

Before the Board of Disciplinary Appeals
Austin, Texas

Elene B. Glassman,
Appellant

v.

State Bar of Texas, Commission for Lawyer Discipline, District 4 Grievance Committee,
Evidentiary Panel 4-6
Appellee

ON APPEAL FROM EVIDENTIARY PROCEEDING H0051132998
HOUSTON, TEXAS

REPLY BRIEF OF APPELLANT

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Oral Argument Requested

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Summary of Reply Argument

The judgment in Evidentiary Proceeding H0051132998 is void; it does not meet requirements of due process. Appellee's Brief denies and distorts well established clear, convincing proof that it is void. Appellant presents substantial evidence and legal authority supporting her claims; Appellee presents no rebuttal or refutation, statutory or case law. The undisputed facts and relevant legal standards for understanding the issues Appellant presents have not been acknowledged by Appellee. The Opinion of the 14th Court of Appeals in Appeal Number 14-09-00522 also fails to acknowledge undisputed facts and applicable legal standards

Harris County Probate Court 1, Cause Numbers 350,750, and 350,750-403 were both before Harris County Probate Court 1, a statutory court. In Texas courts, the party seeking relief must allege and prove all elements of jurisdiction; they are never presumed.

The applicable standards for evaluating a collateral attack in the court in which both judgments originated are different from those in which a collateral attack is before a court of equal sovereignty, "sister court" of the court issuing the original judgment. The only collateral attack case considered by the 14th Court was about collateral attacks in courts of equal sovereignty with the court issuing the judgment.

The Opinion of the 14th Court in Appeal Number 14-09-00522 completely disregards the relevance of both matters being before the same court. The Opinion of the 14th Court in Appeal Number 14-09-00522 issued February 24, 2011 was withdrawn, declared void

The complaint that gave rise to Evidentiary Proceeding H0051132998 was signed by the complainant on May 10, 2011. The testimony of complainant in the Evidentiary Hearing on June 12, 2013 was that the complaint was signed on May 10, 2011 and mailed the next day. Complainant relied on the opinion of February 24, 2011 as a basis for and support for his complaint. In finding “just cause” Commission for Lawyer Discipline disregarded relevant dates creating mootness. Appellant claims the complaint of May 10, 2011 became “moot” when the February 24, 2011 was declared void. A tribunal does not have jurisdiction when a matter is moot. Appellant has challenged the finding by CLD of “just cause”

Neither the 14th Court of Appeals nor CLD presented case law refuting the necessity of proof of all elements of jurisdiction in matters before statutory courts and administrative agencies. The only cases cited by the 14th Court and by CLD about proof of subject matter jurisdiction are District Court cases. The 14th Court opinion is predicated on cases that are not on point as to Appeal Number 14-09-00522; the description of the appeal as frivolous is based on disregard of relevant facts that are not in issue and reliance on case law that is not disputed and is not applicable to the correct facts.

State Bar District 4 Grievance Committee and State Bar District 4 Grievance Committee Evidentiary Panel 4-6 did not comply with required preliminary procedures to qualify Evidentiary Panel 4-6 to conduct Evidentiary Proceeding H0051132998 to such an extent that the matter did not meet due process standards. Appellee has disregarded the relevance of the failure to follow preliminary procedures, dismissing Appellant’s list as a “laundry” list and refusing to acknowledge the only available citations about them.

Appellee claims Appellant has not presented sufficient analysis and authority to entitle her to the relief requested, completely ignoring even clear statutory language, citations to Texas case law, references to the Evidentiary Panel Proceedings Procedural Guide, State Bar Board Policy Manuals.

Jurisdiction is always subject to review; Appellant is entitled to have the judgment in H0051132998 vacated, reversed and in all things dismissed.

ARGUMENT AND AUTHORITIES

Appellee's "Summary of the Argument" begins with factually vague statements. Is an "inter vivos trust" matter within the limited concurrent jurisdiction of statutory probate courts with courts of general jurisdiction that is before a probate court a "probate" matter?

There are also errors in facts included in Appellee's Statement of Facts perpetuating the misstatements, elisions, errors caused by relying on statements of fact that are not factually correct, disregard of standards of proof of jurisdiction before Administrative Agencies, failure to prove jurisdiction, reliance on case law that is not on point producing decisions that are void, violate Appellant's right to due process, a fair and meaningful hearing before an impartial, experienced tribunal capable of appreciating the complexities of the matter and depriving Appellant of her property right in her license to practice law in Texas.

Evidentiary Proceeding H0051132998 "H0051132998" developed from Appeal 14-09-00522 before the 14th Court of Appeals "14th Court" originated in Harris County Probate Court 1 Cause Numbers 350,750 "350,750" and 350,750-403. "350,750-403" Probate Courts have a range of areas of jurisdiction including probating estates. In some instances a Probate Court has jurisdiction affecting Family Court matters, some decide mental health matters, sometimes guardianships are

within the province of Probate Courts. Appellant's Brief cites cases, including Supreme Court of Texas "Sup. Ct." cases stating that jurisdiction is never presumed. (Appellant's Brief p. 6) That the criteria for establishing jurisdiction in a court of general jurisdiction is different from criteria applicable to administrative agencies does not affect the standard that jurisdiction is never presumed. The 14th Court opinion acknowledges Appellant's argument using District Court tactics to claim proof of subject matter jurisdiction in a statutory court case.

The Texas Constitution, Article 5, section 1 creates District Courts as "courts of general jurisdiction." Many matters can be properly before a District Court that are not properly before other tribunals. *Texas Department of Parks & Wildlife v. Miranda*, 133 S.W. 3d 217 (Tex. 2004), Provisions of the Texas Probate Code providing Probate Courts with concurrent jurisdiction with District Courts in some matters, does not make the Probate Courts, "courts of general jurisdiction." They are not excused from statutory court standards.

State Bar of Texas "SBOT" disciplinary matters can be tried in District Court or before a properly established SBOT Grievance Committee Evidentiary Panel.

The exact nature of Appellant's complaints have been stated clearly and repeatedly. They are predicated on disregard by the 14th Court and Commission for Lawyer Discipline "CLD" of facts and law.

CLD must prove all material allegations by a preponderance of the evidence. Texas Rules of Disciplinary Procedure “TRDP” 2.17 M. CLD has not cited authority applying the standards and procedures of District Courts for establishing subject matter jurisdiction to administrative agency proceedings. State Bar Act “SBAct” created SBOT, a public corporation and administrative agency, CLD. In court, a corporation created by special statute must comply with Texas Rules of Civil Procedure “TRCP” 53 and, if requested TRCP 54.

CLD relies on case law cited by other tribunals to support CLD positions disregarding such authority when it controverts or even supersedes CLD positions.

Evidentiary Proceeding H0051132998 “H0051132998 is the subject Board of Disciplinary Appeal “BODA”53021 “53021.” Pleadings, allegations and documents attached to pleadings are not evidence. To “establish” subject matter jurisdiction before an administrative agency, there must be evidence supporting the allegations; proof of standing, ripeness, justiciability and enough factual information to enable the respondent to prepare a defense. Initially Respondent challenged the assignment of H0051132998 to SBOT District 4 Evidentiary Panel 4-4 “4-4” and absence of sufficient facts to enable Respondent to prepare a defense as provided in TRDP 2.17A. Appellant, aware of indications of impropriety, appearance of impropriety and possible bias, amended her pleadings expanding the challenge. Informal

acknowledgments by members of 4-4; similar acknowledgments in the course of the various hearings by members of “4-6,” the Evidentiary Panel to which H0051132998 was transferred indicated further impropriety and disregard of SBAct and TRDP requirements. Impropriety and “appearance of impropriety” are discussed in *Shaefer v. Commission for Lawyer Discipline*, (2011 WL 683810 [Tex. Bd. Disp. App.] Opinion in BODA Appeal 44292.

In the course of the Evidentiary Hearing in H0051132998 the Chair of 4-6 said that when challenging jurisdiction, it is necessary to negate the elements of jurisdiction. Another member of 4-6 said Respondent had been allowed 30 days to bring evidence to negate jurisdiction of CLD. The Chair and Mr. Pfifer, the other member of 4-6 making those statements may have experience with establishing or negating subject matter jurisdiction in tribunals other than SBOT Evidentiary Hearings. Mr. Pfifer stated explicitly that he has experience with jurisdiction. Informal information provided by Assistant Disciplinary Counsel for CLD in H005113298 was that Mr. Pfifer was a newly appointed member of the District 4 Grievance Committee. If that is correct, his experience with subject matter jurisdiction in SBOT Evidentiary Hearings is limited.

Evidentiary Panels are to make their decisions based on the correct criteria, facts established by relevant evidence presented to them. It is the responsibility of

Chair to remind the members about that. Evidentiary Panel Proceedings Procedural Guide, 2013, "Guide" Evidentiary Panel Proceedings p.8 et seq.

This matter was before CLD, a Texas administrative agency created in SBAct. SBAct creates the State Bar of Texas, "SBOT" a public corporation and administrative agency, created by special law. Texas Business Organizations Code, "TBOC" Chapter 24. TRCP 53 and 54 rules applicable to such corporate entities do not modify, remove the applicable standards of proof or, in any way, excuse SBOT or CLD from proving subject matter jurisdiction. CLD did prove "in personam" jurisdiction then claimed the proof of in personam jurisdiction is proof of subject matter jurisdiction and justiciability. Appellee's Brief repeats the language used by Assistant Disciplinary Counsel in the H0051132998 Evidentiary Hearing.

Texas Department of Parks & Wildlife v. Miranda, 133 S.W. 3d 217 (Tex. 2004) originates in a district court as does *Bland Independent School District v. Blue* 347 S.W.3d 547 (Tex 2000) both cases are cited by Appellee. Language in *Tex. Dept. of Parks, id* clearly identifies that matter as being before a "court of general jurisdiction." Appellee cites no cases from SBOT Grievance Committees addressing the question of proof of subject matter jurisdiction being achievable as provided in *Tex. Dept. of Parks, id.*; *Bland id.* That burden of proof was not met by CLD in the Evidentiary Hearing and has not even been discussed in Appellee's Brief.

It is possible that the questions presented herein by Appellant as to proof of jurisdiction, particularly subject matter jurisdiction before an administrative agency and specifically before a SBOT Grievance Committee Evidentiary Panel have not been construed by BODA or the Supreme Court of Texas "Sup. Ct." If there are cases construing the question Appellant has presented repeatedly of the responsibility of CLD to prove subject matter jurisdiction, Appellee has not presented them. Appellant's Brief cites cases stating that jurisdiction of Administrative Agencies is never presumed. Further, an administrative agency only has powers conferred or implied by law. *Buddy Gregg Motor Homes, Inc. v. Motor Vehicle Board of Texas* 156 S.W. 3d 91, 101 (Civ.App.-Austin, 2004):

"Administrative agencies are created by statute and have no inherent authority. *Subaru of America*, 84 **S.W.3d** at 220; *Public Util. Comm'n v. GTE-Southwest, Inc.*, 901 S.W.2d 401, 406 (Tex.1995); *Sexton v. Mount Olivet Cemetery Ass'n*, 720 S.W.2d 129, 137 (Tex.App.-Austin 1986, writ ref'd n.r.e.). Therefore, agencies may only exercise those specific powers that the law confers in clear and express language. *Subaru of America*, 84 **S.W.3d** at 220; *Texas Bldg. Owners & Managers Ass'n v. Public Util. Comm'n*, 110 **S.W.3d** 524, 531 (Tex.App.-Austin 2003, pet. denied). An agency may also exercise powers necessarily implied from the statutory authority granted or the duties expressly given or imposed. *Public Util. Comm'n v. City Pub. Serv. Bd.*, 53 **S.W.3d** 310, 316 (Tex.2001); *Texas Bldg. Owners & Managers Ass'n*, 110 **S.W.3d** at 532. However, the agency may not, on a theory of necessary implication from a specific power, function, or duty expressly delegated, exercise a new or additional power or a power that contradicts the statute. *Sexton*, 720 S.W.2d at 137-38. Nor may the agency exercise a new power solely for administrative purposes of expediency." *Id.* at 138.

Researching BODA opinions is different from usual legal research. It is not clear whether BODA relies on case law for precedent or even on its own opinions for precedent.

Jurisdiction is never presumed, even in courts of general jurisdiction; it must be established by proof. What will satisfy a tribunal as to such proof varies among the groups of tribunals; District Courts, Probate Courts, Administrative Agencies etc. Appellee presents an issue as to whether it is always necessary to prove jurisdiction. Appellant's brief cites cases, including Sup. Ct. cases showing jurisdiction is never presumed; cases cited by Appellee say the same thing;. Appellee has not acknowledged any distinctions in proof of jurisdiction before administrative agencies, proof before other tribunals and CLD criteria. Allegations are assertions of facts requiring proof in order to prevail.

The analysis in the 14th Court opinion in 14-09-00522 on which the 14th court bases its decision as to proof of subject matter jurisdiction is not statutory. It may or may not be available in Probate Court matters within the probate court concurrent jurisdiction with District Court cases.

To support a finding of justiciability of a controversy, there must be an actual controversy between the parties. The U.S. Constitution, 14th Amendment guarantees "due process;" the Texas Constitution, Article I, section 19 says there must be "due course of law." Appellant's brief cites *NCAA v. Jones* 1 S.W.3d 83, (Tex. 1999) showing that if at any stage there ceases to be an actual controversy between the

parties, the case becomes “moot.” The question of mootness before CLD proceeded with H0051132998 has been ignored by CLD and 4-6.

TRDP 2.17A says allegations must include enough facts to enable the respondent to prepare a defense. That seems to be comparable to case law construing TRCP 45 which describes “fair notice.” Exactly what is it that Appellant did or did not do that supported the allegations of violations of Texas Disciplinary Rules of Professional Conduct “TDRPC” 3.01 and 3.02.

There is a distinction in collateral attacks on a judgment that are in the court in which the original judgment was issued and those in sister courts “courts of equal sovereignty” to the court in which the judgment originated. The standard of *White v. White* 179 S.W.2d 503 cited by the 14th Court does not apply to 350,750 and 350,750-403. *White, id* is about collateral attacks in courts of equal sovereignty to the court from which the judgment being collaterally attacked originated. That 350,750 and 350,750-403 were in the same court is an undisputed relevant fact ignored by the 14th Court.

The 14th Court opinion is not adequately supported by statutory sources or cases on point as to the matters before Probate Court 1 in 350,750 and 350,750-403. The explanation and analysis in the 14th Court opinion has elisions in logic and authority; it is not sufficient to support the judgment. Concurrent jurisdiction does

not always mean that all matters within the concurrent jurisdiction proceed in exactly the same way in whichever tribunal hears the matter. The 14th Court attributes “knowledge” of a question of law to Appellant; a party cannot “know” a question of law.

The 14th Court did not provide authority supporting the criteria the 14th Court opinion states, not for the authority of Plaintiff to file the matter in Probate Court but for proof of subject matter jurisdiction. If there are cases construing the question of concurrent jurisdiction and establishing subject matter jurisdiction in a court that has limited concurrent jurisdiction with a court of general jurisdiction they have not been cited. There are references in the 14th Court opinion to the legislation creating the concurrent jurisdiction. There is also a reference to *Alfonso v. Skadden* 251 S.W.3d 52 (Tex. 2008) citing *White v. White* 179 S.W. 2d 503 (Tex. 1944); *White, id* is not on point as to collateral attacks that are in the same court that issued the original judgment.

Had the 14th Court relied on the relevant, undisputed facts showing 350,750-403 was in the same court in which the judgment in 350,750 originated, using the correct standards for analyzing collateral attacks in such circumstances, and statutory court criteria for proof of subject matter jurisdiction, the 14th Court would have reviewed the entire record, had the duty to vacate the judgment in 350,750

acknowledging, as stated in *Metropolitan Transit Authority v. Jackson* 212 S.W. 3d 797, (Civ.App.-Houston[1st Dist] 2006) that absence of jurisdiction produces a void judgment that is “mere waste paper” and that in such situations, the plenary power of the court continues. *Metropolitan Transit Authority, id* also points out that since a void judgment is void, has no force or effect, it can be ignored.

A judgment must conform to the pleadings and the proof. TRCP 301. Appellant asserts that CLD pleadings were not sufficient to enable Appellant to prepare a defense and that CLD did not prove all of the material allegations in the Evidentiary Petition as required by TRDP 2.17M.

Findings of fact must be supported by evidence. Appellant has challenged whether CLD met the “just cause” criteria before filing H0051132998. Appellant has not challenged the authority of properly qualified Evidentiary Panels to conduct Evidentiary Hearings as long as they do so within the applicable rules, policies etc. including due process.

The necessity of administrative agencies proving subject matter jurisdiction is relevant to the necessity of proof of subject matter jurisdiction by CLD in Evidentiary Proceedings before SBOT Grievance Committee Evidentiary Panels. District Courts are “courts of general jurisdiction.” Unless jurisdiction of a matter is limited to another type of court, District Courts in Texas have jurisdiction. That is, in

some circumstances, jurisdiction in District Courts can be presumed subject to some limitations and some case law interpretations. The available case law supports the necessity of proving subject matter jurisdiction but a procedural bypass has been created by Supreme Court opinions in some district court cases in which allegations in petitions are considered sufficient for purposes of estopping later challenges to jurisdiction. Even if both parties were to allege district court jurisdiction in a “forcible entry and detainer” jurisdiction still could not attach. Forcible entry and detainer matters must originate in Justice of the Peace courts. If any other court were to issue a judgment in a forcible entry and detainer matter, it would be void even if the parties agreed to have the matter before a district court and all allegations in the case were established.

There are situations in which courts and administrative agencies have some concurrent jurisdiction. That does not necessarily extend to applying court standards for purposes of establishing jurisdiction before an administrative agency as CLD claims was valid in H0051132998. Allegations assert facts an alleging party must prove in order to prevail. They must also provide enough information to the respondent to enable preparation of a defense.

Appellant has repeatedly challenged reliance on *White v. White id.* in a collateral attack that returns to the same court that issued the original judgment.

Pursuant to Appellant's election of an administrative hearing before an Evidentiary Panel, if there was "just cause" CLD could file an evidentiary petition. In SBOT disciplinary matters a lawyer can "confer" jurisdiction on CLD for a hearing before an Evidentiary Panel. The authority to bring the petition does not prove jurisdiction or other allegations in the petition.

When a lawyer elects an Evidentiary Proceeding, a duly elected Chair of the appropriate SBOT District Grievance Committee assigns properly qualified members of a properly established panel of that district's Grievance Committee to hear the matter. H0051132998 is before SBOT District 4 "District 4" Grievance Committee. Appellant has not questioned the propriety of District 4 conducting the Evidentiary Hearing in H0051132998, that is a matter of proper "venue." Nonetheless, CLD went to some lengths in the Evidentiary Hearing repeatedly "proving" that the matter is before the correct SBOT District. Appellee's Brief has repeated that, not once claiming no need to prove those elements of jurisdiction. Appellant has challenged whether District 4 had proceeded correctly with regard to qualifications of the Chairs of District 4 Grievance Committee, qualifications of members of District 4 Grievance Committee and assignment of the Evidentiary Panels involved in H0051132998.

When conferring authority on CLD to proceed according to the administrative alternative authorized in SBAAct and TRDP, CLD is supposed to have complied with

the various requirements for a properly elected Chair of the particular SBOT District Grievance Committee and properly qualified members of that Grievance Committee being assigned to a properly chosen Evidentiary Panel.

Texas inferior courts and administrative agencies are created by legislation. As a corporation within TRCP 53, SBOT must meet some additional requirements when proceeding in a court. As an administrative agency of a corporation established by special statute, does CLD, a committee of the corporation created by special statute have to comply with TRCP 53 and, as may be applicable TRCP 54. “Fair notice” in court is achieved through TRCP 45 and the cases construing it. There are no cases construing TRCP 53 and 54. TRCP 45 does not require specific allegations of elements of jurisdiction but enough facts to provide “fair notice.” Those standards are comparable to TRDP 2.17 A4. CLD relies on SBAct, TRDP, TRCP and case law to support its positions. It is also supposed to comply with Manuals and Guides.

Shaefer v. Commission for Lawyer Discipline BODA decision 44292 (Jan. 2011) addresses the questions Appellant has presented with regard to compliance with proper preliminary procedures by CLD and points out that there are situations in which there would be no way for a respondent to know if the requirements had been met. *Shaefer, id* concerns presence of a quorum of the Evidentiary Panel, not the

steps necessary before a panel can be assigned to a proceeding or failure to show essential information in the Evidentiary Hearing Report/rendition.

Respondent questioned the propriety of assigning Evidentiary Panel 4-4 “4-4” to H0051132998 she promptly requested information about CLD internal procedures. The response (App. 1) denied the existence of any procedures other than those in SBAAct and TRDP.

District Courts and Evidentiary Panels of SBOT have elements of concurrent jurisdiction with regard to SBOT disciplinary matters. That concurrent jurisdiction is not the same as concurrent jurisdiction in District Courts and some other statutory tribunals. SBOT has no jurisdiction to adjudicate lawyer disciplinary matters unless a lawyer, advised of a disciplinary matter, “elects” the alternative administrative procedure provided in SBAAct, TRDP and other applicable sources of procedures, rules, documents and standards. The election to have an Evidentiary Procedure in District 4, allows District 4 Grievance Committee Chair, to assign an Evidentiary Panel of its members to hear the matter. In making such an election a lawyer relies on CLD and SBOT Grievance Committees to follow the proper preliminary procedures some, but not all of which, are in SBAAct and TRDP.

The procedural steps to authorize an SBOT Grievance Committee Evidentiary Panel to conduct an Evidentiary Hearing are found in an assortment of sources. CLD

and District 4 Grievance Committee Evidentiary Panel 4-6 refused to show compliance with the statutory requirements in SBAct for appointment of members of Grievance Committees in “strict accordance” with the statutory procedures. TRDP 2.09 in conjunction with SBAct section 14 and Manuals Sections IV and VI (App. 2) requiring an Annual Organizational Meeting of Grievance Committees, properly called, proper notice including an agenda, a properly authorized person presiding and a properly conducted election of a Grievance Committee Chair for the next year. TRDP 2.04 requires the present Chair to preside and administer the oath to newly appointed Grievance Committee members. TRDP 2.04 requires that newly appointed Grievance Committee members take the stated oath as soon as possible after being appointed.

Manuals Part IV includes requirements for all SBOT Committees and all meetings of SBOT Committees, including minutes with record of attendance and additional reporting requirements. Since SBAct section 14 specifically requires compliance by SBOT and all SBOT Committees with Roberts Rules of Order, “Rob. Rules” the most recent edition, minutes would include relevant dates, state the presence of a quorum, the business conducted, information about the election of the chair, including nominations and results, appropriate signatures and approvals.

Some of that information from other SBOT Committees is available through the SBOT website. It is not available with regard to Grievance Committees and requests for it through discovery and Public Information Act “PIA” requests did not produce it. CLD refused to respond to the discovery requested. 4-6 denied Respondent’s Motion to Compel CLD to provide it. SBOT Public Information Officer/Special Counsel to the Office of CDC says that information is confidential providing no authority for claiming information otherwise required to be available to the public is confidential. There are some provisions in TRDP as to confidentiality but those provisions are limited. TRDP 2.16C points out that facts and evidence discoverable elsewhere are not made confidential just because they are discussed or introduced in the course of a disciplinary proceeding. Appellant did not request evidence within the confidentiality limitations of 2.16C; the information requested is required be available to the public, therefore is “discoverable” elsewhere but is not actually available.

Appellee’s Brief, attributes the lack of evidence to Appellant, despite TRDP 2.17M. When a party has peculiar knowledge of facts to be proved, that party has the burden of proof. *Jackson v. Green* 700 SW2d 620, (ref. n.r.e) *City of Houston v. Jones* 679 S.W.2d 557 (Tex. App. –Houston, [14th Dist. 1984, no writ)

Members of 4-6 claimed that election of the administrative alternative to a District Court trial the jurisdiction to conduct the hearing was sufficient to cover all elements of jurisdiction.

Manuals, Part VI (App.2) requires that Grievance Committee members be trained annually and provided with copies of Guide.

When all of those steps have been properly completed, the properly elected new Chair appoints members of the Grievance Committee for that State Bar District to specific Evidentiary Panels. Evidentiary Proceeding H0051132998 “H0051132998” was originally assigned to State Bar District 4, Evidentiary Panel 4-4.”4-4” Following denial of Appellant’s Motion to Recuse 4-4, H0051132998 was “transferred” to SBOT District 4, Evidentiary Panel 4-6. “4-6”

Manual, Part VI (App. 2) “directs” Chief Disciplinary Counsel “CDC” for CLD to prepare a manual to be distributed to Grievance Committee members. Assistant Disciplinary Counsel for CLD in H0051132998 denied existence of any rules or other policies, procedures etc. other than SBAct, TRDP and Texas Disciplinary Rules of Professional Conduct. “TDRPC” Members of 4-4 denied the existence of other policies, procedures, etc. other than SBAct, TRDP and TDRPC. (The transcript from the hearing before 4-4 has not been included in Appellant’s record.) Emails (App. 1) between Appellant and Assistant Disciplinary Counsel in H0051132998 in which

the existence of the additional rules, etc. is denied are also included in the appendix to Appellant's Brief.

In transcripts that are included in Appellant's brief, based on comments of various 4-6 members they had no knowledge of the Guide published by the Office of CDC each year since at least 2008 or Manuals published at least once each year since at least 2008. Part IV of Manuals is about SBOT Committees. Manuals Part VI, (App 2) 6.04 about SBOT Grievance Committees states specifically that all requirements for SBOT Committees also apply to SBOT Grievance Committees. Manuals, Part VI, 6.04.01 (App. 2) specifically imposes the provisions of the Manuals as well as TRDP on grievance committee members. 6.03.05 says "The Office of CDC shall conduct annual training sessions for all grievance committee members." (App. 2)

Comments of individual members of 4-6 and disregard of specific TDRP procedures as well as the Manual provisions for annual training of Grievance Committee members indicate that they were not familiar with the existence of either the Guides, the Manuals or the contents of those documents. Appellant has not been able to learn whether District 4 is holding the required "Annual Organizational Meetings" and complying with the requirements for those meetings.

SBOT is governed by PIA standards; Manual, Part IX. Grievance Committees are SBOT Committees; the lines between CLD and Grievance Committees, if maintained, provide a separation protecting the system and the respondents from impropriety and, as stated in *Schaefer v. Commission for Lawyer Discipline*, BODA Case Number 44292 “44292” CDC’s adherence to disciplinary rules is essential and must avoid even the appearance of impropriety. *Commission for Lawyer Discipline v. Schaefer* 364 S.W.3d 831 (Tex. 2012) NOTES acknowledges that issue but the opinion does not reach it. As construed by BODA. 44292 points out that a respondent might not have notice of deficiencies in procedures and thus be unable to produce evidence to prove them. Whether issues decided in BODA opinions appealed to the Supreme Court and not reached in a Supreme Court opinion have precedential status or even relevance for later BODA considerations is not clear. Researching BODA matters is frustrating; summaries of some decisions are in the backs of Guides. Summaries published in the Guide in a particular year might or might not be included in later years. A few opinions (*Shaefer, id*) are available on Westlaw.

In H0051132998, after being told that there are no internal CLD rules, procedures, Appellant submitted PIA requests; responses indicated existence of the Guides and the Manuals. Further PIA requests produced copies of the Guides and the Manuals. Neither of those documents is readily available.

With regard specifically to the Manuals, apparently the request for copies was not usual; permission to release them had to be requested; the manuals were sent. Manuals, Part IX provides for that procedure. Neither the Guides nor the Manuals are available on the internet and are not in the collections of Harris County Law Library or South Texas College of Law Library.

A predicate fact/fact-in-evidence is a fact that has been admitted into evidence in a trial or hearing. *Black's Law Dictionary, 9th Edition* p. 669. An allegation is “something declared or asserted as a matter of fact, especially in a legal pleading To establish a fact there must be evidence properly offered and admitted. Indispensable evidence *Black's id* p. 638. CLD is required to prove all material allegations in its petition. A material allegation in a pleading is an assertion that is essential to the claim, charges or defense, *Black's id* p. 87. There is no question; Appellee has presented no argument or authority denying that authority for the Evidentiary Panel to preside is a material allegation, an essential element to be proved and that proving jurisdictional standards are essential. In administrative hearings, in the absence of proof of subject matter jurisdiction, there is no authority to conduct the hearing. In such instances anything a tribunal issues is void, of no force and effect. Appellant's Brief cites an opinion of the Attorney General that says an administrative agency cannot do anything a court cannot do. In proceedings in a statutory court there must

be proof of subject matter jurisdiction in order to activate the authority of the court to conduct the hearing, adjudicate issues and grant recovery. That burden of proof is the responsibility of the party seeking relief. Appellee has not cited any BODA or Supreme Court cases appealed from BODA decisions addressing the questions raised by Appellant, that may be because there are no opinions construing those questions. If there are BODA opinions, there are no reasonable research procedures for finding them.

Appellant has not found cases construing the provisions of the SBAct, TRDP, Guide and Manuals specifically identified in Appellant's brief and throughout the proceedings before 4-6 and 4-4 all of which refer to the applicable provisions of the SBAct, TRDP, Texas Rules of Evidence "TRE," Guide, Manuals and all of which are cited in Appellant's Brief nor are such cases cited in Appellee's Brief. Appellee's Brief cites cases originating in District Court, some indicate administrative agencies as litigants. Since each administrative agency is statutory, that which might be proper for other administrative agencies is not necessarily applicable in Evidentiary Hearings before SBOT Evidentiary Panels.

The Texas Legislature, SBOT and the Sup. Ct. have gone to some lengths to provide procedural safeguards for lawyers electing an Evidentiary Hearing of

disciplinary matters instead of trial in District Court which would have to be before a properly qualified and elected judge.

Attempts by CLD to comply with TRDP 2.17M as to subject matter jurisdiction show CLD intended to do that but failed. Jurisdiction is always a material element. Before inferior/statutory courts and administrative tribunals proof of authority is the usual standard met at the outset of a matter. CLD and the Evidentiary Panels of SBOT do not have a basis for an exception to that standard .

CLD, as a committee of SBOT with some specific powers granted to it through the TDRP does not change the corporate status of SBOT, a corporation created by special statute. Appellee has not shown anything excusing CLD from any aspect of TRDP 2.17M or TRCP 45, 53 and 54.

If a tribunal is not properly created, anything it does is void and of no force and effect. Appellee asserts “substantial evidence” but there is “no” evidence in support of Appellee’s assertions about subject matter jurisdiction. The only cases cited to support Appellee’s position with regard to proof of subject matter jurisdiction are District Court cases. 4-6 had no authority to adjudicate issues, grant recovery or issue judgment until CLD provided proof of its authority based on evidence properly offered and properly admitted. CLD did not offer any evidence showing subject matter jurisdiction; it is not a question of substantial evidence.

Initially Appellant requested that CLD provide enough facts to provide fair notice as to exactly what the basis of the complaint was about. Requests for that through discovery were refused, the motion to compel CLD to provide the information was denied, the attempt to get that information through a plea to the jurisdiction was denied.

With specific references to the record Appellant's brief identifies efforts to elicit the information necessary to determine if 4-6 was qualified to preside in H0051132998. When facts are uniquely within the knowledge of an adverse party, the burden of proof to establish those facts is the responsibility of the party having access to the information. According to PIA and Manuals, the facts Appellant sought are supposed to be available to the public. TRCP 1 the point of TRCP is to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law. TRCP 192.3 includes everything Appellant requested through interrogatories, requests for admissions, motion to compel compliance and specifically required by TRCP 45, 53 and 54. Appellee's brief claims compliance with TRDP 2.17A but does not address the refusal by CLD and Panel to comply with the requests for discovery of information relevant to determine if the SBAct requirements, TRCP, TRDP requirements and due process were met. TRDP 2.17A is not limited to the identification of the specific TDRPC CLD alleges

were violated; it also includes sufficient information to show the authority of 4-6 to preside. There is notice that CLD is claiming jurisdiction but having challenged that notice not only with a General Denial but specifically throughout the proceedings, the claim is not sufficient to “prove” the necessary authority and elements of jurisdiction.

Appellee’s Brief just dismisses all of Appellant’s citations which refer to policies and procedures that are clear on their face. The citations may be unfamiliar to Counsel for Appellee but they are still citations to policies and procedures governing State Bar, State Bar Committees and CLD.

In *Shaefer, id.* BODA points out that the boundaries between State Bar and CLD for purposes of propriety are delineated and supposed to be respected. A Grievance Committee is not within CLD; that is the point, a decision making tribunal that is not part of CLD. *Shaefer, id* also acknowledges the blurring of those distinctions since the staff of CLD, which includes assistant, regional and appellate disciplinary counsel is not really separated from the State Bar, sharing offices and other resources. SBOT Public Information Officer is also Special Counsel to the Office of CDC.

Appellee does present an issue questioning whether a tribunal must always prove subject matter jurisdiction but does not address the issue of standards applicable to administrative hearings or specifically hearings before Evidentiary

Panels of SBOT Grievance Committees. It is the affirmative duty of a petitioner before a statutory court/tribunal to establish its authority and prove subject matter jurisdiction. Cases cited by Appellee originated as District Court cases and do not distinguish between standards for a court of general jurisdiction and tribunals established by statute. The authority of any statutory tribunal, which includes Evidentiary Panels of SBOT is limited by the statutory authority delegated to it. SBOT is established by legislation, TRDP are promulgated by the Supreme Court; Appellee is quick to point out that TRDP rules supporting her position are almost statutes and then ignores the other rules in TRDP, with regard to the procedural safeguards; the rules Appellee ignores have the same status as the rules Appellee likes. There is no basis for claiming Evidentiary Panels cannot carry out their mandates unless they are permitted to bypass the requirement of proving their authority, especially when it has been challenged. In court, when a party challenges compliance by a corporation created by “special statute” pursuant to TRCP 53, TRCP 54 applies. Appellant has challenged CLD with regard to averments and admissible evidence that will prove ripeness, standing, justiciability, and facts sufficient to enable preparation of a defense.

When language is clear on its face, it does not need to be interpreted or construed. Appellant having challenged authority of 4-6 to preside and CLD having

failed to prove the authority of 4-6 to preside; 4-6 having refused to compel CLD to show proof, there can be no basis for claiming 4-6 has met any other jurisdictional standard to proceed with the Evidentiary Hearing. Presumptions, if any, are not proof and can be overcome; *Alfonso v. Skadden id* the members of 4-6 display a lack of knowledge about the standards of proof of jurisdiction for Administrative Agencies. There are circumstances in District Courts when a party must negate jurisdiction. That is predicated on the District Courts as courts of general jurisdiction. Denying Appellant's requests for discovery of proof of compliance with the terms of the SBAct Appellant was prohibited from showing the absence of proper authority of 4-6 to preside by 4-6 and the purported 2012-2013 District 4 Chair.

The record reveals the extent of the confusion, lack of knowledge and misinformation exhibited by members 4-6. Appellant did not challenge anyone's personal integrity but remarks made by panel members throughout the proceedings revealed belief that Appellant was making such challenges. It appears from the record that 4-6 members are not aware of the specific requirements for seating Grievance Committees and Grievance Committee members. Appellant's challenges were about the absence of compliance with fundamental clearly stated procedures in statutory language and TRDP as well as provisions in Manuals and procedures in Guides.

Assistant Disciplinary Counsel for CLD in H0051132998, although employed by SBOT for at least 7 years did not know that CLD has internal rules and procedures set forth in Guides and Manuals. If he did know about them, he intentionally attempted to mislead Respondent when he denied their existence and, on two occasions, engaged in excessive delay in order to avoid the specific provisions in the Guide with regard to procedures for Motions to Recuse.

Panel members repeatedly insist that just by electing an Evidentiary Hearing, that Appellant had agreed to all sorts of things, none of which are mentioned in the SBAct, TRDP or elsewhere. An election to have an Evidentiary Hearing is not a waiver of any of a Respondent's rights. SBAct 81.072 provides for an administrative alternative and does not include waiver of any of Appellant's rights. Responsibility for administering and supervising lawyer discipline and disability is delegated to the "Board of Directors of the State Bar of Texas." (Preamble to TRDP)

"... Authority to adopt rules of procedure and administration not inconsistent with these rules is vested in the Board. " (Board refers to the Board of Directors of the State Bar of Texas)

Existence of CLD is statutory. SBAct. While TRDP are not statutory they are accorded the significance of statutes. Nonetheless, they are not statutes, the Supreme Court has no authority to promulgate rules for lawyer discipline that bypass statutory requirements and standards for administrative agencies nor is Appellant claiming the Supreme Court has done so. The problem may or may not be provisions in TRDP, it

is impossible to figure that out as CLD and 4-6 pick and choose which rules they follow, bobbing and weaving among the many provisions which, if all of them were to be followed, would protect Appellant's constitutional rights.

TRDP are promulgated by the Supreme Court but must be approved by the SBOT membership then approved by the Board. TRDP are not the complete rules, policies and procedures; just the ones specifically promulgated by the Supreme Court and approved by the membership of SBOT before being approved by the Board. As a corporate entity SBOT must comply with the requirements for corporations; nothing in SBAct suggests State Bar is excused from those standards.

Appellee has not refuted facts, rules, policies and cases presented in Appellant's brief simply referring to a string of rules cited by Appellant saying there are no citations and cases supporting them. (Appellee's Brief p. 3) Of course, there are few, if any, usual citations because they are the internal rules of a corporation some of which only become operative when a lawyer elects an Evidentiary Hearing. Appellee claims Appellant does not show harm as a result of the disregard of fundamental standards of due process. The right to due process is a constitutional right, 14th Amendment, absence of due process is inherently harmful. Appellant has clearly articulated that absence of due process has deprived her of a property right in her license to practice law and, as acknowledged by Appellee, has provided a list of

the procedural errors in the Evidentiary Hearing proceedings. It is not that there are violations of due process here and there, disregard of procedural safeguards is pervasive, Appellee refers to them as a laundry list and does not address any of them as though they do not matter.

The many errors and the secrecy of CLD about its internal procedures provided in Guides and Manuals create a situation that makes is unreasonably difficult and, as to some issues, impossible for a respondent to comprehend what is happening, engage in research to prepare a response, communicate effectively with Assistant Disciplinary Counsel and the Evidentiary Panel.

The issues raised by Appellant are not addressed by Appellee. It appears those rules are not generally known or available to the lawyers employed by SBOT as assistant and regional disciplinary counsel, SBOT volunteers serving on Grievance Committees or to lawyers who elect disciplinary matters heard before an Evidentiary Panel. SBAAct, section 14 mandates that SBOT Committees follow Roberts Rules. If CLD, which is a committee of SBOT and the Grievance Committees which are also committees of SBOT to comply with that statutory requirement perhaps what went awry in H005113298 would not have happened.

Based on Appellee's Brief it is also difficult to discern whether Appellate Counsel for CLD is knowledgeable about the provisions in the various applicable

statutory provisions in SBAct, TRDP, TRE, TRCP, TBOC. For example Appellee's Brief addresses "condition precedent" citing cases dealing with contracts. TRCP 54 Condition Precedent is about requirements for corporations created by special acts.

Appellee does not distinguish between administrative agency and District Court standards. Research attempting to find out what BODA has decided and whether BODA is bound by its own precedents is frustrating and, for some purposes, impossible. TRDP 2.24 states specifically that an appeal from an SBOT Evidentiary Panel is to BODA.

It appears there are no established internal CLD procedures for investigating complaints. Had a timeline been considered with regard to the complaint upon which H0051132998 was based, there would at least have been a question as to whether the complaint had become moot when the earlier opinion of the 14th Court was declared void.

If CDC has published or even written procedures for investigating grievance matters Appellant has not found them. Informally the SBOT Public Information Officer/Special Counsel to Office of CDC told Appellant that CLD considers everything within CLD confidential position is not accurate or consistent. Part of the discovery Appellant requested was about Grievance Committees; they are not part of CLD. The discovery requested as to CLD was procedural information. Apparently

CDC does not investigate using standards applicable to other Administrative Agencies but whatever they do use is something of a mystery.

Substantial evidence depends on evidence properly offered and properly admitted. Respondent's objections to evidence as irrelevant have not been addressed by Appellee. Appellee's Brief makes global statements about substantial evidence; there is "no evidence" supporting subject matter jurisdiction. Whether the judgment of the 14th court is admitted for the purposes attributed to it by Appellee is not determined despite Appellant's objection to it and the failure of counsel for CLD to lay a predicate as well as the disregard by the Chair of 4-6 of the requirements of judicial notice. That the judgment is a public document is not sufficient for any purpose other than the fact that it is a public document. It does not inherently prove anything except that it exists. It does not "prove" the alleged facts and law it states are accurate; some of which are not.

There was no response to Respondent's objections to much of the evidence offered by CLD without laying a predicate and admitted by the Chair who repeatedly cut off Respondent's attempts to establish the basis for her objections. Members of the Evidentiary Panel interrupted Respondent, not to ask questions but to make remarks reflecting their biases and prejudices, apparently predicated on assumptions from their own experiences that are not applicable to Evidentiary Proceedings.

There is significant latitude allowed for admission of evidence that the Chair decides is relevant and of probative value. That does not extend to a denial of Respondent's objections without allowing an opportunity for Respondent to present her objections etc. Appellant asserted her right to notice of documents CLD intended to offer based on judicial notice; her assertion was disregarded, another instance of denial of her right to a fair hearing and to present her case.

CLD's case-in-chief did not include proof of subject matter jurisdiction; CLD did attempt to prove it but rested without doing so. Appellee's Brief disregards the question of an administrative tribunal's obligations to prove its authority. Appellee does not distinguish between the standards of District Court and specifically SBPT as an administrative agency conducting adjudicative proceedings. TRDP 1.06 N.

The elements necessary to establish subject matter jurisdiction that allow a tribunal to proceed with a hearing are not the same as those necessary to prove subject matter jurisdiction in response to a general denial and specific challenges indicating that the tribunal does not have authority to preside, nor authority to decide issues and/or grant recovery and has not provided sufficient facts to allow preparation of a defense.

Appellee repeatedly and consistently begs the issues raised by Appellant with regard to the necessity of proving the elements of TDRPC 3.01 and 3.02 based on the

language in the those rules. CLD never attempts to show Appellant had no reasonable belief that she could prevail in the 14th Court. The only evidence, admitted over Appellant's objection and in disregard of the procedures with regard to taking judicial notice is a statement of the beliefs of the 14th Court, not Appellant's beliefs. The position of CLD is that Appellant could not have had a reasonable belief supporting her decision to appeal from the decisions of Probate Court 1 in 350,750-403 and 350,750.

Authority of a statutory tribunal is often established early in the proceeding. CLD did not prove authority of 4-6 at all. Subject matter jurisdiction for purposes of an administrative agency conducting a hearing, adjudicating issues and granting recovery is not the same as a presumption of subject matter jurisdiction in some District Court matters.

Appellee engages in creative writing in Appellee's Brief claiming as proof that which was not established as proof. Appellee is bound by the record but has added her own point of view in disregard of Texas Rules of Appellate Procedure."TRAP"

An Administrative Agency's decision is to be based on evidential facts and made by experienced officials with an adequate appreciation of the complexities of the subject entrusted to their attention. It cannot be arbitrarily or inherently unfair. "Broadly, questions of law include not only common law, statutory interpretation and

constitutional law but also questions of administrative jurisdiction, of fair administrative procedure and of protection against arbitrary or capricious action or abuse of discretion.” *Lewis, S & L Commissioner v. Metropolitan S & L* 550 S. W. 2d 11, 13. (Texas 1977)

Secrecy about rules, standards and procedures, whether intentional or a result of lack of knowledge on the part of CLD and/or the Evidentiary Panel is contrary to the concept of fairness and justice. The right to full discovery of issues and facts prior to trial, the avoidance of “trial by ambush.” *Ersek v. Davis* 69 S.W.3d 268. 274 (Civ App – Austin, 2008) Appellee has not cited one BODA or Supreme Court opinion based on a BODA opinion that addresses the requirements of administrative agencies in general and/or specifically CLD.

CLD chooses provisions of SBAct and TRDP to follow, ignoring many requirements of the Board of Directors “Board” of the State Bar of Texas “SBOT” some of which are statutory SBAct, some of which are articulated in TRDP and other procedures stated in the Guide which has been published annually since at least 2008 by the Office of Chief Disciplinary Counsel as directed in the Manuals which are published at least annually.

Even before the question of fair notice is the question of whether 4-6 was properly qualified and seated as a panel. CLD has the burden of proof, TRDP 2.17M.

Appellee's brief disregards that standard; a specific example being Appellant's attempts to discover documentation supporting the requirements to elect a chair of a SBOT Grievance Committee, one of the prerequisites to forming and seating Evidentiary Panels, establishing the authority of the Evidentiary Panels to preside. Appellant's brief refers to Appellant's repeated efforts to elicit the documentation showing SBOT Grievance procedures and SBAct, section 14 were followed. Throughout the proceedings before el 4-6 and Panel 4-4, there was informal acknowledgment by counsel for CLD and members of each panel that that there had been no compliance with an assortment of requirements, including a properly called and conducted organizational meeting, TRDP distribution of Guides, compliance with the requirements for Grievance Committees in Manuals.

CLD refused to provide the documentation despite Appellant's requests in interrogatories, requests for admissions, and demand for compliance by CLD with TRCP 45, 53 and 54. Manuals Part VI (App. 2) states specifically that Grievance Committees must comply with the same requirements as other SBOT committees. That is not being done and the information that is supposed to be available to the public as defined by PIA and specifically stated in Manuals and on the internet is not available. Without access to public information, the refusal of CLD to provide it

despite CLD having access to the information and the denial by 4-6 of Appellant's Repeated requests, there is no way that Appellant's rights have been accorded to her.

Appellee does not cite authority for an administrative agency adjudicative tribunal to bypass the requirement of proving its fundamental authority to proceed. There are no opinions of the Board of Disciplinary Appeals "BODA" or the Supreme Court cases dealing with appeals from BODA construing Appellant's questions. What might be the standard for a District Court is not necessarily applicable to administrative agencies. Further, standards applicable to other administrative agencies are not necessarily applicable to CLD as each administrative agency is statutory and limited to the powers specifically delegated to it by the statutory enabling language and necessary authorities derived from the statutory language.

Without regard to statutory language, rules, policies, procedures, an administrative agency is not excused from meeting constitutional standards. To the extent that any provision of TRDP disregards or violates constitutional standards, it is void. An administrative agency cannot do that which a court cannot do. In statutory courts plaintiff's have the affirmative burden of proof of establishing subject matter jurisdiction; that burden applies to cases before administrative agencies which are also statutory.

TRCP 45 requires that a petition give fair notice of the facts sufficient to inform the respondent of the basis of the claims. CLD is proceeding as though it is sufficient to allege rules without complying with statutory requirements for administrative agency adjudicative tribunals. If the CLD is excused from all of the usual requirements of statutory entities SBAct and TRDP would have to include that language.

The Supreme Court and the Board have developed policies, rules and procedures for CLD that, if followed, probably accord due course of law and due process of law. Appellee has not acknowledged the distinction between proof of standing in District Courts and those of statutory adjudicative tribunals. Cases cited in Appellee's Brief attempting to bolster Appellee's position that Appellant "relies heavily" on the position supported by *Tex. Dept. of Parks, id* and other cases originating in District Courts is a smokescreen to avoid responding to the issue of whether an inferior, statutory court required to establish jurisdiction can properly rely on court interpretations predicated on the unique position of District Courts.

Appellee not only attempts to impute to TRDP authority it does not have to claim subject matter jurisdiction without proof, Appellee disregards specific provisions in TRDP that are conditions precedent to proper seating of an Evidentiary Panel and the provisions in Manual specifically cited in Appellant's Brief.

TRDP only had power to hear the Fason complaint if the procedural steps in the various documents governing the administrative lawyer discipline process had been followed. It only has power to render a decision at all if all of the material allegations have been established by a preponderance of the evidence. Appellee agrees that “Subject matter jurisdiction traditionally consists of a power, conferred by constitutional or statutory authority...” (Appellee’s Brief p.6) but there is no language in SBAct or TRDP that excuses CLD from the standard of proof of all other administrative agencies with regard to subject matter jurisdiction. The cases Appellee cited are not about statutory entities.

The record does not show the basis on which CLD decided that just cause existed for purposes of the processing of the complaint. The TRDP provision about the receipt of a grievance is not necessarily applicable to the question of whether, at the time the grievance was signed and mailed, the necessary basis for a grievance existed. In this instance, the grievance shows a signature of complainant on May 10, 2011 and complainant testified during the Evidentiary Hearing that he signed the grievance on May 10, 2011 and mailed it the next day. That CLD indicated receipt more than a month later does not change the applicable facts and criteria at the time the document was signed and mailed. Appellee recently sent Appellant a document by certified mail that has not been delivered. As far as Appellant knows, it has not

been returned to Appellee. Delay in delivery of mail is not a basis for disregarding criteria applicable to finding “just cause;” another CLD elision. The legal standard for filing a document is the mailing date. Evidence of the date of mailing was provided by Fason’s testimony (RR Evid. Hearing p.35) A letter mailed is considered delivered.

Appellee responds to venue as though Appellant had challenged that issue, muddying the waters of the specific elements of “subject matter jurisdiction” raised by Appellant. Appellee (Appellee’s Brief p. 10) refers to the elements of venue as though they can be substituted for proof of standing, ripeness, justiciability, fair notice. CLD is quite clear about the need to prove venue and proved it three times in the course of the Evidentiary Hearing.

Appellee claims an Evidentiary Panel has subject matter jurisdiction without having to prove it (App. Brief p.6) then claims proof of subject matter jurisdiction was presented. (App. Brief p.6 et seq)Neither claim is accurate.

Appellee attempts to bring the threshold question of subject matter jurisdiction into the question of reversible error. Absence of subject matter jurisdiction is not a question of “reversible error.” A judgment that is not supported by subject matter jurisdiction is “void” “Black’s 9th p. 1709 Void, of no legal effect. Questions of jurisdiction must be determined before other issues before the tribunal are relevant.

The judgment in H0051132998 is void; it does not comply with the applicable standards of the SBAct, TRDP, TRCP, case law cited in Appellant's Brief requiring a judgment to be consistent with the rendition, a standard that has not been acknowledged by Appellee. In fact, Appellee engages in another elision, gliding past the Evidentiary Hearing Report, "Rendition" which, according to the cited applicable case law is the rendition. Appellee does not address the insufficiencies in the rendition a point established in Appellant's brief that is not refuted in Appellee's Brief and its insufficiencies to support a judgment at all as it does not show the fundamental requirements necessary to support a valid judgment i.e. presence of a quorum, findings of fact as required by TRDP 2.17P. and TRCP 301 which specifies that a judgment must conform to the pleadings "and" the proof.

The disciplinary petition includes factual errors brought to the attention of 4-6 and disregarded. The opinion of the 14th Court does not provide analysis of the question of whether the standard used in *Tex. Dept. of Parks, id* case originating in District Court applies to statutory courts. It simply bases its decision on *Tex. Dept. of Parks, id* even though the fact that the matter was filed in a statutory court was presented to the 14th Court. There is no authority cited for expanding the standard of *Tex. Dept. of Parks, id* to statutory tribunals.

The question of subject matter jurisdiction can be raised at any time. *Alfonso v. Skadden* 251 SW3d 52 (Tex. 2008) Additionally, even if not raised, issues affecting jurisdiction must be reviewed **sua sponte** (emphasis added) *Gantt v. Gantt* 208 S.W.3d 27, 30.(Civ. App. –Houston [14th Dist.] 2006)

TDRPC 3.01 is about whether the attorney has a reasonable belief that the claim has merit. The 14th Court did not even acknowledge the question of distinctions in proof of jurisdiction, specifically subject matter jurisdiction, in District Court and the proof needed in a statutory court. Nor does the 14th Court present a basis for applying the standard from District Court cases to a statutory court. The standard used in District Court cases such as *Tex. Dept. of Parks, id* is not actually a “judicial admission” and is not found in research about judicial admissions. A document attached to pleadings is not “evidence.”The 14th Court says the decision in 14-09-00522 is predicated on a judicial admission when, in fact, it is predicated only on allegations of both the plaintiff and the defendant that are somehow deemed to be some sort of judicial admission. Nonetheless, whether that contrivance to presume jurisdiction applies to litigation in statutory courts is not supported by the opinion of the 14th Court and no cases previously analyzing that question were presented to the 14th Court. Allegations are not judicial admissions, an allegation is an assertion. Black’s 9th *id* p.86.

Having presented a question the 14th Court did not clearly identify or address, a question not addressed by previous cases, why the 14th Court described it as frivolous is not clear. The H0051132998 petition alleges only the language of TDRPC 3.01 and 3.02. It does not articulate what position or positions Appellant presented were frivolous or what made them frivolous. The 14th court opinion acknowledges that Goodfriend did not “prove” subject matter jurisdiction in 350,750, which case law says is always required when a case is brought in a statutory court.

No case law emanating from statutory courts is cited in the opinion in 14-09-00522 supporting the position that pleading of parties can establish subject matter jurisdiction.

There is no evidence in H0051132998 to support the claimed violations of TDRPC 3.01 and 3.02. As to 3.02 the only witness testified only as to his personal experience; his personal experience is not proof as to anything that Appellant did or the circumstances in which it was done. CLD rested after presenting a “case-in-chief” that did not include proof of elements of subject matter jurisdiction or presenting sufficient facts about the claims that Respondent violated TDRPC 3.01 and 3.02 that would provide Respondent with sufficient information to prepare a defense.

CLD never did present evidence supporting the claims; there was no testimony showing that Appellant’s position was frivolous in any regard as defined by TDRPC

3.01 and there was no testimony or evidence that anything Appellant did violated TDRPC 3.02. CLD claims that just because the 14th Court opinion said the appeal was frivolous and opposing counsel agreed, that somehow that established frivolity.

If there are cases originating in probate courts construing the point made by the 14th Court as to Appellant's pleadings and attribution to Appellant of knowledge of the court's subject matter jurisdiction based on allegations, those cases are not cited in the opinion of the 14th Court.

Neither point is included in the opinion of the 14th Court issued June 12, 2013 which is the basis upon which CLD proceeded even though that opinion was not issued at the time complainant signed the grievance and the judgment upon which complainant relied in submitting the grievance was withdrawn, declared void. A void judgment is as though it had never been. A void judgment has no force and effect. Black's id. p. 921. Ripeness, a component of subject matter jurisdiction, refers to whether a claim has actually accrued. Without the judgment of the 14th Court of February 24, 2013 later declared void, had a complaint that Appellant's claims in 14-09-00522 were frivolous been filed, would that have been sufficient for a finding by CLD of "just cause."

A case becomes "moot" "if," at any stage there ceases to be a factual controversy between the parties. *Waco ISD v. Gibson* 22 S.W.3d 849, (Tex. 2000)

TRDP rules governing the grievance process require two investigations. The initial investigation by CDC determines whether the complaint received by CLD is an inquiry or a complaint. On what basis would a complaint signed May 10, 2011 and mailed on or about May 11, 2011 about violations of TDRPC 3.01 and 3.02 have been relevant in the absence of the February 24, 2011 opinion in 14-09-00522.

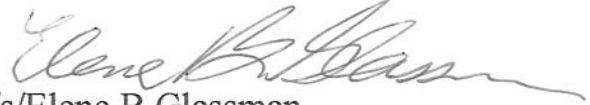
TRDP 1.06 U “Just Cause” In the absence of the February 24, 2011 opinion from the 14th court, based solely on the complaint signed by Fason on May 10, 2011 and mailed the next day, would a reasonably intelligent and prudent person believe Appellant had engaged in professional misconduct?

Appellee asserts that TRDP vests evidentiary panels with jurisdiction to preside over disciplinary proceedings and enter disciplinary judgments against Texas attorneys... (App Brief p. 6)Appellant points out that the authority to preside must be in accordance with statutory standards, TRDP, provisions of Manuals and Guides, etc. The filing of a petition is not automatically authority to enter judgment; Appellant filed a General Denial. A judgment must also meet TRCP 301 standards.

Appellant has complied with T.R.A.P. 33.1 showing clearly that CLD did not provide a properly composed Evidentiary Panel, did not have “just cause” for an Evidentiary Petition, failed prove subject matter jurisdiction, did not meet its burden of proof with regard to allegations generally and specifically of violations of TDRPC

3.01 and 3.02 that Appellant's right to due process was violated, that the evidence and law upon which CLD predicated its claims were erroneous.

Respectfully Submitted,



/s/Elene B Glassman

_____ Elene B. Glassman,
pro se SBN

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APPENDIX

Email conversation

Appendix 1

State Bar Board Policy Manual, Parts 1V and VI

Appendix 2

Appendix 1

Tim Bersch <Tim.Bersch@texasbar.com>
To: Elene Glassman <ebglassman@gmail.com>

Tue, Apr 24, 2012 at 6:12 PM

Ms. Glassman,

July is problematic for a hearing because the Panel 4C's normal hearing date is the first Wednesday of the month, and the first Wednesday of July is July 4, so no hearing will be held. It might be possible to schedule a hearing on another day that month, but it is always difficult to coordinate the schedules of all concerned. That is another reason that I think it is better to schedule the hearing on the Challenge to Jurisdiction in August or September.

Again, I urge you not to request a hearing on your Objection to Assignment of Evidentiary Panel. By the time the hearing can be held, the issue will be moot.

As far as the standards for disqualification or recusal of a panel member are concerned, I refer you to Rule 2.06 of the Texas Rules of Disciplinary Procedure. All of the information about the functioning of Grievance Committees is found in the TRDP.

For the moment, I'll extend the deadline for you to respond to Petitioner's Requests for Disclosure until April 30, 2012. Since I am not making you respond to my discovery, I ask you not to send discovery to me. If you refrain from doing that, and if we agree to set the hearing on the Challenge to Jurisdiction in August or September, I'll extend the deadline for you to respond until after the hearing.

Tim Bersch
[Quoted text hidden]

Elene Glassman <ebglassman@gmail.com>
To: Tim Bersch <Tim.Bersch@texasbar.com>

Wed, Apr 25, 2012 at 11:58 AM

Mr. Bersch,

Thank you, April 30th for disclosure helps, I expect to have it ready by then.

The issues will not be moot but much may change by August or September. I do not quite understand your request that I not seek discovery. I can file it and extend the same courtesies to you that you have extended to me but then I will be protected. I do not want to risk the situations I encountered in 2008.

TDRP does not provide the actual procedures I have requested. The issues of disqualification and/or recusal (they seem to be synonymous) have been brought to the attention of the panel. Who hears recusal/disqualification?

Elene Glassman
[Quoted text hidden]

Tim Bersch <Tim.Bersch@texasbar.com>
To: Elene Glassman <ebglassman@gmail.com>

Wed, Apr 25, 2012 at 4:19 PM

Ms. Glassman:

The issues WILL be moot after July 1. Catherine Wylie will no longer be on the District 4 Grievance Committee, so there will be no need for you to try to keep her from being involved in this proceeding. The members of all six evidentiary panels will have been appointed by a committee chairperson who is someone other than Catherine Wylie, so there will be no need for you to try to keep anyone appointed by her from serving on the evidentiary panel in this proceeding.

Let's just wait til July, then set a hearing on your Challenge to Jurisdiction.

Tim Bersch

-----Original Message-----

From: Elene Glassman [mailto:ebglassman@gmail.com]

[Quoted text hidden]

Appendix 2

Legal Services to the Poor in Civil Matters
 Legal Services to the Poor in Criminal Matters
 Local Bar Services
 Minimum Continuing Legal Education
 Pattern Jury Charges – Business, Consumer and Employment
 Pattern Jury Charges – Criminal
 Pattern Jury Charges – Family
 Pattern Jury Charges – General Negligence and Motor Vehicles
 Pattern Jury Charges – Malpractice, Premises and Products
 Pattern Jury Charges - Oversight
 Professionalism
 Public Affairs
 Racial Diversity in the Profession
 Real Estate Forms
 Section Representatives to the Board
 Texas Disciplinary Rules of Professional Conduct
 Web Services
 Women in the Profession

4.02 Special Committees

4.02.01 Establishment. The Board, either on its own initiative or recommendation of the President, may create by resolution Special Committees and may define the limited objectives, powers and duties of these committees to investigate and study matters of an immediate or nonrecurring character relating to the specific purposes, business, and objectives of the State Bar. Special Committees shall act within the provisions of the State Bar Act and the State Bar Rules and policies established by the Board.

4.02.02 Membership. Special Committees shall be composed of regular membership as the President may determine.

4.02.03 Duration. The life of any Special Committee shall be coextensive with the nature of the task assigned, but shall expire no later than the end of the annual meeting following its creation, unless the Board, on recommendation of the incoming President, votes to continue the committee.

4.02.04 List of Special State Bar Committees.

Annual Meeting

4.03 Removal and Replacement of Members

4.03.01 Removal. Any member of a Standing or Special Committee may be removed by the President, in consultation with the President-elect, before completion of the member's term, when the President determines that:

(A) the member has two unexcused absences from meetings of the committee within any twelve-month

period;

(B) the member has neglected or breached the duties of committee membership;

(C) the member has violated any of the applicable provisions of this Policy Manual; or

(D) the member has become incapacitated or is unable to fulfill the duties of committee membership.

4.03.02 Vacancies. A vacancy in a committee membership position occurs upon:

(A) the death of a member;

(B) a judgment of incompetence of a member by a court of competent jurisdiction;

(C) a member's written resignation delivered to the President; or

(D) a member's removal pursuant to Section 4.03.01.

4.03.03 Filling of Vacancies. When a vacancy occurs in a committee membership position, the President may, but is not required to, appoint a member to fill the vacancy. When the vacancy is in the position of chair, co-chair, or vice-chair of a committee, the President may either designate a current member of the committee to fill such vacancy for the remainder of the Organizational Year. Those appointed to fill the vacancy of a committee member shall serve the balance of the term of the position vacated.

4.04 Additional Committee Policies and Procedures

4.04.01 Size of Committees. Committees shall have a minimum of nine (9) members and a maximum of twenty-seven (27) members. In most instances, a maximum of twenty-one (21) members is desirable.

4.04.02 Guidelines for Committee Operations. The chair and vice-chair of each committee will operate under the following guidelines:

(A) An organizational meeting will be held involving the full committee within the first two months of the Organizational Year.

(B) Each committee will operate with an executive committee of no more than five members to be named by the President.

4.04.03 Financial Responsibility Each chair and vice-chair shall have the responsibility of effecting committee business within the budget provided for that committee. Meetings of the full committee will be held to a minimum

and will be held at a location chosen with the factors of convenience to the membership, travel, and expense in mind. Whenever possible, the committee will function through its executive committee or subcommittees with the full membership of each committee kept fully informed by mail, telephone, or teleconferencing. Teleconferencing equipment is available at State Bar headquarters for this purpose.

4.04.04 Organizational Meeting At the organizational committee meeting, each committee chair shall make the membership aware of the purpose clause of the particular committee and outline the chair's goals and focus for the year. Consideration should be given to appointing subcommittees and subcommittee chairs to further the goals and focus of each committee.

4.04.05 Notice No committee meeting shall be held without providing ten days notice to the members of the meeting accompanied by an agenda setting forth the subject matter to be considered at the meeting.

4.04.06 Staff Assistance. When necessary, staff members may be assigned to act as liaisons to standing or special committees. These assignments are made at the discretion of the Executive Director on request from a committee chair.

4.04.07 Lay Memberships. The President should appoint one or more non-lawyers (but not more than one-third of total committee membership) to committee membership as regular or advisory members. Lay members shall be entitled to attend committee meetings, participate in discussion, and receive copies of notices, minutes of committee meetings, and all other communications sent to committee members. They shall have the same rights, powers, and duties, including rights to vote and to reimbursement, if any, as other committee members of the same classification have.

4.04.08 Multiple Committee Memberships. No member may serve simultaneously on more than one State Bar committee without special approval of the Board, except in instances in which an additional committee membership is a result of the member's *ex officio* performance of a Bar office or position held by the member.

4.04.09 Attendance. Records of attendance at all meetings must be kept by the chair or secretary. It shall be the chair's or the chair's designee's responsibility to have prepared minutes of all committee and subcommittee meetings. The chair shall forward to the Executive Director within ten days following each meeting the minutes of the meeting and the record of attendance.

4.04.10 Committee Reports.

(A) The chair of each committee shall submit to the President (with copies to the President-elect, the Board

advisor, the alternate Board advisor, the Executive Director, and the committee coordinator) two reports per year as follows:

(1) An outline of the projects and objectives of the committee for the coming year, due September 30; and

(2) The final report of April 1, which shall contain the information specified by the Executive Director and President. (The final report will be published in the *Texas Bar Journal*.)

(B) On request of the President, the committee chair is also encouraged to report to the Board about the status of the committee's activities not later than twenty days before each Board's regularly scheduled quarterly meetings.

4.04.11 Income from Non-dues Sources. No funds shall be solicited or received by any committee without prior approval of the Board. All funds shall be remitted to the Executive Director for deposit in the State Bar bank accounts and for disbursement under procedures established by the Board.

4.04.12 Quorum. Committee meetings shall be held on the call of the chair. Each committee meeting must be scheduled through the Executive Director or the designee, who will be responsible for sending meeting notices to committee members, obtaining replies, indicating attendance, and informing the chair of anticipated attendance. Any meeting notice that results in affirmative responses from less than a quorum by three days before the meeting shall be canceled after reasonable notice to the committee chair, and the Executive Director or the designee shall immediately notify the committee members of the cancellation. Copies of all committee notices shall be provided to the President and President-elect. One-third of the members of any standing or special committee shall constitute a quorum for the transaction of business, unless the Board, by special resolution, provides otherwise.

4.04.13 Representation of State Bar. No Standing or Special Committee or member thereof shall, expressly or by implication, purport to represent the State Bar or any committee before any legislative body, agency, court, or other tribunal unless authorized to do so by the Board or the policies or guidelines of the State Bar.

4.04.14 Speaking or Writing. No Standing or Special Committee or member thereof shall, expressly or by implication, purport to act, speak, or write on any subject on behalf of the State Bar or any committee unless authorized to do so by the Board or the policies or guidelines of the State Bar.

4.04.15 Advocacy. No Standing or Special Committee or member thereof shall engage in any advocacy activities in violation of this Policy Manual, Tex. Govt. Code Section

81.034 or any other provision of the State Bar Act or other Texas statute, the rules of the Supreme Court of Texas or any Texas agency, or Texas or federal case law.

PART V. STATE BAR SECTIONS

5.01 Establishment

5.01.01 General The Board may establish and maintain sections for the purpose of promoting the objectives of the State Bar within the particular field designated by the bylaws of each section, all subject to the laws, rules of court, regulations and policies of the State Bar.

5.01.02 Composition. Sections are composed of lawyers who practice in specialized fields of law or who otherwise have common professional interests. Sections may in their bylaws provide for associate members such as legal assistants, non-attorney academic professors and/or law students. The associate members shall not have voting privileges or hold office.

5.01.03 State Bar Participation. Sections tend to encourage participation of a large number of lawyers in the affairs of the State Bar and, accordingly, the activities of sections are encouraged. The State Bar shall seek and receive input from the sections for appointments to committees and State Bar affiliated groups.

5.01.04 Texas Bar Journal. State Bar sections are allowed to have, at no cost, a one-fourth page advertising space in the *Texas Bar Journal* each year to solicit new members.

5.01.05 Establishment. A new section may be established on authorization by the Board upon written petition meeting the following requirements. The contemplated jurisdiction of the section shall not be in substantial conflict, nor substantially overlap, with the jurisdiction of any section, standing committee or special committee.

(A) Presentation of proposed bylaws, which shall include a statement that no positions may be taken by the section or its members in the name of the section that advocates or advances a political or social policy position.

(B) Presentation of the names of initial officers, executive council members and proposed committees of the section.

(C) Presentation of a proposed budget of estimated income and expenses containing a dues structure sufficient to generate \$2000 for each of the first two years of operation.

(D) Presentation of a list of at least 200 members of the State Bar who have signed statements that they will apply for membership in the section

(E) Presentation of a detailed statement of purpose of the proposed section.

(F) Presentation of a statement that the contemplated jurisdiction of the section is not in substantial conflict, nor substantially overlap, with the jurisdiction of any section, standing committee or special committee.

(G) Presentation of a statement that the section will not act as a political or social advocacy group and shall comply with all State Bar policies, the State Bar Act and within the guidelines of *Keller-Gibson* case law.

(H) A proposed section complying with Subsections 5.01.05(A) through (G) shall be accorded provisional status for a period of two years. Provisional sections shall comply with all requirements imposed on existing sections. At the end of the two-year period, the Executive Committee shall review the provisional status to determine substantial compliance with these requirements and shall recommend the continuation or dissolution of the section to the Board.

(I) All sections in existence as of January 1, 1998 shall have five years in which to achieve substantial compliance with the requirements of section status. At the end of this five-year period, the Executive Committee shall review the status to determine substantial compliance and shall recommend the continuation or dissolution of the section to the Board.

5.01.06 Procedures for Reviewing Applications for Creation of New Sections. All proposals to establish a new section of the State Bar of Texas shall be governed by the procedures set forth herein. In making its decision regarding the proposed section, the Board shall consider whether:

(A) The proposed section meets the requirements set forth in Subsection 5.01.05;

(B) The proposed section and its purposes fall within the purposes, express or implied, of the State Bar as provided in the State Bar Act; and

(C) Adequate notice and opportunity has been afforded for presentation of supporting and opposing opinions and views.

5.01.07 Procedures for Obtaining Approval of Board for a Proposed Section.

(A) A written petition and materials complying with Subsection 5.01.05 shall be submitted to the Section Representatives to the Board Committee. After determining that the petition and materials comply with Subsection 5.01.05, the Section Representatives to the Board Committee shall circulate copies of the petition and materials to each member of the Council of Chairs. The

6.04 Grievance Committees

6.04.01 General. All grievance committees shall be duly organized and shall carry out the duties of office in accordance with the Texas Rules of Disciplinary Procedure and this Policy Manual.

6.04.02 Nomination and Appointment. Each Elected Director of the State Bar shall nominate, and the President of the State Bar shall appoint, the members of the grievance committees within the District that coincides with the Director's district. The Elected Director shall certify that he or she has explained the importance of the position to each nominee, and that the nominee has agreed in writing to participate actively in the work of the committee and fulfill the duties of such office. If an Elected Director fails to make such nominations timely, the President shall proceed to make the required appointments without such recommendations. The appointment of grievance committee members does not require ratification by the Board.

(A) Diversity. It is in the best interest of the public and the lawyers of Texas for the racial, ethnic, and gender makeup of the district grievance committees to fairly represent as closely as reasonably practicable, the racial, ethnic, and gender makeup of the districts they serve. Directors are encouraged to make their district grievance committee appointments so as to continue the fulfillment of this goal and to ensure that lawyer members reflect the various sizes of practice groups.

(B) Lawyer Members. In making recommendations for appointments of lawyer members to grievance committees, each Director shall recommend for appointment only those persons who are licensed to practice law in the State of Texas and members in good standing of the State Bar and who have not been convicted of a misdemeanor involving theft, a felony, or a crime involving moral turpitude. No person may serve as a grievance committee member while he or she is a member of the Board or an active judge subject to Canon 4H of the Code of Judicial Conduct.

(C) Public Members. In making recommendations for appointments of public members to grievance committees each Director shall recommend for appointment only those persons representative of the general public who are not licensed to practice law and who do not have other than as consumers a financial interest in the practice of law, and who have not been convicted of a misdemeanor involving theft, a felony, or a crime involving moral turpitude. No person may serve as a grievance committee member while he or she is a member of the Board.

(D) Financial Interest. For purposes of disqualification of a person for recommendation for appointment as a public member to a grievance committee, the phrase "financial interest in the practice of law" shall include:

- (1) the spouse of a lawyer;
- (2) any employee of a lawyer, private law firm, or professional legal corporation;
- (3) any person who acquires the majority of his or her annual gross income from or through a lawyer, law firm, professional legal corporation by way of professional or consultant fees; and
- (4) the spouse of any person listed in (2) and (3) above.

(E) Background Check. Each person seeking to serve as a grievance committee member shall, prior to nomination, submit to the Chief Disciplinary Counsel a written consent to the performance of a criminal background check as a prerequisite to nomination.

6.04.03 Defense of Grievance Committee Members in Lawsuits Related to Their Service. The State Bar shall defend, at the expense of the State Bar, the present and former members of its district grievance committees in civil litigation which has been initiated as the result of the member's committee service. The State Bar, by undertaking the defense of a committee member, cannot and does not assume any obligation to satisfy a judgment rendered against the member or to contribute money toward any settlement agreed upon by the member or any of the parties to the lawsuit. In defending grievance committee members in lawsuits related to their service, the following procedures apply:

(A) Grievance Committee Member to Promptly Notify State Bar. Promptly upon receipt of a citation and petition that alleges conduct on the part of a present or former district grievance committee member as the basis for a claim, the member shall forward a copy of the petition and citation to the Chief Disciplinary Counsel's office in Austin, Texas, together with a request for representation in the matter in question.

(B) Review. Upon receipt of a copy of a request for representation, the Chief Disciplinary Counsel shall:

- (1) send a copy of the request to the Director or Directors in whose district the grievance committee member serves or served, the Chair of the Commission, the President, the Executive Director, the Chair, and the Chair of the Discipline/Client Attorney Assistance Program Committee; and
- (2) review the allegations made therein and both the Chief Disciplinary Counsel and the Executive Director shall make an initial determination as to whether or not the allegations pertaining to the committee member appear to be within the course and scope of the committee member's duties.

(C) Determination. If the Chief Disciplinary Counsel and

before the reinstatement hearing.

(B) The responsibility for requesting the insertion of such notice shall be upon the applicant for reinstatement.

(C) The notice shall be published in the disciplinary actions section of the *Texas Bar Journal* at the same rate as classified ads and the cost thereof paid by the applicant for reinstatement. The notice shall contain the name and address of the applicant, the date and place of resignation or disbarment, and the county, court, and cause number of the application.

6.07 Compromise of Claims Arising from Disciplinary Judgments

Notwithstanding any other provision in this Policy Manual, the Executive Director, upon the advice of the Chief Disciplinary Counsel and other State Bar legal counsel, shall have full authority to compromise claims that arise in connection with the collection of awards of attorneys fees, court costs and litigation expenses due to the State Bar in lawyer disciplinary judgments. The Executive Director shall fully and timely report such compromise to the Board and the Commission.

6.08 Fee Arbitration Committees

The State Bar encourages the formation of fee arbitration committees by every local bar association. Should a local bar fail to form such a committee, then the Director for the district in which that local bar is located may appoint one or more fee arbitration committees for the district.

6.09 Grievance Referral Program

The Grievance Referral Program is established as a diversion program designed to address professionalism issues in minor misconduct cases. The Office of Chief Disciplinary Counsel shall maintain the Grievance Referral Program as a component of the attorney discipline system.

6.09.01 Eligibility

The following criteria are to be considered for participation in the program:

(A) Respondent has not been disciplined within the prior 3 years.

(B) Respondent has not been disciplined for similar conduct within the prior 5 years.

(C) Misconduct does not involve misappropriation of funds or breach of fiduciary duties.

(D) Misconduct does not involve dishonesty, fraud, or misrepresentation.

(E) Misconduct did not result in substantial harm or prejudice to client or complainant.

(F) Respondent maintained cooperative attitude toward the proceedings.

(G) Participation is likely to benefit respondent and further the goal of protection of the public.

(H) Misconduct does not constitute a crime which would subject respondent to compulsory discipline under Part VIII of the Texas Rules of Disciplinary Procedure.

6.09.02 Procedure

(A) The Commission may refer an eligible Respondent to the program in any disciplinary matter that has reached the Just Cause stage of the process.

(B) The Respondent must agree to meet with the program administrator for an assessment of the professionalism issues that contributed to the misconduct.

(C) The Respondent must agree in writing to waive any applicable time limits and to complete specific terms and conditions, including restitution if appropriate, by a date certain and to pay for any costs associated with the terms and conditions.

(D) If the Respondent agrees to participate and completes the terms in a timely manner, the underlying grievance will be dismissed.

(E) If the Respondent does not fully complete the terms of the agreement in a timely manner, the underlying grievance will continue in the ordinary disciplinary process.

(F) Generally, a Respondent is eligible to participate in the program one time.

6.09.03 Reporting The program administrator will provide periodic reports to the Commission on the progress of the program, including the number of cases resolved.

Part VII. Programs, Projects, Services and Functions

7.01 Delivery of Legal Services

7.01.01 Citizens' Legal Education. It shall be a policy of the State Bar to establish a special committee that shall concern itself with developing, implementing, and augmenting programs for the education of the public in regard to each citizen's legal rights and responsibilities and the roles of the legal profession and the judiciary in protecting those rights and enforcing those responsibilities.

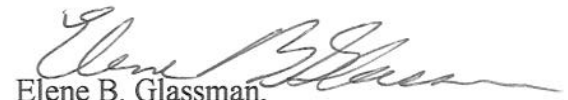
CERTIFICATE OF COMPLIANCE WITH APPELLATE RULE 52.3(j)

Elene B. Glassman, Relator hereby certifies that she has read this Appellant's Reply Brief and concluded that every factual statement in it is supported by competent evidence included in the appendix or record, as required by Appellate Rule 52.3 (j)


Elene B. Glassman, Appellant

CERTIFICATE OF COMPLIANCE WITH APPELLATE RULE 9.4(i)

Elene B. Glassman, Appellant hereby certifies that this document contains 10,069 words as indicated by the word-count function of the computer program used to prepare it and excluding the caption, identity of parties and counsel, statement regarding oral argument table of contents, index of authorities, statement of the case, issues presented, signature, proof of service, certification, certificate of compliance and appendix as provided by Appellate Rule 9.4 (i).


Elene B. Glassman,
Appellant/Respondent

CERTIFICATE OF SERVICE

This certifies that the undersigned served Appellant's Reply Brief on the State Bar of Texas, Commission for Lawyer Discipline, Board of Disciplinary Appeals by sending it to lead counsel for Appellee Cynthia Hamilton electronically, to which Counsel for Appellee gave permission as shown in the Certificate of Service attached hereto and served it on State Bar of Texas, Commission for Lawyer Discipline, Board of Disciplinary Appeals by sending it electronically and to the following address by certified mail, return receipt requested:

Ms. Christine McKeeman, BODA
Texas Law Center, No 610
P. O.Box 12426 Capitol Station
Austin Texas 78711


Elene B. Glassman