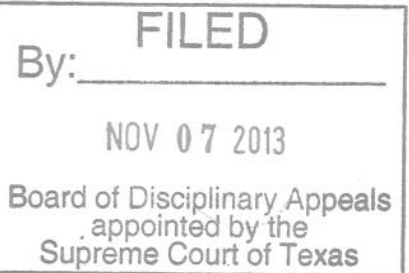


No. 52661



**Before the Board of Disciplinary Appeals
Appointed by
The Supreme Court of Texas**

STEPHEN CARRIAGAN,
APPELLANT
V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

*On Appeal from the Evidentiary Panel
For the State Bar of Texas District 4-5
No. S0110922865, S0061023869, S0071024008*

BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE
(ORAL ARGUMENT REQUESTED)

LINDA A. ACEVEDO
CHIEF DISCIPLINARY COUNSEL

LAURA BAYOUTH POPPS
DEPUTY COUNSEL FOR ADMINISTRATION

CYNTHIA CANFIELD HAMILTON
SENIOR APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY
COUNSEL
STATE BAR OF TEXAS
P.O. Box 12487
AUSTIN, TEXAS 78711-2487
512.427.1350; 1.877.953.5535
FAX: 512.427.4167

IDENTITY OF PARTIES AND COUNSEL

Pursuant to Rule 4.06(c)(1) of the Board's Internal Procedural Rules, the undersigned counsel of record certifies that the following listed persons and parties have an interest in the outcome of this case.

APPELLANT

STEPHEN CARRIGAN
3 Riverway, Suite 1140
Houston, Texas 77056

COUNSEL FOR APPELLANT

WAYNE H. PARIS
8 Greenway Plaza, Suite 818
Houston, Texas 77046
Telephone: 713.951.9100
Fax: 713.9611.3082

APPELLEE

COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS
P.O. Box 12487
Austin, Texas 78711

COUNSEL FOR APPELLEE

LINDA A. ACEVEDO
Chief Disciplinary Counsel

LAURA BAYOUTH POPPS
Deputy Counsel for Administration

CYNTHIA CANFIELD HAMILTON
Senior Appellate Counsel
STATE BAR CARD NO. 00790419

Email: cynthia.hamilton@texasbar.com

State Bar of Texas

P.O. Box 12487

Austin, Texas 78711-2487

512.427.1350; 1.877.953.5535

Fax: 512.427.4167

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**BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE**

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits this brief in response to the brief filed by Appellant, Stephen Carrigan. For clarity, Appellant will be referred to as “Carrigan” and Appellee as “the Commission.” References in this brief to any matter contained in the record before the Board shall be labeled CR (clerk’s record), RRI (reporter’s record from 4/12/13 evidentiary hearing), RRII (reporter’s record from 6/14/13 hearing on motion for new trial), and App.

(appendix). All references to rules are references to the Texas Disciplinary Rules of Professional Conduct¹ unless otherwise noted.

¹ *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app A. (Vernon 2011).

STATEMENT OF THE CASE

Type of Proceeding: Attorney Discipline

Petitioner/Appellee: The Commission for Lawyer Discipline

Respondent/Appellant: Stephen Carrigan

Evidentiary Panel: 4-5

Judgment: Modified Judgment of Partially Probated Suspension (App. 1)

*Violations found (Texas
Disciplinary
Rules of Professional
Conduct):*

Rule 5.03(a): With respect to a non-lawyer employed or retained by or associated with a lawyer, a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

Rule 5.03(b)(1): With respect to a non-lawyer employed or retained by or associated with a lawyer, a lawyer shall be subject to discipline for the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if the lawyer orders, encourages, or permits the conduct involved.

STATEMENT OF THE ISSUES

Whether a trial court may enter judgment based on stipulations of fact that provide sufficient support for the judgment.

Whether a reviewing court should disregard the parties' erroneous legal stipulations if their factual stipulations are sufficient to support the judgment.

STATEMENT OF FACTS

On April 12, 2011, the Commission filed a disciplinary petition alleging that Carrigan committed professional misconduct in connection with his representation of three separate clients (CR 119-24; App. 1). The disciplinary action was set to be heard on April 12, 2013 (CR 581). On the eve of trial, Carrigan agreed to stipulate to some of the allegations of misconduct in exchange for the Commission's agreement to dismiss the remaining allegations (CR 665-66; App. 2). The parties also agreed that the evidentiary hearing would be limited to the issue of sanctions (CR 665-66; App. 2). Counsel for the Commission and counsel for Carrigan signed a letter memorializing the terms of their agreement, and the letter was filed with the Panel on April 12, 2013 (CR 665-66; App. 2).

At the commencement of the evidentiary hearing, the parties announced their agreement to the Panel (RRI 6-7). The parties then discussed the terms of the agreement with the Panel at length on the record (RRI 16-17, 27-30, 126-31). The discussion made it clear that the parties intended to stipulate to the factual allegations set forth in three specific paragraphs of the evidentiary petition; they intended to stipulate that the conduct described in those paragraphs constituted violations of Rules 5.03(a) and 5.03(b)(1); and they agreed to limit the evidentiary hearing to the issue of sanctions (RRI 16-17, 27-30, 126-31). When the discussion became unclear with regard to the exact terms of the parties' agreement, the Panel

took care to question the parties to ensure that there was no misunderstanding regarding any term of the agreement (RRI 27-30).

Before closing the hearing, the Chair confirmed that both parties had a full opportunity to present their cases (RRI 146). Approximately three weeks later, the Panel entered judgment suspending Carrigan's law license (CR 707-713). The findings of fact describing the misconduct exactly matched the three paragraphs from the disciplinary petition to which the parties had stipulated at the hearing (CR 648-49, 708; App. 1, 3). And the conclusions of law recited that Carrigan violated Rules 5.03(a) and 5.03(b)(1) as the parties had agreed (CR 708; App. 3).

Carrigan filed a Motion for New Hearing (New Trial) or, Alternative Motion to Modify Judgment that raised two issues – that the Panel had improperly admitted hearsay evidence and that the judgment included punitive terms beyond those that the Panel had directed the Commission to include in the judgment (CR 715-17; App. 4). In the motion, Carrigan did not question any of the stipulations upon which the judgment was based or the limited nature of the evidentiary hearing (CR 715-17; App. 4).

At the hearing on the motion for new trial, Carrigan attempted to raise a new argument – that he intended to stipulate only to factual allegations but not to rule violations (RRII 4-5). Carrigan did not offer any evidence in support of his new

argument or explain the unambiguous stipulated rule violations in his letter agreement with the Commission (RRII 4-62).

On June 14, 2013, the Evidentiary Panel entered a modified judgment (CR 898-905; App. 5) and an order overruling Carrigan's motion for new trial (CR 896-97). Like the original judgment, the pertinent findings of fact in the modified judgment exactly matched the stipulated facts (App. 1, 5). Carrigan filed a motion to stay the modified judgment on June 17, 2013 (CR 920-24). The Panel heard the motion on July 12, 2013, and granted the stay on July 16, 2013 (CR 974-79, 982-85). Carrigan did not file any additional post-judgment motions.

SUMMARY OF THE ARGUMENT

On the eve of his evidentiary hearing, Carrigan agreed to stipulate to part of the Commission's allegations of misconduct in exchange for the Commission's agreement to dismiss the majority of the allegations. The agreed stipulations were filed in the record, and the parties confirmed the agreement on the record at the hearing. But after the Evidentiary Panel entered judgment suspending Carrigan's law license, he complained that the judgment was improper because he did not intend to stipulate that his conduct constituted misconduct.

In this appeal, Carrigan argues that the Board should reverse the judgment because there is no evidence to support it. His argument cannot succeed because the stipulated facts provide a reasonable basis for the Panel's decision that he

violated Rules 5.03(a) and 5.03(b)(1). Carrigan cannot complain about the limited nature of the evidentiary hearing because he agreed to limit the hearing and because it was not necessary to conduct a more extensive hearing once the parties stipulated to facts sufficient to support the conclusion that Carrigan violated the disciplinary rules. Carrigan also failed to raise any of his appellate complaints during his evidentiary hearing or in his motion for new trial. Thus, his complaints have not been preserved.

Carrigan's claim that the judgment should be reversed because he did not intend to stipulate that his conduct constituted misconduct also has no merit. Parties cannot stipulate to legal conclusions, so a judgment cannot stand or fall based on stipulated legal conclusions. The real question is whether the judgment is supported by the evidence. Because the Panel's conclusion that Carrigan violated the disciplinary rules is supported by the stipulations of fact, which provide a reasonable basis for the judgment, the judgment is proper and should be affirmed.

ARGUMENT

I. Under the substantial evidence standard of review, the evidence is sufficient if it provides a reasonable basis for the Evidentiary Panel's conclusion that Carrigan violated the disciplinary rules.

In attorney disciplinary cases, the substantial evidence standard of review applies. TEX. GOV'T CODE ANN. § 81.072(b)(7) (Vernon 2011) (State Bar Act); TEX. R. DISCIPLINARY P. 7.11, *reprinted in* TEX. GOV'T CODE ANN. tit. 2, subtit. G

app. A-1 (Vernon 2011); *Comm'n for Lawyer Discipline v. Schaefer*, 364 S.W.3d 831, 835 (Tex. 2012). Under the substantial evidence test, the findings of an administrative body are presumed to be supported by substantial evidence, and the party challenging the findings must bear the burden of proving otherwise. *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994). The reviewing court may not substitute its judgment for that of the administrative body and must consider only the record upon which the decision is based. *R.R. Comm'n of Tex. v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995); *Tex. State Bd. of Dental Exam'rs v. Sizemore*, 759 S.W.2d 114, 116 (Tex. 1988).

The substantial evidence standard focuses on whether there is *any* reasonable basis in the record for the administrative body's findings. *City of El Paso*, 883 S.W.2d at 185. Anything more than a scintilla of evidence is sufficient to support a finding. *Tex. Dep't of Pub. Safety v. Cuellar*, 58 S.W.3d 781, 783 (Tex.App.—San Antonio 2001, no pet.). The ultimate question is not whether a finding is correct, but only whether there is some reasonable basis in the record for the finding. *City of El Paso*, 883 S.W.2d at 185.

Questions of law are always reviewed de novo. *Schaefer*, 364 S.W.3d at 835.

II. The stipulated facts provide a reasonable basis for the conclusion that Carrigan violated Rules 5.03(a) and 5.03(b)(1).

Carrigan first complains that the evidence is insufficient to support the judgment because there is no evidence to support the findings of fact. Carrigan's

complaint is meritless. The record makes it clear that, on the record at the evidentiary hearing, Carrigan stipulated to three particular paragraphs of the factual allegations set forth in the disciplinary petition. Carrigan never withdrew his stipulations of fact, and they exactly match the findings of fact in the judgment. The stipulations of fact provide more than a scintilla of evidence to support the Panel's conclusions that Carrigan violated Rules 5.03(a) and 5.03(b)(1). Thus, the stipulations of fact, standing alone, provide sufficient support for the judgment.

Carrigan's second issue – that he withdrew his stipulations of law before the Panel rendered judgment on them – does not provide a basis for reversing the judgment. A party can only stipulate to facts, not matters of law, so Carrigan's stipulations of law are irrelevant to the validity of the judgment. Because the factual stipulations are sufficient to support the conclusion that Carrigan violated Rules 5.03(a) and 5.03(b)(1), the Evidentiary Panel properly rendered judgment based on the factual stipulations alone.

A. Because Carrigan stipulated to the findings of fact on the record during the evidentiary hearing, the Evidentiary Panel properly entered judgment based on the stipulated facts.

On April 11, 2013, Diane St. Yves, who was Carrigan's attorney of record at the time, signed a letter describing the parties' agreement regarding the allegations of misconduct that were set to be heard by the Evidentiary Panel on April 12, 2013 (CR 336, 665-66; App. 2). As part of their agreement, the parties stipulated that

Carrigan engaged in professional misconduct in violation of Rules 5.03(a) and 5.03(b)(1) (CR 665-66; App. 2). The parties also agreed that the evidentiary hearing set for April 12, 2013, would be limited to the issue of sanctions (CR 665-66; App. 2). The signed letter evidencing the parties' agreement was filed in the record on April 12, 2013 (CR 665; App. 2).

When the evidentiary hearing commenced on April 12, 2013, counsel for the Commission announced that the parties had agreed to stipulate to Carrigan's violations of Rules 5.03(a) and 5.03(b)(1) and that the parties had agreed to limit the evidentiary hearing to the issue of sanctions (RRI 6-7). Both St. Yves and Carrigan were present at and participating in the hearing, and neither objected to the announcement regarding the parties' settlement agreement (RRI 6-7).

Carrigan and his attorney also confirmed the agreement multiple times on the record. At the beginning of the hearing, Carrigan objected to deposition excerpts that the Commission offered as sanctions evidence (RRI 8-9). Carrigan made a hearsay objection, argued that the deponent's answers were nonresponsive, and also argued that the deposition excerpts went beyond the scope of the pleadings (RRI 8-9). A lengthy discussion of the proffered evidence and Carrigan's objections then took place. As part of that discussion, two panel members (Chandler and Trachtenberg) had the following exchange with St. Yves, Carrigan, and the Commission's attorney, wherein Carrigan and his attorney

confirmed that Carrigan intended to (1) stipulate to some of the allegations of misconduct and (2) limit the evidentiary hearing to the issue of sanctions:

Mr. Trachtenberg: *Just to be clear y'all are stipulating as to liability?*

Ms. Saucedo: *Yes.*

Mr. Chandler: *Stipulating a rule violation.*

Mr. Trachtenberg: *So the fighting is over the evidence that goes to damages?*

Ms. St. Yves: *Correct. Just the same.*

Mr. Chandler: We're going to talk about that with everybody out of the room. The impact of the ruling given the stipulation on liability.

Mr. Carrigan: Just real quick, Mr. Chandler, good question. I am not stipulating to any facts that this was true or that there was –

Mr. Chandler: No. We understand. We're going to have a long discussion without you here on Rules 5.03A and B1.

Mr. Carrigan: And the last thing I will say and thank you for your patience with me, is *if you will look at the allegations in their petition they made against me on this Chapa that is very close to what I am stipulating to and the reason for the stipulation.* There is nothing in their petition about a hundred dollars or this conversation so that's why we argue it's beyond the petition.

(RRI 16-17) (emphasis added).

As the discussion of Carrigan's objections continued, Carrigan made ambiguous comments regarding his stipulations. The Panel took care to clear up the ambiguity and ensure that there was no misunderstanding regarding the nature and extent of the parties' stipulations. And in response to the panel's direct questions regarding the stipulations, Carrigan unequivocally confirmed that he was stipulating to the allegations of misconduct set forth in paragraphs 12, 13, and 14 of the evidentiary petition and that he was stipulating to violations of Rule 5.03(a) and Rule 5.03(b)(1):

Mr. Carrigan: May I?

Mr. Chandler: Mr. Carrigan, don't argue your case. Make it just on these evidentiary rulings. You heard my question about why I'm a little concerned about these offers. Do you have a point on those issues?

Mr. Carrigan: Yes, sir. Real quick. And I appreciate it. Maybe it's obvious but I have not stipulated or do I believe any of this alleged misconduct – and I ask you before you decide these – read what they have alleged against me, the factual circumstances. It has nothing to do with what she's trying to introduce now. It's not in there. So it's unfair to me. *This is what I had notice of that she was claiming the facts and circumstances about this lack of supervision was about. And there was nothing in there about a hundred dollars or these conversations so I'm here – and so I'm here – I stipulated based upon what they plead. So I ask you to take a look at it.*

Mr. Chandler: *Give me this – for the purposes of, what is the pronoun “this.” First amended evidentiary petition?*

Ms. St. Yves: *Correct.*

Mr. Carrigan: *Third cause of action on Chapa paragraph 12, 13, and 14.* There is absolutely nothing – no notice of anything about this alleged hundred dollars or these conversations. It’s just not in there.

Mr. Chandler: Okay. But what you have agreed is what they claim in here, that’s the violation. You agreed to what they say.

Ms. St. Yves: Failure to supervise.

Mr. Carrigan: I agree 12, 13, and 14 they claimed happen, I’m his employer. Bottom line the – it stops with me. But if there is something wrong in 12, 13, and 14, those facts and circumstances –

Mr. Chandler: Do you think that the offer of money is relevant to the determination about whether this happened?

Mr. Carrigan: I think that’s the only reason – not –

Mr. Chandler: Answer my question. Do you think the offer of money is relevant to whether these happened? That may not be relevant to you because you said I did fail to supervise. But my question is when we determine punishment, is the fact that there was money involved relevant to how egregious we think the conduct you did stipulate to is?

Mr. Carrigan: No, I don’t believe.

Mr. Trachtenberg: Just so I'm clear, may I? 12, 13, and 14 that you just pointed us to. You're stipulating to those facts, aren't you?

Mr. Carrigan: I'm stipulating to those facts, I'm not necessarily stipulating that that constitutes misconduct. But I'm stipulating – but I will stipulate to those facts and those facts only –

Mr. Trachtenberg: As I understand it though you've also stipulated to two misconduct.

Mr. Carrigan: About supervising over these particular facts.

Mr. Chandler: Your stipulation of a violation of Rule 5.03A and B1 is because you agree those facts are true. And because you agree those facts are true, you've said, "Yes, I did violate 5.03A and B1."

Mr. Carrigan: But I'm not stipulating that that constitutes misconduct. I'm not stipulating anything there is wrong.

Mr. Chandler: *Time out. Because I thought we had a stipulation as to misconduct. Do we or do we not have a stipulation that Mr. Carrigan violated rule 5.03A and B1. I thought we did.*

Mr. Carrigan: *Based on these facts.*

Mr. Chandler: *So the answer is yes, we do? Mr. Carrigan, for the record, you stipulate you violated 5.03A, 5.03B1 based on the facts alleged in the first amended evidentiary petition at the third cause of action paragraphs 12, 13, and 14. True?*

Mr. Carrigan: *Correct.*

(RRI 27-30) (emphasis added).

Later in the hearing, questions posed to Carrigan by his attorney again confirmed that he was stipulating to some of the allegations of misconduct:

Ms. St. Yves: Mr. Carrigan, based on the facts before the panel and the allegations that you have stipulated to, what are you asking this panel to do with respect to sanctions? We've stipulated to attorney's fees. What is the sanction that you're asking for?

Mr. Carrigan: I love my profession. I've had 32 years. And I think you heard a little bit of it, well-deserved, well-earned reputation. I like to keep that intact. I believe it should be kept intact. And I would ask this Commission to sanction me with a private reprimand.

Ms. St. Yves: And you will of course pay the cost?

Mr. Carrigan: Yes, ma'am.

Ms. St. Yves: I have no further questions.

(RRI 123-24). And Carrigan himself described his understanding of the nature of the misconduct that his stipulations covered:

Mr. Chandler: . . . You agreed, Mr. Carrigan, at the outset that you did violate rule 5.03A, B, and 1. And B1 says you failed to supervise somebody in your office who did something that you as a lawyer couldn't do yourself. What does that person do? What is your understanding of what that person did such that you had to take responsibility for failing to supervise that person and who is that person?

Mr. Carrigan: It's Israel Zavala. My understanding is what the wrongdoing that he is accused of is that he took a call from an individual at an accident scene, a potential client at an accident scene. . . .

(RRI 126).

Mr. Chandler: Mr. Carrigan, what is it you believe you did such that you agreed that you were in violation of 5.03A and B1?

Mr. Carrington: I've struggled with that, Mr. Chandler, and I'm not trying to back off what I did. But I think I'm a guy who takes responsibility. I'm not a guy who passes it off. He's my employee. The buck stops with me is the best I can tell you. If what he did there, if there was something improper about it, that is my responsibility.

(RRI 130-31).

Before closing the hearing, the Chair of the Evidentiary Panel confirmed that Carrigan had offered all evidence that he wished to offer and otherwise had a full opportunity to be heard. The responses of Carrigan's attorney demonstrate that Carrigan had no complaints regarding the nature or extent of the hearing and that he expected the Panel to issue a judgment within thirty days as required by Rule 2.17P of the Texas Rules of Disciplinary Procedure. The statements refute Carrigan's arguments on appeal that his hearing was incomplete or that he expected a more extensive hearing:

Mr. Chandler: Ms. St. Yves, do you have anything else?

Ms. St. Yves: I have no further witnesses or evidence. We rest.

Mr. Chandler: There are no more questions from the panel. Thank you. At this time we're going to close the evidence for purposes of the sentencing portion of

the punishment phase. Do we need to do anything else today?

We are not going to deliberate today. We're going to wrap it up and we're going to come up with another date where we can reconvene and deliberate. But it won't be right now.

Ms. Saucedo: No. You can just communicate to my office when you're ready either –

Ms. St. Yves: It has to be in 30 days that the –

(RRI 146).

In short, the arguments and testimony of record plainly show that Carrigan knowingly stipulated to the factual allegations set forth in paragraphs 12, 13, and 14 of the evidentiary petition. The Evidentiary Panel took steps to clarify any uncertainty regarding the stipulations in order to ensure that there were no misunderstandings and the nature and extent of the stipulations were clearly stated on the record. The record also shows that Carrigan knowingly agreed to limit the evidentiary hearing to the issue of sanctions but that the Panel nonetheless provided him with a full opportunity to be heard.

Because Carrigan plainly stipulated to the facts on the record, he cannot now complain about the Evidentiary Panel's entry of judgment based on the stipulated facts. The pertinent findings of fact set forth in the judgment exactly match Carrigan's stipulations (App. 1, 5). As the Texas Supreme Court has explained, "A stipulation is 'an agreement, admission, or concession made in a judicial

proceeding by the parties or their attorneys respecting some matter incident thereto.” *Shepherd v. Ledford*, 962 S.W.2d 28, 33 (Tex. 1998). Once the trial court accepts the parties’ stipulation, it becomes a conclusive judicial admission as to the facts asserted, with the parties subsequently estopped from claiming to the contrary. *Id.*; *City of Houston v. Williams*, 353 S.W.3d 128, 146 n. 23 (Tex. 2011). Thus, Carrigan cannot now challenge the stipulated facts. *Id.*

Similarly, Carrigan cannot complain about the limited nature of the evidentiary hearing because he agreed to limit the hearing (CR 665-66; RRI 6-7). In addition, the Panel provided a full opportunity for Carrigan to be heard, and he clearly acknowledged on the record that he had presented all evidence he wished to present (RRI 146).

B. In his motion for new trial, Carrigan did not raise any issue regarding the parties’ stipulations or the agreement to limit the evidentiary hearing to the issue of sanctions.

In his motion for new trial, Carrigan did not raise any complaint regarding the stipulations or the limited nature of the evidentiary hearing, although to preserve any such complaint for appeal, he was *required* to raise it in a timely motion for new trial.² To preserve a complaint on which evidence must be heard, a party must raise the complaint in a timely motion for new trial. TEX. R. CIV. P. 324(b)(1). Otherwise, the complaint is waived and cannot be raised on appeal.

² The only issue raised in Carrigan’s motion for new trial was a complaint regarding the Panel’s admission of hearsay evidence from deposition testimony (CR 715-17).

If evidence must be considered in order to determine a party's complaint regarding a judgment, it is critical for the complaint to be raised in a timely motion for new trial so that both parties will have an opportunity to fully address the matter. The opposing party is entitled to a fair opportunity to present its own counter evidence. In this case, the Commission had no notice of Carrigan's complaints regarding the stipulations, so the Commission was deprived of a meaningful opportunity to address his complaints at the hearing on the motion for new trial.

When Carrigan complained about the stipulations orally in the hearing on his motion for new trial, the Panel responded by correctly pointing out that they took pains to ensure that the nature and extent of Carrigan's stipulations were fully understood and correctly incorporated into the judgment (RRII 5-11). Carrigan offered no evidence to the contrary, not even his own testimony. The only evidence on the issue consisted of (1) Carrigan's prior statements stipulating to the facts and rule violations during his evidentiary hearing and (2) the written stipulations signed by counsel for both parties that were filed in the record prior to the entry of judgment.

The Panel also put Carrigan on notice that his motion for new trial failed to raise any complaint regarding the stipulations and, therefore, his complaint was not properly before the Panel (RRII 8-9). As a result, Carrigan was aware of the need

to raise the issue properly, which he potentially could have done through a second motion for new trial after the Panel entered its modified judgment. Carrigan *never* filed a motion raising his complaints regarding the stipulations, and he did not otherwise raise them in a timely manner. Thus, Carrigan cannot complain on appeal about the Panel's decision to ignore his arguments regarding the stipulations. TEX. R. APP. P. 33.1; *Low v. Henry*, 221 S.W.3d 609, 619 (Tex. 2007); *Moritz v. Preiss*, 121 S.W.3d 715, 721 (Tex. 2003).

For all of these reasons, Carrigan waived any complaint regarding the stipulations.

C. The Evidentiary Panel properly rendered judgment based on the parties' stipulations.

The findings of fact in the judgment exactly match the stipulated facts, and Carrigan did not renounce his stipulations of fact at any time. Even his brief concedes that he intended to stipulate to the facts that form the basis for the findings of misconduct set forth in the judgment.

And regardless of Carrigan's stipulations as to the rule violations, Carrigan's stipulations of fact are sufficient to support the judgment because they are sufficient to support the legal conclusion that Carrigan violated Rules 5.03(a) and 5.03(b)(1), which provide:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (b) a lawyer shall be subject to discipline for the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if:
 - (1) the lawyer orders, encourages, or permits the conduct involved. . .

TEX. DISCIPLINARY R. PROF'L COND. 5.03.

The stipulations of fact state that a tow truck driver approached an accident victim at the scene of the accident and solicited the victim "on behalf of" Carrigan by calling Carrigan's employee from the scene and handing his phone to the victim so that the victim could make an appointment to meet with Carrigan (CR 648-49). The victim met with Carrigan two days later and hired Carrigan to represent him in his personal injury claim (CR 648-49). These facts provide a reasonable basis for concluding that Carrigan violated Rule 5.03(a) and Rule 5.03(b)(1). Thus, it was not necessary for Carrigan to stipulate that he violated the rules – the Panel could properly draw that conclusion based on the stipulations of fact.

III. Whether Carrigan knowingly consented to the stipulations of law is immaterial because parties can only stipulate to factual matters, not matters of law.

The cornerstone of Carrigan's position in this appeal is that he is entitled to a new trial because he did not intend to stipulate that he violated any provision of the disciplinary rules and the parties' legal stipulations are, therefore, invalid. Carrigan's argument is misplaced because parties cannot stipulate to matters of

law. *Spiller v. Spiller*, 901 S.W.2d 553, 559 (Tex.App.—San Antonio 1995, writ denied). As a result, the judgment cannot depend upon whether the parties validly stipulated to the conclusions of law. Even if Carrigan properly withdrew his legal stipulations and properly preserved the issue for appeal, the withdrawal would not render the judgment erroneous.

The factual stipulations provide more than a scintilla of evidence to support the conclusion that Carrigan violated Rules 5.03(a) and 5.03(b)(1). Thus, the conclusion that Carrigan violated the rules is supported by sufficient evidence. If the Evidentiary Panel erroneously relied on the parties' legal stipulations, the error is immaterial because the conclusion that Carrigan violated the rules is correct based on the factual stipulations. An erroneous conclusion of law does not lead to reversal as long as a proper judgment – one that is supported by the evidence – has been rendered. *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002).

In short, because the judgment finds sufficient support in the parties' factual stipulations and Carrigan has not identified any reversible error, the judgment should be affirmed.

CONCLUSION AND PRAYER

For these reasons, the Commission prays that the Board affirm the judgment of the District 4-5 Evidentiary Panel of the State Bar of Texas.

RESPECTFULLY SUBMITTED:

LINDA A. ACEVEDO
CHIEF DISCIPLINARY COUNSEL

LAURA BAYOUTH POPPS
DEPUTY COUNSEL FOR ADMINISTRATION

CYNTHIA W. HAMILTON
SENIOR APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY
COUNSEL
P.O. Box 12487
AUSTIN, TEXAS 78711-2487
512.427.1350; 1.877.953.5535
FAX: 512.427.4167

Cynthia C. Hamilton
with permission Rebecca Stevens

CYNTHIA CANFIELD HAMILTON
SENIOR APPELLATE COUNSEL
STATE BAR OF TEXAS
STATE BAR CARD No. 00790419
ATTORNEYS FOR APPELLEE

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Brief of Appellee, the Commission for Lawyer Discipline, has been served on Mr. Stephen Carrigan by and through his attorney of record, Mr. Wayne H. Paris, 8 Greenway Plaza, Suite 818, Houston, Texas 77046, by certified mail, return receipt requested, by depositing same,

enclosed in a postpaid, properly addressed wrapper in an official depository under the care and custody of the United States Postal Service on the 7th day of November 2013.

Cynthia C. Hamilton
with permission Rebecca Stevens

CYNTHIA CANFIELD HAMILTON
SENIOR APPELLATE COUNSEL
STATE BAR OF TEXAS

No. 52661

**Before the Board of Disciplinary Appeals
Appointed by
The Supreme Court of Texas**

STEPHEN CARRIAGAN,
APPELLANT
V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

*On Appeal from the Evidentiary Panel
For the State Bar of Texas District 4-5
No. S0110922865, S0061023869, S0071024008*

**APPENDIX TO BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE**

LINDA A. ACEVEDO
CHIEF DISCIPLINARY COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY
COUNSEL

LAURA BAYOUTH POPPS
DEPUTY COUNSEL FOR ADMINISTRATION

COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS
P.O. Box 12487

CYNTHIA CANFIELD HAMILTON
SENIOR APPELLATE COUNSEL

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V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

*On Appeal from the Evidentiary Panel
For the State Bar of Texas District 4-5
No. S0110922865, S0061023869, S0071024008*

APPENDIX

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits the following record excerpts in support of its brief:

APPENDIX 1: Petition (CR 119-24)

APPENDIX 2: Letter Agreement Regarding Stipulations (CR 665-66)

APPENDIX 3: Original Judgment (CR 707-13)

APPENDIX 4: Carrigan's Motion for New Trial (CR 715-27)

APPENDIX 5: Modified Judgment (CR 898-905)

Appendix 1

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**BEFORE THE EVIDENTIARY PANEL OF THE
STATE BAR DISTRICT NO. 4E GRIEVANCE COMMITTEE**

COMMISSION FOR LAWYER DISCIPLINE,	§	S0110922865 [MELISSA CASTILLO]
	§	S0061023869 [WILLIAM R. EDWARDS]
Petitioner,	§	S0071024008 [WILLIAM R. EDWARDS]
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
STEPHEN CARRIGAN,	§	
	§	
Respondent.	§	

FILED

APR 12 2011

FIRST AMENDED EVIDENTIARY PETITION

STATE BAR OF TEXAS
HOUSTON CDC

COMES NOW Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, a
committee of the STATE BAR OF TEXAS, and would respectfully show unto the Evidentiary Panel
as follows:

I. PARTIES

Petitioner is the COMMISSION FOR LAWYER DISCIPLINE (hereinafter referred to
as "Petitioner"), a committee of the STATE BAR OF TEXAS.

Respondent is STEPHEN CARRIGAN (hereinafter referred to as "Respondent"), Texas
Bar Card No. 03877000, a licensed attorney and a member of the STATE BAR OF TEXAS.

II. NATURE OF PROCEEDING

Petitioner brings this disciplinary proceeding pursuant to the STATE BAR ACT, TEXAS
GOVERNMENT CODE ANNOTATED §81.001, *et seq.* (Vernon 2003); the TEXAS DISCIPLINARY
RULES OF PROFESSIONAL CONDUCT; and the TEXAS RULES OF DISCIPLINARY PROCEDURE. The
Complaint that forms the basis of this cause of action was filed on or after January 1, 2004.

III. VENUE

Respondent's principal place of practice is Harris County, Texas; therefore, venue is appropriate in Harris County, Texas, pursuant to Rule 2.11B of the TEXAS RULES OF DISCIPLINARY PROCEDURE. Respondent may be served at Three Riverway, Suite 1140, Houston, Texas 77056, or any place he may be found.

IV. PROFESSIONAL MISCONDUCT

The acts and omissions of Respondent, as hereinafter alleged, constitute professional misconduct as defined by Rule 1.06V of the TEXAS RULES OF DISCIPLINARY PROCEDURE.

V. FIRST CAUSE OF ACTION

1. On or about May 12, 2007, **MELISSA CASTILLO'S** (hereinafter referred to as "**CASTILLO**") daughter, **MARYIA**, died in a drowning accident.
2. Later, on May 16, 2007, and while at the funeral home, **ARNOLD MEDINA, RON DOMINGUEZ**, and **JESSE DOMINGUEZ** made direct contact with **CASTILLO** with the intent of securing her representation on behalf of Respondent.
3. At all times material, **ARNOLD MEDINA, RON DOMINGUEZ**, and **JESSE DOMINGUEZ** were acting as employees and/or representatives of Respondent.
4. In order to secure **CASTILLO'S** representation, Respondent guaranteed the payment of the funeral bill.
5. On May 16, 2007, **CASTILLO** signed a contract and hired Respondent.

VI. SECOND CAUSE OF ACTION

6. On or about April 5, 2010, **BONNIE FAHRENTHOLD** (hereinafter referred to as "**BONNIE**") and **SILVERIO DIAZ, JR.** were involved in a fatal automobile accident.

7. On or about April 6, 2010, **CECIL RUNK** (hereinafter referred to as "**CECIL**"), brother of **BONNIE**, received a call from the funeral home stating that someone had offered to pay for **BONNIE'S** funeral. **CECIL** then called the phone number and spoke to **RICHARD DOMINGUEZ** (hereinafter referred to as "**DOMINGUEZ**"), father of Respondent's paralegal, **RON DOMINGUEZ**, to find out why he would want to pay for the funeral. **DOMINGUEZ** informed Cecil that he would need to see them and ask for help.
8. Because **CECIL** was not **BONNIE'S** next of kin, he passed **DOMINGUEZ'** phone number to **BONNIE'S** son, **ZACHARY FAHRENTHOLD** (hereinafter referred to as "**ZACHARY**"). **ZACHARY** called **DOMINGUEZ** and later, with his grandmother, **LULA RUNK** (hereinafter referred to as "**LULA**"), met at **DOMINGUEZ'** house.
9. While at the meeting, Respondent made an appearance with the intent to solicit the case. Respondent handed out his business card and showed off several magazines where he was named a "Super Lawyer."
10. **DOMINGUEZ** gave **ZACHARY** and **LULA** a check in the amount of One Hundred and No/100 Dollars (\$100.00) as an enticement to hiring Respondent.
11. **ZACHARY** and **LULA** declined to hire Respondent.

VII. THIRD CAUSE OF ACTION

12. On or about March 11, 2010, **ROBERTO CHAPA, JR.** (hereinafter referred to as "**CHAPA**") and his family were involved in an automobile accident.
13. While still at the scene of the accident, **CHAPA** was approached by the tow truck driver and solicited on behalf of Respondent. Specifically, the tow truck driver made a telephone call to **ISRAEL ZAVALA** (hereinafter referred to as "**ZAVALA**"), an

employee of Respondent, and then gave the phone to **CHAPA**, who then proceeded to a have a conversation with **ZAVALA** wherein they made an appointment at Respondent's office.

14. On or about March 13, 2010, **CHAPA** went to Respondent's office and hired him for representation in his personal injury claim.

VIII. RULE VIOLATIONS

The acts and/or omissions of Respondent described above constitute conduct in violation of the following Rules of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

- **5.03(a)** with respect to a non-lawyer employed or retained by or associate with a lawyer, a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer [3 counts];
- **5.03(b)(1)** with respect to a non-lawyer employed or retained by or associate with a lawyer, a lawyer shall be subject to discipline for the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if the lawyer orders, encourages, or permits the conduct involved [3 counts];
- **7.03(a)** a lawyer shall not by in-person contact, or by regulated telephone or other electronic contact, seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain [3 counts];
- **7.03(c)** a lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client [2 counts – **CASTILLO and EDWARDS (869)**];
- **7.06(a)** a lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by

that lawyer personally or by any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct [2 counts – CASTILLO and EDWARDS (008)]; and

- 8.04(a)(9) a lawyer shall not engage in conduct that constitutes barratry as defined by the law of this State [2 counts].

IX.

The Complaints that form the basis of these causes of action were brought to the attention of the Office of the Chief Disciplinary Counsel of the STATE BAR OF TEXAS by MELISSA CASTILLO'S filing of a grievance on or about November 9, 2009; and WILLIAM R. EDWARDS' filing of grievances on or about June 28, 2010, and July 26, 2010, respectively.

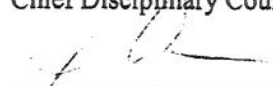
PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, respectfully prays that this Evidentiary Panel discipline Respondent, STEPHEN CARRIGAN, by reprimand, suspension or disbarment, as the facts shall warrant; order restitution to Complainants, if applicable; and grant all other relief, general or specific, at law or in equity, to which Petitioner may show itself to be justly entitled including, without limitation, costs and attorneys' fees.

Respectfully submitted,

STATE BAR OF TEXAS
Office of the Chief Disciplinary Counsel

LINDA A. ACEVEDO
Chief Disciplinary Counsel


SHANNON BREAU SAUCEDA
Assistant Disciplinary Counsel
State Bar No. 24002896
600 Jefferson, Suite 1000
Houston, Texas 77002
Phone: (713) 758-8200
Fax: (713) 758-8292

**ATTORNEYS FOR PETITIONER,
COMMISSION FOR LAWYER
DISCIPLINE**

CERTIFICATE OF SERVICE

I hereby certify that on **April 4**, 2011, a true and correct copy of the *First Amended Evidentiary Petition* was delivered to the following:

Via Certified Mail
No. 7004 0750 0000 6728 2213

Stephen Carrigan
Three Riverway, Suite 1140
Houston, Texas 77056


SHANNON BREAU SAUCEDA

Appendix 2

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

April 11, 2013

FILED

APR 12 2013

STATE BAR OF TEXAS
HOUSTON CDC

By fax (832) 553-7977, and
email diane@stvyveslaw.com

Diane St. Yves
5100 Westheimer, Suite 200
Houston, Texas 77056

RE: Case Nos. S0110922865 [Melissa Castillo], S0061023869 [William R. Edwards], and
S0071024008 [William R. Edwards]; *Commission for Lawyer Discipline v. Stephen Curriگان*;
Before the Evidentiary Panel of the State Bar District 4-5 Grievance Committee

Dear Ms. St. Yves:

Pursuant to our recent communications, the parties in the above referenced disciplinary matter agree to the following:

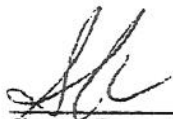
1. Petitioner abandons and dismisses the allegations of professional misconduct related to grievances S0110922865 [Melissa Castillo] and S0061023869 [William R. Edwards/Farenthold].
2. As to matter S0071024008 [William R. Edwards/Chapa], the parties stipulate that Stephen Curriگان engaged in professional misconduct in violation of TEXAS DISCIPLINARY RULE OF PROFESSIONAL CONDUCT 5.03(a) and (b)(1).
3. Pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.18, the Evidentiary Panel will conduct a hearing to determine the appropriate disciplinary sanction for Respondent's violation of the above stipulated Rule. Evidence and/or testimony may be presented for the Evidentiary Panel's consideration in rendering an appropriate disciplinary sanction.
4. The Sanctions Hearing will be held on April 12, 2013, beginning at 1:00 p.m., subject to the availability of the panel or any orders issued by the panel affecting the date or time of hearing.

Please return a signed copy of this letter indicating your agreement to the terms of agreement set forth herein.

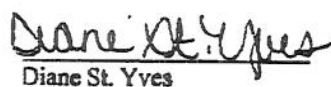
Sincerely,

500 Jefferson, Suite 1000 Houston, Texas 77002
Phone: (713) 758-8200 Fax: (713) 758-8292

000665


Shannon Breaux Saucedo
Assistant Disciplinary Counsel

Agreed:


Diane St. Yves
Counsel for Respondent

4/11/13
Date

Appendix 3

))

**BEFORE THE EVIDENTIARY PANEL OF THE
STATE BAR DISTRICT NO. 4-5 GRIEVANCE COMMITTEE**

COMMISSION FOR LAWYER DISCIPLINE,	§ S0110922865
	§ S0061023869
Petitioner,	§ S0071024008
	§
v.	§ HARRIS COUNTY, TEXAS
	§
STEPHEN CARRIGAN,	§
	§
Respondent.	§

JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On April 12, 2013, came to be heard the above-styled and numbered cause. Petitioner, the **COMMISSION FOR LAWYER DISCIPLINE**, appeared by and through its attorney of record, Shannon Breaux Saucedo, Assistant Disciplinary Counsel, and announced ready. Respondent, **STEPHEN CARRIGAN** (hereinafter referred to as "Respondent"), Texas Bar Number 03877000, appeared in person and through his attorney of record, Diane St. Yves, and announced ready.

Jurisdiction and Venue

The Evidentiary Panel 4-5 (formerly 4E), having been duly appointed to hear this complaint by the chair of the Grievance Committee for STATE BAR OF TEXAS District 4, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

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(V) 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 and conclusions of law:

1. Respondent is an attorney licensed to practice law in Texas and is a member of the STATE BAR OF TEXAS.
2. At the time of the filing of this Disciplinary Proceeding, Respondent resided in and maintained his principal place of practice in Harris County, Texas.
3. On or about March 11, 2010, Roberto Chapa, Jr. (hereinafter referred to as "Chapa") and his family were involved in an automobile accident.
4. While still at the scene of the accident, Chapa was approached by the tow truck driver and solicited on behalf of Respondent. Specifically, the tow truck driver made a telephone call to Israel Zavala (hereinafter referred to as "Zavala"), an employee of Respondent, and then gave the phone to Chapa, who then proceeded to have a conversation with Zavala wherein they made an appointment at Respondent's office.
5. On or about March 13, 2010, Chapa went to Respondent's office and hired him for representation in his personal injury claim.
6. 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 Four Thousand Three Hundred Fourteen and 20/100 Dollars (\$4,314.20), as stipulated to by the parties.

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: 5.03(a) [with respect to a non-lawyer employed or retained by or associate with a lawyer, a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer]; and 5.03(b)(1) [with respect to a non-lawyer employed or retained by or associate with a lawyer, a lawyer shall be subject to discipline for

the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if the lawyer orders, encourages, or permits the conduct involved.

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 RULE 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 two (2) years, beginning June 1, 2013, and ending May 31, 2015. Respondent shall be actively suspended from the practice of law for a period of three (3) months beginning June 1, 2013, and ending August 31, 2013. The one (1) year, nine (9) month period of probated suspension shall begin on September 1, 2013, and shall end on May 31, 2015.

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 (hereinafter referred to as "BODA") 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 June 1, 2013, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701) on or before June 1, 2013, 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 June 1, 2013, 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 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701) on or before June 1, 2013, 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 June 1, 2013, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 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:

1. Respondent shall not violate any term of this *Judgment*.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(V) of the TEXAS RULES OF DISCIPLINARY PROCEDURE.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep the STATE BAR OF TEXAS membership department notified of current mailing, residence and business addresses and telephone numbers.
5. Respondent shall comply with Minimum Continuing Legal Education requirements.
6. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.
7. Respondent shall promptly respond to any request for information from the Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.
8. Respondent shall pay all reasonable and necessary attorneys' fees and direct expenses, as stipulated to by the parties, to the STATE BAR OF TEXAS in the amount of Four Thousand Three Hundred Fourteen and 20/100 Dollars (\$4,314.20). The payment shall be due and payable on or before June 1, 2013, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701).
9. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the STATE BAR OF TEXAS, Respondent shall complete eight (8) additional hours of continuing legal education during each year of Respondent's probation. These additional hours of MCLE shall be in the field of Law Practice Management. However, if Respondent elects, he may complete up to one-half (1/2) of the additional hours of

MCLE each year in Ethics. Within ten (10) days of the completion of these additional MCLE hours, Respondent shall verify completion of the course to the STATE BAR OF TEXAS, via USPS: Office of the Chief Disciplinary Counsel, STATE BAR OF TEXAS, P.O. Box 12487, Austin, Texas 78711-2487; or via Delivery: Office of the Chief Disciplinary Counsel, STATE BAR OF TEXAS, 1414 Colorado St., Suite 200, Austin, Texas 78701.

Respondent shall make contact with the Chief Disciplinary Counsel's Office's 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 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.

Attorneys' Fees and Expenses

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorneys' fees and direct expenses, as stipulated by the parties, to the STATE BAR OF TEXAS in the amount of Four

Thousand Three Hundred Fourteen and 20/100 Dollars (\$4,314.20). The payment shall be due and payable on or before June 1, 2013, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 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(Y) 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.

Publication

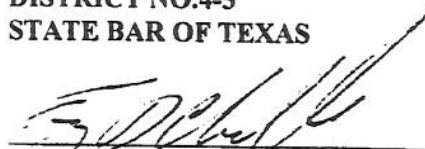
This suspension shall be made a matter of record and appropriately published in accordance with the TEXAS RULES OF DISCIPLINARY PROCEDURE.

Other Relief

All requested relief not expressly granted herein is expressly **DENIED**.

SIGNED this 3rd day of May, 2013.

**EVIDENTIARY PANEL
DISTRICT NO.4-5
STATE BAR OF TEXAS**


TROY CHANDLER
District 4-5 Presiding Member

Appendix 4

BEFORE THE EVIDENTIARY PANEL OF
THE STATE BAR DISTRICT NO. 4-5
GRIEVANCE COMMITTEE

FILED

COMMISSION FOR LAWYER
DISCIPLINE

Petitioner,

vs.

STEPHEN CARRIGAN

Respondent.

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S0110922865

S0061023869

S0071024008

HARRIS COUNTY, TEXAS

MAY 17 2013

STATE BAR OF TEXAS
HOUSTON CCG
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**RESPONDENT'S MOTION FOR NEW HEARING (NEW TRIAL)
OR, ALTERNATIVE MOTION TO MODIFY JUDGMENT**

TO THE HONORABLE EVIDENTIARY PANEL 4-5:

COMES NOW Respondent, Stephen Carrigan, and files this his Respondent's Motion for New Hearing (New Trial) or Alternative Motion To Modify Judgment, pursuant to Rule 329b, Texas Rules of Civil Procedure and Rule 2.22, Texas Rules of Disciplinary Procedure and for good cause would show the following:

A. INTRODUCTION

1. Petitioner is the Commission for Lawyer Discipline; Respondent is Stephen Carrigan.
2. Petitioner filed this action with the Evidentiary Panel 4-5 seeking disciplinary sanctions against Respondent under the Texas Rules of Disciplinary Procedure for alleged violations of Rules 5.03(a), 5.03(b)(1), 7.03(a), 7.03(c), 7.06(a) and 8.04(a)(9), Texas Disciplinary Rules of Professional Conduct.

B. FACTS

3. After a hearing (Evidentiary Trial) on April 12, 2013 the Chairman of the Evidentiary Panel 4-5 of the District 4 Grievance Committee, State Bar of Texas, signed a judgment of Partially Probated Suspension, dated May 3, 2013, containing Findings of Fact and Conclusions

of Law. (Exhibit "A"). The Judgment of Partially Probated Suspension is purportedly based upon an Evidentiary Hearing Report which was received on May 2, 2013 (Exhibit "B").

C. MOTION FOR NEW HEARING (NEW TRIAL)

4. The Findings of Fact and Conclusions of Law are based entirely upon impermissible hearsay from deposition testimony that should have been excluded from evidence and was properly objected to. Accordingly, Respondent requests the panel grant him a new hearing (new trial) on this case.

**D. ALTERNATIVE MOTION TO MODIFY JUDGMENT
OF A PARTIALLY PROBATED SENTENCE**

5. The Judgment of Partially Probated Suspension contains punitive sanctions and provisions never voted on or decreed by the Panel in its Evidentiary Hearing Report. Specifically, the last half of the first sentence under Terms of Active Suspension on page 3-7, all Orders on page 4 of 7, the second full paragraph on page 6 of 7, the entire three paragraphs under Probation Revocation on page 6 of 7 and the last sentence under Ordered on page 7 of 7 were never voted upon by this Panel, were never agreed to by Respondent, and were inserted by Counsel for Petitioner as punitive self executing provisions without authority from this panel. (Compare Exhibits "A" and "B"). Accordingly, Respondent moves this panel grant his motion to modify this judgment with a judgment containing the findings of this Panel contained in its Evidentiary Hearing Report of May 2, 2013.

E. CONCLUSION AND PRAYER

6. WHEREFORE, PREMISES CONSIDERED, Respondent moves this Panel grant him a new hearing trial in the above styled cause or alternatively, modify the Judgment of Partially Probated Suspension to indicate only the sanctions voted by this Panel based upon its vote of April 12, 2013, as evidenced by its Evidentiary Hearing Report received on May 2, 2013.

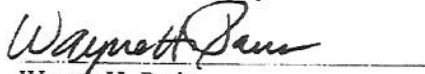
Respectfully Submitted,



Wayne H. Paris
State Bar No. 15462000
8 Greenway Plaza, Suite 818
Houston, Texas 77046
Telephone: (713) 951-9100
Facsimile: (713) 962-3062
E-mail: waynehparis@yahoo.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Respondent's Motion for New Hearing (New Trail) or, Alternative Motion to Modify Judgment has been served upon all interested counsel of record on this 17th day of May 2013 *via facsimile and/or hand delivery*.


Wayne H. Paris

Via Hand Delivery:

Ms. Shannon Breau Saucedo
Assistant Disciplinary Counsel
State Bar of Texas
600 Jefferson, Suite 1000
Houston, Texas 77002

**BEFORE THE EVIDENTIARY PANEL OF THE
STATE BAR DISTRICT NO. 4-5 GRIEVANCE COMMITTEE**

COMMISSION FOR LAWYER DISCIPLINE,	§	S0110922865
	§	S0061023869
Petitioner,	§	S0071024008
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
STEPHEN CARRIGAN,	§	
	§	
Respondent.	§	

JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On April 12, 2013, came to be heard the above-styled and numbered cause. Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, appeared by and through its attorney of record, Shannon Breaux Saucedo, Assistant Disciplinary Counsel, and announced ready. Respondent, STEPHEN CARRIGAN (hereinafter referred to as "Respondent"), Texas Bar Number 03877000, appeared in person and through his attorney of record, Diane St. Yves, and announced ready.

Jurisdiction and Venue

The Evidentiary Panel 4-5 (formerly 4E), having been duly appointed to hear this complaint by the chair of the Grievance Committee for STATE BAR OF TEXAS District 4, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

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(V) of the TEXAS RULES OF DISCIPLINARY PROCEDURE.



Judgment of Partially Probated Suspension

Page 1 of 7

-000718-

Findings of Fact

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

1. Respondent is an attorney licensed to practice law in Texas and is a member of the STATE BAR OF TEXAS.
2. At the time of the filing of this Disciplinary Proceeding, Respondent resided in and maintained his principal place of practice in Harris County, Texas.
3. On or about March 11, 2010, Roberto Chapa, Jr. (hereinafter referred to as "Chapa") and his family were involved in an automobile accident.
4. While still at the scene of the accident, Chapa was approached by the tow truck driver and solicited on behalf of Respondent. Specifically, the tow truck driver made a telephone call to Israel Zavala (hereinafter referred to as "Zavala"), an employee of Respondent, and then gave the phone to Chapa, who then proceeded to have a conversation with Zavala wherein they made an appointment at Respondent's office.
5. On or about March 13, 2010, Chapa went to Respondent's office and hired him for representation in his personal injury claim.
6. 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 Four Thousand Three Hundred Fourteen and 20/100 Dollars (\$4,314.20), as stipulated to by the parties.

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: 5.03(a) [with respect to a non-lawyer employed or retained by or associate with a lawyer, a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer]; and 5.03(b)(1) [with respect to a non-lawyer employed or retained by or associate with a lawyer, a lawyer shall be subject to discipline for

the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if the lawyer orders, encourages, or permits the conduct involved.

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 RULE 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 two (2) years, beginning June 1, 2013, and ending May 31, 2015. Respondent shall be actively suspended from the practice of law for a period of three (3) months beginning June 1, 2013, and ending August 31, 2013. The one (1) year, nine (9) month period of probated suspension shall begin on September 1, 2013, and shall end on May 31, 2015.

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 (hereinafter referred to as "BODA") 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 June 1, 2013, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701) on or before June 1, 2013, 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 June 1, 2013, 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 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701) on or before June 1, 2013, 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 June 1, 2013, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 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:

1. Respondent shall not violate any term of this *Judgment*.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(V) of the TEXAS RULES OF DISCIPLINARY PROCEDURE.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep the STATE BAR OF TEXAS membership department notified of current mailing, residence and business addresses and telephone numbers.
5. Respondent shall comply with Minimum Continuing Legal Education requirements.
6. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.
7. Respondent shall promptly respond to any request for information from the Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.
8. Respondent shall pay all reasonable and necessary attorneys' fees and direct expenses, as stipulated to by the parties, to the STATE BAR OF TEXAS in the amount of Four Thousand Three Hundred Fourteen and 20/100 Dollars (\$4,314.20). The payment shall be due and payable on or before June 1, 2013, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701).
9. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the STATE BAR OF TEXAS, Respondent shall complete eight (8) additional hours of continuing legal education during each year of Respondent's probation. These additional hours of MCLE shall be in the field of Law Practice Management. However, if Respondent elects, he may complete up to one-half (1/2) of the additional hours of

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

May 2, 2013

Via Facsimile No. (832) 553-7977

Diane St. Yves
5100 Westheimer, Suite 200
Houston, Texas 77056

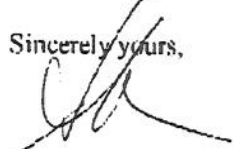
RE: Case Nos. S0110922865, S0061023869, and S0071024008; *Commission for Lawyer Discipline v. Stephen Carrigan*; Before the Evidentiary Panel of the State Bar District 4-5 Grievance Committee

Dear Ms. St. Yves:

Enclosed please find the *Evidentiary Hearing Report* which outlines the Evidentiary Panel's ruling and comports with the email Mr. Chandler sent to counsel on April 29, 2013. Our office received the *Evidentiary Hearing Report* from Mr. Chandler on today's date; therefore, it was not available when we forwarded the proposed *Judgment of Partially Probated Suspension* on May 1, 2013.

Thank you for your attention to this matter. If you have any questions or need additional information, please contact the undersigned at your earliest convenience.

Sincerely yours,


Shannon Breau Saucedo
Assistant Disciplinary Counsel

SBS/sml
Enclosure



713 758 8295

State Bar of Texas

09:50:59 a.m. 05-02-2013

3 / 5

EVIDENTIARY HEARING REPORT

PANEL: 4 COMMITTEE: 5 HEARING DATE: April 12, 2013
S0110922865
S0061023869
CASE NO: S0071024008 STYLE: Commission for Lawyer Discipline v. Stephen Carrigan
LOCATION: STATE BAR OF TEXAS, 600 Jefferson, Suite 1000, Houston, Texas 77002
COURT REPORTER: DEPOTEXAS

PANEL MEMBERS (INDICATE ATTY OR PUBLIC). Please note presiding member with an asterisk (*).

1. Troy D. Chandler (Atty)*	<u>Present</u> / Absent / Recused
2. Doris T. Abston (Public)	<u>Present</u> / Absent / Recused
3. John M. Barrera (Public)	<u>Present</u> / Absent / Recused
4. Dinesh Singhal (Atty)	<u>Present</u> / Absent / Recused
5. Brian Trachtenberg (Atty)	<u>Present</u> / Absent / Recused
6. Kirsten H. Wilson (Atty)	<u>Present</u> / Absent / Recused

I. TYPE OF HEARING: (Check One)

☐ Evidentiary and Sanction
☐ Continued Evidentiary and Sanction
☒ Sanction Only
☐ Default

II. HEARING RESULT: (Check One)

☐ Hearing Continued
☐ Dismissed
☐ Default Granted
☐ Default Denied

☒ Professional Misconduct Found¹ (If selected, please continue)

☐ Private Reprimand
☐ Public Reprimand
☐ Disbarment

☐ Suspension: (If selected, please choose either Fully Active, Fully Probated or Partially Probated)

Fully Active Suspension: Length

Beginning:

Fully Probated Suspension: Length

Beginning:

Partially Probated Suspension:

Length of Active Portion: 90 Days

Beginning: June 1, 2013

Length of Probated Portion: 21 months

Beginning: September 1, 2013

 : Probated portion conditioned upon:

RECEIVED**MAY 02 2013****STATE BAR OF TEXAS
HOUSTON CDC**

¹Violation of TDRPC 5.03(a) and 5.03(b)(1), per stipulation of the parties

000724

713 758 8295

State Bar of Texas

09:51:14 a.m. 05-02-2013

4/5

_____ Payment of restitution
 _____ Payment of attorney's fees/cost
 _____ Other: _____

X CFLD attorney's fees:

Amount: \$3,500.00² Payable: _____
 (Date)

X CFLD Costs:

Amount: \$814.20³ Payable: _____
 (Date)

N/A Restitution payable to: _____

Amount: _____ Payable: _____
 (Date)

TERMS AND CONDITIONS OF PROBATION

Please check all terms and conditions the Panel finds appropriate for this probation:

- x Respondent shall not engage in professional misconduct during term of probation.
- x Respondent shall not violate any state or federal criminal statutes during term of probation.
- x Respondent shall keep State Bar of Texas membership notified of current address and telephone number.
- x Respondent shall comply with Minimum Continuing Legal Education requirements during term of probation.
- x Respondent shall comply with IOLTA requirements during term of probation.
- x Respondent shall respond to any request for information from the Grievance Committee or Chief Disciplinary Counsel during term of probation.

x ADDITIONAL CONTINUING LEGAL EDUCATION COURSES AS FOLLOWS:

Areas of Law	No. of Hours	Deadline

____ PSYCHOLOGICAL EVALUATION REPORTS (Utilize only if supported by evidence of Mental Illness)

Evaluation Deadline	Frequency

____ SUBSTANCE ABUSE TESTING (Utilize only if supported by evidence of Substance Abuse)

Start Date	End Date	Frequency

² Per stipulation of the parties.

³ Per stipulation of the parties.

713 758 8295

State Bar of Texas

09:51 28 a.m. 05-02-2013

5 / 5

____ LAW OFFICE MANAGEMENT PROGRAM EDUCATION COURSES

<u>No. of Seminar Hours</u>	<u>Deadline</u>
8 hours, June 1, 2015.	

____ LAW OFFICE MANAGEMENT PROGRAM CONSULTATION

Deadline

____ TRUST ACCOUNT REPORTING (Utilize only if supported by evidence of Trust Account Violation)

<u>Start Date</u>	<u>Frequency</u>
_____	_____

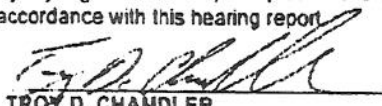
____ TRUST ACCOUNT AUDIT (Utilize only if supported by evidence of Trust Account Violation)

Deadline

_________ OTHER: _____

_____PROFESSIONAL MISCONDUCTThe Panel finds the following Disciplinary Rules were violated: TIDRPC: 5.03(a) and 5.03(b)(1)

By my signature below, I request the Office of the Chief Disciplinary Counsel to prepare a Judgment in accordance with this hearing report.


TROY D. CHANDLERDistrict No. 4-5
Presiding Member

000726

BEFORE THE EVIDENTIARY PANEL OF
THE STATE BAR DISTRICT NO. 4-5
GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER	§	
DISCIPLINE	§	S0110922865
	§	S0061023869
Petitioner,	§	S0071024008
vs.	§	
	§	
STEPHEN CARRIGAN	§	
Respondent.	§	HARRIS COUNTY, TEXAS

ORDER

After due consideration of Respondent's Motion for a New Trial and the Response, along with the arguments, the Evidentiary Panel grants same and ORDERS a new trial in the above styled cause.

OR

After considering the Motion to Modify Judgment the Evidentiary Panel grants same and ORDERS that the Judgment of Partially Probated Suspension be modified to comply only with the Evidentiary Panels findings in its Evidentiary Panel's Hearing Report.

SIGNED this _____ day of _____ 2013

EVIDENTIARY PANEL CHAIR

Appendix 5

BEFORE THE EVIDENTIARY PANEL OF THE
STATE BAR DISTRICT NO. 4-5 GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE,	§	S0110922865
	§	S0061023869
Petitioner,	§	S0071024008
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
STEPHEN CARRIGAN,	§	
	§	
Respondent.	§	

MODIFIED JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On April 12, 2013, came to be heard the above-styled and numbered cause. Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, appeared by and through its attorney of record, Shannon Breaux Saucedo, Assistant Disciplinary Counsel, and announced ready. Respondent, STEPHEN CARRIGAN (hereinafter referred to as "Respondent"), Texas Bar Number 03877000, appeared in person and through his attorney of record, Diane St. Yves, and announced ready. On June 14, 2013, *Respondent's Motion For New Hearing (New Trial) Or. Alternative Motion to Modify Judgment* [filed May 17, 2013], was heard by the Evidentiary Panel. In presenting his motion, Respondent appeared in person and through his attorney of record, Wayne Paris. Petitioner was represented by Shannon Breaux Saucedo, Assistant Disciplinary Counsel. After due consideration of Respondent's *Motion* and argument of the Parties, the Evidentiary Panel enters this Modified Judgment of Partially Probated Suspension.

Jurisdiction and Venue

The Evidentiary Panel 4-5 (formerly 4E), having been duly appointed to hear this complaint by the chair of the Grievance Committee for STATE BAR OF TEXAS District 4, finds that it has

jurisdiction over the parties and the subject matter of this action and that venue is proper.

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(V) 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 and conclusions of law:

1. The parties stipulate that Respondent engaged in professional misconduct in violation of TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT 5.03(a) and 5.03(b)(1).
2. Respondent is an attorney licensed to practice law in Texas and is a member of the STATE BAR OF TEXAS.
3. At the time of the filing of this Disciplinary Proceeding, Respondent resided in and maintained his principal place of practice in Harris County, Texas.
4. On or about March 11, 2010, Roberto Chapa, Jr. (hereinafter referred to as "Chapa") and his family were involved in an automobile accident.
5. While still at the scene of the accident, Chapa was approached by the tow truck driver and solicited on behalf of Respondent. Specifically, the tow truck driver made a telephone call to Israel Zavala (hereinafter referred to as "Zavala"); an employee of Respondent, and then gave the phone to Chapa, who then proceeded to have a conversation with Zavala wherein they made an appointment at Respondent's office.
6. On or about March 13, 2010, Chapa went to Respondent's office and hired him for representation in his personal injury claim.
7. 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 Four Thousand Three Hundred Fourteen and 20/100 Dollars (\$4,314.20), as stipulated to by the parties.

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: **5.03(a)** [with respect to a non-lawyer employed or retained by or associate with a lawyer, a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer]; and **5.03(b)(1)** [with respect to a non-lawyer employed or retained by or associate with a lawyer, a lawyer shall be subject to discipline for the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if the lawyer orders, encourages, or permits the conduct involved.

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 RULE 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 two (2) years, beginning July 1, 2013, and ending June 30, 2015. Respondent shall be actively suspended from the practice of law for a period of three (3) months beginning July 1, 2013, and ending September 30, 2013. The one (1) year, nine (9) month period of probated suspension shall begin on October 1, 2013, and shall end on June 30, 2015.

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 (hereinafter referred to as "BODA") 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 July 1, 2013, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701) on or before July 1, 2013, 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 July 1, 2013, 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 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701) on or before July 1, 2013, 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 July 1, 2013, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 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:

1. Respondent shall not violate any term of this *Judgment*.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(V) of the TEXAS RULES OF DISCIPLINARY PROCEDURE.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep the STATE BAR OF TEXAS membership department notified of current mailing, residence and business addresses and telephone numbers.
5. Respondent shall comply with Minimum Continuing Legal Education requirements.
6. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.
7. Respondent shall promptly respond to any request for information from the Chief

Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.

8. Respondent shall pay all reasonable and necessary attorneys' fees and direct expenses, as stipulated to by the parties, to the STATE BAR OF TEXAS in the amount of Four Thousand Three Hundred Fourteen and 20/100 Dollars (\$4,314.20). The payment shall be due and payable on or before July 1, 2013, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701).
9. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the STATE BAR OF TEXAS, Respondent shall complete eight (8) additional hours of continuing legal education during each year of Respondent's probation. These additional hours of MCLE shall be in the field of Law Practice Management. However, if Respondent elects, he may complete up to one-half (1/2) of the additional hours of MCLE each year in Ethics. Within ten (10) days of the completion of these additional MCLE hours, Respondent shall verify completion of the course to the STATE BAR OF TEXAS, via **USPS: Office of the Chief Disciplinary Counsel, STATE BAR OF TEXAS, P.O. Box 12487, Austin, Texas 78711-2487; or via Delivery: Office of the Chief Disciplinary Counsel, STATE BAR OF TEXAS, 1414 Colorado St., Suite 200, Austin, Texas 78701.**

Respondent shall make contact with the Chief Disciplinary Counsel's Office's 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 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.

Attorneys' Fees and Expenses

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorneys' fees and direct expenses, as stipulated by the parties, to the STATE BAR OF TEXAS in the amount of Four Thousand Three Hundred Fourteen and 20/100 Dollars (\$4,314.20). The payment shall be due and payable on or before July 1, 2013, 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, Texas 78711-2487 (1414 Colorado St., Austin, Texas 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(Y) 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.

Publication

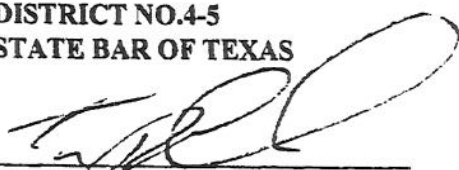
This suspension shall be made a matter of record and appropriately published in accordance with the TEXAS RULES OF DISCIPLINARY PROCEDURE.

Other Relief

All requested relief not expressly granted herein is expressly **DENIED**.

SIGNED this 14 day of June, 2013.

EVIDENTIARY PANEL
DISTRICT NO.4-5
STATE BAR OF TEXAS



TROY CHANDLER
District 4-5 Presiding Member