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SEP 14 2015

Board of Disciplinary
Appeals

**EMERGENCY STAY IS REQUESTED
DOCKET NO.**

**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**

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

Respectfully submitted,

Jerry Scarbrough, Pro Se
P.O. Box 690866
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ORAL ARGUMENT IS RESPECTFULLY REQUESTED

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IDENTITY OF PARTIES AND COUNSEL

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, Chairperson, 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

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Honorable Lisa Richardson, Presiding Member
Docket No. A0111214896 & A0111214897**

PETITION FOR WRIT OF MANDAMUS, PROHIBITION AND INJUNCTION

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

Relator, Jerry Scarbrough, petitions this Board to issue a writ of mandamus, prohibition, or injunction compelling the Honorable Members of the Evidentiary Panel for State Bar District No. 08-5 and the Honorable Lisa Richard, Presiding Member, to immediately issue an order to stay his suspension of the Partially Probated Suspension it ordered in this disciplinary proceeding and order the Commission to return his bar license and card. Relator petitions BODA to order the commission to remove the Texas Bar website the language that says "not eligible to practice in Texas," until a final decision is made in his appeal.

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". References in this brief are CR is for Clerk's Record, and RR is for Reporter's Record.

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

Jerry Scarbrough, Relator brings this original Mandamus action seeking an immediate order to compel the Evidentiary Panel to stay its order suspending his license to practice law pursuant to the *Texas Rules of Disciplinary Procedure* §2.25. He timely filed a Motion to Stay the Suspension and met his burden of proof, but it was denied by the Evidentiary Panel for State Bar District No. 08-5, Honorable Lisa Richardson, Presiding Member. Although his appeal brief is not due the Bar published a notice which informed and gave notice to the world that his licenses had been suspended before this case has a final disposition.¹

ISSUES PRESENTED

Did the Evidentiary Panel abuse its discretion by denying Jerry Scarbrough's Motion to Stay the suspension?

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

¹ Notice of Jerry Scarbrough's suspension published on the State Bar of Texas Website.

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.²

On May 7, 2015, Jerry Scarbrough timely filed a motion to stay the suspension.³ Relator timely filed his notice of appeal, July 6, 2015.⁴

The Evidentiary Panel denied Relator's Motion to Stay Suspension, July 7, 2015.⁵

This Mandamus is brought to correct the Panel's action.

ARGUMENT

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."⁶ The Panel's denial of Jerry Scarbrough's motion to stay was arbitrary, and an unreasonable departure from precedent and settled judicial custom. Jerry Scarbrough is clearly entitled to relief because the Rule requires the Panel to grant the stay when he carries his burden such as he did here. See *Tilton v. Marshall*, 925 S.W.2d, 672, 682 (Tex. 1996); *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979) In review of the witnesses' testimony it is abundantly clear that Jerry Scarbrough has met his

² CR-2013

³ CR-2038

⁴ CR-3906

⁵ CR-3969, 3970

⁶ See Appendix 3.

burden of proof. The Commission did not offer a single witness or any other credible evidence to rebut the evidence Jerry Scarbrough offered in support of granting the stay

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.⁷ 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. A writ of mandamus would issue to correct a clear abuse of discretion. *In re Nitla S.A.*, 92 S.W.3d 419, 422 (Tex. 2002); *Liberty Nat'L Fire Ins. Co. v. Akin*, 927 S.W.2d 627, 629 (Tex. 1996); *Walker v. Packer*, 827 S.W.2d 833,839 (Tex. 1992.); *In Re: Prudential Insurance Company*, 148 S.W.3d 124 (Tex. 2004).

In this case the Evidentiary Panel abused its discretion when it clearly failed to analyze or apply the law correctly.⁸ The trial court has no discretion to misinterpret or misapply the law. *Walker*, 827 S.W.2d at 840; *In Re: Prudential Insurance Company*, 148 S.W.3d 124 (Tex. 2004). Jerry Scarbrough established that the Panel could have reached only one decision on the facts he presented. See *Akin*, 927 S.W.2d at 630. Thus, he met his burden of proof by offering twelve witnesses who testified from their own experiences as to his qualifications to continue to practice law in this state. Each testified that Jerry Scarbrough's continuing practice of law would not pose a threat to the welfare of his clients or the public. See their testimony as they testified to the Evidentiary Panel.^{9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20}

⁷ See Appendix 1

⁸ Tx. Rules Disciplinary Procedure 2.25, Appendix 2.

⁹ RR, Vol. 1, Motion to Stay, David Fernandez pg. 35, Ln. 22 through pg. 41, Ln. 21; pg. 43, Ln. 3 through pg. 44, Ln. 5

¹⁰ RR, Vol. 1, Motion to Stay, Nancy Perez Patron pg. 44, Ln. 23 through pg. 47, Ln. 16.

¹¹ Vol. 1, Motion to Stay, Michele Barbara Chimene pg. 49, Ln. 8 through pg. 51, Ln. 10; pg. 53, Ln. 2-10.

¹² RR, Vol. 1, Motion to Stay, Ernie Gibson, pg. 53, Ln. 24 through pg. 56, Ln. 2; pg. 58, Ln. 25 through pg. 59, Ln. 23

Additionally, Jerry Scarbrough offered testimony at the Evidentiary hearing from attorneys who practice in Bell County, and are familiar with him and his practice of law in the courts there. David Fernandez, testified, when asked if he is familiar with Jerry Scarbrough's reputation in the legal community in Bell County, for being fair and honest he said it was absolutely honest.²¹ Jack Tarver, a lawyer who has practiced law for 48 years is familiar with Jerry Scarbrough, testified as to his competence, based upon his personal experience, and dealing with him and his clients over 20 years. He knows of no reason why Jerry Scarbrough should not continue to practice law in Bell County.²² Dan Corbin, attorney, CPA, former Mayor, City Councilman of Killeen, and member of the Advertising Committee for the State Bar of Texas from 2000 through 2003. He testified that he was personally familiar with Jerry Scarbrough's reputation, and based upon his belief he thought he should be able to continue to practice law in Killeen.²³ Gary Jordan, attorney for 42 years in Waco, testified about his good professional

¹³ RR, Vol. 1, Motion to Stay, Wayne Casey, pg. 60, Ln. 18 through pg. 62, Ln. 24; pg. 64, Ln. 16 through pg. 66, Ln. 6

¹⁴ RR, Vol. 1, Motion to Stay, Brian Hugh Brannock, pg. 66, Ln. 16 through pg. 68, Ln. 17; pg. 70, Ln. 12-14.

¹⁵ RR, Vol. 1, Motion to Stay, Kim Elaine Brannock, pg. 71, Ln. 1 through pg. 72, Ln. 21; pg. 74, Ln. 2-9.

¹⁶ RR, Vol. 1, Motion to Stay, Howard Jeffrey Lyles, pg. 74, Ln. 21 through pg. 77, Ln. 12.

¹⁷ RR, Vol. 1, Motion to Stay, Amy-Nicole Ximinez, pg. 85, Ln. 10 through pg. 90, Ln. 17; pg. 92, Ln. 11, through pg. 94, Ln. 24.

¹⁸ RR, Vol. 1, Motion to Stay, Jerry Scarbrough, pg. 97, Ln. 1, through pg. 100, Ln. 7.

¹⁹ RR, Vol. 1, exhibit 2, Deposition of Frank Cimino, Pg. 5, Ln. 6 through pg. 8, Ln. 23; Pg. 24, Ln. 17 through pg. 26, Ln. 16.

²⁰ RR, Vol. 1, exhibit 4, Deposition of Steve Sather, Pg. 5, Ln. 13 through pg. 14, Ln. 13; Pg. 24, Ln. 22 through pg. 25, Ln. 21.

²¹ CR Vol. 2, Evidentiary Hearing, pg. 145, Ln. 3-10, 13-20.

²² CR Vol. 2, Evidentiary Hearing, pg. 171, Ln.9-25; pg. 172, Ln. 1-23; pg. 173, Ln. 1-3,10-25; pg. 174, Ln. 1-6.

²³ CR Vol. 2, Evidentiary Hearing, pg. 174, Ln.20-25; pg. 175, Ln. 1-25; pg. 176, Ln. 1-25; pg. 177, Ln. 1-25; pg. 178, Ln. 1-7.

relationship with Jerry Scarbrough, and opined that he was an honest and fair lawyer.²⁴ Michele Barber Chimene, who practices appellate law, and resides in Sugarland, Texas, filed the Appellant's Brief for Jerry Scarbrough, in the *Olvera v. Purser* case and other cases they worked on including one that was appealed to the Supreme Court of the United States, testified about the fitness of Jerry Scarbrough to practice law in this State. She also worked on the *Olvera v. Purser* case at the trial level, and Appellate level and opined that she thought his chances of winning the case on appeal was "Absolutely excellent."²⁵ Richard Mason, Assistant Attorney General, who has had cases where Jerry Scarbrough was his adversary, testified that he had a very good opinion of Jerry Scarbrough regarding his honesty as a lawyer, and felt like he was an upfront person and very ethical.²⁶ Jerry Scarbrough also testified as to his ability to practice law in this state and that his continued practice of law would pose no threat to the welfare of his clients or the public.²⁷

In order for Jerry Scarbrough to show he is entitled to mandamus he must meet two requirements. The first is to show that the panel clearly abused its discretion. This has been done as discussed earlier. The second requirement is to show that he has no adequate remedy by appeal. In *Re: Prudential Insurance Company*, 148 S.W.3d 124, (Tex, 2004); *Walker v. Packer*, 827 S.W.2d 833,839 (Tex. 1992.) The court said "The operative word, "adequate" has no comprehensive definition; it is simply a proxy for the careful balance of jurisprudential considerations that determine when appellate courts will use original mandamus proceedings to

²⁴ CR Vol. 2, Evidentiary Hearing, pg. 180, Ln.10-25; pg. 181, Ln. 1-25; pg. 182, Ln. 1-25,; pg. 183, Ln. 1-22.

²⁵ CR Vol. 1, Evidentiary Hearing, pg. 206, Ln.1-25; pg. 207, Ln. 1-13; pg. 208, Ln. 1-25,; pg. 209 Ln. 1-25; pg. 210, Ln. 1-25; pg. 211, Ln. 1-25; pg. 212, Ln. 25; pg. 213, Ln. 1-12; pg. 218, Ln.16-18.

²⁶CR Vol. 1, Evidentiary Hearing, pg. 221, Ln.8-25; pg. 222, Ln. 1-25; pg. 223, Ln. 1-12, 23-25,; pg. 224 Ln. 1-5.

²⁷ RR, Vol. 1, Motion to Stay, Jerry Scarbrough, pg. 97, Ln. 1 through pg. 100, Ln. 1.

review the actions of lower courts.” It goes on to say an appellate remedy is “adequate” when any benefits to mandamus review are outweighed by the detriments. Appeal is not an adequate remedy in this case because the stay that was denied deprives Jerry Scarbrough’s right to continue making a living for himself and providing important legal services for his clients who have no other way to proceed. Furthermore, if the right to continue to practice law was not important while the appeal is pending the rules of procedure would not have provided it.

The bar’s publication on its web site <https://www.texasbar.com> that Jerry Scarbrough is “Not Eligible to Practice in Texas (click for detail)” deprives him of his right to practice law in Texas before a final determination is made in this case.²⁸ His suspension was a denial of due process, and equal protection of the law. The breach has caused and continues to harm Jerry Scarbrough, and his clients have been severely harmed and denied due process.

Requirements of the Judgment to surrender his license, Bar card, notify his clients, opposing counsel, and the courts of his suspension deprives the Relator of his property rights under the law and Constitutions of the United States, and Texas. It also denies him due process and equal protection under the law.²⁹

BODA should immediately issue a mandamus, prohibition, injunction ordering the Evidentiary Panel to stay the suspension it ordered, and order the Commission to immediately return Jerry Scarbrough’s licenses, bar card, and publish a notice on the State Bar of Texas Website, stating that Jerry Scarbrough’s suspension has been stayed in lieu of the final decision in this case.³⁰

²⁸ Texas Rules of Disciplinary Procedure 6.07

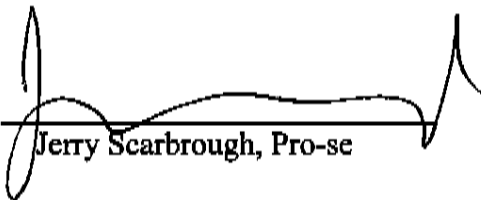
²⁹ Article 1 §19, Texas Constitution; and the Fourth, Fifth, and Sixth Amendments to The United States Constitution

³⁰ TRDP 6.07

PRAYER

WHEREFORE PREMISES CONSIDERED, Relator, Jerry Scarbrough, prays that this Honorable Board of Disciplinary Appeals schedule an emergency hearing on this petition for writ of mandamus, consider the evidence, oral argument, and enter mandamus ordering the Honorable Evidentiary Panel to stay its Order of Suspension, return Relator's license, bar card and remove the notation in the Texas Bar web site stating that Jerry Scarbrough is "Not Eligible to Practice in Texas", pending a final disposition on his case.

Respectfully submitted

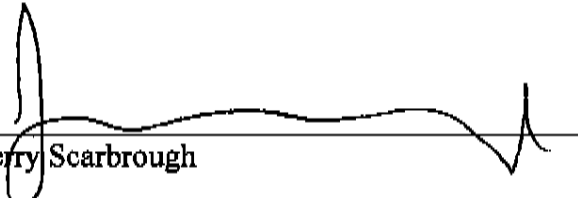
By: 
Jerry Scarbrough, Pro-se

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September 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

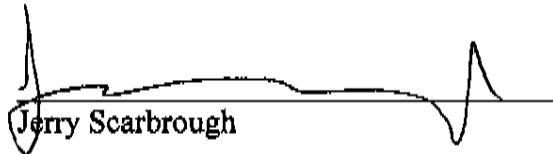
VERIFICATION

STATE OF TEXAS §
COUNTY OF BELL §

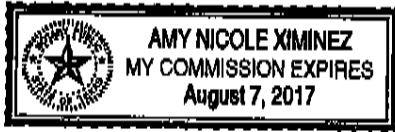
Before me, the undersigned notary, on this day personally appeared, Jerry Scarbrough, a person whose identity is known to me. After I administered an oath to him, upon his, oath he said the following:

“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 14th day of September 2015.



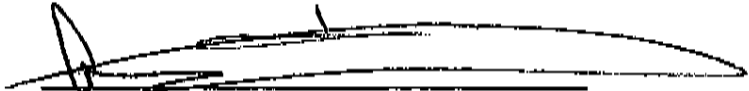

Notary Public, State of Texas

EXHIBIT "1"

MR. JERRY W. SCARBROUGH

Not Eligible to Practice in Texas (click for detail)

JERRY SCARBROUGH, P.C.

Bar Card Number: 17717500

TX License Date: 10/30/1981

Primary Practice Location: Killeen , Texas

*PO Box 690866
Killeen, TX 76549-0866*

Practice Areas: Litigation: Personal Injury

Statutory Profile Last Certified On: 10/11/2014

PRACTICE INFORMATION

Firm: Jerry Scarbrough, P.C.

Firm Size: Solo

Occupation: Private Law Practice

Practice Areas: Litigation: Personal Injury

Services Provided:

None Reported By Attorney

Foreign Language Assistance:

None Reported By Attorney

LAW SCHOOL

School

Degree earned

Baylor University
Doctor of Jurisprudence/Juris Doctor (J.D.)

Graduation Date 05/1981

CONTACT INFORMATION

Tel: 254-634-6266 ☎

COURTS OF ADMITTANCE

Federal:

US Supreme Court

Fifth Circuit Court of Appeals

Texas Eastern District Court

Texas Western District Court

Other Courts:

None Reported By Attorney

Other States Licensed:

None Reported By Attorney

PUBLIC DISCIPLINARY HISTORY

State of Texas*

| <i>Sanction</i> | <i>Entry date</i> |
|---|-------------------|
| Partially Probated Suspension | 04/07/2015 |
| <i>(Start-End)</i> | |
| <i>Sanction</i> 05/01/2015 - 04/30/2017 | |
| <i>(Start-End)</i> | |
| <i>Sanction</i> 05/01/2017 - 04/30/2025 | |

Other States

None Reported By Attorney

Note* Only Texas disciplinary sanctions within the past 10 years are displayed. For sanction information beyond 10 years, information about a specific disciplinary sanction listed above or to request a copy of a disciplinary judgment, please contact the Office of the Chief Disciplinary Counsel at (877) 953-5535. There is a \$15.00 fee for each disciplinary judgment copied. Make checks payable to: State Bar of Texas; PO Box 12487; Austin TX 78711 or by Credit Card.

Note**

The Texas Attorney Profile provides basic information about Attorneys licensed to practice in Texas. Attorney profile information is provided as a public service by the State Bar of Texas as outlined in Section 81.115 of the Texas Government Code. The information contained herein is provided "as is" with no warranty of any kind, express or implied. Neither the State Bar of Texas, nor its Board of Directors, nor any employee thereof may be held responsible for the accuracy of the data. Much of the information has been provided by the attorney and is required to be reviewed and updated by the attorney annually. The information noted with an asterisk (*) is provided by the State Bar of Texas. Texas grievance/disciplinary information will not appear on the profile until a final determination is reached. Access to this site is authorized for public use only. Any unauthorized use of this system is subject to both civil and criminal penalties. This does not constitute a certified lawyer referral service.

EXHIBIT "2"

8/2/2015

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 "3"



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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.

EXHIBIT "4"

Rule 34.3(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 34.3(o) 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;

EXHIBIT "5"

Sec. 6. COURTS OF APPEALS; TERMS OF JUSTICES; CLERKS. (a) The state shall be divided into courts of appeals districts, with each district having a Chief Justice, two or more other Justices, and such other officials as may be provided by law. The Justices shall have the qualifications prescribed for Justices of the Supreme Court. The Court of Appeals may sit in sections as authorized by law. The concurrence of a majority of the judges sitting in a section is necessary to decide a case. Said Court of Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error. Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law.

(b) Each of said Courts of Appeals shall hold its sessions at a place in its district to be designated by the Legislature, and at such time as may be prescribed by law. Said Justices shall be elected by the qualified voters of their respective districts at a general election, for a term of six years and shall receive for their services the sum provided by law.

(c) All constitutional and statutory references to the Courts of Civil Appeals shall be construed to mean the Courts of Appeals.

(Amended Aug. 11, 1891, Nov. 7, 1978, Nov. 4, 1980, Nov. 5, 1985, and Nov. 6, 2001.)
(TEMPORARY TRANSITION PROVISION for Sec. 6: See Appendix, Note 3.)

EXHIBIT "6"

9/11/2015

THE TEXAS CONSTITUTION ARTICLE 1. BILL OF RIGHTS

(Amended Nov. 3, 2009.)

Sec. 18. IMPRISONMENT FOR DEBT. No person shall ever be imprisoned for debt.

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.

Sec. 20. OUTLAWRY OR TRANSPORTATION FOR OFFENSE. No citizen shall be outlawed. No person shall be transported out of the State for any offense committed within the same. This section does not prohibit an agreement with another state providing for the confinement of inmates of this State in the penal or correctional facilities of that state.

(Amended Nov. 5, 1985.)

Sec. 21. CORRUPTION OF BLOOD; FORFEITURE; SUICIDES. No conviction shall work corruption of blood, or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

Sec. 22. TREASON. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

Sec. 23. RIGHT TO KEEP AND BEAR ARMS. Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

Sec. 24. MILITARY SUBORDINATE TO CIVIL AUTHORITY. The military shall at all times be subordinate to the civil authority.

EXHIBIT "7"



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Fourth Amendment

The Fourth Amendment originally enforced the notion that "each man's home is his castle", secure from unreasonable searches and seizures (http://www.law.cornell.edu/wex/unreasonable_search_and_seizure) of property by the government. It protects against arbitrary arrests (http://www.law.cornell.edu/wex/arrest), and is the basis of the law regarding search warrants (http://www.law.cornell.edu/wex/search_warrant), stop-and-frisk (http://www.law.cornell.edu/wex/stop_and_frisk), safety inspections, wiretaps, and other forms of surveillance (http://www.law.cornell.edu/wex/electronic_surveillance), as well as being central to many other criminal law topics and to privacy law (http://www.law.cornell.edu/wex/privacy).

Learn more... (http://www.law.cornell.edu/wex/fourth_amendment)

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.


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| Third Amendment | up | Fifth Amendment |
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Fifth Amendment

The Fifth Amendment creates a number of rights (http://www.law.cornell.edu/anncon/html/amdt5toc_user.html) relevant to both criminal and civil legal proceedings. In criminal cases (http://www.law.cornell.edu/wex/criminal_law), the Fifth Amendment guarantees the right to a grand jury (http://www.law.cornell.edu/wex/grand_jury), forbids "double jeopardy" (http://www.law.cornell.edu/wex/double_jeopardy), and protects against self-incrimination (<http://www.law.cornell.edu/wex/self-incrimination>). It also requires that "due process of law" (http://www.law.cornell.edu/wex/due_process) be part of any proceeding that denies a citizen "life, liberty or property" and requires the government to compensate citizens when it takes private property (<http://www.law.cornell.edu/wex/takings>) for public use.

Learn more... (http://www.law.cornell.edu/wex/fifth_amendment)

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Wex Resources

Fifth Amendment (http://www.law.cornell.edu/wex/fifth_amendment)

Criminal Law (http://www.law.cornell.edu/wex/criminal_law) / Criminal Procedure (http://www.law.cornell.edu/wex/criminal_procedure)

Due Process (http://www.law.cornell.edu/wex/due_process)

Substantive Due Process (http://www.law.cornell.edu/wex/substantive_due_process)

Miranda Warning (http://www.law.cornell.edu/wex/miranda_warning)

Indictment (<http://www.law.cornell.edu/wex/indictment>)

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U.S. Constitution (</constitution/overview>)

Sixth Amendment

The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay (http://www.law.cornell.edu/wex/speedy_trial), the right to a lawyer (http://www.law.cornell.edu/wex/right_to_counsel), the right to an impartial jury (http://www.law.cornell.edu/anncon/html/amdt6frag3_user.html), and the right to know who your accusers are (http://www.law.cornell.edu/wex/Right_to_confront_witness) and the nature of the charges and evidence against you. It has been most visibly tested in a series of cases involving terrorism (<http://www.law.cornell.edu/supct/html/03-1027.ZS.html>), but much more often figures in cases that involve (for example) jury selection or the protection of witnesses, including victims of sex crimes as well as witnesses in need of protection from retaliation.

Learn more... (http://www.law.cornell.edu/anncon/html/amdt6frag1_user.html#amdt6_hd4)

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.


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