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

No. 67843

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

LAUREN ASHLEY HARRIS
STATE BAR OF TEXAS CARD No. 24080932,
APPELLANT

V.

**COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE**

*On Appeal from an Evidentiary Panel
For the State Bar of Texas District 14
No. 202000647 [North]*

**APPELLEE'S RESPONSE IN OPPOSITION TO APPELLANT'S MOTION TO CORRECT
& SUPPLEMENT THE REPORTER'S RECORD**

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TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Subject to and without waiving the arguments set forth in its pending Motion to Dismiss for Want of Jurisdiction in this matter, Appellee, the Commission for Lawyer Discipline (the “Commission”), files this Response in Opposition to Appellant’s Motion to Correct and Supplement the Reporter’s Record (“Appellant’s Motion”).

I.

The Reporter’s Record for the January 27, 2023, Evidentiary Hearing in the underlying case was filed with the Board on May 11, 2023, consisting of two volumes (transcript and exhibits). [RR Vol. 1 & 2]. Appellant’s Motion appears to request supplementation of the reporter’s record consisting of; (1) “recording/transcription/logs of the November 12, 2020 Zoom hearings for Cause Nos. 202000486 and 202000647”; (2) “recording/logs held by the CDC of the January 27, 2023 hearing”; and (3) “recording/transcription/logs of the March 24, 2023 hearing.” [Appellant’s Motion, ¶27].

The Commission objects to each of Appellant’s three, above-referenced requests for supplementation of the reporter’s record in this matter.

1) As Appellant’s Motion alleges, Investigatory Hearings were held in Case Nos. 202000486 and 202000647, involving Appellant as the respondent, on November 12, 2020.¹ First, Case No. 202000486 is not a part of the underlying Evidentiary Panel proceeding in this case at all. [CR 40-43]. Second, investigatory hearings held *prior* to the institution of suit by the Commission (i.e., as part of the pre-suit, “Just Cause” investigation of a disciplinary matter) *in either case* are also

¹ Members and staff of the CDC and Commission are required to maintain proceedings before an Investigatory Hearing Panel as “strictly confidential” and “any record may be released only for use in a disciplinary matter.” TEX. RULES DISCIPLINARY P.R. 2.12(F) & 2.16. To that end, this Response generally addresses matters already first raised by Appellant’s Motion only, and only to the extent necessary to provide the Commission’s response to same.

not a part of the underlying Evidentiary Panel proceeding in this case. Evidentiary Panel proceedings are initiated by the Commission's filing of an Evidentiary Petition, *after* Just Cause has been determined. TEX. RULES DISCIPLINARY P.R. 2.17. As such, any "recording/transcription/logs" of investigatory hearings that took place prior to the institution of the Evidentiary Panel proceeding in this case, whether regarding the underlying case or any other, separate case, are not part of the appellate record in this matter and should not be included as a supplemental reporter's record. TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.02(a).

2) As noted above, the reporter's record of the January 27, 2023, Evidentiary Hearing in this matter was previously filed with the Board. The Reporter's Record consists of two volumes; the first, a transcript of the Evidentiary Hearing, and the second, an exhibit volume. [RR. Vol. 1 & 2]. Appellant provides no authority in support of a request that any record of the January 27, 2023, Evidentiary Hearing other than the Reporter's Record itself should be made a supplemental part of that Reporter's Record. TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.02(a), (f).

3) Finally, Appellant's request for "recording/transcription/logs of the March 24, 2023 hearing," is also without merit. As previously noted in the Commission's Motion to Dismiss for Want of Jurisdiction and associated reply in

this matter, Appellant’s motion for new trial in the Evidentiary Panel proceeding was untimely.

The Panel issued its Default Judgment of Partially Probated Suspension on February 7, 2023. [CR 195-202]. A *timely* motion for new trial was due on or before March 9, 2023. TEX. RULES DISCIPLINARY P. R. 2.21; TEX. R. CIV. P. 329b(a). Appellant did not file her motion for new trial until March 13, 2023, thirty-four (34) days after it was due. [CR 311-340].

Notwithstanding the tardiness of Appellant’s motion for new trial, the Evidentiary Panel held a hearing on Appellant’s untimely motion on March 24, 2023. However, as the panel ultimately denied a new trial, the motion was a nullity:

“To summarize the purpose of an untimely motion or amended motion for new trial: ‘If the trial court ignores the tardy motion, it is ineffectual for any purpose. The court, however, may look to the motion for guidance in the exercise of its inherent power and acting before its plenary power has expired, may grant a new trial; but if the court denies a new trial, the belated motion is a nullity and supplies no basis for consideration upon appeal of grounds which were required to be set forth in a timely motion.’”

--*Moritz v. Preiss*, 121 S.W.3d 715, 720 (Tex. 2003) (citing *Kalteyer v. Sneed*, 837 S.W.2d 848, 851 (Tex.App. – Austin 1992, no writ).

That is, **no** “recording/transcription/logs of the March 24, 2023 hearing,” would supply any basis for consideration on appeal at all, and is/are likewise not a proper part of the appellate record.

Further, there is no express requirement that any *post-judgment* Evidentiary Panel proceedings be on the record, or that a hearing be held for any such matters at

all. TEX. RULES DISCIPLINARY P. R. 2.21. Finally, no record was taken of the March 24, 2023, hearing. [Supp. CR 1008-1013].

The inclusions Appellant wishes to make to the Reporter's Record are not proper under the Texas Rules of Disciplinary Procedure, the Board's Internal Procedural Rules, or the Texas Rules of Appellate Procedure. Accordingly, Appellant's Motion should be denied.

II.

Additionally, in the Conclusion & Prayer of Appellant's Motion, Appellant requests the Board "abate ruling on the pending Appellee Motion to Dismiss until the final rendition of the record in this appeal." [Appellant's Motion, ¶50]. However, Appellant does not cite any authority in support of that request. A reviewing court is obligated to determine whether its assumption of appellate jurisdiction is proper. *New York Underwriters Ins. Co. v. Sanchez*, 799 S.W.2d 677, 678 (Tex. 1990); *see also, Phillips v. State*, 77 S.W.3d 465, 466-67 (Tex.App. – Houston [1st Dist.] 2002, no pet.) (per curiam); *One (1) 2007 GMC Yukon VIN 1GKFC13047R304753 v. State*, 405 S.W.3d 305, 308-09 (Tex.App. – Corpus Christi 2013, no pet.). All of the pleadings filed in the Evidentiary Panel proceeding which are necessary to the Board's determination in that respect are already part of the appellate record. [CR]. Appellant's request in this respect is without merit and should be denied as well.

CONCLUSION AND PRAYER

For these reasons, the Commission is opposed to Appellant's Motion to Correct & Supplement the Reporter's Record.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Appellee's Response in Opposition to Appellant's Motion to Correct & Supplement the Reporter's Record has been served on Appellant, Lauren Ashley Harris, by email to lauren@lahlegal.com on the 2nd day of August, 2023.



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