



**BEFORE THE BOARD OF DISCIPLINARY APPEALS
Appointed By
THE SUPREME COURT OF TEXAS**

**HEATHER SCHAEFER
State Bar Card No. 24027840**

v.

**COMMISSION FOR
LAWYER DISCIPLINE
OF THE STATE BAR OF TEXAS**

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CAUSE NO. 44292

**JUDGMENT VACATING JUDGMENT OF DISBARMENT
AND REMANDING FOR NEW TRIAL**

On July 23, 2010, the Board of Disciplinary Appeals considered the appeal of Heather Schaefer from the Judgment of Disbarment signed March 3, 2009 by the 01A-2 Evidentiary Panel of the State Bar of Texas District 01A grievance committee in Cause Nos. D0050732097, D0080732685, and D0110733526. Appellee withdrew the original request for oral argument, and the case was submitted on the briefs and the record.

Having considered the record and briefs, the Board concludes that:


- (1) The record discloses fundamental error on its face. Fundamental error occurs where the record reveals that the tribunal did not have capacity to act as a court, *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990) (orig. proceeding) or where the public interest as declared in the statutes of Texas is directly and adversely affected. *Pirtle v. Gregory*, 629 S.W.2d 919, 920 (Tex. 1982) (per curiam).
- (2) The hearing record indicates that the evidentiary panel which heard the case consisted of only five members with one public member position “vacant.”

- (3) The evidentiary panel therefore failed to meet the statutory requirement that all panels of grievance committees shall consist of two-thirds attorney members and one-third public members. TEXAS RULES OF DISCIPLINARY PROCEDURE 2.07 and 2.17.
- (4) The statutory requirement that each panel consists of two-thirds attorney members and one-third public members is strict and inflexible. *In re Allison*, 288 S.W.3d 413, 417 (Tex. 2009).
- (5) The panel was not free to disregard the statutory mandates regarding panel composition. *Cafiero v. Comm'n for Lawyer Discipline*, BODA Case 37811 (May 10, 2007).
- (6) Because the panel failed to comply with the mandatory statutory composition requirement, it lacked capacity to act.
- (7) Because the panel lacked capacity to act the resulting judgment is void. *Mapco, Inc. v. Forrest*, 795 S.W.2d at 703.

IT IS THEREFORE ORDERED that the Judgment of Disbarment signed March 3, 2009 by the 01A-2 Evidentiary Panel of the State Bar of Texas District 01A grievance committee in Cause Nos. D0050732097, D0080732685, and D0110733526 is hereby **VACATED**.

It is further **ORDERED** that the case is **REMANDED** to the District 01A grievance committee for a new hearing on the merits.

SIGNED this 30th day of July 2010.



CHAIR PRESIDING