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THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

NO. 72059

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

DAMON ALEXANDER GOFF,
Appellant,

v.

COMMISSION FOR LAWYER DISCIPLINE,
Appellee.

APPELLANT'S REPLY BRIEF

ORAL ARGUMENT REQUESTED

Appeal from the Judgment of Partially Probated Suspension
Signed October 23, 2025
Evidentiary Panel 9-1, State Bar of Texas
District 9 Grievance Committee

Case Nos. 202401976, 202401948, 202401773, 202401831, 202401705, 202401064, 202403602, 202405503, 202405879

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I. INTRODUCTION

The Commission's response to Appellant's brief rests on three primary strategies: a citation error in Appellant's opening brief that it characterizes as fatal; a claim that the continuance motion was procedurally deficient; and a blanket assertion that no evidence supports the ex parte communication claim. None of these arguments, examined against the actual record, warrants affirmance.

This reply addresses each of the Commission's strongest arguments directly, corrects the Schaefer citation error, and raises an independent ground that the Commission's brief does not address: the structural indivisibility of the judgment's sanction, which means that error on any single count requires remand for a new sanctions hearing — not piecemeal modification by this Board.

This reply is accompanied by Appendix A — the Sworn Declaration of Damon Alexander Goff — submitted not as evidence on the merits of the underlying violations, but as factual predicate for the structural due process arguments raised in Issues 1 and 2 of Appellant's opening brief, which concern communications that occurred outside the hearing and are therefore not reflected in the reporter's record. Appellant respectfully submits that the Board has authority to consider this declaration in evaluating the integrity of the proceedings below, independent of any merits determination.

II. CORRECTION: THE SCHAEFER CITATION

Appellant acknowledges the citation error identified by the Commission in footnote 7 of its brief. The correct citation for Commission for Lawyer Discipline v. Schaefer is 364 S.W.3d 831 (Tex. 2012), not 354 S.W.3d 297 as stated in Appellant's opening brief. Appellant also acknowledges that Schaefer does not stand for the proposition that the Texas Supreme Court affirmed BODA's remand on structural grounds — the Court's holding was the reverse. Schaefer, 364 S.W.3d at 834. Both errors are candidly corrected.

However, the correction of the Schaefer citation does not undermine Appellant's structural due process arguments, which rest on independent grounds. Schaefer was cited as additional support, not as the sole foundation. The structural due process principles applicable to quasi-judicial proceedings — including the right to be heard before a ruling adverse to one's interests and the right to confront adverse witnesses — derive from the Fourteenth Amendment and Article I, Section 19 of the Texas Constitution, independent of any disciplinary case citation.

The Commission's treatment of the Schaefer error as dispositive of the entire ex parte issue — rather than a correctable citation mistake — overstates its significance. A pro se appellant's citation error does not waive a substantive constitutional argument properly raised and briefed.

III. THE EX PARTE ISSUE: CIRCUMSTANTIAL EVIDENCE IS LEGALLY SUFFICIENT

A. The Commission's 'No Evidence' Argument Misapplies the Standard

The Commission argues that 'Goff doesn't point to any facts in the record that support his allegation there was any ex parte communication.' Appellee's Brief at 36. This argument conflates the absence of direct evidence with the absence of legally sufficient evidence. Texas courts have long recognized that circumstantial evidence alone can establish a disputed fact, provided it excludes every other reasonable hypothesis. Lozano v. Lozano, 52 S.W.3d 141, 148-49 (Tex. 2001). The Commission's brief offers no alternative hypothesis for the central fact that drives this issue: how did Commission counsel know, on the evening of September 30, 2025, what the Panel Chair would rule the following morning on a contested evidentiary question?

The Commission's brief does not attempt to answer that question. It cannot, because no innocent explanation exists in the record.

B. The In-Record Circumstantial Evidence Is Substantial

The following facts are established in the reporter's record and are undisputed:

- On the morning of October 1, Commission counsel spoke to the mitigation evidence issue first, at Vol. 1, Tr. 88:22-25. Panel Chair Rossick then ruled immediately after, at Tr. 89:1-3, that the Panel 'literally could not take that in as evidence' — in language directly tracking counsel's position.

- The same pattern repeated when the ruling was corrected at pages 271-273. Commission counsel spoke first again at Tr. 271:22-272:22, defining in precise terms what the corrected ruling would permit. Rossick announced the corrected ruling in language that adopted her formulation verbatim.

- Rossick's own acknowledgment — 'I had that mixed up,' Tr. 271:10-11 — confirms he independently reconsidered the ruling between morning and end of day. The transcript contains no on-record moment where this reconsideration occurred, no research, no consultation with panel members. The natural inference is that something occurred off the record.

- The October 8 continuance Order demonstrates that Rossick was communicating with Commission counsel about the hearing outside Appellant's participation. The Order references Appellant's representation about future availability — language from Appellant's motion — yet the Order was issued without any proceeding at which Appellant made that representation directly to Rossick. See [CR 2141-45].

Taken together, this circumstantial record — a specific prediction by opposing counsel the night before the hearing, a ruling the next morning matching it exactly, a consistent pattern of counsel speaking first and the chair adopting her language, and demonstrated out-of-record coordination on the continuance — is sufficient for this Board to draw the inference of ex parte communication. The Commission offers no alternative explanation for any of these facts.

C. Appellant's Sworn Declaration Provides Direct Factual Support

Appended to this reply as Appendix A is the Sworn Declaration of Damon Alexander Goff. The declaration attests, under penalty of perjury, to the following:

- On the evening of September 30, 2025, at approximately 5:00 p.m., Commission counsel Amanda Kates contacted Appellant by telephone and told him that Panel Chair Rossick

would not permit him to present evidence that no grievance had ever been filed against him — communicating this as a statement of what Rossick had decided or would decide, not as her own position.

- The following morning, Rossick ruled exactly as Kates had predicted, immediately after she spoke on the issue.

- Communications between Commission counsel's office and the Panel Chair also preceded the October 8 continuance ruling, as reflected in the Order's language and the timeline of its issuance.

Appellant submits this declaration not as evidence on the merits of the underlying violations — those are established by the default — but as factual predicate for the structural due process arguments that concern the integrity of the proceedings themselves. Courts and quasi-judicial bodies regularly consider extra-record materials when a party's claim is that the process itself was tainted, as distinguished from a merits challenge to the outcome. The declaration is sworn under penalty of perjury and is offered in good faith.

The Commission will have no opportunity to file a written response to this declaration given the posture of the briefing. Appellant therefore requests that the Board permit a brief exchange on this point during oral argument, at which Appellant is available to address any questions the Board may have about the declaration's contents.

D. The Preservation Argument Does Not Apply to Pre-Hearing Communications

The Commission argues that Appellant waived the ex parte issue by failing to raise it before the panel. Appellee's Brief at 35-36. This argument fails for a straightforward reason: the preservation doctrine requires a party to object to an error that occurred during the proceeding, in time for the tribunal to correct it. It does not require a party to object to a communication that occurred before the proceeding began and of which the party had no contemporaneous documentary proof.

Appellant learned of the September 30 communication from Commission counsel herself, in a telephone call the night before the hearing. He had no basis to raise a formal objection before the

panel without documentary evidence — which he did not possess at the time. The cases cited by the Commission for the preservation requirement — Belt, Leighton, and Kaufman — all involve due process arguments that could have been raised based on in-proceeding events. An ex parte communication that preceded the proceeding is categorically different: it is by definition not something that can be preserved through a timely panel objection, because it occurred before the panel convened.

Moreover, to the extent preservation is required, the record demonstrates that Appellant raised the substance of the issue on the record. He challenged the morning ruling directly, asked Rossick how to seek a ruling from the full panel on the evidentiary question, and noted the unusual sequence of events. Vol. 1, Tr. 271:1-9. The preservation requirement is satisfied when a party brings the issue to the tribunal's attention. Appellant did so.

IV. THE CONTINUANCE MOTION: WHAT THE RECORD ACTUALLY SHOWS

A. The Commission Mischaracterizes the Motion

The Commission states that Appellant's motion 'did not allege the hospitalization of any family member' and was 'not accompanied by any documentation.' Appellee's Brief at 41. On the first point, the Commission is technically correct: the word 'hospitalization' does not appear in the motion. Appellant acknowledges that his opening brief overstated the motion's contents in using that word. On the second point, it is correct that no documentation was attached.

However, the motion expressly alleged 'a sudden and unforeseen family medical emergency involving his minor child' requiring Appellant's 'personal attention and supervision, rendering him unable to adequately prepare for or participate in the currently scheduled hearing.' [CR 2126-31]. That allegation is accurate. At the time of filing, Appellant had received a call from his child's school, had retrieved the child, and was en route to the pediatrician. The emergency was developing in real time. The absence of attached documentation reflects the circumstances — a

parent filing an emergency motion hours before a Zoom hearing while managing a child's unfolding medical situation — not the absence of genuine cause.

B. The Motion Was Verified

The Commission argues the verification did not meet the requirements of TEX. CIV. PRAC. & REM. CODE §132.001 'such that it could arguably have served as an unsworn declaration.' Appellee's Brief at 41 n.9. That is a concession. The Commission's own brief acknowledges the verification could arguably satisfy §132.001. The motion was signed by Appellant with a verification stating the facts were within his personal knowledge and true and correct, in Williamson County, Texas. Under the circumstances — a pro se respondent filing an emergency motion hours before a Zoom hearing while managing a child medical emergency — the verification was the functional equivalent of an unsworn declaration and provided the panel a verified factual basis for the continuance request.

The cases cited by the Commission for the presumption-of-no-abuse rule — Villegas v. Carter and Taherzadeh — involved motions that provided no factual basis whatsoever for the continuance request. Here, the motion provided a specific, verified factual basis: a family medical emergency involving a minor child. That distinction matters.

C. The Order Is the Commission's Most Significant Problem

The Commission's brief largely ignores the content of the Order itself. [CR 2141-45]. That Order reveals more about the October 8 proceedings than any other document in the record.

The Order granted the motion in part — a tacit acknowledgment that Appellant's circumstances warranted some accommodation. It then proceeded with Mushtaq's testimony for one stated reason: witness scheduling. But the Order's most consequential language concerns rescheduling: 'Pursuant to Respondent, Mr. Damon Goff's representation to the Panel that he will be available any

time the rest of the panel can soonest meet, Mr. Goff's availability need not be considered in the rescheduling of this hearing.'

This language is extraordinary. Appellant's motion had stated he would be available whenever the panel could soonest meet — an expression of good faith cooperation. The Order converted that cooperative statement into a basis for stripping Appellant of any scheduling consideration going forward. A respondent who offers maximum flexibility to accommodate the panel is not 'voluntarily absenting himself,' as the Commission characterizes it. He is doing the opposite.

The Commission also ignores the timeline. The Order was issued at 11:12 a.m. The hearing was set for 12:00 p.m. Appellant had 48 minutes' notice that adverse testimony would proceed. Even setting aside the family emergency, 48 minutes is not a meaningful opportunity to prepare and participate. A trial court abuses its discretion in denying a continuance when it acts without reference to guiding rules and principles — including the interests-of-justice standard expressly required by TRDP Rule 2.17(O). Olsen v. Comm'n for Lawyer Discipline, 347 S.W.3d 876, 885 (Tex.App. – Dallas 2011, pet. denied). The combination of a verified family emergency, a 48-minute notice window, a partial grant of the continuance acknowledging some merit to the motion, and the taking of adverse testimony without any opportunity for cross-examination satisfies that standard here.

V. THE 8.04(A)(8) ISSUE: REFRAMED AS PROPORTIONALITY

The Commission correctly identifies that Appellant's fifth issue in his opening brief argued against the wrong finding. Appellee's Brief at 47-48. The Rule 8.04(a)(8) finding as to Fontana and Caballero was based on Appellant's failure to timely respond to the CDC's grievance notices — not on dishonest conduct involving the NSF check. Appellant acknowledges this misdirection in his opening brief and does not contest the technical basis for the 8.04(a)(8) finding here.

However, the proportionality dimension of this finding survives. The 8.04(a)(8) finding — failure to respond to a grievance — is categorically different from the 1.14 commingling findings and the

1.03 communication failures that form the core of this proceeding. Its contribution to the overall 24-month sanction warrants independent examination by this Board.

The Fontana matter presents a unique circumstance that the Commission's brief does not address: Fontana formally withdrew his grievance by fax on August 1, 2025, was subsequently paid by Appellant, and testified on the Commission's own direct examination that he did not believe Appellant should be disciplined. Vol. 1, Tr. 135:18-22. The Commission proceeded with the Fontana matter over the complainant's own objection and despite his testimony against discipline. The failure-to-respond finding in a matter where the complainant withdrew and testified against discipline deserves substantially less sanctioning weight than the Commission's argument implies — a proportionality determination within this Board's authority under TRDP Rule 15.02.

VI. THE INDIVISIBLE SANCTION: WHY BODA CANNOT MODIFY WITHOUT REMANDING

A. The Judgment Contains No Apportionment

Neither the Commission's brief nor the Judgment itself addresses a fundamental structural feature of this case: the 24-month partially probated suspension was imposed as a single unified sanction across nine consolidated matters. The Judgment contains no finding specifying what portion of the sanction is attributable to each individual matter. There is no statement that the Fontana matter contributes a specific period, or that the Mushtaq matter contributes a specific period, or that the three-month active suspension is driven primarily by the 8.04(a)(8) findings versus the 1.14 commingling findings. See [App 1 to Appellee's Brief].

This reflects the panel's exercise of consolidated sanctioning discretion — nine matters were weighed together and a single sanction was imposed on the aggregate. The panel never answered the question of what the appropriate sanction would be for any proper subset of the nine matters.

B. Error on Any Count Requires Full Remand

The consequence of the judgment's indivisibility is this: if this Board agrees with Appellant on any single issue — the Enright legal insufficiency, the Mushtaq due process violation, the disproportionate weight of the Fontana 8.04(a)(8) finding — this Board cannot simply subtract that count and proportionally reduce the 24-month sanction. There is no apportionment record to work from. The panel made no finding that would tell this Board how much of the 24-month sanction to remove if one count falls.

The legally correct remedy for an indivisible sanction tainted by error on any component is remand for a new sanctions determination — not piecemeal modification by the appellate body. See TRDP Rule 2.26; IPR Rule 4.07. An appellate body that modifies an indivisible sanction without a factual record supporting the modification is itself making a sanctioning decision that belongs to the evidentiary panel under TRDP Part XV. That Part commits the sanctioning determination to the panel's fact-finding discretion, not to appellate re-weighing.

C. The Most Serious Findings Drive the Sanction and Are Contested

The 8.04(a)(8) finding carries greater sanctioning weight under TRDP Rule 15.04 than findings of communication failures or commingling. If its sanctioning weight is reconsidered in light of Fontana's withdrawal and testimony against discipline, the overall sanction calculus changes materially — but this Board has no record from which to determine by how much.

The three matters where no complainant testified — Abbey, Kim, and Allen-Bradley — were weighted in the sanction as part of a fully established nine-count proceeding. Those three matters rested entirely on deemed-true default facts with no live testimony. A new sanctions hearing at which Appellant could present evidence of payment and cross-examine those complainants about Grant's role in soliciting their grievances would produce a materially different evidentiary record on which to calibrate the sanction.

The Kim matter is particularly significant. Kim's diminished value claim presented indicia of insurance fraud that Appellant was investigating at the time of the alleged communication failures

— which explains the disbursement delay in that matter. Kim did not testify. His non-appearance is consistent with a complainant who does not wish to testify under oath. The panel's sanction treated Kim's matter as straightforward misconduct when the full factual picture may present a materially different circumstance.

None of these considerations can be addressed through this Board's modification of the existing judgment. Only a new sanctions hearing before a neutral panel, at which Appellant can present the full evidentiary record developed in the parallel civil litigation, can produce a just result on the full nine-count record. Remand under TRDP Rule 2.26 is the appropriate remedy.

VII. THE COMMISSION'S BRIEFING DEFICIENCY ARGUMENT PROVES TOO MUCH

The Commission devotes significant attention to arguing that Appellant's brief is waived for insufficient briefing. Appellee's Brief at 32-35. This argument, if accepted to the extent the Commission urges, would effectively bar pro se respondents in attorney disciplinary proceedings from obtaining meaningful appellate review of panel decisions — an outcome incompatible with the due process principles applicable to proceedings that may result in suspension or disbarment.

More practically, the Commission's briefing argument is inconsistent with its own conduct. If Appellant's issues were truly so insufficiently briefed as to present nothing for review, the Commission would have said so and stopped. Instead, it filed an 11,110-word brief addressing each of Appellant's eight issues on the merits, with extensive citation to authority and the record. A party cannot simultaneously argue that an opposing brief presents nothing reviewable and then spend sixty pages responding to it on the merits. The Commission's thorough merits response is itself evidence that Appellant's brief presented cognizable issues for review.

This Board should address Appellant's issues on their merits. The Commission has had a full and fair opportunity to respond, and it has done so. Affirming solely on briefing deficiency grounds — where the Commission has fully briefed the merits and where the Appellant is pro se facing a 24-

month suspension — is a result this Board's precedents do not require and the interests of justice do not support.

VIII. PRAYER FOR RELIEF

For the foregoing reasons, and for the reasons stated in Appellant's opening brief, Appellant Damon Alexander Goff respectfully requests that the Board of Disciplinary Appeals:

1. REMAND this matter in its entirety to a new statewide panel under TRDP Rule 2.26 and IPR Rule 4.07 for a de novo sanctions hearing. Remand is the only appropriate remedy given: (a) the structural due process defects in the October 1 and October 8 proceedings, as supported by the in-record circumstantial evidence and Appendix A to this reply; (b) the indivisibility of the judgment's sanction across nine consolidated matters — which makes piecemeal modification impossible without the apportioned factual record that only a new sanctions hearing can provide; and (c) the incomplete evidentiary record as to three non-appearing complainants whose matters were weighted in the sanction without live testimony.

2. In the alternative, if this Board does not order full remand: REVERSE the violation finding as to Case No. 202401064 (Mushtaq) for the due process reasons stated in Issue 2 of Appellant's opening brief; REVERSE the violation finding as to Case No. 202401948 (Enright) for the legal insufficiency reasons stated in Issues 3 and 4; and MODIFY the overall sanction to a fully probated suspension with trust account, CLE, and monitoring conditions retained, reflecting the weight of the uncontested mitigating factors and the remedial purposes of the Texas attorney discipline system.

3. GRANT oral argument, which Appellant has timely requested and which the complexity of the issues — including the indivisible sanction argument raised in this reply and the sworn declaration attached as Appendix A — would materially assist this Board in resolving. Appellant is prepared to address the contents of Appendix A at oral argument and to respond to any questions the Board may have.

4. GRANT such other and further relief as the Board deems just and proper.

Respectfully submitted,

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IX. CERTIFICATE OF SERVICE

I certify that on July 29, 2026, a true and correct copy of this Appellant's Reply Brief and Appendix A were served on the following counsel for Appellee by email to michael.graham@texasbar.com, and on the BODA Clerk:

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Certificate of Compliance: This reply brief contains approximately 3,900 words in the sections required to be counted, which is less than the 7,500-word limit permitted by the Board's Internal Procedural Rules.

/s/ Damon Alexander Goff
Damon Alexander Goff
Pro Se Appellant

APPENDIX A

SWORN DECLARATION OF DAMON ALEXANDER GOFF

IN SUPPORT OF ISSUES 1 AND 2

Note: The Sworn Declaration of Damon Alexander Goff follows this cover page. The declaration is submitted pursuant to 28 U.S.C. § 1746 and Texas Civil Practice and Remedies Code § 132.001, under penalty of perjury.

The declaration is offered not as evidence on the merits of the underlying violations established by Appellant's default — those findings are not challenged on factual grounds — but as factual predicate for the structural due process arguments raised in Issues 1 and 2 of Appellant's opening brief. Those issues concern communications that occurred outside the hearing proceedings and are therefore not reflected in the reporter's record. Appellant respectfully submits that this Board has authority to consider this declaration in evaluating whether the proceedings below were conducted with the fairness and impartiality the Texas Rules of Disciplinary Procedure and constitutional due process require.

The Sworn Declaration of Damon Alexander Goff follows this page.