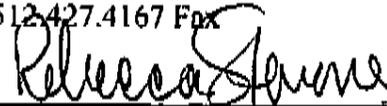
proceeding. Petitioner further prays for such other and additional relief, general or specific, at law or in equity, to which it may show itself entitled.

Respectfully submitted,

Linda A. Acevedo  
Chief Disciplinary Counsel

Rebecca (Beth) Stevens  
Assistant Disciplinary Counsel

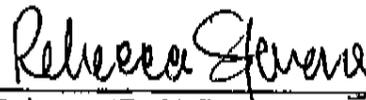
Office of the Chief Disciplinary Counsel  
STATE BAR OF TEXAS  
P.O. Box 12487  
Austin, Texas 78711-2487  
512.427.1350 Phone  
512.427.4167 Fax



Rebecca (Beth) Stevens  
State Bar Card No. 24065381  
ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served upon Jerry Scarbrough, P.O. Box 690866, Killeen, Texas 76549, by facsimile (254) 634-0516, in accordance with Rule 21a Tex.R.Civ.P. on this 17<sup>th</sup> day of March 2014.



Rebecca (Beth) Stevens

FILED

**BEFORE THE EVIDENTIARY PANEL FOR  
STATE BAR DISTRICT NO. 08-5 STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER  
DISCIPLINE,  
Petitioner**

**V.**

**JERRY W. SCARBROUGH,  
Respondent**

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\*  
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Anna C. Acevedo  
Chief Disciplinary Counsel  
State Bar of Texas

**A0111214896  
A0111214897**

**NOTICE OF SETTING**

An Evidentiary Hearing on the above referenced matter has been set for Thursday, May 15, 2014, at 9:30 a.m. at the Texas Law Center, 1414 Colorado, Hatton Sumners Conference Room, Austin, Texas 78701.

Respectfully submitted,

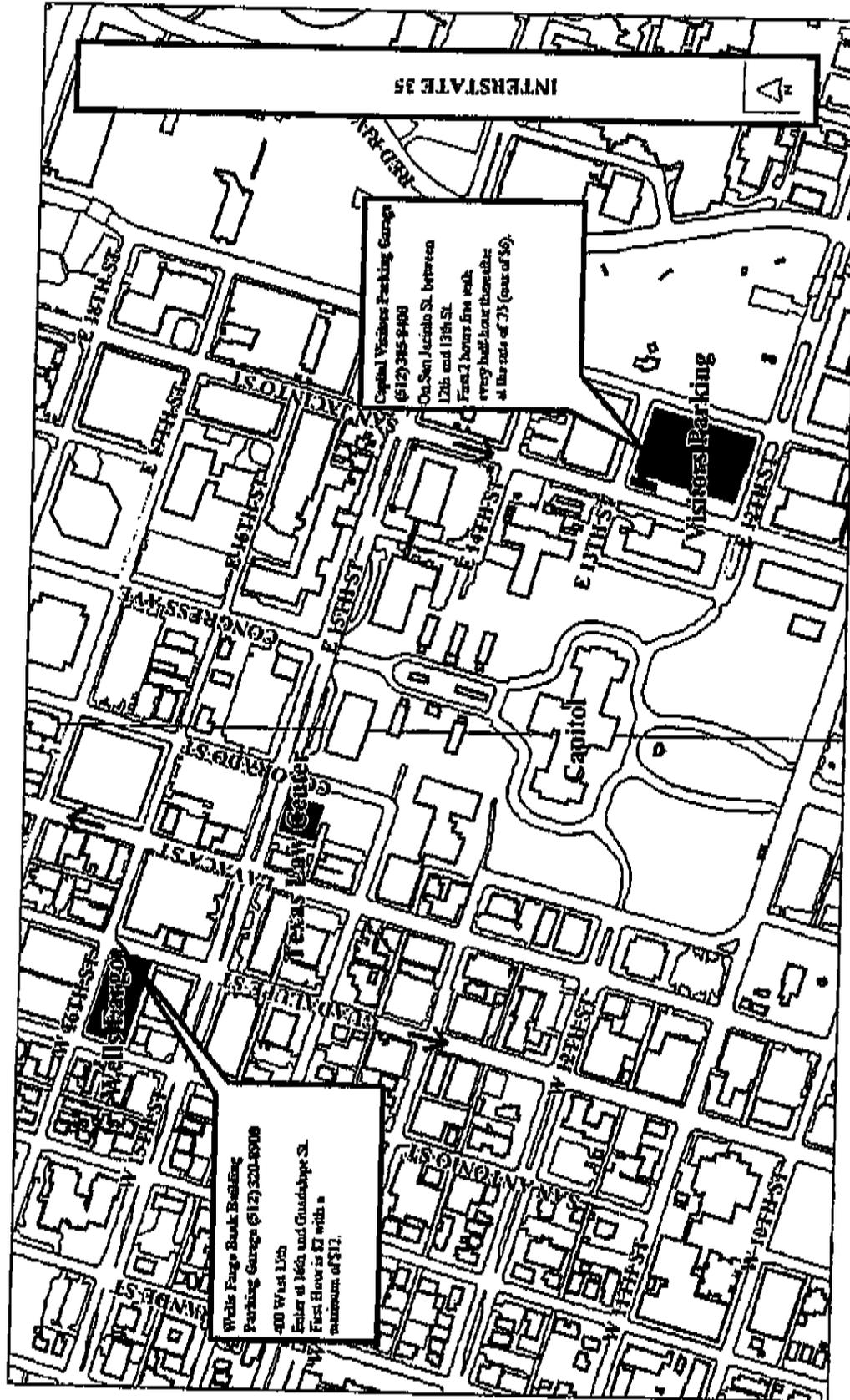
**Linda A. Acevedo**  
Chief Disciplinary Counsel

**Rebecca (Beth) Stevens**  
Assistant Disciplinary Counsel  
Office of Chief Disciplinary Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711  
Telephone: (512) 427-1350  
Fax: (512) 427-4167  
Email: [bstevens@texasbar.com](mailto:bstevens@texasbar.com)

By:   
**Rebecca (Beth) Stevens**  
State Bar No. 24065381

ATTORNEYS FOR PETITIONER

Alternative Parking Options



# EXHIBIT "2"

**BEFORE THE EVIDENTIARY PANEL FOR  
STATE BAR DISTRICT NO. 08-5 STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER  
DISCIPLINE,  
Petitioner**

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\*  
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**A0111214896  
A0111214897**

**V.**

**JERRY W. SCARBROUGH,  
Respondent**

**JUDGMENT OF PARTIALLY PROBATED SUSPENSION**

**Parties and Appearance**

On January 14, 2015, a hearing on Petitioner's First Amended Motion for Application of Collateral Estoppel was heard. On January 16, 2015, an Order Partially Granting Petitioner's First Amended Motion for Application of Collateral Estoppel was entered. On February 19, 2015 and March 9, 2015, came to be heard the above styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, Jerry W. Scarbrough, Texas Bar Number 17717500, appeared in person and through attorney of record and announced ready.

**Jurisdiction and Venue**

The Evidentiary Panel 8-5 having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 8, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

CF8-16

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### **Professional Misconduct**

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

### **Findings of Fact**

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

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
2. Respondent resides in and maintains his principal place of practice in Bell County, Texas.
3. In 2009, Clayton Olvera, a former business associate of Gary Purser, Sr. ("Gary Purser"), filed a lawsuit against Gary Purser and the Purser family (Helen Purser, Sue Purser, JoAnn Purser and Bubba Purser). On or about June 18, 2010, the Purser family filed a third-party petition against Melissa Deaton ("Deaton"), and Deaton hired Respondent, Jerry Scarbrough, to represent her. Deaton, through prior counsel, counter-claimed against the Purser family and, through Respondent, filed a third-party petition against Elizabeth Purser Tipton.
4. Respondent knowingly made a false statement of material fact to the 146th District Court. Throughout the litigation, Respondent responded to various discovery requests on behalf of Deaton. Opposing counsel made repeated requests to Respondent for production of any recordings involving Gary Purser. At a discovery sanctions hearing on May 27, 2011, in sworn testimony before the 146th District Court, Respondent denied having knowledge of any recordings of Gary Purser other than (1) a recording involving Gary Purser, Melissa Deaton, and Kathy Purdue, and (2) a recording involving Gary Purser, Melissa Deaton, and John Redington. However, there existed at least one additional recording, referred to as the "two good bitches" recording, involving Gary Purser, Melissa Deaton, and Denise Steele, which Respondent had previously given to an information technology professional named Shawn Richardson together with the two other recordings.

CF6-16

5. In prior litigation, the 146th District Court and the U.S. Bankruptcy Court for the Western District of Texas, Waco Division, made fact findings that Respondent unlawfully obstructed another party's access to evidence, specifically audio recordings of Gary Purser; altered, destroyed, or concealed audio recordings of Gary Purser; or counseled or assisted Melissa Deaton in doing so.
6. In prior litigation, the 146th District Court and the U.S. Bankruptcy Court for the Western District of Texas, Waco Division, made fact findings that Respondent knowingly disobeyed an order of the 146th District Court not to disclose medical records pertaining to Gary Purser.
7. Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation during a telephone conversation with Gary Purser's niece, Carolyn Bolling, after Gary Purser's death. When Ms. Bolling asked Respondent whom he represented, Respondent said that he represented himself and Gary "probably more than anyone else in the world right now." Respondent did not disclose his representation of Melissa Deaton. This left Ms. Bolling with the impression that Respondent represented her deceased uncle. At no time did Respondent represent Gary Purser.
8. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees and direct expenses associated with this Disciplinary Proceeding in the amount of \$12,000.00.

#### **Conclusions of Law**

The Evidentiary Panel concludes that, based on foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: 3.03(a)(1), 3.04(a), 3.04(d), 8.04(a)(1) and 8.04(a)(3).

#### **Sanction**

The Evidentiary Panel, having found that Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument and after having considered the factors in Rule 2.18 of the Texas Rules of Disciplinary Procedure, the Evidentiary Panel finds that the proper discipline of the

Respondent for each act of Professional Misconduct is a Partially Probated Suspension.

Accordingly, it is ORDERED, ADJUDGED and DECREED that Respondent be suspended from the practice of law for a period of ten (10) years, beginning May 1, 2015 and ending April 30, 2025, provided Respondent complies with the following terms and conditions. Respondent shall be actively suspended from the practice of law for a period of two (2) years beginning May 1, 2015 and ending April 30, 2017. If Respondent complies with all of the following terms and conditions timely, the eight (8) year period of probated suspension shall begin on May 1, 2017, and shall end on April 30, 2025:

1. Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of \$12,000.00. The payment shall be due and payable on or before April 30, 2017, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
2. Respondent shall make contact with the Chief Disciplinary Counsel's Offices' Compliance Monitor at 877-953-5535, ext. 1334 and Special Programs Coordinator at 877-953-5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

Should Respondent fail to comply with all of the above terms and conditions timely, Respondent shall remain actively suspended until the date of compliance or until April 30, 2025, whichever occurs first.

#### **Terms of Active Suspension**

It is further ORDERED that during the term of active suspension ordered herein, or that may be imposed upon Respondent by the Board of Disciplinary Appeals as a

result of a probation revocation proceeding, Respondent shall be prohibited from practicing law in Texas; holding himself out as an attorney at law; performing any legal services for others; accepting any fee directly or indirectly for legal services; appearing as counsel or in any representative capacity in any proceeding in any Texas or Federal court or before any administrative body; or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

It is further ORDERED that, on or before April 30, 2015, Respondent shall notify each of Respondent's current clients and opposing counsel in writing of this suspension.

In addition to such notification, it is further ORDERED Respondent shall return any files, papers, unearned monies and other property belonging to current clients in Respondent's possession to the respective clients or to another attorney at the client's request.

It is further ORDERED Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before May 15, 2015, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein.

It is further ORDERED Respondent shall, on or before April 30, 2015, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the

CF8-16

pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing.

It is further ORDERED Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before May 15, 2015 an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court.

It is further ORDERED that, on or before May 1, 2015, Respondent shall surrender his law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of Texas.

#### Terms of Probation

It is further ORDERED that during all periods of suspension, Respondent shall be under the following terms and conditions:

3. Respondent shall not violate any term of this judgment.
4. Respondent shall not engage in professional misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure.
5. Respondent shall not violate any state or federal criminal statutes.
6. Respondent shall keep State Bar of Texas membership department notified of current mailing, residence and business addresses and telephone numbers.
7. Respondent shall comply with Minimum Continuing Legal Education requirements.
8. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.
9. Respondent shall promptly respond to any request for information from the

CF6-18

- Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.
10. Respondent shall make contact with the Chief Disciplinary Counsel's Offices' Compliance Monitor at 877-953-5535, ext. 1334 and Special Programs Coordinator at 877-953-5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

### **Probation Revocation**

Upon information that Respondent has violated a term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals ("BODA") and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

BODA shall conduct an evidentiary hearing. At the hearing, BODA shall determine by a preponderance of the evidence whether Respondent has violated any term of this Judgment. If BODA finds grounds for revocation, BODA shall enter an order revoking probation and placing Respondent on active suspension from the date of such revocation order. Respondent shall not be given credit for any term of probation served prior to revocation.

It is further ORDERED that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

### **Attorney's Fees and Expenses**

It is further ORDERED Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of

\$12,000.00. The payment shall be due and payable on or before April 30, 2017, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

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

It is further ORDERED that Respondent shall remain actively suspended from the practice of law as set out above until such time as Respondent has completely paid attorney fees and direct expenses in the amount of \$12,000.00 to the State Bar of Texas.

#### **Publication**

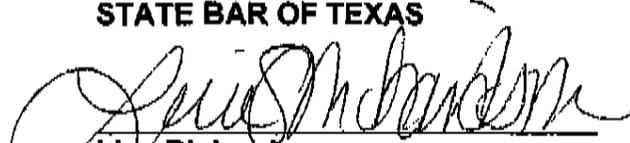
This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

**Other Relief**

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 7 day of April, 2015.

**EVIDENTIARY PANEL  
DISTRICT NO. 8-5  
STATE BAR OF TEXAS**

  
**Lisa Richardson  
District 8-5 Presiding Member**

# EXHIBIT "3"

File Copy

**JERRY SCARBROUGH**  
**ATTORNEY AT LAW**

Jerry Scarbrough

**Mailing Address:**  
P. O. Box 690866  
Killeen, Texas 76549



Board Certified in Personal Injury Trial Law

**Office Address:**  
2302 W. Stan Schlueter,  
Killeen, Texas 76549

May 7, 2015

**VIA FACSIMILE: 1.512.255.8905**

Lisa Richardson  
213 N. Mays, Suite A  
Round Rock, Texas 78664

Re: A0111214896 & A01111214897  
Commission for Lawyer Discipline v. Jerry W. Scarbrough

Dear Ms. Richardson:

Enclosed please find the following:

1. Respondent's Motion for New Trial; and
2. Respondent's Motion to Stay.

I would like to schedule a hearing for the above motions to be heard. Please advise me of date, time, and location of the requested hearing.

Opposing counsel has been forwarded a copy of the enclosed pleading as indicated below.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Jerry Scarbrough

JS/anx

Enclosures

cc: **VIA FACSIMILE: 1.512.427.4167**  
Rebecca (Beth) Stevens, Esq.  
Office of the Chief Disciplinary Counsel  
STATE BAR OF TEXAS  
P.O. Box 12487  
Austin, Texas 78711-2487

11 3 11

Page 2: Scarbrough, Jerry  
Cover Letter: Mt New Trial & Mt to Stay

**VIA ELECTRONIC MAIL: *eric@templalawoffice.com***

John Eric Stoebner  
2106 Bird Creek Drive  
Temple, Texas 76502

**VIA ELECTRONIC MAIL: *writ@hillcountrypayroll.com***

Writ Baese  
2721 Layaga  
Round Rock, Texas 78681

# EXHIBIT "4"

# STATE BAR OF TEXAS



*Office of the Chief Disciplinary Counsel*

May 21, 2015

Jerry Scarbrough  
P.O. Box 690866  
Killeen, Texas 76549

*Via Facsimile 254.634.6266 and Via Email jws@jerryscarbrough.net*

Re: A0111214896 & A0111214897  
Commission for Lawyer Discipline v. Jerry W. Scarbrough

Dear Mr. Scarbrough:

As you are aware, on April 7, 2015, the Evidentiary Panel District No. 8-5 entered a judgment in this matter. The judgment includes a 10 year partially-probated suspension with two years active suspension. The active suspension began May 1, 2015, and lasts through April 30, 2017. On May 7, 2015, you filed a Motion to Stay and Motion for New Trial.

During our telephone conversation this afternoon you indicated that you are currently practicing law and intend to continue to do so. Our office is currently working on setting a hearing for your motions to be heard. In the meantime, the judgment is in full effect and you are not allowed to practice law until and unless your Motion to Stay is granted.

If you have any questions, please feel free to contact me.

Sincerely,

Rebecca (Beth) Stevens  
Assistant Disciplinary Counsel  
Office of the Chief Disciplinary Counsel  
State Bar of Texas

4

6/1/2015

Jerry Scarbrough Mail - CFLD v. Scarbrough



Paralegal Jerry Scarbrough <paralegal@jerryscarbrough.net>

## CFLD v. Scarbrough

1 message

**Beth Stevens** <Beth.Stevens@texasbar.com> Thu, May 21, 2015 at 5:25 PM

To: "jws@jerryscarbrough.net" <jws@jerryscarbrough.net>

Cc: "paralegal@jerryscarbrough.net" <paralegal@jerryscarbrough.net>

Mr. Scarbrough,

Please find attached a letter from me to you, sent this date May 21, 2015, via email and facsimile.

Thank you,

Beth  
Rebecca (Beth) Stevens  
Assistant Disciplinary Counsel  
Office of the Chief Disciplinary Counsel  
1414 Colorado, Ste. 200  
Austin, TX 78701  
(512) 427- 1350  
Fax: 427-4167  
beth.stevens@texasbar.com

Please consider the environment before printing this message.

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36K

# EXHIBIT "5"

6/5/2015

Jerry Scarbrough Mail - RE: CFLD v. Scarbrough

"JWS@jerryscarbrough.net" <JWS@jerryscarbrough.net>, "paralegal@jerryscarbrough.net" <paralegal@jerryscarbrough.net>, Beth Stevens <Beth.Stevens@texasbar.com>

Shelly,

The panel has considered the motion for continuance and will grant the motion, but we will also reset the hearing on the motion to stay. There will be no hearing tomorrow morning in this matter.

I will sign an order resetting both hearings first thing tomorrow morning. I am away from the office for the rest of the evening.

Eric Stoebner

On Jun 4, 2015, at 5:52 PM, Shelly Hogue <Shelly.Hogue@Texasbar.com> wrote:

Ms. Richardson,

I understand Mr. Stoebner will be acting as Panel Chair in your absence.

I want to clarify that Mr. Scarbrough wants the hearing on his Motion to Stay to move forward in the morning and is only requesting a continuance on his Motion for New Trial.

With that said, I have attached an order as you requested for Mr. Stoebner's consideration.

Thank you,

Shelly

**From:** Lisa Richardson [mailto:lisa.richardson@lrfamilylawtx.com]  
**Sent:** Thursday, June 04, 2015 5:34 PM  
**To:** Shelly Hogue; John Eric Stoebner; Writ Baese  
**Cc:** JWS@jerryscarbrough.net; paralegal@jerryscarbrough.net; Beth Stevens  
**Subject:** RE: CFLD v. Scarbrough

[Quoted text hidden]

<Order on MFC 6.4.15.docx>

ExchangeDefender Message Security: Check Authenticity

**Eric Stoebner** <eric@templalawoffice.com>  
To: Shelly Hogue <Shelly.Hogue@texasbar.com>  
Cc: Lisa Richardson <lisa.richardson@lrfamilylawtx.com>, Writ Baese <writ@hillcountrypayroll.com>

Fri, Jun 5, 2015 at 8:26 AM

# EXHIBIT "6"

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 **Order on MFC 6.4.15.docx**  
17K

---

**Eric Stoebner** <eric@templelawoffice.com> Thu, Jun 4, 2015 at 5:58 PM

To: Shelly Hogue <Shelly.Hogue@texasbar.com>

Cc: Lisa Richardson <lisa.richardson@lrfamilylawtx.com>, Writ Baese  
<writ@hillcountrypayroll.com>, "JWS@jerryscarbrough.net"

<JWS@jerryscarbrough.net>, "paralegal@jerryscarbrough.net"

<paralegal@jerryscarbrough.net>, Beth Stevens <Beth.Stevens@texasbar.com>

Shelly,

The panel has considered the motion for continuance and will grant the motion, but we will also reset the hearing on the motion to stay. There will be no hearing tomorrow morning in this matter.

I will sign an order resetting both hearings first thing tomorrow morning. I am away from the office for the rest of the evening.

Eric Stoebner

[Quoted text hidden]

<Order on MFC 6.4.15.docx>

**Exchange Defender** Message Security: Check Authenticity

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**Shelly Hogue** <Shelly.Hogue@texasbar.com> Thu, Jun 4, 2015 at 6:12 PM

To: Eric Stoebner <eric@templelawoffice.com>

Cc: Lisa Richardson <lisa.richardson@lrfamilylawtx.com>, Writ Baese  
<writ@hillcountrypayroll.com>, "JWS@jerryscarbrough.net"

<JWS@jerryscarbrough.net>, "paralegal@jerryscarbrough.net"

<paralegal@jerryscarbrough.net>, Beth Stevens <Beth.Stevens@texasbar.com>

Thank you, Mr. Stoebner.

" 6 "

# EXHIBIT "7"



# EXHIBIT "8"

6/2/2015

Abuse of Discretion legal definition of Abuse of Discretion

# Abuse of Discretion legal definition of Abuse of Discretion

<http://legal-dictionary.thefreedictionary.com/Abuse+of+Discretion>

## Abuse of Discretion

Also found in: Dictionary/thesaurus, Medical, Financial, Encyclopedia, Wikipedia.



## Abuse of Discretion

*A failure to take into proper consideration the facts and law relating to a particular matter; an Arbitrary or unreasonable departure from precedent and settled judicial custom.*

Where a trial court must exercise discretion in deciding a question, it must do so in a way that is not clearly against logic and the evidence. An improvident exercise of discretion is an error of law and grounds for reversing a decision on appeal. It does not, however, necessarily amount to bad faith, intentional wrong, or misconduct by the trial judge.

For example, the traditional standard of appellate review for evidence-related questions arising during trial is the "abuse of discretion" standard. Most judicial determinations are made based on evidence introduced at legal proceedings. Evidence may consist of oral testimony, written testimony, videotapes and sound recordings, documentary evidence such as exhibits and business records, and a host of other materials, including voice exemplars, handwriting samples, and blood tests.

Before such materials may be introduced into the record at a legal proceeding, the trial court must determine that they satisfy certain criteria governing the admissibility of evidence. At a minimum, the court must find that the evidence offered is relevant to the legal proceedings. Evidence that bears on a factual or legal issue at stake in a controversy is considered relevant evidence.

The relevancy of evidence is typically measured by its *probative value*. Evidence is generally deemed **Probative** if it has a tendency to make the existence of any material fact more or less probable. Evidence that a murder defendant ate spaghetti on the day of the murder might be relevant at trial if spaghetti sauce was found at the murder scene. Otherwise such evidence would probably be deemed irrelevant and could be excluded from trial if opposing counsel made the proper objection.

During many civil and criminal trials, judges rule on hundreds of evidentiary objections lodged by both parties. These rulings are normally snap judgments made in the heat of battle. Courts must make these decisions quickly to keep the proceedings moving on schedule. For this reason, judges are given wide latitude in making evidentiary rulings and will not be over-turned on appeal unless the appellate court finds that the trial judge abused his or her discretion.

For example, in a **Negligence** case, a state appellate court ruled that the trial court did not abuse its discretion by admitting into evidence a posed accident-scene photograph, even though the photograph depicted a model pedestrian blindly walking into the path of the driver's vehicle with the pedestrian's head pointed straight ahead as if she was totally oblivious to the vehicle and other traffic. *Gorman v. Hunt*, 19 S.W.3d 662 (Ky. 2000). In upholding the trial court's decision to admit the evidence, the appellate court observed that the photograph was only used to show the pedestrian's position relative to the vehicle at the time of impact and not to blame the pedestrian for being negligent. The appellate court also noted that the lawyer objecting to the photograph's admissibility was free to remind the jury of its limited relevance during cross-examination and closing arguments.

An appellate court would find that a trial court abused its discretion, however, if it admitted into evidence a photograph without proof that it was authentic. *Apter v. Ross*, 781 N.E.2d 744 (Ind.App. 2003). A photograph's authenticity may be established by a witness's personal observations that the photograph accurately depicts what it purports to depict at the time the photograph was taken. Ordinarily the photographer who took the picture is in the best position to provide

# EXHIBIT "9"

Rule 34.5(c)(2). The appeal must be dismissed if a certification that shows the defendant has the right of appeal has not been made part of the record under these rules.

(e) *Clerk's Duties.* The trial court clerk must note on the copies of the notice of appeal and the trial court's certification of the defendant's right of appeal the case number and the date when each was filed. The clerk must then immediately send one copy of each to the clerk of the appropriate court of appeals and, if the defendant is the appellant, one copy of each to the State's attorney.

(f) *Amending the Notice or Certification.* An amended notice of appeal or trial court's certification of the defendant's right of appeal correcting a defect or omission in an earlier filed notice or certification, including a defect in the notification of the defendant's appellate rights, may be filed in the appellate court in accordance with Rule 37.1, or at any time before the appealing party's brief is filed if the court of appeals has not used Rule 37.1. The amended notice or certification is subject to being struck for cause on the motion of any party affected by the amended notice or certification. After the appealing party's brief is filed, the notice or certification may be amended only on leave of the appellate court and on such terms as the court may prescribe.

(g) *Effect of Appeal.* Once the record has been filed in the appellate court, all further proceedings in the trial court - except as provided otherwise by law or by these rules - will be suspended until the trial court receives the appellate-court mandate.

(h) *Advice of Right of Appeal.* When a court enters a judgment or other appealable order and the defendant has a right of appeal, the court (orally or in writing) shall advise the defendant of his right of appeal and of the requirements for timely filing a sufficient notice of appeal.

#### Notes and Comments

Comment on 1997 change: This is former Rule 40. In civil cases, the requirement of an appeal bond is repealed. Appeal is perfected by filing a notice of appeal. A notice must be filed by any party seeking to alter the trial court's judgment. The restricted appeal — formerly the appeal by writ of error — is perfected by filing a notice of appeal in the trial court as in other appeals. The contents of the notice of appeal is prescribed. The notice of limitation of appeal is repealed. In criminal cases, the rule is amended to apply to notices by the State, and to refer to additional statutory requirements for the State's notice. In felony cases in which the defendant waived trial by jury, pleaded guilty

or nolo contendere, and received a punishment that did not exceed what the defendant agreed to in a plea bargain, the rule is amended to make clear that regardless of when the alleged error occurred, an appeal must be based on a jurisdictional defect or a written motion ruled on before trial, or be with the permission of the trial court.

Comment to 2002 change: Rule 25.2, for criminal cases, is amended. Subdivision 25.2(a) states the parties' rights of appeal that are established by Code of Criminal Procedure article 44.01 and by article 44.02, the proviso of which was repealed when rulemaking power was given to the Court of Criminal Appeals. Subdivision 25.2(b) is given the requirement that a notice of appeal be in "sufficient" form, which codifies the decisional law. The requirement in former subdivision 25.2(b)(3) that a plea-bargaining appellant's notice of appeal specify the right of appeal is replaced by a requirement in subdivision 25.2(d) that the trial court certify the defendant's right of appeal in every case in which a judgment or other appealable order is entered. The certificate should be signed at the time the judgment or other appealable order is pronounced. The form of certification of the defendant's right of appeal is provided in an appendix to these rules. If the record does not include the trial court's certification that the defendant has the right of appeal, the appeal must be dismissed. If a sufficient notice of appeal or certification is not filed after the appellate court deals with the defect (see Rules 34.5(c) and 37.1), preparation of an appellate record and representation by an appointed attorney may cease.

### Rule 26. Time to Perfect Appeal

#### 26.1. Civil Cases

The notice of appeal must be filed within 30 days after the judgment is signed, except as follows:

- (a) the notice of appeal must be filed within 90 days after the judgment is signed if any party timely files:
- (1) a motion for new trial;
  - (2) a motion to modify the judgment;
  - (3) a motion to reinstate under Texas Rule of Civil Procedure 165a; or
  - (4) a request for findings of fact and conclusions of law if findings and conclusions either are required by the Rules of Civil Procedure or, if not required, could properly be considered by the appellate court;
- (b) in an accelerated appeal, the notice of appeal must be filed within 20 days after the judgment or order is signed;

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## **2.24 Appeals by Respondent or Commission:**

The Respondent or Commission may appeal the judgment to the Board of Disciplinary Appeals. Such appeals must be on the record, determined under the standard of substantial evidence. Briefs may be filed as a matter of right. The time deadlines for such briefs shall be promulgated by the Board of Disciplinary Appeals. An appeal, if taken, is perfected when a written notice of appeal is filed with the Board of Disciplinary Appeals. The notice of appeal must reflect the Intention of the Respondent or the Commission to appeal and identify the decision from which appeal is perfected. The notice of appeal must be filed within thirty days after the date of judgment, except that the notice of appeal must be filed within ninety days after the date of judgment if any party timely files a motion for new trial or a motion to modify the judgment.

# EXHIBIT "10"

6/5/2015

THE TEXAS CONSTITUTION ARTICLE 1. BILL OF RIGHTS

Sec. 19. DEPRIVATION OF LIFE, LIBERTY, ETC.; DUE COURSE OF LAW.  
No citizen of this State shall be deprived of life, liberty,  
property, privileges or immunities, or in any manner disfranchised,  
except by the due course of the law of the land.

Handwritten signature or initials, possibly "11/10" or similar, with a circular scribble below the numbers.

# EXHIBIT "11"



Texas Center for  
**LEGAL ETHICS**  
*Professionalism in Practice™*

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### **2.25 No Supersedeas**

An Evidentiary Panel's order of disbarment cannot be superseded or stayed. The Respondent may within thirty days from entry of judgment petition the Evidentiary Panel to stay a judgment of suspension. The Respondent carries the burden of proof by preponderance of the evidence to establish by competent evidence that the Respondent's continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public. An order of suspension must be stayed during the pendency of any appeals therefrom if the Evidentiary Panel finds that the Respondent has met that burden of proof. An Evidentiary Panel may condition its stay upon reasonable terms, which may include, but are not limited to, the cessation of any practice found to constitute Professional Misconduct, or it may impose a requirement of an affirmative act such as an audit of a Respondent's client trust account.

11

# EXHIBIT "12"

STATE OF TEXAS           §  
COUNTY OF BELL         §

Before me, the undersigned authority, personally appeared Jerry Scarbrough, who, being by me duly sworn, deposed as follows:

“My name is Jerry Scarbrough. The facts set out below are based upon actions taken before I was involved in the case, they are not based on my personal knowledge but were taken from a certified copy of the record on appeal, which I personally read, and which I ask the panel to take judicial notice of. The facts I have discovered after the trial which are set out below are based upon my personal knowledge.

I have been licensed to practice law for more than thirty-three (33) years. I have been certified by the Texas Board of Legal Specialization in Personal Injury Trial Law since 1990. Not once have I ever been disciplined by the bar for attorney misconduct before this instant case. As you can see from the attached affidavits, my clients and peers believe as I do, that my continued practice of law poses no threat to their welfare or to the public.<sup>1</sup>

This case was originally brought by Clayton Olvera over a partnership and employment, contract, which was drafted by an esteemed member of the BODA, Jack Crews in 2008. In the suit he claimed that Gary Purser Sr., and his company, Freytag Irrigation, wrongfully discharged him and that Gary Purser, Sr. and Freytag owed him money under the agreement. He also alleged that Gary Purser's family interfered with his contract rights. Elizabeth Tipton, daughter of Gary Purser, attorney and complainant in this grievance, along with her brother, Gary Purser, Jr., his wife and city council woman, Joann Purser, trespassed onto Melissa Deaton's property

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<sup>1</sup> Affidavits of Brian Brannock, Kim Brannock, Wayne Case, Jr., James Daigle, Byoung Sook Lee-Kim, Howard Liles, Michelle Barber Chimene, Esq., Frank Cimino, Esq., Stephen W. Sather, Esq., and Amy-Nicole Ximinez are attached hereto and incorporated herein for all purposes.

and assaulted her and Gary Purser, Sr., February 25, 2009. On April 29, 2010, Joann Purser assaulted Gary Purser Sr. while he was sitting in his truck on Melissa Deaton's driveway at her home in Temple, Texas. In that episode she took from Gary Purser, Sr., an elderly person, \$9,300, according to her own testimony. She also assaulted Melissa Deaton, causing her serious personal injuries. June 18, 2010, Helen Purser and her children filed a countersuit against Olvera and added Melissa Deaton and Denise Steele as defendants. They claimed that Gary Purser had Alzheimer's Disease, dementia and other mental disorders, and that Olvera, his former girlfriend, Denise Steele, and her friend, Melissa Deaton somehow defrauded them. Gary Purser, Sr., never made such a claim however, nor did his companies. Helen Purser, his wife, claimed that Denise Steel and her friend, Melissa Deaton, my client, had defrauded the marital estate and sued Gary Purser, Sr. for divorce, where she sought restraining orders against her husband, enjoined him from transferring any assets, coming near her, his home or business, and requested the court to make an unequal division of their estate. She alleged Denise Steele and Melissa Deaton had inappropriate relationship with her husband, and alienated his affection. These suits against Deaton were filed in May 2010, before I was hired to represent Melissa Deaton. Deaton had initially hired John Redington, an attorney, who had sued Helen, Gary Purser, Jr., "Bubba", Joann Purser, and Sue Ellen Purser for trespass and assault. Jack Crews did not represent Gary Purser in the divorce action, but knew of the case, referred him to a divorce lawyer, and in violation of his restraining order, drafted Gary Purser's transfer of his interest in the 1999 Gary Purser, Sr. Trust, August 8, 2010. The trust had an estimated value of fifty million dollars (\$50,000,000). These transactions had already transpired before I was hired on August 12, 2010.

Melissa Deaton was suffering from scleroderma, a terminal disease. When we first met she was extremely ill. She signed a contingent fee contract which I agreed to defend her in the

divorce and contract suit and prosecute her counterclaim for personal injuries. We conducted initial discovery as normal and requested disclosures, request for production and interrogatories pursuant to the *Rules of Procedure*. Likewise, we responded to their discovery as we normally do in these cases. At the time we responded to their request I did not have any items that I did not produce for their request. Subsequent to our responses we served on them, Melissa Deaton, unbeknownst to me, recorded a conversation between Gary Purser, Sr., her sister, and herself. There had also been an alleged recording made by John Redington, May 2, 2010, between him and Gary Purser, Sr., which Melissa Deaton did not have and I did not know about at the time. In Deaton's deposition, January 7, 2011, she disclosed the recordings and I immediately set about trying to obtain them from her and John Redington. In effect she supplemented her disclosures and responses to discovery by identifying these recordings. Deaton produced the recorder (she said that it belonged to Denise Steele) she used to record her sister and Gary Purser, Sr. to me. It looked like a large thumb drive, but I could not see any means to play it because it had no external connection apparatus or wires. I could not play the device so I carried it to my longtime IT professional Shawn Richeson. At that time I asked Richeson to copy the conversation on the device to a CD in order for me to deliver it to Jeff Ray, Helen Purser's attorney. When I picked up the CD it contained only one recording, the conversation my client had described to which I had my staff copy and deliver to Jeff Ray. Soon afterward I returned the recording device to my client. I did not hear nor did my client ever admit that the device had more than the one recording on it. The recorder disappeared, she claimed, during her spring cleaning. She told me that the device was either thrown away or given to Good Will by volunteers who helped her clean her home. We did not discover this loss until I asked her to return the recorder to me after Helen Purser filed motions for sanctions. I continued to seek the

Redington recording, and eventually I obtained the analog mini cassette tape recording on about May 25, 2011. I took it to Shawn Richeson, where he converted it to a digital format and copied it to a CD. I delivered it to Helen Purser, on May 27, 2011. During this time Jeff Ray and Jack Crews had the so called "secret" recordings that they claimed they had obtained from Shawn Richeson, my IT professional, on April 21, 2011.

According to Jeff Ray, Helen Purser's lawyer, his IT professional obtained one and then ten recordings from my IT professional on April 21, 2011.<sup>2</sup> The recordings, only eight, were not provided to me until September 23, 2011. Helen Purser only played selected portions of the so called "secret" recordings during hearings on her motion for sanctions against me, Melissa Deaton and John Redington in August. Her lawyer, Jeff Ray also provided the recordings to the judge ex-parte in August. Melissa Deaton claimed she did not make them nor did she ever admit that they were true recordings of conversations she and Gary Purser, Sr. had. I was joined as a defendant on July 5, 2011. The Pursers alleged that I was a co-conspirator and claimed that I had defrauded Gary Purser, Sr. along with my client, Melissa Deaton. They also sought to sanction me for spoliation of the recording device which my client had lost. I was severely sanctioned by the trial court, and at the trial he gave the jury a spoliation instruction which allowed the jury to consider the failure to produce the recording against us. These sanctions are currently on appeal to the Third Court of Appeals at Austin.

The linchpin of Helen Purser's case was that her husband was suffering from Alzheimer's Disease, dementia, and other mental disorders. This fact was never established and to this day there was never a finding that Gary Purser, Sr. was incompetent at anytime. On March 14, 2011, at a hearing on my Motion to Compel discovery, we entered into an agreement

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<sup>2</sup> Juan Francisco Casas' deposition Jan 27, 2014, 12-60683-cag Chapter 7, Waco, Texas.

and the court signed an order that prohibited the parties from divulging their medical records to anyone other than experts for review in preparation of trial. They were stonewalling me in producing Gary Purser, Sr. for depositions, and they did not produce his medical records until July 20, 2011, only eight days before he died. They had however filed many pages of Gary Purser, Sr.'s medical records with the court, unsealed, in May, before the hearings on their motions for sanctions. Those records were not helpful to their position that Gary Purser, Sr. was incompetent. The psychologist and medical doctors thought he was suffering from depression and anxiety due to his marital and family problems instead of any mental defects. They also noted that he had been living separately from his wife, alone, since October 15, 2009. They also documented that he was taking Risperidone, a drug which had a black box warning which cautioned against giving it to elderly dementia patients. I became very suspicious of the motives of Helen Purser and her children when I discovered Gary Purser, Sr. was in very poor mental and physical condition May 26, 2011. His wife had dismissed her divorce action against him in January after he had agreed to her conditions to come home. The conditions were that he transfer his interest in his Gary Purser Sr. 1999 Trust to his children or their accountant, give up his driver's license, keys to his truck, cell telephone, retire from his position as general manager of his construction companies and stop visiting his friends, Melissa Deaton and Denise Steele, and give her his medical power of attorney. David Pace, my process server told me that Mr. Purser was very ill, near death when he attempted to serve a subpoena on him and Helen Purser, on May 26, 2011. He said, "they had hospital beds set up in their living room. Gary Purser had a feeding tube in his nose and was incoherent." I was alarmed because he was my star witness.<sup>3</sup> The next day at the hearing when I asked Elizabeth Tipton why her father wasn't there, she said

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<sup>3</sup> I had seen him with his daughter, Elizabeth Tipton. January 17, 2011, at a Mexican Restaurant and he was in very good physical and mental condition.

he and her mother were ill and couldn't make the hearing for that reason. When I asked her for their conditions out of my concerns for their health she said, "my mother is going to be alright, but dad is not going to make it." Because of my knowledge of the medical treatments and his previous condition I felt that Gary Purser was being abused by his family and felt that I should report my beliefs to the Adult Protective Service. He died on July 28, 2011, before the service had completed a full report. It concluded that he was able to financially take care of himself and that my complaint was unfounded. At the subsequent trial they offered only a short version of the APS's findings in an effort to prove that I was intentionally attempting to harm them. I was just following the law by reporting my suspicions surrounding my discovery of his condition. Subsequently, I have discovered very disturbing facts which led me to believe that Helen Purser and her family intentionally abused and ultimately caused the death of Gary Purser, Sr.

Although I was sanctioned for divulging Gary Purser's medical records to a homicide detective, who by definition is an expert, the family continued to publish his records in the file of the case and plead facts that alleged his medical conditions in their pleadings. Elizabeth Tipton testified that shortly after Gary Purser's death, they had waived the confidentiality of his medical records because they wanted to use them at trial.<sup>4</sup> At trial they introduced his medical power of attorney which expressly provided that his health care providers were to provide his medical records to anyone who had an interest in him.<sup>5</sup> The medical power of attorney was not produced, but kept from me because it was in contravention of their claim that he was entitled to confidentiality of his medical records. The same medical records that they claimed I had improperly divulged to the detective and his niece, Carolyn Bolling. The medical records were ordered by the court,

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<sup>4</sup> Trial testimony of Elizabeth Tipton

<sup>5</sup> Gary Purser, Sr.'s Medical power of Attorney, trial exhibit 30

March 14, 2011, to be produced within ten (10) days, but they were not provided to me until July 20, 2011. They had been edited and did not have the records of treatment beyond June of 2011.

The remaining Gary Purser medical records were not produced until the trial, September 2012. They disclosed that Helen Purser had provided a do not resuscitate DNR notice to all healthcare providers when they picked Mr. Purser up at his home early on July 24, 2011, and that she or her children made the hospital staff aware of the DNR multiple times. They also ordered the care givers to discontinue service, (DS), to him at least twenty-four (24) hours before he died. Mr. Purser's last admission records noted he was unresponsive, dehydrated, malnourished, he had lost 30lbs. in last 90 days, had aspiration pneumonia, sepsis, stage II bed sore, and possible strep, when he arrived at the hospital. Most alarming to me was the fact that Gary Purser's primary physician, Dr. Jessie, had twice told him that he should discontinue taking Risperidone because of its side effects. The first time was when Gary Purser went to him and was complaining about drooling saliva in February. He told Gary that that was a side effect of Risperidone and he should stop using it. In March, Gary went again went to see Dr. Jessie, accompanied by his wife, Helen, and again Dr. Jessie told them that he should stop the Risperidone. Helen then said she didn't want him to because he would began acting again as he had previously. Up until that time the medical records show that Risperidone was being prescribed to him on a monthly refill basis, but in May his pharmacy records reflect that he was prescribed 180 tabs, or 90 days supply by Dr. Jessie. Doctor Jessie's records; however, do not document any request for such a prescription, nor is there any notes reflecting that he ordered any more Risperidone for Gary Purser. Recently, I discovered that Helen Purser was the only

one to order and pick up Gary's medicine, and she alone gave it to him daily.<sup>6</sup> This revelation is in sharp contrast to her deposition testimony where she claimed that she did not give him his medicine, but a hired nurse or Sue, her daughter, dispensed his medication to him.<sup>7</sup> The falsity of her testimony was brought out by Gary Purser, Sr.'s sworn interview, conducted by your esteemed colleague Jack Crews, April 19, 2011, in his office, exactly one hundred (100) days before Gary Purser died. That interview was conducted to cover for Mr. Crews' legal work where he allowed and assisted Gary Purser's transfer of his valuable assets (1999 Gary Purser, Sr. Revocable Trust) to Ron Stepp, and ultimately to Elizabeth Tipton, Gary Purser, Jr. and Sue Ellen Van Zanten, his children. All of these persons are his firm's clients and two of them have interlocking business relationships with the firm's partners. At the time this occurred Jack Crews knew that there were restraining orders in the divorce action prohibiting Gary Purser from transferring any of his assets, and he also knew that there were allegations made by Helen Purser that he was incompetent, unable to care for himself or manage his business affairs.

Soon after Gary Purser, Sr. was buried Jack Crews took over as attorney in charge of the Helen Purser and Purser Family defense team. Up until that time he maintained that Gary Purser was competent close to the day he died.<sup>8,9</sup> After he took over as lead counsel he switched sides. He adopted the Purser Family's claims that Gary Purser suffered with Alzheimer's Disease, dementia and other mental disorders, and was incompetent. His new adopted pleadings claimed

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<sup>6</sup> Gary Purser interview, April 19, 2011, by Jack Crews, attached hereto as exhibit 1 and 2 for all purposes.

<sup>7</sup> Helen Purser deposition in cause 236,117-B, 146<sup>th</sup> Judicial District Court, Bell County

<sup>8</sup> Jack Crews testified in Federal court that Gary Purser was competent close to the day he died.

<sup>9</sup> He also maintained that Gary Purser, Sr. was competent, November 29, 2010, when he served his responses to discovery to Clayton Olvera's discovery request and requests for admission.

that Melissa Deaton and Denise Steele had somehow defrauded Gary Purser, Sr. of thousands of dollars and his community assets.<sup>10</sup>

Gary Purser's medical records did not support the notion that he was suffering from Alzheimer's,<sup>11</sup> so they looked around and came up with symptoms they found on the internet to convince the doctors Gary Purser was suffering from FTD (frontotemporal dementia).<sup>12</sup> It is a disease that normally occurs in patients much younger than Mr. Purser, and has other traits that did not match with the actual symptoms his wife claimed he was having. For instance, people suffering from FTD maintain their cognitive skills for years, and brain scans can diagnose the disease because the frontal lobe atrophies.<sup>13</sup> Some patients have been known to have unusual behavioral traits such as inappropriate sexual remarks toward others, craving sweets and taking their shoes and socks off in a restaurant. Helen Purser testified that Elizabeth had written her a note which listed the types of things FTD patients sometimes displayed. She dutifully told his doctors that he was suffering with these things, and they provisionally diagnosed him as having FTD. But patients who crave sweets, eat pies and cakes as she claimed he did do not lose weight as Mr. Purser did. In the last ninety (90) days of his life he lost thirty (30) pounds. Helen told his doctors that for the last thirty (30) days before she brought him in on his last admission, he had not eaten solid food, and that she had been giving him a liquid diet of ensure and vodka tonics.<sup>14</sup> Helen Purser, while her divorce was still pending, told the doctor that he was acting inappropriately toward waitresses and was sexually aggressive toward them and her. She tried to get the doctor, (not his primary physician) to declare that he should not be able to drive and have

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<sup>10</sup>This must have occurred during the time between my being hired and Gary Purser's death.

<sup>11</sup> He had three normal cat scans and a "grossly normal" PET scan.

<sup>12</sup> Crews dropped Alzheimer's from their 4<sup>th</sup> Amended Petition and went with FTD instead.

<sup>13</sup> Elizabeth had a PET scan performed on Gary Purser which was "grossly normal", no signs of abnormalities.

<sup>14</sup> Gary Purser admission notes July 24, 2011.

the department of public safety suspend his driving privileges. He suggested that Gary retake his driver's test to satisfy them he could drive, and he passed it much to their dismay.<sup>15</sup> He had a valid Texas Driver's License until the day he died.<sup>16</sup>

On April 19, 2011, Jack Crews had Gary Purser, Sr. make a sworn interview with a court reporter and videographer taking down his every word. In it they declared it was made for privileged purposes, "attorney work product", but they agreed that he could give a copy of it to Jeff Ray, Helen's attorney. They did not provide a copy to me although I had requested it in my discovery requests and request for disclosures in August almost a year earlier. The transcript and video were finally provided to my attorney after the judgment against me had been entered and they were trying to get the bankruptcy court to find the staggering judgment declared as non-dischargeable. It eviscerated their entire case. There, Mr. Purser sat; drooling from the Risperidone Helen was giving him every day against his doctor's orders, answering questions about his involvement in the suit against my clients, Melissa Deaton and Denise Steele. He flatly denied he ever had any sexual relationship with either lady, and dispelled all the relevant facts that his wife and family were claiming in their lawsuit against me, Melissa Deaton, and Denise Steele.<sup>17</sup>

The foregoing testimony and evidence was not presented to the Panel because the CDC persuaded them to apply collateral estoppel against me. They claimed that the jury's decision and answers to the charge precluded me from offering contradicting testimony. There are several reasons that this application of collateral estoppel is unfair. I was joined in the

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<sup>15</sup> His daughter called the doctor's office and said that Gary Purser had passed his driver's exam in February, 2011.

<sup>16</sup> Certified copy of DPS driver's records for Gary Purser, Sr., attached hereto and incorporated herein for all purposes..

<sup>17</sup> See exhibits 1 and 2.

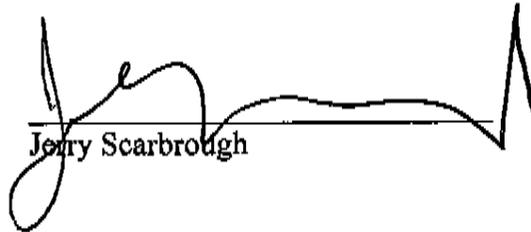
underlying suit after the court found that I intentionally destroyed evidence contained in the lost recorder. That finding is not supported by evidence in the trial record, and is currently on appeal at the Third Courts of Appeal in Austin. The issues which the jury found I was responsible for committing were not supported by evidence presented by the Purser's case. For example, there was no evidence that I obtained any money or valuable property from Gary Purser, nor was there any evidence that I defamed anyone. Likewise there was no evidence that I conspired with my clients to fraudulently obtain anything of value from Gary Purser or his Community Estate. Because they failed to prove their case I did not offer any evidence to rebut theirs. Judge Mayfield summed it up succinctly at the end of the trial after my attorney rested my case. He told David Fernandez, my lawyer, that his defense was "brilliant." He went on to say, "they taught us in law school not to offer any evidence if your opponent didn't prove up their case." That is why I did not testify or offer the foregoing evidence, and another reason is I was unable to offer some of the evidence discussed above is because it was intentionally hidden from me, and not discovered until later. Additionally, at the trial I was not representing Melissa Deaton or Denise Steele, but I could not offer any evidence that might harm their interest. They are the only witnesses who could testify as to the origin and validity of the so called "secret" recordings. My conclusions as to its validity would only have been speculation, because I was not a party to them. Additionally the evidence was clear that I did not destroy or lose the recorder. I did attempt to preserve it as soon as I was told that it might contain some relevant information.

The most egregious conduct was the fact that Judge Alice Oliver Parrot testified at the trial that I had committed unethical conduct by not producing or destroying the so called "secret" recordings that they had obtained from my IT professional. She claimed she didn't want to file a grievance against me until the trial was over because she didn't want to prejudice the jury. Her

testimony inflamed the jury against me and the other defendants to such an extent that instructions could not have cured the wrong. Her testimony lead directly to the punishing judgment the jury awarded against us.

I believe my Motion to Stay the Panel's suspension of my right to practice of law will prevail because the evidence attached to this affidavit clearly demonstrates that my continued practice of law will not pose a threat to the welfare of my clients or the public. I totally agree with the witnesses who have sworn to their affidavits supporting me, and affirm that my continuing practice of law will not pose a threat to the welfare of my clients or the public.

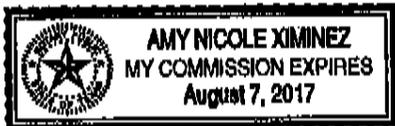
"Further affiant sayeth not."

  
Jerry Scarbrough

SWORN TO AND SUBSCRIBED before me on the 25<sup>th</sup> day of June, 2015.



Notary Public, State of Texas



# EXHIBIT "12-1"

STATE OF TEXAS §  
COUNTY OF Bell §

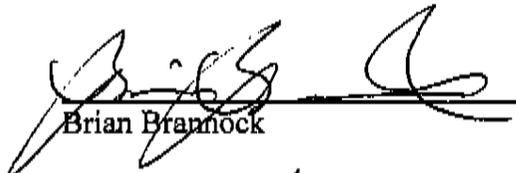
Before me, The undersigned authority, personally appeared Brian Brannock, who, being by me duly sworn, deposed as follows:

"My name is Brian Brannock. I am a former client of Jerry Scarbrough. The facts set out below are based upon my personal knowledge, and are true.

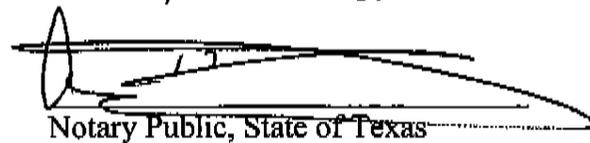
My wife and I were involved in automobile wreck May 14, 2010, in Belton, Texas. As a result of the wreck I have suffered serious personal injuries, which have caused me great financial loss, and unemployment. I retained a lawyer in Killeen to take legal action against the negligent driver soon after the wreck. The case languished in his office until I decided that I needed to find a lawyer that would fully represent me in my case. I asked Jerry Scarbrough to help me with my case, and he agreed to assist me. We entered a written contingent fee contract agreement and did not require me to pay any fee up front. I was very happy with the representation Jerry Scarbrough was providing me. He and his staff kept me informed of his work on the file, and they were always available to visit with me if I needed to ask them any questions.

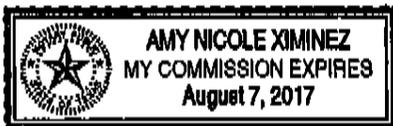
Based on my personal experience I feel that Jerry Scarbrough's continued practice of law will not pose a threat to his client's welfare or to the welfare of the public. His suspension from the practice of law would harm me and the public in my opinion. If his ability to practice law is restored I believe he will again zealously represent me and obtain a satisfactory resolution to the case.

"Further affiant sayeth not."

  
Brian Brannock

SWORN TO AND SUBSCRIBED before me on the 15 day of JUNE, 2015.

  
Notary Public, State of Texas



STATE OF TEXAS §  
COUNTY OF Belton §

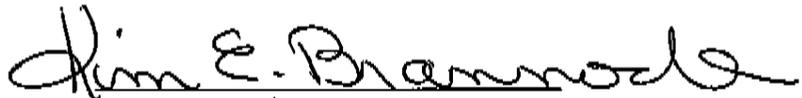
Before me, The undersigned authority, personally appeared Kim Brannock, who, being by me duly sworn, deposed as follows:

"My name is Kim Brannock. I am a former client of Jerry Scarbrough. The facts set out below are based upon my personal knowledge, and are true.

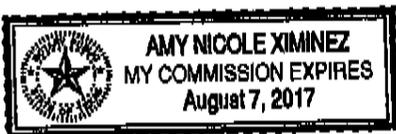
My husband and I were involved in automobile wreck May 14, 2010, in Belton, Texas. As a result of the wreck I have suffered serious personal injuries due to the severe personal injuries my husband sustained in the automobile wreck, which have caused me great financial loss, and mental anguish. I retained a lawyer in Killeen to take legal action against the negligent driver soon after the wreck. The case languished in his office until we decided that we needed to find a lawyer that would fully represent us in our case. I asked Jerry Scarbrough to help with the case, and he agreed to assist. We entered a written contingent fee contract agreement and did not require me to pay any fee up front. I was very happy with the representation Jerry Scarbrough was providing me. He and his staff kept me informed of his work on the file, and they were always available to visit with me if I needed to ask them any questions.

Based on my personal experience I feel that Jerry Scarbrough's continued practice of law will not pose a threat to his client's welfare or to the welfare of the public. His suspension from the practice of law would harm me and the public in my opinion. If his ability to practice law is restored I believe he will again zealously represent me and obtain a satisfactory resolution to the case.

"Further affiant sayeth not."

  
Kim Brannock

SWORN TO AND SUBSCRIBED before me on the 15<sup>th</sup> day of June, 2015.



  
Notary Public, State of Texas

STATE OF TEXAS §  
COUNTY OF Bell §

Before me, The undersigned authority, personally appeared Wayne Casey, Jr., who, being by me duly sworn, deposed as follows:

"My name is Wayne Casey, Jr. I am a client of Jerry Scarbrough. The facts set out below are based upon my personal knowledge, and are true.

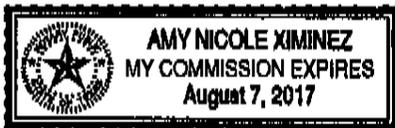
I was seriously injured when an elderly gentleman turned his car in front of a truck I was driving. The resulting collision killed him instantly, and caused the truck and its load of fertilizer to leave the road and hit a tree. The injuries I sustained in the wreck have caused me permanent debilitating injuries. I retained Jerry Scarbrough to represent me in a legal action to recover my damages. We entered into a written retainer agreement which is contingent on his successful representation in the suit he filed in McLennan, County, Texas. Currently the suit is in not proceeding because Jerry Scarbrough's right to practice law is suspended. He is the only lawyer I want to handle my case because he is very diligent and knowledgeable of the facts of my case.

Jerry Scarbrough's continuing practice of law will not pose a threat to the welfare of his clients or the public. I sincerely hope that the Board of Disciplinary Appeals stay any suspension Jerry Scarbrough is under and that he is allowed to serve me and the public as he has in the past.

"Further affiant sayeth not."

Wayne Casey  
Wayne Casey

SWORN TO AND SUBSCRIBED before me on the 20<sup>th</sup> day of June, 2015.



[Signature]  
Notary Public, State of Texas

STATE OF TEXAS §  
COUNTY OF Bell §

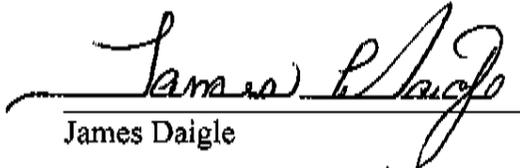
Before me, The undersigned authority, personally appeared James Daigle, who, being by me duly sworn, deposed as follows:

"My name is James Daigle. I am a former client of Jerry Scarbrough. The facts set out below are based upon my personal knowledge, and are true.

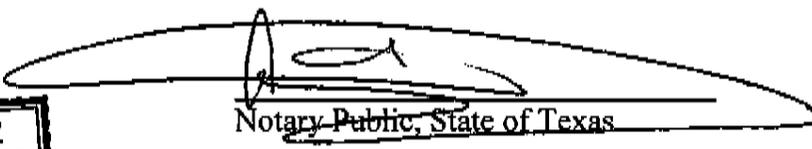
I hired Jerry Scarbrough to represent me regarding an automobile wreck that I was hurt in. He has done an outstanding job in recovering from the negligent driver, however he was underinsured. Jerry Scarbrough then looked to my automobile insurance policy, and began pursuing a claim under it to recover my damages from the under insured driver's protection coverage. Since his right to practice law was suspended I have retained another lawyer to assist me. My new lawyer is not as able as Jerry Scarbrough was and I feel like I am at a disadvantage because Jerry Scarbrough is not representing me now.

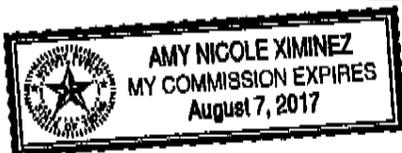
Based on my own experience I believe Jerry Scarbrough's suspension from the practice of law has jeopardized my case and those other clients he represented before his suspension. His continued practice of law will not pose a threat to the welfare of his clients or the public. The Board of Disciplinary Appeals should stay his suspension and he should be allowed to continue practicing law.

"Further affiant sayeth not."

  
James Daigle

SWORN TO AND SUBSCRIBED before me on the 16 day of June, 2015.

  
Notary Public, State of Texas



STATE OF TEXAS §  
COUNTY OF Bell §

Before me, The undersigned authority, personally appeared Byong Sook Lee-Kim, who, being by me duly sworn, deposed as follows:

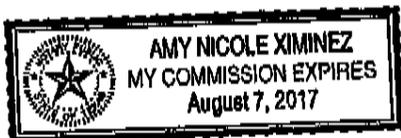
"My name is Byoung Sook Lee-Kim. I am a former client of Jerry Scarbrough. The facts set out below are based upon my personal knowledge, and are true.

My husband and I are native Koreans. We are in Texas because he is a Baptist minister who was preaching at a Korean church locally. The congregation hired Jerry Scarbrough to represent it in a church matter several years ago, and he was instrumental in bringing the matter to a successful conclusion. Because of him and his staff's work I have recommended him to friends and others when they have asked me to advise them on hiring an attorney. He has continued to help us when called upon, and recently we have asked him to help us with other legal matters of a personal nature. His continued practice of law will not pose a threat our welfare or to the public's welfare. We are satisfied with his legal work in the past and look forward to his assistance with our future needs. It would be very hard to find another lawyer to help us as well as Jerry Scarbrough has. We hope you will allow him to continue to practice law.

"Further affiant sayeth not."

  
Byoung Sook Lee-Kim

SWORN TO AND SUBSCRIBED before me on the 10 day of June, 2015.



  
Notary Public, State of Texas

STATE OF TEXAS §  
COUNTY OF Bell §

Before me, The undersigned authority, personally appeared Howard Liles, who, being by me duly sworn, deposed as follows:

"My name is Howard Liles. My case was referred to Jerry Scarbrough, by another attorney to handle the litigation matter. The facts set out below are based upon my personal knowledge, and are true.

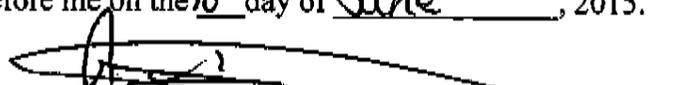
I was involved in a multi car automobile wreck with an 18 wheeled semi tractor truck, March 21 2013, in San Antonio, Texas. As a result of the wreck I have suffered serious personal injuries, which have caused me great financial loss, and unemployment. I retained a lawyer in Killeen to take legal action against the negligent driver soon after the wreck. The case languished in his office until shortly before the statute of limitations would have barred my recovery. I asked Jerry Scarbrough to help me with the file and he promptly filed suit in Bexar County, and the case was progressing along very smoothly until his license to practice law was suspended. The case is again being handled by the original referring lawyer. It has gone back to dormancy, and I fear that it has been put on a "back burner." I was very happy with the representation Jerry Scarbrough was providing me. He and his staff kept me informed of his work on the file, and they were always available to visit with me if I needed to ask them any questions.

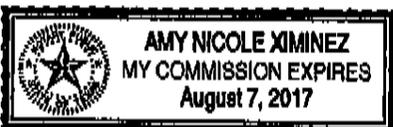
Based on my personal experience I feel that Jerry Scarbrough's continued practice of law will not pose a threat to his client's welfare or to the welfare of the public. His suspension from the practice of law would harm me and the public in my opinion. If his ability to practice law is restored I believe he will again zealously represent me and obtain a satisfactory resolution to the case.

"Further affiant sayeth not."

  
Howard Liles

SWORN TO AND SUBSCRIBED before me on the 10<sup>th</sup> day of June, 2015.

  
Notary Public, State of Texas



Affidavit of Michele Barber Chimene

COUNTY OF HARRIS           §  
  §  
STATE OF TEXAS           §

**BEFORE ME, the undersigned authority, on this day personally appeared Michele Barber Chimene, who by me being first duly sworn, upon her oath deposed and stated as follows:**

**“My name is Michele Barber Chimene. I am over the age of 18 years, am of sound mind and body, have never been convicted of a felony or crime of moral turpitude, am in all ways competent to make this affidavit and have personal knowledge of the facts set out herein, which are true and correct.**

**‘I am an attorney working with the CHIMENE LAW FIRM, and have practiced appellate law for approximately twenty-two years. I have never had sanctions levelled against me or one of my clients and I am familiar with the disciplinary rules and abide by them. I have also taken coursework in psychology at Dartmouth College in Hanover, NH, and have studied many books and scientific articles on “Medline” on “reading” people, in an effort to be better able to “size up” potential clients and opposition counsel. In the years since I began this study, I have gone from very little accuracy in determining when someone would not pay and when someone was lying to almost 100% accuracy in determining whether someone I was speaking with was lying or telling the truth. Therefore, I consider myself a good judge of character at this time.**

**‘During the last approximately four years I have worked closely with Jerry Scarbrough on a number of cases at the trial, appellate, mediation and United States Supreme Court level. These cases include (but are not limited to) *David Saverse v. State of Texas*, *Warmbrod v. USAA*, and *Olivera v. Purser v. Deaton*. I have had ample participation in pre-trial matters in his cases, and, on those cases which he appealed, I have read the complete records of the cases, so as to have a full comprehension of what went on at the trial level. In the cases in which I worked for Jerry Scarbrough, there was never any sign of discovery impropriety on the part of Mr. Scarbrough or his office. He has several times said that, “I give them everything and let the chips fall where they may.” I never, except for the *Purser* case, had any discovery battles where Mr. Scarbrough was accused of not producing everything he should. As his appellate attorney, I can say that there was no evidence that the “missing” tape was made by Mr. Scarbrough’s clients, no evidence that they ever had it, and definitely no evidence that Mr. Scarbrough ever had the tapes he was accused of failing to produce. The Pursers at that time were accused of having a private detective follow Mr. Purser, and this detective would have had**

access to tape Mr. Purser and anyone he was with. This case is currently on appeal in the Austin Court of Appeals. The sanctions are at issue on appeal. I have approximately a 70% success record on my appellate practice, so I have some professional judgment as to the likelihood of success of an appeal. Mr. Scarbrough's appeal of his sanctions has a very high probability of success, in my professional opinion.

The question that was posed to me was whether Mr. Scarbrough would be a detriment to the public, his clients or the legal profession if he was allowed to practice until this matter was final. My answer is a very strong, "No, he would not be a detriment." To make this answer, I reviewed some of my case files and searched Mr. Scarbrough's name on the web, as well as relying upon my current memory. There was one, (only one), case in which sanctions had been requested against Mr. Scarbrough; that case also involved Mr. Purser and Jack Crews. In that case, counsel was mad that Mr. Scarbrough did not nonsuit her client before having taken any sworn testimony of the parties. As an attorney who has taken a number of depositions and done a number of summary judgments, as well as filed nonsuits, it is my professional opinion that it would be highly irregular to nonsuit a party before having the chance to question that party. An attorney has a duty to zealously represent his client, and that, in my opinion, would not be zealous representation. The sanction was reversed on appeal.

There are several frequent ways that an attorney may easily run afoul of the disciplinary rules. Mr. Scarbrough violates none of them. First, one may "ambulance chase." I have had a long question and answer session with Mr. Scarbrough before this matter arose; I was hoping for suggestions for my practice. The ways Mr. Scarbrough obtains new clients is by word-of-mouth and through an advertisement and a website that conform with State Bar Rules. Mr. Scarbrough will not be a detriment to anyone with the ways he would obtain clients if this enforcement were stayed. It is, in my opinion, a severe detriment to Mr. Scarbrough's career that the Bar "Find a Lawyer" and other lawyer-finding tools such as AVVO.com post that he cannot practice due to disciplinary suspension, when said suspension is not final.

Another way in which attorneys run afoul of the Rules is to sit on cases and not do anything. This is not Mr. Scarbrough's way of doing business. The number to "contact a lawyer" on his website is the actual phone number I myself use to contact him. A prospective client immediately has his experienced legal ear. In my experience, most attorneys who post a phone number to "talk to a lawyer" have you connected to an answering service or paralegal when you call the number. In other words, it has been my experience that Mr. Scarbrough does not lie about this, although many lawyers do lie. This could be a very important lack of delay if the client is up against limitations. As far as sitting on cases, in all the cases on which I have worked with Mr. Scarbrough, he does not "sit" on cases. He works them up by doing prompt discovery and reasonable motion practice. He is one of the most intelligent attorneys I have worked for, so it is not unusual for him to suggest

grounds for summary judgment that I have not even thought of. An attorney is supposed to zealously represent his client. Many plaintiffs attorneys attempt to settle the case without doing much pretrial work, so they can get an easy payday. Not only does Mr. Scarbrough not do this (see above), but he pays out of his own pocket to take the case to the highest level, if he believes his client's case has merit. For example, look at *Warmbrod v. USAA*, a case in which the Texas Supreme Court determined that it was alright to ask a veteran or family of a serviceman to pay for their own medical care, despite the fact that one of the inducements (and promises) for serving our country was the promise of free medical care. Mr. Scarbrough knew that chances of success at the United States Supreme Court were small, but he believed his client's position that she should not have to pay for her care was the position supported by the wording of the law and was entirely correct. Mr. Scarbrough paid me, an attorney experienced in the preparation of petitions to the Supreme Court, a substantial sum of money to take Ms. Warmbrod's case to the Supreme Court. We did so, and although we were not successful. Ms. Warmbrod got full and zealous representation, without paying a dime because hers was a contingent fee case. My overview of Mr. Scarbrough's cases indicates that he always provides zealous representation, within the bounds of the Disciplinary Rules. For these reasons also – Mr. Scarbrough is honest, he can be easily communicated with, and he doesn't sit on cases but zealously represents his clients within the Rules – I conclude that Mr. Scarbrough would not be a detriment to anyone if allowed to practice law.

I simply cannot think of any way in which Mr. Scarbrough's practice of law would affect anyone or the Bar in any negative fashion. Mr. Scarbrough is honest, intelligent and knowledgeable, and if my observations of other Bell County area lawyers involved in the *Purser* case are any indicator, Mr. Scarbrough's clients will be much worse off if they have to seek representation elsewhere."

Further, affiant sayeth not.

  
Michele Barber Chimene

SUBSCRIBED AND SWORN TO before me, on this the 16th of June, 2015, to certify which witness my hand and seal of office

  
Notary Public

STATE OF TEXAS  
COUNTY OF BELL

§  
§

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Frank Cimino, who, after being by me duly sworn stated the following under oath:

"My name is Frank Cimino. I am over the age of fourteen (14) years, and I am competent to make this affidavit. The statements contained herein are true and correct.

"My name is Frank Cimino. I am an attorney licensed to practice in the state of Texas. I practice in the fields of personal injury law, criminal defense, family law, and immigration law. The facts set out below are based on my personal knowledge, and are true and correct.

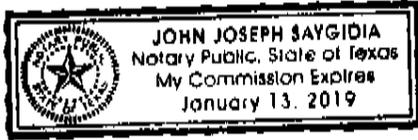
"I have known Mr. Scarbrough since 2003 when I arrived from law school to the central Texas area to practice law. Mr. Scarbrough was always helpful and provided sound legal advice that included client relations, court proceedings, civil procedure and dealings with the general public. I cannot say I ever received information or advice from Mr. Scarbrough that was anything but filled with integrity. He has been regarded in the legal community as a zealous advocate and a serious lawyer.

"The general public in this community has known Mr. Scarbrough as a pillar of strength and respect his advice. I have never known Mr. Scarbrough to mislead anyone in any case except for what has surfaced or has been alleged under cause No. 12-6031. I have never known anyone in this community to say that Mr. Scarbrough's advice is not sound or supported by the law. Based on my personal experience I feel Mr. Scarbrough's continued practice would not present a threat or harm to the public.

"I AM SIGNING THIS AFFIDAVIT VOLUNTARILY. I HAVE NOT BEEN COERCED OR THREATENED IN ANY WAY TO SIGN THIS AFFIDAVIT, NOR HAS ANY PROMISE OF ANY NATURE BEEN MADE IN EXCHANGE FOR MY EXECUTION OF THIS AFFIDAVIT."

*Frank Cimino*  
\_\_\_\_\_  
Frank Cimino, Affiant

SWORN and SUBSCRIBED before me, the undersigned authority, on this 17 day of June, 2015.



*John Joseph Saygidia*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
COUNTY OF TRAVIS       §

Before me, the undersigned authority, personally appeared Stephen W. Sather, who, being by me duly sworn, deposed as follows:

"My name is Stephen W. Sather. I am an attorney licensed to practice law in the State of Texas. I am Board Certified in Business Bankruptcy by the Texas Board of Legal Specialization and the American Board of Certification. My professional qualifications are set forth on the attached resume. The facts set out below are based upon my personal knowledge, and are true and correct.

"I have known Jerry Scarbrough professionally since 1994. We were co-counsel in Case No. 94-60631, Ted. C. Connell and related litigation in the United States Bankruptcy Court for the Western District of Texas. Additionally, I represented Mr. Scarbrough in Case No. 12-6031, Purser v. Scarbrough in the United States Bankruptcy Court for the Western District of Texas. I also represented one of Mr. Scarbrough's clients, Mr. Van T. Merrell, in Case No. 13-11326, Highway Technologies, Inc. in the United States Bankruptcy Court for the District of Delaware.

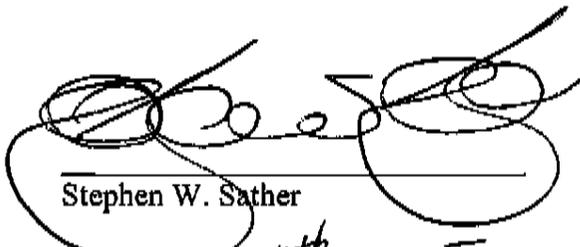
"In my experience, Mr. Scarbrough has been a zealous and dedicated advocate for his clients. It is my belief that the issues which arose in Case No. 236,117-B were the result of unique circumstances in that case and are unlikely to recur in the routine practice of his office. In making these statements, I have relied on my observations and the evidence received. I have not relied upon attorney-client privileged communications and do not intend to waive any aspect of the privilege.

"Mr. Scarbrough owes a substantial debt to my firm arising out of Case No. 12-6031. His continued ability to practice will allow him to earn income and make payments upon that debt. Failure to stay the suspension pending appeal would be harmful to my firm.

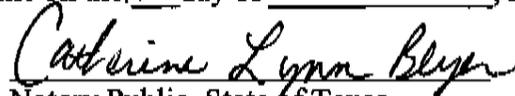
"Based on my personal experience I feel that Jerry Scarbrough's continued practice of law will not pose a threat to his client's welfare or to the welfare of the public. His suspension from the practice of law would harm me and the public in my opinion. If his ability to practice law is restored I believe he will zealously represent his clients within the boundaries of the law."

"Further affiant sayeth not."

Affidavit of Stephen W. Sather

  
\_\_\_\_\_  
Stephen W. Sather

**SWORN TO AND SUBSCRIBED** before me on the 16<sup>th</sup> day of June, 2015.

  
\_\_\_\_\_  
Notary Public, State of Texas



**STEPHEN W. SATHER**  
**BARRON & NEWBURGER, P.C.**  
1212 Guadalupe, Suite 104  
Austin, TX 78701  
(512) 476-9103 Ext. 220  
email: [ssather@bn-lawyers.com](mailto:ssather@bn-lawyers.com)

**CURRENT POSITION**

Partner, Barron & Newburger, P.C.

**PROFESSIONAL ACTIVITIES**

President, Bankruptcy Section of the Austin Bar Association, 2006-2008; Treasurer, 2001-2006  
Member, American Bankruptcy Institute, Federal Bar Association, Bankruptcy Section of the State Bar of Texas, , Commercial Law League of America (Bankruptcy Section Executive and Education Committees and author of amicus brief to en banc Fifth Circuit)  
Member, State Bar College  
Life Fellow, Texas Bar Foundation

**LAW RELATED HONORS**

Order of the Coif  
Board Certified in Business Bankruptcy by the American Certification Board and the Texas Board of Legal Specialization  
Texas Super Lawyer, 2006-2014  
Selected for 2010-2014 editions of Best Lawyers in America in the field of Bankruptcy and Creditor-Debtor Rights law.  
Selected as an AV Pre-Eminent Lawyer by Martindale-Hubbell for 2010-2014.  
Top-Ranked Foreclosure Attorney by Business Week, 2008  
Recipient, Judge Suzanne Covington Pro Bono Service Award from Volunteer Legal Services, June 2008  
Co-Recipient (with Barbara Barron), The Constant Gardener Award from Advocacy, Inc. for pro bono representation, January 2008  
Course Director, Advanced Consumer Bankruptcy Course, State Bar of Texas, 2011  
Course Director, Building Blocks of a Bankruptcy Practice, State Bar of Texas, 1999

**COURTS OF PRACTICE**

Licensed to practice before the United States Supreme Court, the Supreme Court of Texas, the Fifth Circuit Court of Appeals and the United States District Courts for the Eastern, Western, Northern and Southern Districts of Texas and the District of Colorado.

**EDUCATION**

1983, B.A. Summa Cum Laude in Economic and Political Science, Texas Lutheran University  
1986, J.D. with Honors, University of Texas School of Law  
Sunflower Award in Antitrust

**CIVIC INVOLVEMENT**

St. Martin's Lutheran School, Member School Board, 1996-98, 2004-06; Board President, 1998 and 2005; Board Secretary, 1996-1997.

Affidavit of Stephen W. Sather

Austin United Capital Soccer Club, Vice-President of Division III, May 2006-Jan. 2008; Vice-President of Referees, Jan. 2008-May 2010; Age Group Commissioner, August 2006-May 2009.

## PUBLICATIONS:

### Law Review Articles:

Resolving Conflicts Between Bankruptcy and Administrative Law, 11 *Tex. Tech. Admin. L. J.* 267 (Spring 2010)  
 Borrowing from the Taxpayer: State and Local Tax Claims in Bankruptcy, 4 *Am. Bankr. Inst. Law Rev.* 201 (Spring 1996)(with Patricia Barsalou and Richard Litwin)Tax Issues in Bankruptcy, 25 *St. Mary's Law Rev.* 1363 (1994)  
 Who Needs Chapter 11? Potential Alternatives for the Small Debtor, 4 *J. Bankr. Law & Prac.* 97 (Nov./Dec. 1994)  
 The Single Asset Debtor, 2 *J. Bankr. Law & Prac.* 343 (Sept./Oct. 1993)(with Adrian Overstreet).

### Journal and Newsletter Articles:

"Bullock and the Requirement of Scierter in Dischargeability Actions," *American Bankruptcy Institute Journal* (September 2013)  
 "One Year Later: How Has Schwab v. Reilly Changed Exemption Practice?," *American Bankruptcy Institute Journal* (November 2011)  
 "Ninth Circuit BAP Finds Wells Fargo Freeze Policy Violates Automatic Stay," *Business Law Today* (1/24/11)  
 "Supreme Court Review," *Debt*<sup>3</sup> (July/August 2010)(with Barbara M. Barron)  
 "Supreme Court to Decide Whether Means Test Allows Deduction for Unencumbered Vehicles," *American Bankruptcy Institute Journal* (June 2010), p. 12.  
 "Maintaining Professional Responsibility While Using Legal Technology," *Texas Bar Journal* (July 2009), p. 538. Re-printed in *The Computer and Internet Lawyer* (February 2010), p. 13.  
 "Say What? The Latest Word on Regulation of Attorney Speech Under BAPCA," *American Bankruptcy Institute Journal*, p. 12 (March 2009)  
 "The Great Bankruptcy Rush of 2005 and Its Aftermath: The View from Texas," *Am. Bankr. Inst. J.* (September 2006), p. 34.  
 "The Other Shoe Drops on Pro-Snax," *State Bar of Texas Bankruptcy Law Section Newsletter*, (Spring 2006), p. 8.  
 "The Shrinking Discharge," Pt. 1, Vol. 20, No. 6, *Debt*<sup>3</sup> 12 (Nov./Dec. 2005), Pt. 2, Vol. 21, No. 1, *Debt*<sup>3</sup> 18 (Jan./Feb. 2006).  
 "Trade Creditor and Small Business Protections Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005," *Texas Bar Journal* 1018 (Dec. 2005)(with Barbara Barron).  
 Highlights of BAPCA 2005 Changes to the Consumer Provisions of Title 11, Vol. 20, No. 5, *Debt*<sup>3</sup> (Nov. 2005)(special pull-out section)(with Barbara Barron  
 "Shakespeare for Lawyers: More Light Than Heat," *Am. Bankr. Inst. J.* (March 1998).  
 "Shakespeare for Lawyers: A Rose By Any Other Name Would Quack Like a Duck," *Am. Bankr. Inst. J.* (Nov. 1996).  
 "Shakespeare for Lawyers: Stalking Horse," *Am. Bankr. Inst. J.* (May 1996).  
 "Shakespeare for Lawyers: First Thing, Let's Kill All the Lawyers," *Am. Bankr. Inst. J.* (Dec./Jan. 1996)  
 "Shakespeare for Lawyers: The Quality of Mercy," *Am. Bankr. Inst. J.* (July/August 1995).

Affidavit of Stephen W. Sather

“Shakespeare for Lawyers: Pound of Flesh,” *Am Bankr. Inst. J.* (March 1995).  
 “Shakespeare for Lawyers: Hoisting One’s Petard,” *Am. Bankr. Inst. J.* (Oct. 1994).

Author of A Texas Bankruptcy Lawyers Blog, <http://steyesathersbankruptcynews.blogspot.com>

#### REPORTED DECISIONS:

##### U.S. Court of Appeals:

*Barron & Newburger, P.C. v. Texas Skyline, Ltd. (In re Woerner)*, 783 F.3d 266 (5<sup>th</sup> Cir. 2015)(*en banc*)  
*Wells Fargo Bank, N.A. v. 804 Congress, LLC (In re 804 Congress, LLC)*, 756 F.3d 368 (5<sup>th</sup> Cir. 2014)  
*BP RE, LP v. RML Waxahachie Dodge, LLC*, 744 F.3d 1371 (5<sup>th</sup> Cir. 2014)  
*Eggers v. Van Zandt (In re Eggers)*, 466 Fed.Appx. 337 (5<sup>th</sup> Cir. 2012)  
*Reed v. City of Arlington*, 650 F.3d 571 (5<sup>th</sup> Cir. 2011)(*en banc*)  
*Camp v. Ingalls (In re Camp)*, 631 F.3d 757 (5<sup>th</sup> Cir. 2011)  
*Fehmel v. Union State Bank (In re Fehmel)*, 372 Fed.Appx. 507 (5<sup>th</sup> Cir. 2010)  
*Bobby D Associates v. Walsh (In re Walsh)*, 143 Fed.Appx. 580 (5<sup>th</sup> Cir. 2005)  
*Gupta v. Eastern Idaho Tumor Institute (In re Gupta)*, 394 F.3d 347 (5<sup>th</sup> Cir. 2004)  
*Compuadd v. Texas Instruments (In re Compuadd Corporation)*, 137 F.3d 880 (5<sup>th</sup> Cir. 1998)  
*Schertz-Cibolo-Universal City School District v. Wright (In re Educators Group Health Trust)*, 25 F.3d 1281 (5<sup>th</sup> Cir. 1994)  
*In re Al Copeland Enterprises*, 991 F.2d 233 (5<sup>th</sup> Cir. 1993)  
*In re Laymon*, 958 F.2d 72 (5<sup>th</sup> Cir. 1992)  
*In re Greystone III Joint Venture*, 995 F.2d 1274 (5<sup>th</sup> Cir. 1992)  
*United States v. Moyer*, 951 F.2d 59 (5<sup>th</sup> Cir. 1992)  
*In re Dyke*, 943 F.2d 1435 (5<sup>th</sup> Cir. 1991)  
*Matter of American Healthcare Management*, 900 F.2d 827 (5<sup>th</sup> Cir. 1990)

##### U.S. District Court:

*Bounds v. Brown McCarroll*, 495 B.R. 725 (W.D. Tex. 2013)  
*Lowe v. Vazquez (In re Vazquez)*, 2013 U.S. Dist. LEXIS 44271 (W. D. Tex. 2013)  
*Smith v. Lynco-Electric (In re El Paso Refinery)*, 165 B.R. 826 (W.D. Tex. 1994)  
*In re Great-West Life Assurance Co.*, 7 Tex. Bankr. Ct. Rep. 303 (W.D. Tex. 1993)  
*U.S. Postal Service vs. Brazos County Appraisal District*, 736 F. Supp. 735 (S.D. Tex. 1988)

##### Bankruptcy Court:

*In re 804 Congress, LLC*, 529 B.R. 213 (Bankr. W.D. Tex. 2015)  
*Schwertner Backhoe Services v. Kirk (In re Kirk)*, 525 B.R. 325 (Bankr. W.D. Tex. 2015)  
*In re Parsons*, 2014 WL 714557 (Bankr. W.D. Tex. 2014)  
*Purser v. Scarbrough (In re Scarbrough)*, 516 B.R. 897 (Bankr. W.D. Tex. 2014)  
*In re Bounds*, 491 B.R. 440 (Bankr. W.D. Tex. 2013)  
*In re CRB Partners, Ltd.*, 2013 Bankr. LEXIS 800 (Bankr. W.D. Tex. 2013)  
*In re Lucas*, 2012 Bankr. LEXIS 5067 (Bankr. S. D. Tex. 2012)  
*Jasek v. Antolik (In re Antolik)*, 2012 Bankr. LEXIS 5126 (Bankr. W.D. Tex. 2012)  
*In re Wald*, 2012 Bankr. LEXIS 2552 (Bankr. W.D. Tex. 2012)

Affidavit of Stephen W. Sather

*Hutton v. Ferguson (In re Hutton)*, 436 B.R. 819 (Bankr. W.D. Tex. 2011)  
*Estate of Walser v. Antone's Records, Inc. (In re Antone's Records, Inc.)*, 445 B.R. 758 (Bankr. W.D. Tex. 2011).  
*Burns v. LTD Acquisitions (In re Burns)*, 2010 Bankr. LEXIS 896 (Bankr. S.D. Tex. 2010)  
*Cordier v. Plains Commerce Bank (In re Cordier)*, 2009 WL 890604, 2009 Bankr. LEXIS 888 (Bankr. D. Ct. 2009)  
*In re Douglass*, 413 B.R. 573 (Bankr. W.D. Tex. 2009)  
*Goldberg v. Craig (In re Hydro-Action, Inc.)*, 341 B.R. 186 (Bankr. E.D. Tex. 2006)  
*New Venture Partnership v. JRB Enterprises (In re JRB Enterprises)*, 188 B.R. 373 (Bankr. W.D. Tex. 1995)  
*In re Mr. Gattis, Inc.*, 162 B.R. 1004 (Bankr. W.D. Tex. 1994)  
*In re The Landing Associates, Ltd.*, 157 B.R. 791 (Bankr. W.D. Tex. 1993)  
*Wright v. Moffitt (In re Moffitt)*, 1992 Bankr. LEXIS 2581 (Bankr. S.D. Tex. 1992)  
*In re North American Oil & Gas, Inc.*, 130 B.R. 473 (Bankr. W.D. Tex. 1990)

State Court:

*Pagel & Sons, Inc. v. Gems One Corporation*, 2009 Tex. App. LEXIS 8035 (Tex. App.—Austin, 2009, no pet.)  
*Baragas v. Coupland State Bank*, 2001 Tex. App. LEXIS 7885, 46 UCC Rep. Serv. 2d (Callaghan) 565 (Tex. App.—Austin, 2001, no writ)  
*Day v. Tripp*, 1999 Tex. App. LEXIS 5550 (Tex. App.—Austin, 1999, no writ)

Affidavit of Stephen W. Sather

STATE OF TEXAS §  
COUNTY OF Bell §

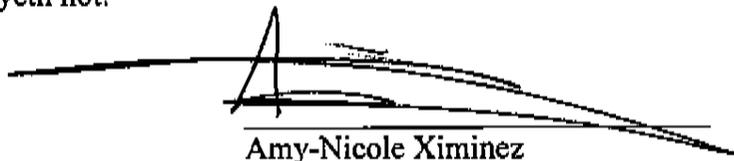
Before me, The undersigned authority, personally appeared Amy-Nicole Ximinez, who, being by me duly sworn, deposed as follows:

"My name is Amy-Nicole Ximinez. I am Jerry Scarbrough's legal assistant. The facts set out below are based upon my personal knowledge, and are true.

I am a graduate of an ABA accredited paralegal school, where I earned an AAS Degree in Paralegal Studies. I have worked for Jerry Scarbrough for ten years (10). He has a very diverse range of clients, big and small cases concerning all aspects of the law. Every case is important to him, and he faithfully represents each client. He is never too busy to talk to his clients or visit with them when they call or come by his office. He always strictly follows the rules of procedure and law when representing his clients. He does a lot of personal injury trial work and serves his clients well by documenting all discovery and negotiations done on their behalf.

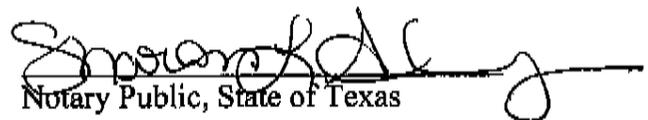
Not once has he ever instructed me to do any unethical act or mislead anyone about facts of a case. My job is to prepare our cases for trial and mediation. Jerry Scarbrough oversees all of my work and personally reviews and signs all documents we publish. Other lawyers contact him on a regular bases seeking his advice and experience, which he freely gives when asked. Jerry Scarbrough's continued practice of law will not pose a threat to the welfare of his clients or the public. Based on my knowledge, experience and training I feel that suspending him from practicing law would be harmful to the welfare of his clients and the public.

"Further affiant sayeth not."

  
Amy-Nicole Ximinez

SWORN TO AND SUBSCRIBED before me on the 19 day of June, 2015.



  
Notary Public, State of Texas

# TRIAL EXHIBIT "30"

## **INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY**

**THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psycho-surgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the capacity to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be eighteen (18) years of age or older or a person under eighteen (18) years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing, or by your execution of a subsequent Medical Power of Attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.



### MEDICAL POWER OF ATTORNEY

#### DESIGNATION OF HEALTH CARE AGENT

I, GARY W. PURSER, SR., appoint:

Name: Elizabeth H. Tipton  
Address: 3775 Elnora Street, Houston, TX 77005  
Phone: (713) 668-6240

AND

Name: Gary W. Purser, Jr.  
Address: 6503 Wells Fargo Drive, Killeen, TX 76542-9721  
Phone: (254) 526-5635

AND

Name: Sue Ellen van Zanten  
Address: 200 Cattail Circle, Harker Heights, TX, 76548  
Phone: (254) 833-5197

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document, each of whom may do so independent of the others of them and without the consent of the others of them. This Medical Power of Attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician. For all purposes of Section 1.02 HIPAA Provisions below, this Medical Power of Attorney takes effect immediately. This Medical Power of Attorney shall be effective for three years following my death.

**LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:** None except the Advance Directive to Physicians and Family or Surrogates I execute simultaneously with or after the execution of this document shall be controlling over the directions of my agent.

#### HIPAA PROVISIONS

All provisions under this Section shall be effective immediately for all purposes.

My Agent(s) shall have the status, power, authority and rights as my Personal Representative(s) for all purposes as provided in the Health Insurance Portability and Accountability Act of 1996, (Pub. L. 104-191), 45 CFR Section 160 through 164.

I direct each health care provider or Covered Entity to release to my Personal Representative any and all such medical information as may be requested by my Personal Representative and deemed necessary by my Personal Representative in order for my Personal Representative to perform their respective duties and/or for my Personal Representative to make any decision authorized hereunder, immediately or in the future. I authorize my Personal Representative to execute any and all releases and other documents necessary in order to obtain disclosure to my Personal Representative of my patient records and other protected health information that may be subject to and protected under the Health Insurance Portability and Accountability Act. Such authorizations may have an expiration date up to 3 years after my death.

I authorize my Personal Representative to appoint a Patient Advocate for me, who may be any person so designated by my Personal Representative. My Patient Advocate shall have the same right to ask questions and receive information regarding my medical condition(s), treatment, and any proposed treatment as I and my Personal Representative would have, and the right to be in attendance to me at all times.

\* UNLESS I EXPRESSLY INSTRUCT OTHERWISE, MY AGENT, PATIENT ADVOCATE, CARE GIVERS, CARE FACILITIES AND RESIDENCE FACILITIES SHALL GIVE INFORMATION ABOUT MY CONDITION AND WHEREABOUTS TO ALL WHO INQUIRE.

I authorize my Agent and any Personal Representative to take any and all legal steps necessary to ensure compliance with my instructions to provide access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of the courts as may be necessary to enforce my rights under the law and shall include attempting to recover attorneys fees against anyone who does not comply with this Medical Power of Attorney.

#### DESIGNATION OF ALTERNATE AGENT

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

**A. First Alternate Agent**

Name: NONE  
Address:  
Phone:

**B. Second Alternate Agent**

Name: NONE  
Address:  
Phone:

The original of this document is kept at 2113 Lakeview Loop, Killeen, TX 76543-5575.

The following individuals or institutions have signed copies: Thomas C. Baird, 15 North Main Street, Temple, Texas 76501.

#### DURATION

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

#### PRIOR DESIGNATIONS REVOKED

I revoke any prior Medical Power of Attorney.

#### ACKNOWLEDGMENT OF DISCLOSURE STATEMENT

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

I sign my name to this Medical Power of Attorney on Aug 26, 2010, at Killeen, Bell County, Texas.

Gary W. Purser, Sr.  
GARY W. PURSER, SR.

**STATEMENT OF WITNESSES**

I declare under penalty of perjury that the principal has identified himself or herself to me, that the principal signed or acknowledged this durable power of attorney in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this document, that I am not the person appointed as agent by this document, and that I am not a provider of health or residential care, an employee of a provider of health or residential care, the operator of a community care facility, or an employee of an operator of a health care facility.

I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to any part of the estate of the principal on the death of the principal under a will or by operation of law.

Witness Signature: Phyllis B. Murphy  
Print Name: Phyllis B. Murphy Date: 8-26, 2010  
Address: 2409 Canyon Creek Drive, Temple, TX 76502

Witness Signature: Kristi A. Patterson  
Print Name: Kristi A. Patterson Date: 8-26, 2010  
Address: 1867 Old Waco Road, Temple, TX 76502