NO. 67843

BEFORE THE BOARD OF DISCIPLINARY APPEALS

APPOINTED BY

THE SUPREME COURT OF TEXAS

LAUREN ASHLEY HARRIS

STATE BAR OF TEXAS NO. 24080932,

APPELLANT,

FILED

9/9/24

THE BOARD *of* DISCIPLINARY APPEALS

Appointed by the Supreme Court of Texas

v.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE.

On Appeal from Cause No. 202000647 [North]
Grievance Committee, District 14
Evidentiary Panel 14-2 of the State Bar of Texas

APPELLANT'S REPLY TO APPELLEES' RESPONSE TO MOTIONS PENDING BEFORE BODA RE: RECORD(S) ON APPEAL

TO THE HONORABLE BOARD OF DISCLIPINARY APPEALS:

Comes now, APPELLANT, Lauren Ashley Harris, by and through undersigned counsel, and files this her Reply to Appellee, the Commission for Lawyer Discipline's Response to both the Appellant's Motion to Correct and Supplement the Reporter's Record, (Appellant Motion filed on July 23, 2023, Response filed August 2, 2023), and Appellant's First Amended Motion to Correct and Supplement the Clerk's Record, (Motion filed July 22, 2024 and Response filed

August 9, 2024) before this, the Honorable Board of Disciplinary Appeals ("BODA"). In support thereof, Appellant respectfully shows as follows:

I.
Specific Rebuttal to CDC Responses

A. *From CFLD's Response to Clerk Certificate of Conference Allegations*

Where the CDC has alleged that the Appellant failed to make certificates of conference on the pending motions before BODA, the following Appendix records by and between the CDC appellate attorney Michael Graham and Appellant were made in 2023 prior to her retention of undersigned counsel:

July 29, 2023, Appellant sent Michael Graham an email communication which explicitly stated it was a Certificate of Conference for both pending Motions before BODA. *See Attached Appendix A.*

B. *Unzverified, uncorroborated mere arguments of counsel are not evidence*

"...like any other motion, merely a pleading that is the necessary vehicle by which the movant raises issues for resolution. A motion is not self-proving." As to Guerra's unsworn, unverified mere comments, without affidavit or self-proven or otherwise attested to in any respect -- NOT EVIDENCE.[1] Argument of counsel is not "evidence."[2] Generally, an attorney's statements must be under

---

[1] 71 Tex. Jur. 3d Trial and ADR § 138

[2] aGrant v. Espiritu, 470 S.W.3d 198 (Tex. App. El Paso 2015); In re East, 476 S.W.3d 61 (Tex. App. Corpus Christi 2014).

oath to be considered evidence.[3] Unsworn statements of counsel generally do not constitute evidence.[4] Thus, comments[5] or argument[6].made by attorneys during trial generally are not evidence except where no objection is made to the absence of the oath.[7]

C. *Law of the Case*

The Supreme Court possesses the power to remand a case for further proceedings even when a rendition would otherwise be proper. This is allowed "in the interests of justice."[8] One reason this occurs is when the Supreme Court decides a case under circumstances where the litigants did not have the benefit of some new expansion or contraction of the common law by the court in that or some other case decided during the pendency of the instant appeal.[9] Courts of appeals possesses similar power to remand cases when the "interests of justice require a remand for another trial."[10] Moreover, T.R.A.P. 43.6 more broadly allows them to "make any other appropriate order that the law and the nature of the case require..."[11]

As the Supreme Court recently acknowledged in *Phillips v. Bramlett, 407 S.W.3d 229 (Tex.*

---

[3] Cruz v. Van Sickle, 452 S.W.3d 503 (Tex. App. Dallas 2014); Northeast Texas Staffing v. Ray, 330 S.W.3d 1 (Tex. App. Texarkana 2010).

[4] . Ardmore, Inc. v. Rex Group, Inc., 377 S.W.3d 45 (Tex. App. Houston 1st Dist. 2012)

[5] Brogan v. Brownlee, 358 S.W.3d 369 (Tex. App. Amarillo 2011).

[6] Cleveland v. Taylor, 397 S.W.3d 683 (Tex. App. Houston 1st Dist. 2012); Brogan v. Brownlee, 358 S.W.3d 369 (Tex. App. Amarillo 2011); In re Commitment of Day, 342 S.W.3d 193 (Tex. App. Beaumont 2011)

[7] Good v. Baker, 339 S.W.3d 260 (Tex. App. Texarkana 2011).

[8] T.R.A.P. 60.3.

[9] Boyles v. Kerr, 855 S.W.2d 593, 603 (Tex. 1993).

[10] T.R.A.P. 43.3(b).

[11] *See, e.g., Luxeyard v. Klinex*, 643 S.W.3d 260, 265 (Tex. App.—Houston [14th Dist.] 2022); *Union Pac. R.R. v. Seber*, 477 S.W.3d 424, 432 (Tex. App.—Houston [14th Dist.] 2015, no pet.)

2013):

When the life cycle of a judgment extends beyond an initial appeal, courts often face unique or unsettled jurisdictional and procedural issues...” It is important to note that when an appellate court issues its judgment and mandate remanding a case for further proceedings the lower court only has the authority to take such actions as are authorized by the judgment and mandate.

As the Supreme Court has stated: when an appellate court reverses a lower court's judgment and remands the case to the trial court, …the trial court is authorized to take all actions that are necessary to give full effect to the appellate court's judgment and mandate.[12]. But the trial court has no authority to take any action that is inconsistent with or beyond the scope of that which is necessary to give full effect to the appellate court's judgment and mandate.

When a trial court exceeds the authority thus given it and does not comply with the appellate court’s instructions in conducting further proceedings, its judgment will be beyond its authority and erroneous. Thus, when a trial court conducts proceedings unnecessary to comply with the appellate judgment or revises its prior judgment in ways not specified by the appellate court, the trial court’s “remand judgment” will be reversed in a subsequent appeal.[13]

When an appellate court remands for a new trial of all or a severable part of a case, the lower court will take such action as to that case or matter as was instructed by the appellate judgment, and such instructions and limitations must and will be enforced.[14]

The instructions in the mandate and judgment usually require that the lower court take some specific action “consistent with the court’s opinion,” but even without such an instruction, the lower courts should look for guidance not only to the mandate but to the opinion of the court.[15] When the case is remanded for other reasons than a new trial, the lower court must restrict itself to those actions necessary to follow the appellate judgment in deciding the issue or issues remanded for such determination. In some instances, this involves nothing more

---

[12] *See In re Columbia Med. Ctr. of Las Colinas*, 306 S.W.3d 246, 248 (Tex.2010) (per curiam) (holding trial court erred on remand by failing to reduce punitive damages award to conform to this Court's reduction of actual damages, as dictated by statutory cap on punitive damages)

[13] *Phillips* at 234; *Wall v. Wall,* 186 S.W.2d 57, 58-9 (Tex. Comm. App. 1945, opinion adopted).

[14] *Dessomes v. Desommes*, 543 S.W.2d 165, 169 (Tex. Civ. App.—Texarkana 1976, writ ref’d n.r.e.)

[15] *Hudson v. Wakefield*, 711 S.W.2d 628, 630 (Tex. 1986); Seale v. Click, 556 S.W.2d 95, 96 (Tex. Civ. App.—Texarkana 1977, writ ref’d).

than a mathematical calculation.[16]

As the Commission of Appeals mentioned in passing in *Wall,* these **limitations on a court's authority on remand include the "law of the case" doctrine. <u>This doctrine provides that legal determinations made by a court of last resort bind the parties and the lower courts in subsequent proceedings in the case where the issues are substantially the same as those determined on appeal.</u>**[17]

Therefore, the CDC's repeated mention and allegation that the Appellant's Motion for New Trial was untimely is an affront to the BODA Order of August 15, 2023 which denied that relief for the CDC and allowed the BODA appeal to proceed with jurisdiction for the appeal granted top continue before BODA, which impliedly overruled the untimely argument; yet, the CDC's continued arguments for late filed post-judgment motions is in disregard of BODA's explicit ruling s and Orders to date.

As the Plea to the Jurisdiction brought exactly the same argument, yet was denied buy formal Order of BODA, the CDC's continued presentation of this argument violates the Law of the Case doctrine and fails to recognize the development in this action. Where the CDC's apparent reasoning to continue to rely on this position before the EVH Panel -- even after the BODA ruling which denied the CDC Plea to the Jurisdiction and by implication, ruled that Appellant was entitled to proceed with her Appeal before BODA with timely filed Motions -- in which

---

[16]See, e.g., Sky View at Las Palmas, LLC v. Mendez, 555 S.W.3d 301, 116 (Tex. 2018).
[17] *Trevino v. Turcotte*, 564 S.W.2d 682, 685 (Tex. 1978).

BODA conclusively found this appeal to be the proper jurisdiction, without preclusion due to merely procedural timing issue raised against the appeal by clerical error in filing the Motion for New Trial -- which arguments were continued before the EVH Panel by Guerra and improperly before the Panel itself, and which were/are were made moot in this appeal, although the CDC has explicitly refused to acknowledged the implications of BODA's rulings, and inexplicably continues to rely on this argument -- even currently through its response on which this Reply provides rebuttal. this is improper based on common sense, Law of the Case and Staire Decisis.

D. *Improper presentation of Appellant's possible Appellate rights*

The CDC has made presentation of Appellant's appellate arguments by improper classification/limitation of the Appellant's possible categories and matters for error in this appeal -- resulting in the incorrect framework/improper limitation of the Appellant's actual points of error/issues on appeal and right to appeal the various matters for which she will bring error. The CDC repeatedly attempts to define the only matter for which Appellant can bring error before BODA to be limited to the Default Motion/Order and Hearing before EVH Panel 14-2 in January of 2023, [prior to her having notice of the EVH Petition and proceedings] and attempts to sweep under the rug their duty to produce Appellant's disciplinary file, including the recordings of those proceedings, citing that they are irrelevant and not subject to disclosure in their own improper statutory application of the confidentially of

disciplinary files under TRDP 2.16.

The CDC has made unsworn, conclusory and unauthenticated arguments of counsel that they do. not have to procure of the recordings do not exist, but have provided n context or reasonable exaltation fo their factual position, made merely in the body of their responses and not verified at all.,

The record of the Appellant's communications with the CDC is the entire record, not merely limited to the Evidentiary Petition filing and thereafter, as the bias, prejudice and motive of the CDC and its actions in contravention to due diligence or due process must be considered in the record for this Appeal by BODA.

The conclusory statements that the entire Complaint/Response, communications and setting of IVH, resulting in the Grievance Referral Program by Panel 6-3 is somehow inapplicable to this Appeal of the EVH 14-2 Default Judgment, is an inequitable position. The CDC has a duty to maintain the disciplinary files of the members of the bar and where this one has already resulted in public sanction, it must and should have already relapsed the requested information, especially in light of the many requests made officially through these proceedings.

As all acts levied against Appellant herein and in all related disciplinary matters, dismissed and currently stagnant after Appellant's filings of notice of these proceedings and the related nature thereof -- have all been created and maintained by the same CDC attorney, and the Appellant had provided written notice to the

CDC attorney and her Investigator in multiple ways of the residential home address of Appellant on multiple occasions, then the CDC cannot state that the requested portions of the record are not material and relevant to the points of error of Appellant as requested to date.

Appellant seeks to have same included in the record for BODA review to illustrate the failure of due diligence and the initial/continued/current decisions of the CDC to not serve Appellant with actual notice of these proceedings, on top of setting up the EVH Panel 14-2 with a IVH setting for another mater wholly in error for venue to falsely create bias against Appellant.

This appeal is only a result of the procedurally improper and inequitable decisions of the CDC and continues to date with conclusory and unsupported denials of simple requested for information, but all reflect the uncooperative and antagonistic theme of the CDC to this Appellant, with the sanctions being improper, and a direct down-line result of this inequitable position. By attempting to control the Appellant's available points of error and Limit the Appellant issues she can bring on appeal to merely the EVH Panel setting in January 2023, this improperly excludes the conduct of the CDC in its dealings with Appellant beginning in 2019 -- but where truly, multiple pre-EVH petition/hearing/sanction actions events and CDC conduct is ripe and of the Appellant’s active issue for this appeal reflecting multiple points of error. Appellant is not limited to those matters which the CDC apparently believes

the Appellant to restrict her appeal, and Appellant objects to the improper attempt to control the points of error she shall bring herein.

II.
Appellant Requests for Ruling & Clarification/Relief from BODA

Appellant and include at least the following requests for BODA consideration in clarification of its previous rulings and/or by way of new rulings/findings or directives of BODA:

1. requiring Appellee/the CDC/trial counsel Guerra to make written certification/verification under penalty of perjury, for the position that "no recording" of March 24, 2023 was made by the CDC;
2. including the full circumstances for the lack of recording to be placed on the record -- since the setting went forward over Appellant's objection;
3. detailing why no recording was made, which reflects the absence of that regularly conducted CDC activity;
4. detailing if a recording was made, what occurred, when or how deleted/lost destroyed?
5. requiring Appellee to produce the Panel hearing/attendance report for the March 24, 2023 setting;
6. mandating that the Panel attendance for the new FBOE setting comport exactly/directly to the same members who were present during the original FBOE hearing;
7. requiring the Appellee to produce all communications with the Evidentiary Panel 14-2 related to Respondent, especially each and every ***ex-parte*** communication with the Panel and specifically the Panel Chair;
8. detailing the absence of the Panel Chair, an indispensable party, from any recent communications sent to Appellant, even when including related Panel members, yet not even copying the Panel Chair;
9. detailing Appellees' actual or legal bases for opposition to each of the matters as asserted within the FBOE, so as to attempt in good faith to reach agreement on what issues are not actually in dispute, and limit the issues before the Panel as "disagreed."
10. requiring Appellee to concede it has not amended nor supplemented the August 4, 2023 Response to FBOE,

yet upon the August 15, 29023 entry of BODA Order, this rendered at least the first two pages of the August 4, 2023 CDC Response as moot/a nullity;

11. requiring Appellee/the CDC/trial counsel Guerra to make written certification/verification under penalty of perjury, for the position that " within her August 4, 2023 FBOE response regarding notice of hearing for the Motion for New Trial was included in the attachment for Zoom setting

where for the first time, Petitioner asserted the document attached-- the Zoom email sent to Appellant by the CDC subsequent to her February 20 2023 post-judgment filing of the Motion to Stay -- ALSO included notice of hearing for the Motion for New Trial, asserting instead of no notice for the setting that it was in fact provided by notice to Respondent, and noticed not absent from the proceedings. Yet, instead the Zoom attachment is absent any indication of any actual setting or motion at all, and this assertion is without any facts to support same, when not even under oath nor verified by any party or counsel, and instead is an intentional misrepresentation purporting to assert due process notice for both post-judgment motions and -- operates instead as a basis for sanctions in failure of honesty and candor before the tribunal. and setting for the same hearing date,

12. requiring Appellee/the CDC/trial counsel Guerra to make written certification/verification under penalty of perjury, for the recent and wholly bizarre position within the CDC's December 21, 2023 Response to Appellant's Motion for Judicial Notice that ***Appellant did NOT appear and made default for the March 24, 2023 setting before the Panel***

made in a fully coherent sentence *(opposed to a mere typographical error/mistake)* which asserts another intentional misrepresentation -- this striking to the very heart of this entire BODA cause, now, for the first time in December 2023 asserting that **Appellant did NOT appear and made default** for the March 24, 2023 setting before the Panel, at which Guerra denied Appellant the ability to continue the and obtain court reporter and at which Appellant appeared only under duress when attempting to cancel the hearing upon instead opting for ruling by submission -- which lack of a reporter's record and procedurally unconscionable premise makes the basis of this entire action on remand -- and all actions before BODA have been overshadowed by that hearing, and all effort of Appellant have been aimed to remediate -- as the CRUX for the FBOE and this remand -=- YET where made in a fully coherent sentence by Guerra *(opposed to a mere typographical error/mistake)* and which misrepresentation is so facially invalid, that the falsity of same is apparent even in Guerra's own work-product, clearly forgotten, but conspicuously apparent in the draft and executed findings of fact and ta conclusions of law DRAFTTED by Guerra and entered by the Panel Chair, in which both provide recitals explicitly stating that Respondent appeared at the March 24, 2023 setting *pro-se, yet Guerra now asserts* that **Appellant did NOT appear and made default** for the March 24, 2023 setting, in exponential need for sanctions.

Similar to the procedural posture of this action, Texas Appellate Courts have specifically ordered the same abatement and remand back to the District trial courts when a party files a TRAP 33.2 formal bill of exception seeking to make a record where otherwise missing for appeal.[18]

However, Appellant specifically points BODA to the Appellate Orders that specifically recognize TRAP 34.6 requirements, and further direct the tribunal on remand to ascertain fault and factual foundation related to the FBOE hearing procedures, such as seen in the Order of Abatement issued by the Court of Appeals for First District of Texas at Houston, for appeal taken from the 190th District Court of Harris County in CRYSTAL DANIELLE HENDERSON v. COMMISSION FOR LAWYER DSICIPLINE, holding in part:

> **WE DIRECT THE TRIAL COURT TO, WITHIN FIFTEEN DAYS OF THE DATE OF THIS ORDER, CONDUCT A HEARING AT WHICH THE TRIAL COURT IS TO:**
>
> **1.** DETERMINE IF A REPORTER'S RECORD EXISTS FOR THE "HEARING THAT WAS HELD BEFORE THE TRIAL COURT ON JULY 21, 2022;
>
> **2.** IF NO RECORD EXISTS FOR THE HEARING, THE TRIAL COURT IS TO DETERMINE (A) WHY THERE IS NO RECORD FOR THE HEARING, (B) IF THE RECORD IS NECESSARY FOR THIS APPEAL, AND IF THE RECORD CAN BE REPLACED BY AGREEMENT OF THE PARTIES;
>
> **3.** IF A RECORD DOES EXIST FOR THE HEARING, ORDER THE COURT REPORTER TO PREPARE AND FILE A SUPPLEMENTAL REPORTER'S RECORD CONTAINING A TRANSCRIPT OF THE HEARING;
>
> **4.** MAKE ANY OTHER FINDINGS AND RECOMMENDATIONS THE TRIAL COURT DEEMS APPROPRIATE; AND
>
> **5.** ISSUE WRITTEN FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS AS TO THESE ISSUES, SEPARATE AND APART FROM ANY DOCKET SHEET NOTATIONS.
>
> **SEE TEX. R. APP. P. 34.6(F).**
>
> **THE TRIAL COURT SHALL HAVE A COURT REPORTER RECORD THE HEARING. THE TRIAL COURT CLERK IS DIRECTED TO FILE A SUPPLEMENTAL CLERK'S RECORD CONTAINING THE TRIAL COURT'S FINDINGS, RECOMMENDATIONS, AND ORDERS WITH THIS COURT WITHIN TWENTY DAYS OF THE**

[18] ***See HARRIS.1007-1022.***

DATE OF THIS ORDER. THE COURT REPORTER IS DIRECTED TO FILE A SUPPLEMENTAL REPORTER'S RECORD CONTAINING THE TRANSCRIPT FROM THE HEARING WITHIN TWENTY DAYS OF THE DATE OF THIS ORDER.

Directives such as this are also necessary in this case. BODA had specifically declined to rule on Appellant's pending Motion to Correct & Supplement the Reporter's Record, filed before BODA on July 31, 2023, and in which the exact relief quoted above and again sought herein was requested by Appellant.

TRAP 34.6 findings, must be required in this case, especially when such specific relief has already been requested, and remains pending before BODA by prior motion. Appellant submits that those Courts which required the parties to illuminate upon the facts of the record, did so for the issues critical to appellate review, error, harm and fault in the failure to present a record on appeal and/or before the appellate courts; therefore, this remains poignantly relevant to this appeal and a necessary finding/directive of BODA. Further, where the connection to the additional matters requested from the CDC are stated as follows, and all have a direct effect and intrinsically related to the matter on appeal before BODA in this action, by:

- Refusal to supply the Recordings of the Other CDC Hearings, (all but 2020005424 & 20202143 [Tran(s)] on August 27, 2021 before Evidentiary Panel 14-2 [Denton] where Appellant was not provided notice and did not appear -- but where the Venue provisions of the TRDP 2.11 explicitly reveals that this was NOT the proper venue forum,
- Inequitable Evidentiary Panel Forum Shopping:

- Guerra set a IVH hearing in the combined cause 2020005424 & 20202143 [Tran(s)] on August 27, 2021 before Evidentiary Panel 14-2 [Denton] where Appellant was not provided notice and did not appear -- but where the Venue provisions of the TRDP 2.11 explicitly reveals that this was NOT the proper venue forum, as Appellants office address at the time the Grievance was filed was Dallas, all facts of the Complaint were in Dallas and did so in advance of the Evidentiary Petition Default for which the CDC bypassed all due diligence ion serving Appellant to effectuate a Sanction which the Panel entirely omitted its findings to justify same, departing upward from the recommended Sanction of the CDC of fully probated suspension -- with instead, an active suspension that had no bearing on the elements for issuance of same -- as the actual facts of the matter were already heard by IVH 6-3 on November 12, 2020 and the GRP was suggested -- and instead was based on a pre-conceived bias of the improper placement of the IVH on the Tran Cause numbers which could not amount to 'previous" disciplinary history.

- IVH Panel 14-2 applied a sanction and standard for findings against Appellant for the non-adjudicatory and non-binding IVH recommendation -- and which is substantiated/supported by the evident ex-parte evidence on the face of the record -- subject line for the CDC email for Cause No. 202000647 [North] enclosing the Default Judgment of Partially Probated Suspension of Feb 7, 2023 -- **but inexplicably titled to the EVH Panel 14-2 with the Cause Nos 2020005424 & 20202143 [Tran(s)] for the IVH setting of the wrong venue;** the very same Panel before the very same Evidentiary Panel indicating clear bad faith and Panel Forum Shopping of the CDC top the detriment of Appellant.[

- Further, this Forum Shopping is evidenced by the continued record of the Cause Nos. 2020005424 & 20202143 and show the CDCs inexplicable move from Denton to Dallas in its Evidentiary Petition -- which, if true -- reflects that the CDC, if proscribing the application of the 2.11 TRDP venue provisions properly, assumed that Dallas was the principal place of business for appellant and confirms further that EVH Panel 14-2 was the improper venue for the 202000647 EVH Panel.

- Moreover, the bad faith failure to adhere to the TRDP is evidenced further by the CDC's bringing. of the 202000586 [Mukhin] proceeding which was placed by EVH AGAIN before EVH Panel 14-2 on where the Just Cause Finding was so far after the 60 days and without at IVH days and further was set in Denton while the CDC continuously states that appellant was living in North Dallas, Therefore it too, cannot in any

manner constitute proper application of the 2.11 Venue provision if the TRDP.

    - All the above also are directly related to the PIA Request information received by the SBOT and illustrating that the CDC was changing the address of Appellant without knowledge, consent or approval on the publicly available State Bar Website in contravention to the confidentially provisions of the PIA, the State Bar Act and the Texas Rules of Professional Conduct.

- pattern and practice of the CDC as a state agency which entire purpose is to prosecute professional misconduct, but who flagrantly disregard the very rules on which they execute sanctions for which they have not even attempted the semblance of propriety (Schaffer)

- the CDC actions are ultra vires of the TRDP and therefore require judicial review

The CDC states that the items as requested are not material and yet Appellant seeks to have each support her many points of error on appeal, and are therefore necessary to rendition of the BODA review. While the CDC is denying that the recordings exist, they have simultaneously failed to explain why these particular business recording are absent when their own policy/procedural guide, state is as their "custom" to "make a recording of the hearings. The rule authorizing the transmission of a supplemental record to the appellate court is given a liberal

construction[19] so that decisions are based on substance rather than procedure[20] when deficiencies can be easily corrected.[21] The rule authorizing the transmission of a supplemental record to the appellate court is given a liberal construction[22] so that decisions are based on substance rather than procedure[23] when deficiencies can be easily corrected.[24]

Despite the permission that the rules governing supplementation Tex. R. App. P. 34.5(c) grant parties to supplement the appellate record with items that they deem relevant and omitted, nothing in the rules compel the appellate court to consider those items in reaching its decision.[25] Thus, even though the parties have great latitude to include supplemental items in the clerk's record, it is still up to the appellate court whether to consider them.[26]

Supplementation may bring before the appellate court various matters that are otherwise properly part of the record on appeal[27] and necessary to the proper

---

19 Barron v. James, 145 Tex. 283, 198 S.W.2d 256 (1946); El Paso County v. Ontiveros, 36 S.W.3d 711 (Tex. App. El Paso 2001).

20 El Paso County v. Ontiveros, 36 S.W.3d 711 (Tex. App. El Paso 2001); Baker v. Trand, Inc., 931 S.W.2d 405 (Tex. App. Waco 1996).

21 Silk v. Terrill, 898 S.W.2d 764 (Tex. 1995); Libhart v. Copeland, 949 S.W.2d 783 (Tex. App. Waco, 1997).

22 Barron v. James, 145 Tex. 283, 198 S.W.2d 256 (1946); El Paso County v. Ontiveros, 36 S.W.3d 711 (Tex. App. El Paso 2001).

23 El Paso County v. Ontiveros, 36 S.W.3d 711 (Tex. App. El Paso 2001); Baker v. Trand, Inc., 931 S.W.2d 405 (Tex. App. Waco 1996).

24 Silk v. Terrill, 898 S.W.2d 764 (Tex. 1995); Libhart v. Copeland, 949 S.W.2d 783 (Tex. App. Waco, 1997).

25 **Roventini v. Ocular Sciences, Inc., 111 S.W.3d 719 (Tex. App. Houston 1st Dist. 2003).**

26 **Interest of A.S.M., 650 S.W.3d 85 (Tex. App. El Paso 2021).**

27 Alice Nat. Bank v. Edwards, 408 S.W.2d 307 (Tex. Civ. App. Corpus Christi 1966).

presentation of the case. [28] However, while the record may be supplemented under the appellate rules if something has been omitted, the supplementation rules cannot be used to create new evidence.[29] Various matters found to be otherwise properly part of a record on appeal and necessary to the proper presentation of a case include:

- • citations[30]
- • essential pleadings[31]
- • motions[32]
- • affidavits in support of summary judgment motions[33]
- • arguments of counsel and related orders[34]
- • evidence taken as testimony during pretrial proceedings[35]
- or depositions[36]
- • transcripts made during depositions where a tape was presented to the jury[37]
- • reproductions of sketches used at trial[38]
- • copies of deeds and contracts[39]
- • copies of insurance policies[40]
- • entry of costs omitted by the clerk of the trial court[41]
- • findings of fact and conclusions of law[42]
- • the court's charge to the jury[43]

---

[28] Feldman v. Marks, 960 S.W.2d 613 (Tex. 1996).

[29] Baylor Scott and White, Hillcrest Medical Center v. Weems, 575 S.W.3d 357 (Tex. 2019)..

[30] Salazar v. Garcia, 232 S.W.2d 685 (Tex. Civ. App. San Antonio 1950), writ refused; Harrisburg Nat. Bank v. George C. Vaughan & Sons, 204 S.W.2d 9 (Tex. Civ. App. Galveston 1947), dismissed, (Oct. 15, 1947).

[31] Soto v. El Paso Natural Gas Co., 942 S.W.2d 644 (Tex. App. El Paso 1996).

[32] Silk v. Terrill, 898 S.W.2d 764 (Tex. 1995).

[33] Sgitcovich v. Oldfield, 220 S.W.2d 724 (Tex. Civ. App. Galveston 1949), writ refused.

[34] Thompson v. Janes, 227 S.W.2d 330 (Tex. Civ. App. Austin 1950)

[35] Langford v. Moody, 309 S.W.2d 267 (Tex. Civ. App. Austin 1958).

[36] Crown Life Ins. Co. v. Estate of Gonzalez, 820 S.W.2d 121 (Tex. 1991).

[37] State Farm Fire and Cas. Ins. Co. v. Vandiver, 941 S.W.2d 343 (Tex. App. Waco 1997); Rogers v. CIGNA Ins. Co. of Texas, 881 S.W.2d 177 (Tex. App. Houston 1st Dist. 1994).

[38] MacDonald v. Skinner, 347 S.W.2d 950 (Tex. Civ. App. El Paso 1961), writ granted, (Oct. 3, 1961) and writ dismissed pursuant to agreement, (Nov. 15, 1961).

[39] Tucker v. Boyd, 156 Tex. 262, 293 S.W.2d 841 (1956).

[40] Universal Underwriters Ins. Co. v. Hartford Acc. & Indem. Co., 487 S.W.2d 152 (Tex. Civ. App. Houston 14th Dist. 1972), writ refused n.r.e., (Jan. 24, 1973).

[41] Texas-New Mexico Pipeline Co. v. Linebery, 326 S.W.2d 733 (Tex. Civ. App. El Paso 1959), writ refused n.r.e.

[42] Vass v. Fisher, 405 S.W.2d 866 (Tex. Civ. App. Houston 1966).

[43] McLeroy v. Stocker, 505 S.W.2d 615 (Tex. Civ. App. Houston 1st Dist. 1974).

- • the verdict[44]

The rule permitting supplementation of the record is not intended to place the burden on the appellate court to secure material omitted from the record solely in order to perfect the appellant's appeal or to demonstrate that errors complained of have been properly preserved for review -- the burden remains on the appellant to bring forward a sufficient record to have the appeal considered on its merits.[45] A suggestion to supplement will be denied where the material sought to be added to the record is not material[46] or where it does not properly constitute part of the record on appeal.[47] such as matter not in the record as it existed before the trial court at the time a default judgment was rendered.[48] Also, evidence not necessary for review of the error alleged[49] or arguments not presented to the trial court[50] will not be added to the record. If the parties cannot agree the trial court must—after notice and hearing—settle the dispute.[51] If the court finds any inaccuracy, it must

---

[44] Womack Machine Supply Co. of Houston v. Fannin Bank, 499 S.W.2d 917, 13 U.C.C. Rep. Serv. 669 (Tex. Civ. App. Houston 14th Dist. 1973), judgment rev'd on other grounds, 504 S.W.2d 827 (Tex. 1974).

[45] **Coleman v. Pacific Emp. Ins. Co., 484 S.W.2d 449 (Tex. Civ. App. Tyler 1972), writ refused n.r.e., (Oct. 18, 1972) (decided under the former rule).**

[46] **Spurlock v. Johnson, 94 S.W.3d 655 (Tex. App. San Antonio 2002) (requested supplementation of the record not relevant to disposition of appeal and would be denied); Barnes v. Texas Bankers Life & Loan Ins. Co., 861 S.W.2d 421 (Tex. App. Dallas, 1993).**

[47] **, National Sur. Corp. v. Standard Concrete Pipe Sales Co., 366 S.W.2d 103 (Tex. Civ. App. Houston 1963)**

[48] **Barker CATV Const., Inc. v. Ampro, Inc., 989 S.W.2d 789 (Tex. App. Houston 1st Dist. 1999); Laidlaw Waste Systems, Inc. v. Wallace, 944 S.W.2d 72 (Tex. App. Waco 1997), writ denied, (Sept. 4, 1997)**

[49] **MacDonald v. Skinner, 347 S.W.2d 950 (Tex. Civ. App. El Paso 1961), writ granted, (Oct. 3, 1961) and writ dismissed pursuant to agreement, (Nov. 15, 1961).**

[50] Hennessey v. Vanguard Ins. Co., 895 S.W.2d 794 (Tex. App. Amarillo 1995), writ denied, (Aug. 1, 1995).

[51] . Tex. R. App. P. 34.6(e)(2).

order the court reporter to conform the reporter's record (including text and any exhibits) to what occurred in the trial court and to certify and file a correction in the appellate court.[52]

If a dispute as to the accuracy of the reporter's record arises after the reporter's record has been filed in the appellate court, that court may submit the dispute to the trial court for resolution. The trial court must then ensure that the reporter's record is made to conform to what occurred in the trial court.[53] A record for appeal may be corrected for inaccuracies where there is a disagreement about whether the record reflects what actually happened at trial, after notice and hearing before the trial court.[54] The trial court may amend its records to make them speak the truth even after an appeal has been perfected, and the transcript has been filed in the appellate court. [55] A trial judge may, even after perfection of an appeal, amend a bill of exception to make it conform to the facts.[56] When the judge withdraws approval of a bill of exception, changes and reforms it, and again approves it, the bill as so

---

[52] Tex. R. App. P. 34.6(e)(2).

[53] Tex. R. App. P. 34.6(e)(3).

[54] Akinwamide v. Transportation Insurance Company, 499 S.W.3d 511 (Tex. App. Houston 1st Dist. 2016); In re Estate of Arrendell, 213 S.W.3d 496 (Tex. App. Texarkana 2006).

[55] Harris v. Stark, 101 Tex. 587, 110 S.W. 737 (1908); Murray v. Murray, 350 S.W.2d 593 (Tex. Civ. App. Dallas 1961).

As to a motion to correct the record of a judgment by the trial court, generally, see Tex. Jur. 3d, Judgments §§ 153 to 166.

[56] . M. System Stores v. Davenport, 36 S.W.2d 243 (Tex. Civ. App. Amarillo 1931), writ dismissed w.o.j., (July 22, 1931).

amended should be substituted for the one originally approved.[57] The order of the trial court on motion to correct the record is conclusive[58] and binding on the appellate court.[59] If a filing designated for inclusion in the clerk's record has been lost or destroyed, the parties may, by written stipulation, deliver a copy of that item to the trial court clerk for inclusion in the clerk's record or a supplement.[60]

If the parties cannot agree, the trial court must, on any party's motion or at the appellate court's request, determine what constitutes an accurate copy of the missing item and order it to be included in the clerk's record or a supplement.[61] The trial court's decision with respect to substitution of the record may be subsequently challenged on appeal.[62] Papers that may be substituted by proceedings instituted for that purpose in the trial court include pleadings,[63] bills of exception[64], injunction bonds,[65] and maps or plats.[66] If the

---

[57] M. System Stores v. Davenport, 36 S.W.2d 243 (Tex. Civ. App. Amarillo 1931), writ dismissed w.o.j., (July 22, 1931).

[58] Texas Emp. Ins. Ass'n v. Mallard, 180 S.W.2d 381 (Tex. Civ. App. Galveston 1944), judgment rev'd on other grounds, 143 Tex. 77, 182 S.W.2d 1000 (1944).

[59] Wells-Grinnan M.A.B. v. Belton Sand & Gravel Co., 293 S.W.2d 70 (Tex. Civ. App. Austin 1956).

[60] Tex. R. App. P. 34.5(e).As to proceedings for the reproduction of papers or records, see Tex. Jur. 3d, Records and Recording Laws § 2.

[61] Tex. R. App. P. 34.5(e).

[62] Bassett Furniture Industries, Inc. v. Texas State Bank, 951 S.W.2d 8 (Tex. App. Corpus Christi 1997).

[63] Watson Co., Builders v. Bleeker, 285 S.W. 637 (Tex. Civ. App. San Antonio 1926).

[64] Moore v. Nordyke, 275 S.W. 849 (Tex. Civ. App. Amarillo 1925).

[65] J.M. Radford Grocery Co. v. Owens, 159 S.W. 453 (Tex. Civ. App. Amarillo 1913).

[66] Norwood v. McMillan, 278 S.W. 331 (Tex. Civ. App. Amarillo 1925).

transcript is lost while in possession of counsel after it has been filed, a certified copy must be substituted since an uncertified copy will not be considered.[67] When exhibits are lost or destroyed and cannot be suitably replaced, the appellant is prevented from making proper presentation of the sufficiency of the points of error.[68] The appellate clerk must safeguard the record and every other item filed in a case. If the record or any part of it or any other item is missing, the court will make an order for the replacement of the record or item that is just under the circumstances.[69] A new trial is required when a missing record is necessary to the appeal's resolution.[70] An appellant is entitled to a new trial where:

- (1) the appellant has timely requested a reporter's record;
- (2) without the appellant's fault, a significant exhibit or a significant portion of the court reporter's notes and records has been lost or destroyed or, if the proceedings were electronically recorded, a significant portion of the recording has been lost or destroyed or is inaudible;
- (3) the lost, destroyed, or inaudible portion of the reporter's record, or the lost or destroyed exhibit, is necessary to the appeal's resolution; and
- (4) the lost, destroyed, or inaudible portion of the reporter's record cannot be replaced by agreement of the parties, or the lost or destroyed exhibit cannot be replaced either by agreement of the parties or with a copy determined by the trial court to accurately duplicate with reasonable certainty the original exhibit. Tex. R. App. P. 34.6(f).
  Lost court reporter's record and exhibits were necessary to resolving child support and custody issues on appeal, such that the mother, who was the appellant, was entitled to a new trial; she intended to raise the issues on appeal challenging the trial court's decisions on custody and retroactive

[67] Colonial Bldg. & Loan Ass'n v. Meyer, 48 S.W.2d 729 (Tex. Civ. App. Amarillo 1932).

[68] Owens-Illinois, Inc. v. Chatham, 899 S.W.2d 722 (Tex. App. Houston 14th Dist. 1995), writ dismissed, (Nov. 16, 1995).

[69] Tex. R. App. P. 12.3.

[70] In Interest of J.G., 587 S.W.3d 25 (Tex. App. Tyler 2018).

> child support, and the missing exhibits were pertinent to the mother's arguments regarding the child support arrearage because she asserted that the trial court erroneously gave the father credit for certain child support payments. In Interest of J.A.N., 563 S.W.3d 913 (Tex. App. El Paso 2018).
> However, missing portions of the court reporter's record were not necessary to resolution of the court record requester's appeal, in an action regarding termination of the requester's parental rights, and thus the requester was not entitled to a new trial; one requested document was not the subject of the appeal, and other requested records raised a question as to whether the requester was properly admonished on the dangers of representing herself at trial, but admonishment was not required since the requester was represented by appointed counsel. In Interest of J.G., 587 S.W.3d 25 (Tex. App. Tyler 2018).

III. Appellant's Current Points On Appeal[71]

Specific matters which must be marshalled herein for illustration of Appellant's right to have BODA order supplementation/disposition/rendering upon the records of this appeal from her motions to correct and supplement the reporter's and clerk's record-- so as to carry her burden in this appeal -- are summarized below and include, but are not limited to the below matters for which Appellant must and does again seek the full record of her disciplinary matters before the Office of Chief Disciplinary Counsel to date as follows:=

1. Misconduct of Counsel /Failure to Serve Process/Material Misrepresentations and Bad faith. A trial court may award damages in a no-answer default judgment case based on affidavits;[72] in a no-answer default context, judgment

---

[71] Appellant ***reserves the right to change or add points as necessary by her briefing, as this is merely a first draft to prove her entitlement to the record on appeal and requested for supplementation before BODA as live in these motions before the tribunal.***

[72] *Whitaker v. Rose*, 218 S.W.3d 216, 2007 WL 324595 (Tex. App.—Houston [14th Dist.] 2007, no pet.)

can be entered on the pleadings alone, and all facts properly pled are deemed admitted. The legal and factual sufficiency of the evidence to support an award of unliquidated damages may be challenged on appeal from a no-answer default judgment. Where a specific attack is made upon the sufficiency of the evidence to support the trial court's determination of damages in a default judgment, the appellate court must review the evidence produced.[73] The failure to do so is an abuse of discretion.

The rule precluding reversal on appeal on the ground that the trial court made an error of law, unless the appellate court concludes that the error complained of probably caused the rendition of an improper judgment or probably prevented the petitioner from properly presenting the case to the appellate court, applies in reviewing assertions of misconduct of counsel.[74] Lawyers are officers of the court, and as such officers, they have taken an oath that calls for the highest type of ethical conduct in the performance of their duty in the trial of cases. Any departure from this degree of ethical conduct, when properly objected to and preserved for review, requires the court to examine the entire record to determine whether the argument probably caused the rendition of an improper judgment.[75] In determining the prejudicial effect of a counsel's arguments, it is the cumulative effect of all statements,

---

[73] *Whitaker v. Rose*, 218 S.W.3d 216, 2007 WL 324595 (Tex. App.—Houston [14th Dist.] 2007, no pet.)
[74] Buhidar v. Abernathy, 541 S.W.2d 648 (Tex. Civ. App. Corpus Christi 1976), writ refused n.r.e., (Jan. 5, 1976).
[75] Texas Sand Co. v. Shield, 381 S.W.2d 48 (Tex. 1964).

and not individual statements, that is controlling.[76] Where an objection had been made to a part of an argument and the court had admonished the jury, the entire argument would be considered by the appellate court to determine whether the cumulative effect of all the statements was prejudicial and inflammatory such that they constituted a denial of a fair trial.[77]

However, the cumulative effect of errors cannot justify reversal where the various errors therein could have been cured had an objection been made and instruction been requested[78] Where questions and remarks by the defendant's counsel, not justified by the record, are so prejudicial as to be not curable by the trial court's instruction, the reviewing court is not required to decide whether any one of the statements is so prejudicial as to require reversal, but it is required to consider the cumulative effect of all the statements.[79] Where a previous misconduct of a defendant's counsel is magnified by arguments to the jury, although the court instructs the jury not to consider that argument, reversal is required.[80]

Service of process on a defendant that had nothing on the citation or attached to the citation that was a verification of the return of the citation amounted

---

[76] Southern Pac. Co. v. Hubbard, 156 Tex. 525, 297 S.W.2d 120 (1956); Alonzo v. John, 647 S.W.3d 764 (Tex. App. Houston 14th Dist. 2022), petition for review filed, (Aug. 25, 2022).

[77] Louisiana & A. Ry. Co. v. Mullins, 326 S.W.2d 263 (Tex. Civ. App. Texarkana 1959), writ refused n.r.e., (Oct. 14, 1959).

[78] . Traders & General Ins. Co. v. Derrett, 340 S.W.2d 305 (Tex. Civ. App. Beaumont 1960), writ refused n.r.e., (Feb. 8, 1961).

[79] Holder v. Central Freight Lines, Inc., 429 S.W.2d 191 (Tex. Civ. App. Waco 1968).

[80] McClintock v. Travelers Ins. Co., 393 S.W.2d 421 (Tex. Civ. App. Amarillo 1965), writ refused n.r.e., (Nov. 10, 1965). **:**

to reversible error apparent from the face of the record, as required to set aside a default judgment by restricted appeal, where the process server had not verified the return of citation as required by the rule setting forth the requirements for return of service.[81]When the trial court does not specify the basis for its ruling, it is the appellant's burden on appeal to show that each of the independent grounds asserted in support of judgment is insufficient to support the judgment.[82]

2. **Jurisdiction, Venue of Evidentiary Panel** On appeal from the trial on the merits, if venue was improper, it will in no event be harmless error and will be reversible error. In determining whether venue was or was not proper, the appellate court must consider the entire record, including the trial on the merits.[83] If there is a failure to comply with a mandatory procedural rule enacted by the legislature, the error requires reversal.[84]

3. **Misconduct of Panel/Judicial Misconduct.** A party complaining about alleged improper comments of a trial judge first must show the comments were improper and then show that the improper comments prejudiced the complaining party.[85] When conduct of a trial court violates the rules of civil procedure governing

---

[81] Carmona v. Bunzl Distribution, 76 S.W.3d 566 (Tex. App. Corpus Christi 2002).

[82] Federal Ins. Co. v. Everest National Ins. Co., 257 S.W.3d 771 (Tex. App. Dallas 2008).

[83] Tex. Civ. Prac. & Rem. Code Ann. § 15.064(b).

[84] C. E. Duke's Wrecker Service, Inc. v. Oakley, 526 S.W.2d 228 (Tex. Civ. App. Houston 1st Dist. 1975), writ refused n.r.e.

[85] Haynes v. Union Pacific Railroad Company, 598 S.W.3d 335 (Tex. App. Houston 1st Dist. 2020); Kroger Company v. Milanes, 474 S.W.3d 321 (Tex. App. Houston 14th Dist. 2015); In re Commitment of Hill, 308 S.W.3d 465 (Tex. App. Beaumont 2010), review granted, judgment rev'd on other grounds, 334 S.W.3d 226 (Tex. 2011).

a trial court's communication with the jury, the appellant must show that the error was harmful.[86] When the appellate court reviews for reversible error a claim of alleged judicial misconduct, the scope of review is the entire record.[87] Even assuming the impropriety of a trial court's comment on testimony or evidence, no error can be predicated on such comment in the absence of an objection thereto.[88] A court's failure to address live defenses is an abuse of discretion that is harmful by its nature.[89]

4. Procedural violations of the TRDP -- Statutory and regulatory construction. If there is a failure to comply with a mandatory procedural rule enacted by the legislature, the error requires reversal.[90] Statutory and regulatory construction present questions of law for the court, which the appellate court reviews de novo, present questions of law for the court, which the appellate court reviews de novo.

4. Motion to Stay

5. Motion for New Trial

In re Sandoval, 619 S.W.3d 716 (Tex. 2021) (per curiam:
The wife who brought a divorce action obtained authorization for substituted service on her husband, and then obtained a no-answer default judgment against him. The husband filed a motion for a new trial, arguing equitable grounds and service of process deficiencies. The trial court sustained the wife's hearsay objection to the husband's affidavit and denied his motion. The court of appeals did not find the affidavit was

---

[86] Bellino v. Commission for Lawyer Discipline, 124 S.W.3d 380 (Tex. App. Dallas 2003).

[87] In re Douglas, 333 S.W.3d 273 (Tex. App. Houston 1st Dist. 2010); Barrientos v. Nava, 94 S.W.3d 270 (Tex. App. Houston 14th Dist. 2002).6 Tex. Jur. 3d Appellate Review § 668

[88] Trinity Universal Ins. Co. v. Jolly, 307 S.W.2d 843 (Tex. Civ. App. Austin 1957), writ refused n.r.e.

[89] Mosaic Baybrook One, L.P. v. Simien, 674 S.W.3d 234 (Tex. 2023).

[90] C. E. Duke's Wrecker Service, Inc. v. Oakley, 526 S.W.2d 228 (Tex. Civ. App. Houston 1st Dist. 1975), writ refused n.r.e.

hearsay, but nonetheless affirmed on the grounds of formal defects in the affidavit. Held: The trial court erred in refusing to grant a new trial following default judgment in a divorce case. The trial court erroneously concluded that the movant's affidavit contained hearsay, when it recited facts from his personal knowledge. The appellate court improperly affirmed based on formal defects in the affidavit **even though they were not raised in the trial court where they could have been cured. The trial court should have accepted the movant's uncontroverted allegations as true and granted the new trial.**

6. **Notice of Hearing**

7. **Notices to the Panel**

8. **Failure to provide a court reporter**. The harmless error rule applies to all errors, even those involving the violation of procedural rules couched in mandatory language.[91] Where a trial court has failed to comply with a procedural rule adopted by the Texas Supreme Court, however, the usual test as to what constitutes reversible error is applicable.[92] Reversal should never be ordered merely as a penalty for the violation of a rule even though the violation is flagrant and unprovoked.[93] Such rules are framed to secure substantial justice. Therefore, an oversight of them by the court or counsel, which is not calculated to and does not prejudice the substantial rights of the parties within the meaning of the rules, should ordinarily be disregarded.[94]

9. **Motion for Continuance** Therefore, an asserted error in overruling a plea in abatement and a motion for continuance sought on the ground of failure to

---

[91] Lone Star Steel Co. v. Scott, 759 S.W.2d 144 (Tex. App. Texarkana 1988), writ denied, (Mar. 8, 1989)

[92] C. E. Duke's Wrecker Service, Inc. v. Oakley, 526 S.W.2d 228 (Tex. Civ. App. Houston 1st Dist. 1975), writ refused n.r.e.

[93] Loughry v. Hodges, 215 S.W.2d 669 (Tex. Civ. App. Fort Worth 1948), writ refused n.r.e.

[94] Ginther v. Southwest Workover Co., 286 S.W.2d 291 (Tex. Civ. App. San Antonio 1955).

furnish a copy of the cross-action as required by the rules of civil procedure was harmless where the recovery on the cross-action was denied.[95]

10. Evidence -- Exclusion/ Denial of exhibits. The test for harmful error in allowing a party's witness to testify when the witness has not been designated as a person having knowledge of relevant facts in response to the opposing party's interrogatory is not whether the party propounding the interrogatory had available to it information from pretrial discovery that corroborated the undesignated witness's testimony; rather, the testimony or evidence in question must be cumulative of other testimony or evidence that has been properly admitted at trial.[96]

11. Findings of fact and conclusions of Law. In addition, when findings of fact are neither filed nor requested following a bench trial, the appellant's burden on appeal is to show that the judgment of the court below cannot be sustained by any theory raised by the evidence.[97] A court's failure to address live defenses is an abuse of discretion that is harmful by its nature.

Conclusion

"An appellate court lso] has the power to correct and reform a trial court judgment to make the record speak the truth when it has the necessary data and information

---

[9595] First Nat. Bank of Mexia v. Anderson, 352 S.W.2d 851 (Tex. Civ. App. Waco 1962), writ refused n.r.e., (Mar. 14, 1962).

[96] Jamail v. Anchor Mortg. Services, Inc., 809 S.W.2d 221 (Tex. 1991).As to cumulative evidence, see § 652.

[97] Santa Fe Petroleum, L.L.C. v. Star Canyon Corp., 156 S.W.3d 630 (Tex. App. Tyler 2004).

to do so,"[98] affirming an appellate court has the power to modify a judgment "to make the record speak the truth."[99]

WHEREFORE, PREMESIS CONSIDERED, on behalf of Appellant, Lauren Ashley Harris, this Reply seeks to address and rebut the assertions of the CDC in its Responses to appellant's Motions to Correct and Supplement the Record on Appeal, both the Clerk and Reporter's Records. The CDC allege that Appellant has not cited any proposition to allow her these supplements and additions, but the overwhelming body of appellate law in the state of Texas for record corrections, supplements, additions, and lost and destroyed matters of appellate record reflect that Appellant, where having timely requested the record and without justification for itw denials -- at no fault of Appellant in the failure to produce same -- Appellee, as the sole party in possession of the records needed for Appellant presentation before the Appellate Court herein -- has failed to produce or explain or relfct in reasonable justification or sworn/authenticated testimony the failure. which themselves do not cite to any case law indicating that Appellants is not entitled to a copy of her disciplinary file, especially where all the proceedings and prepares thereof are directly related to this Appellate matter, intrinsically related based on the overlapping actions and

[98] *Jackson v. State,* 288 S.W.3d 60, 64 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd) (citing *Nolan v. State*, 39 S.W.3d 697, 698 (Tex. App.—Houston [1st Dist.] 2001, no pet.); TEX. R. APP. P. 43.2(b)); *accord Williams v. State*, 911 S.W.2d 788, 791 (Tex. App.—San Antonio 1995, no writ)

[99] quoting Asberry v. State, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd))).

decisions showing bias and motive to violate the procedural rules. Where Appellant files this Reply to Appellees' Response to the Motions to Correct and Supplement the Reporter's Record and the Clerk's Record before this, the Honorable Board of Disciplinary Appeals, Appellant seeks BODA's granting of the relief for the r; and, all other relief, general or special, in law or in equity, to which Appellant has shown herself justly entitled.

Respectfully Submitted,

CARPENTER & ASSOCIATES

/s/ ***Tyriece Hampton*** ______________
Joshua Carpenter
State Bar No. 24090907
josh@carplawfirm.com
James Metcalf
State Bar No. 24140131
jmetcalf@carplawfirm.com
Tyriece Hampton
State Bar No. 24133041
ty@carplawfirm.com
7920 Belt Line Rd., Suite 1100
Dallas, Texas 75254
Tel: (972) 455-8700
Fax: (972) 767-5599
filing@carplawfirm.com
Attorneys for Appellant, Lauren Ashley Harris

CERTIFICATE OF SERVICE

As required by Texas Rule of Appellate Procedure 6.3 and 9.5(b),(d),(e), I certify that a true and correct copy of the foregoing document was served on all other parties via the method indicated below on September 9, 2024:

Michael G. Graham

Counsel for Appellee, Commission for Lawyer Discipline
via email: *michael.graham@texasbar.com*

/s/ ***Tyriece Hampton***
Tyriece Hampton

Fwd: RE: BODA # 67843; Certificate of Conference for Appellant Motions

Me <lauren@lahlegal.com>
Wed, 21 Aug 2024 9:15:18 AM -0500 •
To "ty" <ty@carplawfirm.com>, "filing" <filing@carplawfirm.com>

Sincerely,

Lauren A. Harris

Texas Bar: 24080932
Mailing: PO Box 793414
Dallas, Texas 75379
Office: 469) 359-7093
Fax: 469) 533-3953
www.LAHLegal.com

============ Forwarded message ============
From: Michael Graham <Michael.Graham@TEXASBAR.COM>
To: "lauren@lahlegal.com"<lauren@lahlegal.com>
Cc: "Lauren Baisdon"<Lauren.Baisdon@TEXASBAR.COM>
Date: Mon, 31 Jul 2023 11:45:44 -0500
Subject: RE: BODA # 67843; Certificate of Conference for Appellant Motions
============ Forwarded message ============

Ms. Harris,

Thank you for your e-mail, below. FYI, Ms. Baisdon is my legal assistant; you may certainly copy her on anything you send me, I just wanted to be clear that she is not an attorney and any communication/correspondence regarding substantive issues in this matter must come to me.

As to your conference requests:

1. Your proposed Motion to "Correct and Supplement the Reporter's Record" – Any recording of the November 12, 2020, Investigative Hearing you refer to is not a part of the appellate record in this matter. *See BODA IPR 4.02(a).* As to the Panel hearings that took place on January 27, 2023, and March 24, 2023; (i) a certified copy of the transcript of the Jan. 27th hearing is already a part of the appellate record in this matter; and (ii) it is my understanding that the

March 24th hearing was not on the record. As such, I do not believe there is any basis for your proposed motion, and would request that you note that any such motion is "Opposed".

2. Your proposed Motion for a "Complete and Accurate Clerk's Record" – Yes, I think I'll need at least some idea of the items you suggest were "omitted" from the Clerk's record before I can figure out whether the Commission would be opposed to such a motion or not. It may be possible that we can agree on item(s) to be included, if there are legitimate reason(s) for their inclusion, but I'd need an idea of what you're talking about first.

Further, our conference in these respects is in no way a waiver of the position taken by the Commission in its previously-filed Motion to Dismiss for Want of Jurisdiction, and all such conference(s) and/or agreements remain subject to the Commission's position in that respect.

If you have any other questions, please don't hesitate to let me know.

Respectfully,

Michael G. Graham
Appellate Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, TX 78711
Phone: (512) 427-1350

STATE BAR of TEXAS

Important: This message and any attached documents are intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law, and is intended for the lawful use of the individual or entity named above only. If the reader of this message is not the intended recipient, you are notified that any dissemination, distribution, or copying of this message and any attached documents is strictly prohibited. If you have received this message in error, please immediately notify us by return e-mail and destroy the original message. Thank you for your cooperation.

From: Lauren Harris <lauren@lahlegal.com>
Sent: Saturday, July 29, 2023 3:49 PM
To: Michael Graham <Michael.Graham@TEXASBAR.COM>
Cc: Lauren Baisdon <Lauren.Baisdon@TEXASBAR.COM>
Subject: BODA # 67843; Certificate of Conference for Appellant Motions

Mr. Graham *and Ms. Baisdon,*

Pursuant to Tex. R. App. P. 10.1(a)(5), I seek to confer about the merits of two motions I will file in the pending BODA appeal, Cause No. 67843, and to inquire as to opposition:
1) Appellant's Motion to Correct and Supplement the Reporter's Record and
2) Appellant's Motion for a Complete and Accurate Clerk's Record.

The substance of these motions is summarized as follows:

1) Appellant's Motion to Correct and Supplement the Reporter's Record seeks an Order from BODA which directs the CDC to produce the recording of the November 12, 2020 Zoom hearing before District 6 Grievance Committee Investigatory Hearing Panel 6-3; further, any recordings of the settings before District 14 Grievance Committee Evidentiary Hearing Panel 14-2 including the January 27, 2023 setting, and the March 24, 2023 hearing: at which no court reporter was present, although requested, and the CDC objected to a continuance so a Court Reporter could transcribe the setting.

2) Appellant's Motion for a Complete and Accurate Clerk's Record seeks many omitted items to be supplemented into the Clerk's Record which are material to Appellant's positions on appeal. The list is voluminous, and I have not yet completed same. If you require the final list before offering your answer regarding opposition, I will re-send this request upon completion/before filing.

Please advise your positions as soon as practicable, I plan on filing at least the Appellant's Motion to Correct and Supplement the Reporter's Record by Monday, July 31, 2023, and the second motion as soon thereafter as possible, upon finalizing the list of items omitted.

Sincerely,

Lauren A. Harris