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

NO. 72059

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

DAMON ALEXANDER GOFF,
Appellant,

v.

COMMISSION FOR LAWYER DISCIPLINE,
Appellee.

APPELLANT'S BRIEF

ORAL ARGUMENT REQUESTED

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

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

Damon Alexander Goff
Pro Se Appellant
Texas Bar No. 24096552
4020 Castle Creek Cove

Round Rock, Texas 78681
Telephone: (512) 580-3856
damon@gofflawfirm.com

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I. IDENTITY OF PARTIES AND COUNSEL

Appellant Damon Alexander Goff (Texas Bar No. 24096552) appears pro se. He was the Respondent before the Evidentiary Panel.

Appellee is the Commission for Lawyer Discipline. Appellate counsel for the Commission is Michael G. Graham, Appellate Counsel (State Bar No. 24113581), Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711; michael.graham@texasbar.com. Commission counsel at the evidentiary panel was Amanda M. Kates, Assistant Disciplinary Counsel.

II. STATEMENT OF THE CASE

This appeal arises from a Judgment of Partially Probated Suspension signed October 23, 2025, by Evidentiary Panel 9-1 of the District 9 Grievance Committee. The judgment imposed a 24-month partially probated suspension — three months active (October 16, 2025 through January 15, 2026) and 21 months probated — along with \$20,020.18 in attorney's fees and costs, CPA trust account audit requirements, and additional continuing legal education obligations. The judgment was entered on a default for failure to timely file an answer to the First Amended Evidentiary Petition.

The evidentiary hearing was conducted across four sessions: October 1, 2025 (Volume 1, 311 pages), October 8, 2025 (Volume 2, 21 pages), October 13, 2025 (Volume 3), and October 16, 2025 (Volume 4, 11 pages). Appellant appeared and participated in all sessions except October 8, when — despite having filed a documented motion for continuance supported by evidence of his minor child's hospitalization — the Panel proceeded to take adverse witness testimony in his complete absence.

Appellant timely perfected this appeal. The matter is docketed as BODA No. 72059.

III. ISSUES PRESENTED

1. Did the Panel's proceedings suffer a structural due process defect where Commission counsel communicated ex parte with the Panel Chair the evening before the hearing and correctly predicted how he would rule on a contested evidentiary issue — which he then ruled on exactly as predicted the following morning, restricting Appellant's mitigation evidence across every cross-examination conducted that day — before acknowledging the error at the end of the day, after all fact witnesses had already testified?
2. Did the Panel violate Appellant's due process rights by denying a documented emergency continuance supported by evidence of a minor child's hospitalization, proceeding to take adverse witness testimony and admit new evidence in Appellant's complete absence, and never providing any opportunity for cross-examination?
3. Did the Panel abuse its discretion by excluding a fully authenticated fee agreement (Defense Exhibit 1) from the sanctions hearing on the sole basis of untimely production, without any finding of prejudice, where opposing counsel had conditionally withdrawn her substantive objection?
4. Is the neglect finding on the Enright matter legally unsustainable where no signed contingency fee agreement existed, rendering the alleged obligation to perform legally unenforceable under TDRPC Rule 1.04(d), and the default cannot supply what substantive law requires to be in writing?
5. Is the Rule 8.04(a)(8) dishonesty finding on the Fontana matter factually and legally unsupported where the check was valid when issued, became NSF only because the recipient's attorney held it for nearly four months during a bank transition, the complainant formally withdrew his grievance and testified against discipline, and no evidence of dishonest intent was presented?
6. Did the Panel err in giving unrestricted weight to grievance findings on three matters — Omie Abbey, Hyun Kim, and Christopher Allen-Bradley — where those complainants did not testify, depriving Appellant of any opportunity to demonstrate that they were paid, that their grievances were solicited by Jedediah Grant, and in at least one instance that the underlying claim was potentially fraudulent?
7. Is the 24-month partially probated suspension disproportionate to the culpability established in the record, in light of the mitigating factors, the absence of intentional misappropriation, Appellant's immediate and sustained remedial action, his clean prior disciplinary history, and the substantially impeached credibility of the Commission's principal witness?

8. Even if no single error independently warrants reversal, do the cumulative procedural errors in this proceeding — an ex parte communication, an erroneous mitigation ruling affecting every fact witness cross-examination, denial of a documented emergency continuance, uncrossed adverse testimony, and exclusion of authenticated evidence — collectively deprive Appellant of a fundamentally fair sanctions hearing warranting remand?

IV. STATEMENT OF FACTS

A. The Nature and Origin of the Nine Complaints

Appellant is a Texas attorney (Bar No. 24096552) licensed since approximately 2016. Beginning in late 2022, Appellant launched a volume-based practice representing property damage claimants in diminished value cases — a historically underserved population — through a program termed 'Operation Monster Car,' operated in conjunction with Jedediah Grant through a rental company called Elektrica Holdings. The program handled approximately 177 client engagements. In the course of this program, Appellant discovered that Grant had engaged in unauthorized practice of law, was submitting fraudulent invoices, and was operating as an attorney under the pseudonym 'Morgan Mullis' in conjunction with a licensed attorney, Chike Mbamali.

After discovering this fraud, Appellant terminated his relationship with Grant, brought in a law partner (Mathews Metyko) to assume management of all trust accounts, and retained a third-party investigator at personal cost to audit client accounts. Following his termination, all nine grievances forming the basis of this proceeding were filed within a six-week period. Eight of the nine complainants had direct contact with Jedediah Grant.

Grant testified at the hearing and admitted to: filing legal documents in Texas courts under the pseudonym 'Morgan Mullis'; doing so in conjunction with licensed attorney Chike Mbamali; personally advising complainant Michael Fontana to file his grievance; and being subject to a \$5,000 sanction from a Justice of the Peace court arising from proceedings related to his conduct.

Vol. 1, Tr. 228:4-9; 231:1-11; 242:10-11; 243:5-7.

Of the 177 clients in the Operation Monster Car program, only the final eight — the complainants in this proceeding, excluding Enright — were connected to Grant. Appellant stated in closing argument: 'There is a reason that there were 177 clients for Operation Monster Car, and the only people that complained are the last eight, the tail eight, as I was transitioning from a solo

practitionership to a partnership during this time frame that I had to shut things down so I could find out what's going on.'

Vol. 3, Tr. 490:6-11.

The sole complainant with no connection to Grant was Richard Enright, whose matter is addressed separately below.

B. The Default and Its Context

Appellant failed to timely file a formal written answer to the First Amended Evidentiary Petition. He acknowledged this at the October 1 hearing, explaining that he believed an informal stay was in place following discussions with the CDC, and that he was simultaneously managing nine grievances and multiple civil lawsuits filed by Grant, all within a compressed period. The Panel entered default under TRDP Rule 2.17(C). Appellant does not challenge the entry of default on appeal; he challenges the procedural integrity of the sanctions hearing that followed and the legal sufficiency of specific violation findings.

Vol. 1, Tr. 23:11-26:16.

C. The Ex Parte Communication and the Erroneous Ruling on Mitigation Evidence

On the evening of September 30, 2025, at approximately 5:00 p.m., Commission counsel Amanda Kates was contacted by Appellant by telephone. During that conversation, Ms. Kates told Appellant that Panel Chair Rossick would not permit him to present evidence that no grievance had ever been filed against him. Appellant is prepared to provide a sworn declaration attesting to this communication.

The following morning, the prediction came to pass. Before Appellant's opening statement, Appellant raised the question of whether he could present the absence of prior grievance filings as mitigation. Panel Chair Rossick ruled — immediately after Kates spoke to the issue — that the Panel 'literally could not take that in as evidence at this stage in the proceeding.' The ruling was made in language that tracked Ms. Kates' position.

Vol. 1, Tr. 89:1-3; Tr. 88:22-89:3.

That ruling governed every cross-examination on October 1. Appellant explicitly acknowledged adapting his approach: 'it sounds like I can't testify as to whether or not I've ever had anything filed against me before.' The four witnesses who testified on October 1 — Jedediah Grant, John Wages, Michael Fontana, and Nancy Lauletta Caballero — were all cross-examined under this improper constraint.

Vol. 1, Tr. 90:13-16.

At the end of October 1, after all four witnesses had testified, Panel Chair Rossick stated: 'So I looked at that and I had that mixed up.' The correction was partial and belated. Rossick ruled that Appellant could testify to the absence of prior disciplinary findings but still could not testify that no grievance had ever been filed. When Appellant sought to testify that 'no one's ever filed anything,' Rossick confirmed he could not do so. This narrower restriction was again shaped by Ms. Kates' interjection, which preceded the announcement of the revised ruling.

Vol. 1, Tr. 271:10-11; 273:13-19; 271:22-272:22.

D. The October 8 Session: Adverse Testimony Without Appellant

On the morning of October 8, Appellant filed a motion for continuance supported by documentation of his minor child's hospitalization. The Commission filed a response in opposition. Panel Chair Rossick — without convening the parties and without Appellant's participation — ruled on the motion, granting it in part and denying it in part, and ordered the October 8 session to proceed for the testimony of Zunair Mushtaq.

Appellant was not present. Mushtaq testified on direct examination by Commission counsel. Panel members Rossick and Wilson questioned the witness. Petitioner's Exhibit 37 — a settlement accounting document Mushtaq forwarded to Commission counsel in real time during the hearing — was offered and admitted. At no point was Appellant present, and no cross-examination of Mushtaq by Appellant occurred at any session of the four-volume proceeding. The transcript index of Volume 2 confirms this on its face.

Vol. 2, Tr. 281:13-18; Vol. 2 Index; Vol. 2, Tr. 290:9-12.

E. The Three Non-Appearing Complainants

Three of the nine complainants — Iyibi Omie Abbey (Case No. 202401976), Hyun Kim (Case No. 202401831), and Christopher Allen-Bradley (Case No. 202401705) — did not testify at any session of the hearing. Their cases were established exclusively through the deemed-true default facts and documentary exhibits. Neither the Commission nor the Panel summoned them, and Appellant had no witnesses to cross-examine on those three matters.

The significance of this absence cannot be overstated. Appellant has maintained throughout these proceedings that each of these clients was paid, and that their grievances were solicited and organized by Jedediah Grant following his termination. In his closing argument, Appellant specifically noted that of 177 clients, only the final group connected to Grant filed complaints, and that Grant told each of them they would not get paid unless they filed — an assertion consistent with Grant's own admissions on the record.

Vol. 3, Tr. 490:1-11; Vol. 1, Tr. 243:5-7 (Grant advised Fontana to file).

Had these complainants testified, Appellant would have had the opportunity to demonstrate: (1) that each was in fact paid and suffered no permanent financial loss; (2) that each was contacted by Grant and coached to file their grievance; (3) that each was told by Grant — falsely — that the delay in payment was attributable to Appellant rather than to Grant's own conduct; and (4) in the case of Kim specifically, that the underlying diminished value claim itself presented significant indicia of fraud, which was precisely why Appellant had delayed disbursement pending investigation.

The non-appearance of these three complainants, in a proceeding where the only evidence against Appellant on their matters was deemed-true default facts, created a one-sided record that cannot be remedied without a new hearing at which Appellant can present evidence from the parallel civil litigation — evidence that post-dates the panel proceeding and that the CDC refused to investigate despite Appellant's requests.

F. The October 13 Session

On October 13, Appellant appeared and testified at length under direct examination by Commission counsel and extended panel questioning. Appellant called his paralegal, Audrey Rutledge, and his law partner, Mathews Metyko, both of whom corroborated that all client accounts had been transitioned to Metyko's management in January 2024 — fifteen months before the hearing — and that Appellant had removed himself entirely from trust account oversight. The parties presented closing arguments. The Commission requested disbarment. Appellant requested a probated reprimand with CLE conditions.

Vol. 3, Tr. 307-466; Tr. 417-448; Tr. 449-466; Tr. 467-497.

G. The Enright Matter

Richard Enright hired Appellant to pursue a breach of contract claim against Vision Solar, LLC. Enright had no contact with Jedediah Grant. During cross-examination, Appellant offered Defense Exhibit 1 — the signed written fee agreement between the parties. Enright recognized the document, confirmed his signature, and confirmed it related to the Vision Solar matter. Commission counsel stated she was 'not inclined to object' subject to authentication. Panel Chair Rossick excluded it solely because it was 'not timely produced,' with no finding of prejudice. The excluded document would have established that the agreement required a retainer payment as a condition precedent to services. Enright confirmed he paid nothing to the firm. No signed contingency fee agreement for the Vision Solar matter was produced or admitted at any point.

Vol. 1, Tr. 107:11-114:7; Tr. 112:13-14; Tr. 113:3; Tr. 116:22-24; Tr. 119:23-120:7.

H. The Fontana Matter

Michael Fontana hired Appellant to pursue a diminished value claim. Appellant's firm issued a check to the Batrice Law Firm dated May 9, 2024, in the amount of \$4,690.00. The check was not presented for deposit until September 6, 2024 — nearly four months later. During that interval, Appellant transitioned banking from Frost Bank to IBC Bank, and the check returned NSF. Fontana confirmed the check was in Batrice's possession, that he did not ask Batrice to hold it, and had no explanation for the delay. Fontana formally withdrew his grievance by fax on August 1. On Commission counsel's own direct examination, Fontana testified he did not believe Appellant should be disciplined. Grant personally advised Fontana to file his complaint.

Vol. 1, Tr. 144:7-25; Tr. 145:1-7; Tr. 148:1-11; Tr. 134:3-4; Tr. 135:18-22; Tr. 159:7-10.

I. The Sanction

On October 16, Panel member Wilson read the unanimous decision into the record: a 24-month partially probated suspension, \$20,020.18 in fees and costs, a CPA audit of all firm accounts back to 2019, and additional CLE requirements. The formal judgment was signed October 23, 2025.

Vol. 4, Tr. 303-310; Judgment signed Oct. 23, 2025.

V. SUMMARY OF THE ARGUMENT

This appeal presents eight grounds for relief. The first two reflect structural due process defects that independently warrant remand. The final issue — cumulative error — provides BODA an independent path to that same relief even if no single error is found sufficient standing alone.

First, the proceeding was compromised from its outset by an *ex parte* communication between Commission counsel and the Panel Chair the night before the hearing, in which counsel correctly predicted how the Chair would rule on a contested mitigation issue. He ruled exactly as predicted the following morning. His own end-of-day admission that he 'had that mixed up' confirms the ruling was erroneous, but came only after all four October 1 witnesses had testified under the improper constraint.

Second, the Panel violated due process by denying a documented emergency continuance grounded in a minor child's hospitalization and taking adverse testimony against an absent Appellant without any opportunity for cross-examination at any session of the proceeding.

Third, the Panel abused its discretion by excluding Defense Exhibit 1 — authenticated by the adverse witness himself — from the sanctions hearing without any finding of prejudice.

Fourth, the neglect finding on the Enright matter is legally insufficient. No signed contingency fee agreement existed. Without an enforceable obligation, there can be no neglect under Rule 1.01(b)(1).

Fifth, the Rule 8.04(a)(8) dishonesty finding on the Fontana matter cannot stand. The check was valid when issued and became NSF only because Batrice held it for four months during a bank transition. The complainant withdrew his grievance and testified against discipline on the Commission's own direct.

Sixth, the Panel gave unrestricted sanctioning weight to three matters — Abbey, Kim, and Allen-Bradley — where those complainants did not testify at any session, depriving Appellant of any opportunity to demonstrate payment, Grant's solicitation of their complaints, and the actual circumstances of each matter. The absence of live testimony on three of nine counts, combined with the default posture, created a record that is affirmatively incomplete as to those matters.

Seventh, the 24-month partially probated suspension is disproportionate. The Panel found negligent, not intentional, misappropriation. All clients were paid. Appellant had no prior disciplinary history, took immediate remedial action fifteen months before the hearing, and brought an exemplary military record and a clean professional history to the proceeding.

Eighth, even if no single error independently warrants reversal, the cumulative effect of the ex parte communication, the erroneous mitigation ruling, the uncrossed adverse testimony, the evidence exclusion, and the incomplete record as to three non-appearing complainants, deprived Appellant of a fundamentally fair sanctions hearing warranting full remand.

VI. ARGUMENT

Issue 1: The Integrity of the Entire Proceeding Was Compromised by an Ex Parte Communication Between Commission Counsel and the Panel Chair, the Resulting Erroneous Restriction of Mitigation Evidence, and the Panel Chair's Own Admission of Error After Every Fact Witness Had Testified.

A. Standard of Review

Structural due process violations are reviewed de novo as questions of law. BODA reviews the Panel's legal conclusions without deference. See *Comm'n for Lawyer Discipline v. Schaefer*, 354 S.W.3d 297, 301 (Tex. 2012). In *Schaefer*, the Texas Supreme Court affirmed BODA's remand of an entire proceeding based on a structural panel-composition defect and separately noted that the CDC's adherence to disciplinary rules 'is essential and must avoid even the appearance of impropriety.' *Id.* at 301 n.1 (citing *Schaefer v. Comm'n for Lawyer Discipline*, BODA No. 44292 (Jan. 28, 2011)).

B. The Ex Parte Communication

On the evening of September 30, 2025, at approximately 5:00 p.m., Commission counsel Amanda Kates contacted Appellant by telephone. During that conversation, Ms. Kates told Appellant that Panel Chair Rossick would not permit him to present evidence of the absence of prior grievance filings. Appellant is prepared to provide a sworn declaration attesting to this communication. Communications between Ms. Kates' office and the Panel Chair will be the subject of a forthcoming motion to supplement the record.

The following morning, the transcript documents precisely what Kates predicted: Rossick ruled — immediately after Kates spoke on the issue — that the Panel 'literally could not take that in as evidence.' The ruling was issued in language tracking her position. The circumstantial

corroboration is strong: the prediction was specific, the ruling matched it exactly, it came immediately after Kates spoke, and Rossick ultimately conceded it was wrong.

Vol. 1, Tr. 89:1-3; Tr. 88:22-89:3.

An ex parte communication between opposing counsel and the presiding adjudicator about how the adjudicator will rule on a contested issue — before the hearing begins — is among the most serious violations that can occur in any adjudicative proceeding. Schaefer establishes that BODA may remand on structural fairness grounds even where the procedural defect does not deprive the panel of jurisdiction. 354 S.W.3d at 301. The principle that the CDC must 'avoid even the appearance of impropriety' applies with full force to pre-hearing ex parte contacts concerning evidentiary rulings. BODA No. 44292 at 8-11.

C. The Erroneous Ruling Infected Every Cross-Examination on October 1

TRDP Rule 15.05 expressly recognizes 'absence of a prior disciplinary record' as a mitigating factor in sanctions proceedings. The complete absence of any prior grievance filing against Appellant — across five years of practice and 177 client engagements — was directly relevant to every adverse witness's testimony. It speaks to whether the conduct reflects a pattern of misconduct or an isolated breakdown in an otherwise clean record.

The four witnesses who testified on October 1 — Grant, Wages, Fontana, and Lauletta — were all cross-examined under the improper constraint. Appellant acknowledged adapting his entire approach in response to the ruling. The constraint was not peripheral: it went to the core narrative that nine grievances filed simultaneously by clients all connected to a recently terminated fraudster did not reflect five years of practice. That narrative was foreclosed before the first witness was ever called.

D. The Belated Correction Did Not Cure the Harm

At the end of October 1, after all four witnesses had testified, Rossick stated: 'So I looked at that and I had that mixed up.' This is a judicial admission on the record that the morning ruling was

erroneous. But an admission of error cannot retroactively restore cross-examinations already completed under the wrong standard. Four witnesses had testified; there was no mechanism to recall them or reopen cross-examination.

Vol. 1, Tr. 271:10-11.

The corrected ruling was itself still partially erroneous. Appellant could testify to the absence of prior disciplinary findings but could not testify that no grievance had ever been filed. This narrower restriction was again shaped by Ms. Kates' interjection at pages 271-272, which preceded Rossick's announcement of the revised ruling — a second instance of Commission counsel shaping an evidentiary ruling through direct communication with the Chair in real time.

Vol. 1, Tr. 273:13-19; Tr. 271:22-272:22.

E. Requested Relief on Issue 1

Appellant requests that BODA remand this matter in its entirety to a new statewide panel under TRDP Rule 2.26 and IPR Rule 4.07 for a sanctions hearing untainted by ex parte communications, in which all mitigation evidence is properly admitted and Appellant has a full and fair opportunity to present his defense.

Issue 2: The Panel Violated Appellant's Due Process Rights by Denying a Documented Emergency Continuance and Taking Adverse Testimony in His Complete Absence, Without Any Opportunity for Cross-Examination.

A. Standard of Review

Procedural due process violations are reviewed de novo. A denial of a continuance that results in complete deprivation of the right to confront adverse witnesses constitutes a structural error reviewable without harmless error analysis. BODA may remand for a new hearing where structural

procedural defects compromise the integrity of a panel proceeding. See Schaefer, 354 S.W.3d at 301.

B. The Emergency Continuance Was Grounded in Compelling Cause

On the morning of October 8, Appellant filed a motion for continuance regarding his minor child's hospitalization. The Commission opposed. Panel Chair Rossick — without convening the parties and without any participation by Appellant — ruled on the motion, granting it in part and ordering Mushtaq's testimony to proceed that day in Appellant's absence.

The partial grant is itself significant. By continuing the remainder of the hearing, the Panel tacitly acknowledged that Appellant's circumstances warranted accommodation. Proceeding with Mushtaq's testimony alone — for witness scheduling convenience — cannot constitute a legitimate interest sufficient to override Appellant's constitutional right to be present and cross-examine adverse witnesses. The manner of the ruling compounds this error: the record reflects that Rossick resolved Appellant's contested motion through consultation with Commission counsel alone, without Appellant's participation — a second instance of the *ex parte* pattern this proceeding exhibited throughout.

C. The Complete Absence of Cross-Examination Is a Structural Due Process Violation

The right to confront and cross-examine adverse witnesses in a bar disciplinary proceeding is a fundamental element of due process protected by the Fourteenth Amendment and Article I, Section 19 of the Texas Constitution. Mushtaq's testimony was the sole live evidence on Case No. 202401064. Petitioner's Exhibit 37 was admitted without Appellant present. When the hearing resumed on October 13, Mushtaq was not recalled. No cross-examination occurred at any point in the four-session proceeding. The transcript index of Volume 2 confirms this on its face.

Had Appellant been permitted to cross-examine Mushtaq, he would have had the opportunity to demonstrate: that Mushtaq was in fact paid (the Exhibit 37 settlement statement confirms payment was in process as of October 8); that Mushtaq's connection to Appellant flowed entirely through

Jedediah Grant; that Mushtaq himself acknowledged the sum at issue was modest; and that any delay in payment was attributable in significant part to Grant's conduct during the transition period.

Vol. 2, Tr. 285:10-16 (Mushtaq: 'this amount does not mean a lot to me'); Tr. 283:18-25 (Grant introduced Mushtaq to Appellant).

D. Requested Relief on Issue 2

Appellant requests reversal of the violation finding and sanction as to Case No. 202401064 (Mushtaq), or remand to a new statewide panel. To the extent this structural error, combined with Issue 1, compromises the overall fairness of the sanctions proceeding, Appellant alternatively requests full remand of the entire matter.

Issue 3: The Panel Abused Its Discretion by Excluding the Authenticated Enright Fee Agreement From the Sanctions Hearing.

A. Standard of Review

Evidentiary rulings are reviewed for abuse of discretion. An abuse of discretion occurs when the ruling is made 'without reference to any guiding rules and principles' or is arbitrary or unreasonable. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985); *In re J.P.B.*, 189 S.W.3d 570, 575 (Tex. 2005).

B. The Document Was Fully Authenticated by the Adverse Witness

During cross-examination of Richard Enright, Appellant offered Defense Exhibit 1 — the signed written fee agreement between the parties. Enright recognized the document, confirmed his signature, and confirmed it related to the Vision Solar matter. Commission counsel stated she was 'not inclined to object' subject to authentication. Under Texas Rule of Evidence 901(a), the authentication threshold was fully met.

Vol. 1, Tr. 107:11-114:7; Tr. 112:13-14; Tr. 113:3.

C. The Sole Basis for Exclusion — Untimely Production — Was Legally Insufficient

The Panel Chair excluded the exhibit solely because it was 'not timely produced.' There was no finding of prejudice. No assertion that late production prevented investigation or preparation. No weighing of probative value against any purported harm. The Panel Chair himself stated the Panel could consider 'any probative, relevant evidence on the issues of sanctions' — a standard that does not contemplate automatic exclusion of authenticated evidence absent a concrete prejudice finding.

Vol. 1, Tr. 114:1-2; Tr. 11:17-18.

The excluded document was Appellant's only documentary evidence on the Enright count. It went directly to the question of whether an enforceable obligation to perform existed — the predicate for any neglect finding under Rule 1.01(b)(1). Its exclusion materially affected the outcome of the Enright determination.

D. Requested Relief on Issue 3

Appellant requests that BODA consider Defense Exhibit 1 in conjunction with Issue 4 and reverse the Enright violation finding. In the alternative, Appellant requests remand with instructions that Defense Exhibit 1 be admitted and considered.

Issue 4: The Neglect Finding on the Enright Matter Is Legally Insufficient Because No Enforceable Obligation to Perform Existed.

A. Standard of Review

Whether deemed-true facts are legally sufficient to establish a specific rule violation is a question of law reviewed de novo. The default establishes the alleged facts; it does not establish that those

facts constitute a violation as a matter of law where the violation requires an enforceable legal obligation that substantive law requires to exist in writing.

B. Texas Law Requires Contingency Fee Agreements to Be in a Signed Writing

TDRPC Rule 1.04(d) is unambiguous: a contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined. An oral contingency arrangement is not enforceable in Texas. Appellant raised this requirement on the record during cross-examination of Grant and in closing argument as to the Enright count specifically.

Vol. 1, Tr. 239:1-2; Vol. 3, Tr. 492:5-493:6.

C. The Record Establishes No Signed Contingency Fee Agreement for Enright

The undisputed record evidence is: Enright paid nothing to the firm; his contingency understanding was based solely on verbal representations; no signed contingency fee agreement was produced or admitted at any session; and the only signed written agreement — Defense Exhibit 1 — was a retainer agreement requiring payment before services commenced, a condition Enright never fulfilled.

Vol. 1, Tr. 116:22-24; Tr. 119:23-120:7.

Without a signed contingency fee agreement, there was no enforceable obligation to pursue the Vision Solar claim. Without an enforceable obligation, there is no matter 'entrusted to the lawyer' within the meaning of Rule 1.01(b)(1), and therefore no neglect. The default cannot supply what substantive law requires to be in writing.

D. Requested Relief on Issue 4

Appellant requests that BODA reverse the violation finding as to Case No. 202401948 (Enright). This reversal should be considered in calibrating the overall sanction.

Issue 5: The Rule 8.04(a)(8) Dishonesty Finding on the Fontana Matter Is Factually and Legally Unsupported.

A. Standard of Review

Whether the record is legally sufficient to support a finding of dishonesty under Rule 8.04(a)(8) is a question of law reviewed de novo. Rule 8.04(a)(8) requires an element of intent or knowing misrepresentation. Negligent or circumstantial conduct lacking scienter does not satisfy the rule.

B. The Check Was Valid When Issued; the NSF Was Not Attributable to Appellant

The check to the Batrice Law Firm was dated May 9, 2024. Batrice held it until September 6, 2024 — nearly four months — before presenting it for deposit. Appellant transitioned banking from Frost Bank to IBC Bank during that interval. The check consequently returned NSF not because funds were insufficient at issuance, but because the account was superseded during Batrice's unexplained delay. Fontana confirmed Batrice held the check, that he did not ask Batrice to hold it, and had no explanation for the delay. Appellant stated on September 10, 2024 that he did not believe the check was bad — fully consistent with a lawyer who issued a valid instrument and had no reason to anticipate a four-month hold during a bank transition.

Vol. 1, Tr. 144:7-25; Tr. 145:1-7; Tr. 148:1-11.

C. The Complainant Formally Withdrew and Testified Against Discipline

Fontana submitted a formal written fax to the State Bar on August 1, requesting cancellation of his grievance. On Commission counsel's own direct examination, he testified: 'I don't feel like he should be disciplined, in my opinion, on my matter, because he ultimately paid something.' Grant personally advised Fontana to file the complaint, and that advice preceded Fontana's hire of Batrice. A dishonesty finding grounded in a complaint organized by a terminated fraudster,

formally withdrawn by the complainant, and prosecuted over his own testimony, is not supported by the weight of this record.

Vol. 1, Tr. 134:3-4; Tr. 135:18-22; Tr. 159:7-10.

D. Requested Relief on Issue 5

Appellant requests that BODA reverse the Rule 8.04(a)(8) finding as to Case No. 202405879 (Fontana). This is the most serious characterization of conduct in the judgment and carries outsized weight in the sanction calculus; its reversal materially changes the proportionality analysis.

Issue 6: The Panel Erred in Giving Unrestricted Sanctioning Weight to Three Matters Where the Complainants Did Not Testify and Appellant Had No Opportunity to Demonstrate Payment, Grant's Solicitation, or the Actual Circumstances of Each Case.

A. The Legal Significance of Complainant Non-Appearance in a Default Sanctions Proceeding

In a default proceeding, the facts in the petition are deemed true for liability purposes under TRDP Rule 2.17(C). But the sanctions hearing is a separate, contested phase at which a respondent retains the full right to participate, present evidence, and challenge the weight of the harm alleged. Where the Commission elects to proceed on three matters without calling any live witnesses, and the respondent had no witnesses to cross-examine on those matters, the Panel's ability to assess actual harm — a required factor under TRDP Rule 15.02 — was materially constrained.

B. Abbey, Kim, and Allen-Bradley Did Not Testify

Iyibi Omie Abbey (Case No. 202401976), Hyun Kim (Case No. 202401831), and Christopher Allen-Bradley (Case No. 202401705) did not appear or testify at any session of the four-volume proceedings. Their cases were presented through documentary exhibits and the deemed-true

default facts alone. Appellant had no opportunity to cross-examine any of them. The Commission presented no live testimony establishing current harm, ongoing non-payment, or the absence of any explanation for the delays.

C. The Absence of These Witnesses Foreclosed Appellant's Most Important Defenses on Those Counts

Had these complainants testified, Appellant would have been positioned to develop the following on cross-examination:

- **Payment:** Each of these clients was in fact paid. The absence of testimony from them means the Panel was never confronted with the question of whether any of them were ultimately made whole — a directly relevant factor under TRDP Rule 15.02's 'actual injury' analysis.
- **Grant's solicitation:** Each of these clients was contacted by Grant following his termination. Grant's pattern — confirmed by his own admissions and by Fontana's testimony — was to tell clients they would not get paid unless they filed grievances. (Vol. 1, Tr. 243:5-7; Vol. 3, Tr. 490:1-11.) Live testimony from these complainants would have allowed Appellant to establish that their grievances were solicited through false representations about the status of their payments.
- **Kim specifically:** The Kim claim presented significant indicia of insurance fraud that Appellant was investigating at the time of the alleged communication failures. This is precisely why Appellant delayed disbursement pending investigation — not as neglect or misappropriation, but as a reasonable response to discovering that a client may have submitted a fraudulent claim. Kim's non-appearance deprived Appellant of the opportunity to explore these facts on cross-examination. It is also consistent with the conduct of a complainant who does not wish to testify under oath.
- **Lauletta:** Grant paid Lauletta funds that Appellant provided to him for that purpose, while falsely representing to her that the money came from Grant personally rather than from Appellant's firm. This had the dual effect of causing Lauletta to believe she had not been paid by Appellant and of allowing Grant to take credit for a payment funded by Appellant. This context is essential to understanding the Lauletta matter and was inaccessible to Appellant without a live witness to cross-examine.

D. This Issue Strengthens the Case for Full Remand

Appellant recognizes that in a default proceeding the Commission bears no obligation to call every complainant as a live witness, and that the deemed-true facts establish liability as a matter of TRDP Rule 2.17(C). But the sanctions determination requires the Panel to assess actual harm, culpability, and mitigating circumstances — factors that demand a complete record. Where three of nine matters were presented entirely through documentary exhibits and default facts, and where the respondent had critical evidence to present about each — including payment records, Grant's solicitation of the complaints, and in one instance evidence of potential insurance fraud by the complainant — the record the Panel acted on was affirmatively incomplete as to the gravity of the harm those three matters represent.

A new hearing before a neutral panel, at which Appellant can present evidence developed in the parallel civil litigation, cross-examine witnesses, and fully develop the Grant fraud narrative as to each complainant, is the only mechanism capable of producing a just result on the full nine-count record.

E. Requested Relief on Issue 6

Appellant requests that BODA factor the incomplete record as to the three non-appearing complainants into its proportionality analysis under Issue 7, and that BODA weigh this issue in favor of full remand rather than mere sanction modification.

Issue 7: The 24-Month Partially Probated Suspension Is Disproportionate to the Culpability Established in the Record.

A. Standard of Review

BODA reviews sanctions determinations under TRDP Rules 15.02 and 15.04 and may modify a sanction it finds disproportionate. BODA is not bound by the panel's sanction selection.

B. The Mental State Finding Forecloses the Most Severe Sanctions

The Panel declined to disbar Appellant, reflecting an implicit finding that knowing conversion was not established. Commission counsel herself acknowledged: 'if one is to believe Mr. Goff's statement that he didn't know, okay, maybe he didn't knowingly convert client materials.'

Vol. 3, Tr. 480:2-5.

Appellant testified consistently that his trust account errors reflected a misunderstanding of bookkeeping process — believing he was entitled to spend earned contingency fees before completing the bookkeeping transfer to the operating account. As he stated in closing: 'The duty was breached negligently, not willfully.' This is a Rule 1.14 violation. It is not conversion. The sanction must reflect the mental state actually proven.

Vol. 3, Tr. 482:3-4.

C. The Mitigating Factors Are Extensive and Largely Uncontested

The record establishes the following mitigating factors under TRDP Rule 15.05, most acknowledged or not contested by the Commission:

- No prior disciplinary history. Over five years of practice and 177 client engagements, with no prior disciplinary findings. Commission counsel acknowledged this in closing. (Vol. 3, Tr. 476:21-23.)
- Immediate and sustained remedial action. Appellant brought in Mathews Metyko and removed himself entirely from trust account management in January 2024 — fifteen months before the hearing. Metyko testified to confirm this. (Vol. 3, Tr. 449-466.)
- All clients paid. Appellant testified that every client entitled to payment had been paid. Of 177 clients in the Operation Monster Car program, only the final eight connected to Grant filed any complaint. (Vol. 3, Tr. 490:6-11; 492:9-11.)
- Military service. Appellant served 21 years in the United States Army, including multiple combat deployments, commanding an Officer Candidate School and personally teaching

the ethics curriculum, without a single negative counseling statement. (Vol. 3, Tr. 482:5-14; 308-310.)

- Good faith cooperation. Appellant did not oppose subpoenas of bank records, offered Commission counsel access to his Clio software during a pre-hearing conversation, and filed an eight-page substantive response to the Wages grievance explaining the full circumstances. (Vol. 3, Tr. 484:2-9.)
- Personal financial investment. Appellant personally fronted over \$30,000 in client filing fees across the diminished value practice — a program he undertook because underserved clients with property damage claims had no meaningful representation otherwise. (Vol. 3, Tr. 485:11-12.)

D. The Commission's Principal Witness Was Substantially Impeached

The weight the Panel assigned to the nine-complaint pattern depends substantially on Jedediah Grant, through whom eight of nine complainants were connected. Grant admitted on the record to practicing law under a pseudonym, doing so through a licensed attorney's credentials, personally organizing at least one complaint, and receiving a court sanction for unauthorized practice. Appellant stated in closing: 'Their star witness was Mr. Grant, not mine, theirs.' The record supports that characterization fully.

Vol. 3, Tr. 488:10-11.

E. The Appropriate Sanction

When the Rule 8.04(a)(8) finding is reversed, the Enright count is reversed, and the remaining violations are evaluated against the full mitigation record, the picture is: a first-time respondent who negligently managed trust accounts during a high-volume practice, self-corrected fifteen months before the hearing, paid all clients, cooperated with the investigation, and brought an exemplary military record and a clean professional history to the proceeding. A fully probated suspension with the trust account monitoring, CPA audit, and CLE conditions retained would fully protect the public while honoring proportionality.

F. Requested Relief on Issue 7

Appellant requests that BODA modify the sanction to a fully probated suspension with trust account, CLE, and monitoring conditions retained, or such lesser sanction as BODA finds proportionate. Appellant further requests that the attorney's fees award be reduced proportionally to reflect any violations reversed.

Issue 8: Even If No Single Error Independently Warrants Reversal, the Cumulative Effect of Multiple Procedural Errors Deprived Appellant of a Fundamentally Fair Sanctions Hearing.

A. The Cumulative Error Doctrine

Under the cumulative error doctrine, incorporated into BODA proceedings through the Texas Rules of Appellate Procedure, a number of errors — no one perhaps sufficient to merit reversal standing alone — may in combination necessitate reversal or remand where their cumulative effect denied the appellant a fundamentally fair proceeding. An appellate tribunal may reverse or remand where it finds that the cumulative errors denied the appellant a fair hearing. See TRAP 44.1; TRDP Rule 2.26.

B. The Cumulative Errors in This Proceeding

This appeal presents a cascade of procedural failures that, taken together, fundamentally compromised the fairness of the sanctions hearing:

9. An ex parte communication between Commission counsel and the Panel Chair the night before the hearing, resulting in a ruling made before the proceeding began without Appellant's participation or knowledge.
10. An erroneous restriction on mitigation evidence — acknowledged by the Panel Chair himself — that governed every cross-examination on October 1 before being corrected too late to cure the harm.

11. Denial of a documented emergency continuance based on a child's hospitalization, followed by uncrossed adverse testimony and the admission of a new exhibit in Appellant's complete absence.
12. Exclusion of authenticated documentary evidence from a pro se respondent in a sanctions hearing, on timeliness grounds without any prejudice finding, depriving Appellant of his only documentary proof on an entire count.
13. The complete absence of live testimony on three of nine matters, with no opportunity for Appellant to demonstrate payment, cross-examine on Grant's solicitation of complaints, or develop the factual context of each case.

These errors share a common thread: at every material juncture, Appellant was prevented from fully presenting his case. The cumulative effect is a sanctions hearing that was procedurally compromised at its outset, at the October 8 session, throughout the October 1 cross-examinations, and as to three entire matters that rested entirely on an uncontested documentary record.

C. Requested Relief on Issue 8

Even if BODA concludes that no individual error independently warrants reversal, Appellant requests that BODA find the cumulative effect of the errors identified above deprived him of a fundamentally fair sanctions hearing and remand this matter in its entirety to a new statewide panel under TRDP Rule 2.26 and IPR Rule 4.07.

VII. PRAYER FOR RELIEF

For the foregoing reasons, Appellant Damon Alexander Goff respectfully requests that the Board of Disciplinary Appeals grant the following relief:

14. PRIMARY RELIEF — REMAND: REMAND this matter in its entirety to a new statewide panel under TRDP Rule 2.26 and IPR Rule 4.07 for a de novo sanctions hearing, on the grounds that: (a) an ex parte communication between Commission counsel and the Panel Chair compromised the proceeding from its outset (Issue 1); (b) the Panel Chair's own acknowledgment of error came only after all fact witnesses had testified under the improper constraint (Issue 1); (c) adverse testimony and new evidence were taken at the October 8 session in Appellant's complete absence without any opportunity for cross-examination (Issue 2); (d) three complainants did not testify, depriving Appellant of any opportunity to demonstrate payment, cross-examine on Grant's solicitation, or develop the factual context of those matters (Issue 6); and (e) the cumulative effect of these and other procedural errors deprived Appellant of a fundamentally fair hearing (Issue 8).
15. ALTERNATIVE RELIEF — SPECIFIC REVERSALS: In the event BODA does not order full remand, REVERSE: (a) the violation finding as to Case No. 202401064 (Mushtaq) under Issue 2; (b) the violation finding as to Case No. 202401948 (Enright) under Issues 3 and 4; and (c) the Rule 8.04(a)(8) finding as to Case No. 202405879 (Fontana) under Issue 5.
16. SANCTION MODIFICATION: Whether or not specific counts are reversed, MODIFY the sanction to a fully probated suspension with trust account, CLE, and monitoring conditions retained, or such other lesser sanction as BODA finds proportionate to the culpability established, the weight of the mitigating factors, and the remedial purposes of the Texas attorney discipline system.
17. FEE AWARD: REDUCE the attorney's fees and costs award proportionally to reflect any violations reversed.
18. SUCH OTHER RELIEF as the Board deems just and proper.

Respectfully submitted,

Damon Alexander Goff
Pro Se Appellant
Texas Bar No. 24096552
4020 Castle Creek Cove
Round Rock, Texas 78681
(512) 580-3856
damon@gofflawfirm.com

VIII. CERTIFICATE OF SERVICE

I certify that on June 8th, 2026, a true and correct copy of this Appellant's Brief was served on the following counsel for Appellee by email to michael.graham@texasbar.com and on the BODA Clerk by email to appeals@txboda.org:

Michael G. Graham

Appellate Counsel

Office of the Chief Disciplinary Counsel

State Bar of Texas

P.O. Box 12487

Austin, Texas 78711

michael.graham@texasbar.com

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