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,

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 BRIEF

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ORAL ARGUMENT REQUESTED

I. IDENTITY OF PARTIES & COUNSEL

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Provided by reference below; clerk's record: three parts

[CR-*-***]** 1) **ORIGINAL CLERK'S RECORD**

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CDC to BODA August 4, 2023……..…*(1133 pages)*

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CDC to BODA February 16, 2024**……***(1692 pages)*

II. REPORTER'S RECORD

Provided by reference below; Reporter's Record: two hearings, three parts

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B. *EVH PANEL 14-2 FORMAL BILLS OF EXCEPTION hearing Jan. 26, 2024*

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V. OTHER REFERENCES

1) The State Bar of Texas is herein **"SBOT."**
2) The Board of Disciplinary Appeals is herein **"BODA."**
3) The District Grievance committees are herein **"DGC."**
4) Investigatory Hearing Panels of the DGC are **"IVH" Panels.**
5) Evidentiary Hearing Panels of the DGC are **"EVH" Panels.**
6) Appellant, Lauren Ashley Harris is herein as **"Appellant," or "Respondent."**
7) Appellee, the Commission for Lawyer Discipline, is **"Appellee" or "CFLD."**
8) The Office of Chief Disciplinary Counsel is the **"CDC."**
9) Assistant Disciplinary Counsel Laurie Guerra, is herein "**Guerra."**
10) Complainant Lyndon Scott North is herein **"North."**
11) Dist. 14 Grievance Committee Chair/Panel 14-2 Chair, William Travis Biggs: is **"Biggs."**
12) The Texas Rules of Appellate Procedure are **"TRAP."**
13) The Texas Rules of Civil Procedure are **"TRCP."**
14) The Texas Rules of Disciplinary Procedure are **"TRDP."**
15) The Texas Disciplinary Rules of Professional Conduct are **"TDRPC."**
16) The Texas Rules of Evidence are **"TRE."**
17) "Default Judgment of Partially Probated Suspension" is the **"DFJ" or "Judgment."**
18) Findings of Fact and Conclusions of Law are **"FOFCOL."**
19) Respondent's Verified Motion for Formal Bills of Exception are **"FBOE."**

VI. STATEMENT OF THE CASE

Nature of the case:	Arising from a Grievance filed in January 2020 against Appellant by Complainant North, the CDC held an Investigatory Hearing on November 12, 2020 before District Grievance Committee 6, Investigatory Hearing Panel 6-3, resulting in non-sanction: the Grievance Referral Program; however, no agreement was reached. The CDC attorney intentionally instituted evidentiary proceedings before the DGC 14 EVH Panel 14-2, of improper venue, and similarly knew the address of Appellant was incorrect and would not result in proper service. The Panel entered a defective Order for substitute service based on the CDC's misrepresentations and Appellant was never served with process. In granting default, the CDC provided the Panel the wrong legal precedent, and without applying any of the guidelines for sanctions entered a "Default Judgment of Partially Probated Suspension" imposing a surprise, year-long suspension, active six-months/probated six-months, resulting in Appellant's termination from her new position of employment, in the absence of any prior disciplinary history and zero change from Panel 6-3's offer to the date of ruling. Appellant attempted remedy before EVH 14-2 in post-judgment motions to stay, for new trial, requests to the Panel, and more, but the CDC forced attendance at March 24, 2023 hearing without a court reporter, no notice that the Motion/New Trial was also to be heard, excluded all Appellant's exhibits without justification and denied continuance to obtain a court reporter/"remedy" Exhibits -- denying Appellant due process, abusing and ignoring the TRDP, TRCP and TRE, including making a record of the proceeding. Appellant filed notice of appeal with BODA and filed TRAP 33.2 FBOE, obtained appellate relief from BODA which ordered remand of the case the 14-2 Panel to hear the FBOE. While on remand, the CDC/EVH 14-2 further violated the right to a court reporter, necessitating BODA to issue emergency relief and providing Order to CDC/EVH 14-2 for adequately conducting a hearing on the FBOE on the record. Finally holding the FBOE hearing on the record January 26, 2024, it too, similarly resulted in an abuse of discretion by arbitrary denial/rejection of Appellant's TRAP 33.2 FBOE, where the CDC/Panel wholly failed to follow the statute. Appellant seeks reverse and render against DFJ.
Ev. Panel Case No.:	*202000647*
Ev. Panel:	*14-2*
Disposition:	*"Default Judgment of Partially Probated Suspension"*
Parties before BODA:	**Appellant:** *Lauren Ashley Harris* **Appellee: CFLD,** *Permanent Committee of the SBOT*

VII. STATEMENT OF JURISDICTION

Pursuant to the State Bar Act, and the Texas Rules of Disciplinary Procedure, the Texas Board of Disciplinary Appeals has exclusive appellate jurisdiction over attorney discipline judgments entered by Panels of the District Grievance Committees of the State Bar of Texas, under the substantial evidence standard of review.[1]

VIII. STATEMENT OF APPLICABLE VERSION

Texas Rules of Disciplinary Procedure

Pursuant to Rule 1.04 the Texas Rules of Disciplinary Procedure, the version of the Rules applicable to this appeal and utilized herein are the June 2018 Rules/August 2018 Amendments which were in effect at the time the underlying Grievance was instigated: January 15, 2020, seen within the August 28, 2018 Order of the Supreme Court, Misc. Docket No. 18-9112; Corrected Order Giving Final Approval of Amendments to the Texas Rules of Disciplinary Procedure.[2]

[1] *See* TEX. GOV'T CODE ANN. § 81.072(b)(7); TRDP Rules 2.23 and TRDP Rules 7.08(D).
[2] TRDP 1.04.

IX. STATEMENT OF FACTS

I. THE UNDERLYING CASE

A. PRE-LITIGATION

In October 2017, Lyndon Scott North ("North"), a Texas resident, was involved in a motor-vehicle accident occurring in the State of Oklahoma **[SCR-0432-0436].** For his injuries/damages, North executed an attorney-client agreement on October 16, 2017 with Appellant/The Law Offices of Lauren A. Harris **[SCR-0245-0249].**[3] On North's behalf, Appellant proceeded in the personal injury representation,[4] including letters of representation for both:

1) Tortfeasor's Farmers Insurance OK policy: bodily-injury ("BI") limits of $25,000.00 **[SCR-0444]**

and

2) North's State Farm TX policy:
   (a) Personal Injury Protection ("PIP") limits of $2,500.00,
   and
   (b) Uninsured/Underinsured motorist ("UM") limits of $30,000.00 **[SCR-0263-0264, 0449-0505].**[5]

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[3] North did not have an email address, so Appellant created a yahoo email account for Mr. North that date, so she could send him documents and materials relative to the case: **[SCR-0039][APP 9].**

[4] Police Report **[SCR-0333-0337, 0346-0350, 0432-0436],** ER records **{SCR-0251-0261, 0355-0363]**, out-of-pocket expenses **[SCR-0389-0395].**

[5] On October 18, 2017, North's office visit **[SCR-0368/0869]** notably revealed North had intentionally misled Appellant about his previous injuries/accidents. **[SCR-0364-0367,0865-0868]** zero employment/preceding fifteen years; had a pain management doctor serving as PCP; total disability benefits receiver confirmed by by 2008 records/permanent impairment rating. **[SCR-0351-0354],** transforming from acute-injury MVA to merely an aggravation of pre-existing injuries matter. Thereafter, North received Medical City of Plano ER, CT scans/head/spine: October 25, 2017/$27,378.00. **[SCR-0276-0277,0369-0383,0446-0447];** November 10, 2017, Appellant paid/Addison Internal Medicine; **{SCR-0384];** November 13, 2017, imaging, NorthStar Diagnostic **[SCR-0385-0388, 0438-040].**

During the course of the representation, North left Texas to stay with his brother in Washington state, with no scheduled return, advising Appellant that it was a remote area, and would only have access to his phone when "in-town" **[SCR-0822-0828][APP. 9].**

During that time, Appellant made State Farm PIP demand with explicit instructions to send the $2,500 payment directly to North in Washington **[SCR-0822-0828][APP.9].** Appellant continued communications to/from State Farm: November 28, 2017 [**SCR0331-0332]**, December 12, 2017 **[SCR-0265,0282-0284,0339,0343-0395]** including acceptance: Farmer's BI limits **[SCR-0266-0267,0271-0272,0340-0341],** securing UM carrier's consent December 18, 2017 **[SCR-0268,0397-0398]**, North's execution/Farmer's Release for $25,000.00 BI limits December 29, 2017 **[SCR0269-0270,0297-0291,0293];** State Farm response December 29, 2017 **[SCR-0285-0286,0400-0401];** January 3, 2018, Dr. Kweller's future medicals **[SCR-0405/0442];** State Farm follow-up demand **[SCR-0403-0408].**, On January 8, 2018, reflecting the location: Lacey, Washington, North faxed Appellant his signed Settlement Statement **[SCR-0290-0291,0268,0794,0293][APP. 9].** State Farm communications continued: January 20, 2018 **[SCR-0410-0415],** January 22, 2018 **[SCR-0287-0288,0417-418]** and January 25, 2018 [**SCR-0278-0280,0420-0422][SCR-0424-0425],** but Appellant's UM demands were unsuccessful -- thus, Appellant filed suit on North's behalf.

B. LITIGATION, CLIENT CONDUCT & CASE ASSESSMENT

Plaintiff's Original Petition against State Farm was filed February 26, 2018 before the 134th District Court of Dallas County, Texas in Cause No. DC-18-02647 **[SCR-0306-0321].**[6]

> Notably, From the outset of the UM suit, Appellant alerted North she would not be able to take the case to trial due to TDRPC Rule 3.04 *(preventing Appellant from being both trial counsel and Stowers witness)* and would be seeking replacement/co-counsel [**APP 9][SCR-0822-0828/0570-0572].** Over the life of the case, Appellant's attempts to obtain replacement/co-counsel were not successful; approximately ten different firms/attorneys had no interest **[SCR-0822-0828][APP 9].**

Through the course of the UM case, and after the initial treatment attempts, North refused to continue any course of medical treatment for his injuries from the loss, against both medical and legal advice **[SCR-0078].** This was especially true upon receiving the initial medical provider surgery recommendations and securing an estimated cost for future surgery. **[SCR-0300-0304].**

Although North sporadically returned to Texas, he would again leave Texas for Washington, with no return date set, and similarly, was only sporadically responding to calls and texts. **[SCR-0822-0828][APP. 9]** Most critically, Appellant was unable to obtain any availability from North on dates for deposition which was the ongoing request from opposing counsel **[APP 9].** North's medical providers similarly could not get a hold of

[6] Payment was remitted for service pf process fees by appellant on February 28, 2018 **[SCR-0298-0299];** citation was issued March 1, 2018 **[SCR-0295];** the return was filed March 14, 2018 **[SCR-0295-0297], and** Plaintiff's 2nd Amended Petition was filed August 18, 2018 **[SCR-0498,0996]**.

him, and by August 19, 2019 were seeking to close-out his file. **[SCR-0078-0079/0579-0580].**

North's total amount of UM damages – calculated as the amount of paid or incurred medicals were as follows:

Pauls Valley Emergency Room:	$590.31
Greenville Healthcare Associates:	$234.00
Medical City of Plano	$27,378.50
Addison Internal Medicine:	$108.00
Northstar Imaging:	$5,225.00
Out of Pocket Expenses:	$478.44

TOTAL**: $34,014.25 [SCR-0368,0384,0388-0395].**

> Less the $2,500 PIP payment from $34,014,25: *$31*,514.25, reduced by the $25,000.00 BI payment, as offset **[SCR-0340]** – equated to a total reduction of $27,378.50, left the total amount of North's contractual damages attributable to the $30,000 UM limits to the amount of **$4,135.75 as measure for the actual economic damages under the policy, since Mr. North refused to continue treatment [SCR-0403-0408, 0410-0415]** (extra-contractual damages would have been based on a bad-faith expert's calculation/report, whom had not yet been retained).

Dealings with North became antagonistic: North was not responding to Appellant and when he did, he would not provide his dates of return – refusing offered alternatives (*i.e. public library remote video conference*); so, Appellant never provided available dates to opposing counsel for North's deposition **[APP 9].**

> In late 2018, Appellant experienced a data-breach which nearly destroyed her solo-practice[7] and included access to client documents, her email: communications from the courts/opposing counsel. This specifically included failed correspondence with counsel for State Farm at least on January 16, 2019 **[SCR-**

[7] Where the residual effects of the breach were ongoing, much of the deleted materials were thankfully recovered, but over 54,000 documents/Appellant's work-product were lost without chance of recovery. *Appellant gave the SBOT official notice of the occurrence on December 8, 2019, notating that the date it began was determined to be October of 2018.*

0273], which led to Appellant filing the January 27, 2020 Plaintiff's Status Brief before the 134th District Court reflecting the Data Breach/compromise in advance of hearing before Judge Tillery **[APP 9].**

Dealings with defense counsel were antagonistic,[8] even in agreements. Appellant ultimately complied with opposing counsel's frivolous special exceptions and discovery – all, except for her client's deposition -- which ultimately, proved fatal to the suit. The case was dismissed on October 14, 2019 as sanction for failure to cooperate in discovery, which was only based on the outstanding deposition of her client, which Appellant could not satisfy without her client's cooperation. **[APP. 9].**

Appellant secured the assistance of attorney Ben Julius to file post-judgment relief, who requested North's signature as consent to the association of counsel, but North did not sign before plenary power expired **[APP 9].**

On January 15, 2020, Attorney Gerard Livingston orchestrated the Grievance filing before the CDC on North's behalf, made the basis of this appeal**. [APP 9][CR-0577, SCR-0822-0828].**

II. THE UNDERLYING GRIEVANCES(S)

A. APPELLANT'S ADDRESSES & CDC PRE-LITIGATION CONDUCT

On November 8, 2019, Appellant executed a residential lease agreement with The Advenir, 17671 Addison Road #1603, Dallas, Texas 75287 **[CR-0460-0477].** This was

[8] Plaintiff's Motion to Compel was filed April 15, 2019 [**SCR-0306-0321**].

Appellant's residential address at the time Livingston submitted North's Grievance to the CDC, January 15, 2020. Appellant's registered mailing/public facing address with the SBOT at that time was 9330 LBJ Freeway Suite 900, Dallas Texas 75243 **[SSCR-000520-000536].** CDC Investigator, Elena Wolfe ("Wolfe") granted Appellant extensions for her Grievance Response(s) due dates, as Appellant was communicating with Wolfe across three matters **(***Moffat: (dismissed by SDP April 1, 2020* ***[SCR-0524-0525])*** *North* ***[SCR-0321-0327]*** *and MacFarland:* ***[SCR-0017-0021] [SCR0518-0522]*** *(dismissed by IVH 6-3 on December 8, 2020* ***[SCR-0526]),*** *see timeline* ***[SCR-1036-1038, 1099-1101][APP 9]),*** *all communications by/between CDC/Appellant*.

Although Appellant had turned in the Moffat Response November 2019, on January 21, 2020, Wolfe sought more information–"due" in seven days -- where Appellant was made to keep up with repeated/additional questioning from Wolfe,[9] all, while Appellant was still trying to balance her already overwhelming solo-practitioner caseload. **[APP 9][SCR-0029-0030].** On January 27, 2020, Livingston left Appellant a voicemail message **[SCR-0076]** and on January 30, 2020, Livingston demanded Appellant's malpractice insurer's information**. [SCR-0077][SCR-0243][SCR-0578].** Upon advising Livingston no

[9] Now understood to be arbitrary deadlines, not set forth as a requirement anywhere in the TRDP.

policy was in place, **[SCR-0577],** Wolfe thereafter notified Appellant that Livingston no longer represented North. [**SCR-0536].**

On January 31, 2020, Appellant's email correspondence **with Wolfe <u>specifically notated Appellant's residential home address, providing a screen-shot of her power company account information for her townhome located at 17671 Addison Road, Unit 1603, Dallas, Texas 75287.</u> [SCR-0528-0533.]**

Further, as Appellant officed with Regus over the years, in multiple locations -- regardless the location or year, Appellant was never physically located in any of her offices -- unless, and only, by appointment. **[APP. 9][SSCR-000520-000536].**

> Wolfe/the CDC were explicitly on notice of this fact, based on MacFarland's perceived complaint about Appellant not being in the office when he showed up without an appointment and had to be escorted by security from the building, after which, posting an inflammatory google review about Appellant, and her office address. **[SCR-0016].**
>
> On April 1, 2020, Appellant received the Moffat SDP (dismissal) Notice. **[SCR-0524-0525**].
>
> Appellant formally submitted the North Response to Wolfe on April 6, 2020, **[SCR-0321-0327]** with hundreds of documents/relevant exhibits as seen in the Exhibit Binder Volumes I-V for Appellant's Formal Bills of Exception materials filed before the EVH Panel 14-2 herein, **[SCR-00004-1003].**
>
> On April 20, 2020, Appellant advised she was trying to finalize additional answers and the same date, Wolfe responded:
>
> > **"[u]nderstood. I certainly don't believe there is a lack of care on your part regarding the grievances or your practice…" [SCR-0044].**
>
> That same month, April and year, 2020 Appellant made the decision to cease being a solo-practitioner, and so, **did not accept any new clients after that month and year *sourced from the public*, thereafter slowly closing out her docket.**

Appellant entered into a new residential lease at 892 Union Station Parkway #8106 in May 2020 **[CR-0479-0493],** and switched her Regus mailing address to 405 State Highway 121 in June 2020 **[CR-0494].** *Appellant never had another location or mail service after leaving the 9330 LBJ Freeway office that worked as it was intended/functioned properly.*

The North and MacFarland matters were set for Investigatory Hearing before DGC 6 IVH Panel 6-3 on November 12, 2020 at 9:30am **[CR-0505][APP. 9].** Upon responding many months later, October 18, 2020, to the MacFarland google review, Appellant provided both the post and response to the CDC prior to the IVH setting. **[APP. 9][SCR-0016].**

B. IVH HEARING NOVEMBER 12, 2020, IVH PANEL 6-3

On the morning of November 12, 2020, the IVH Panel 6-3 heard the North Grievance first **[APP.9].** In that IVH setting, Appellant again specifically related that her work address was not a physical location for her office, but rather a Regus virtual office address **[SCR-0517] [APP.9].**

> Notably, for both settings, Appellant did not receive the "hearing exhibit" emails sent from the CDC until each hearing was over, as the Exhibits for each were never provided to Appellant prior to either hearing: the North ZOOM Panel started at 9:30am, yet the email for the "Exhibits for this morning's hearing" were not sent to Appellant until 10:06am by Guerra while the ***second hearing was already ongoing, and only lasted approximately 25 minutes***. **[SCR-0553][APP 9].**
>
> Further, in the second matter, the CDC's Grievance exhibits were similarly not sent to Appellant until the hearing was already underway/nearly concluded **[SCR-0551-0552]** sent at 11:29am and the other at 11:30 am **[SCR-0560-0561] [APP 9], one being "recalled" by the CDC based on the Panel's ruling:**
>
> > Appellant was confused as to the subject matter of Guerra's questions, where completely unrelated to MacFarland, instead related to a third-

> client, not involved in the grievance, who had reached out to MacFarland and obtained the investigator's contact information to use this as a measure to coerce/extort Appellant into completing legal work Appellant was not required to do. That client never filed a Grievance; Wolfe was merely allowing him to abuse the disciplinary system and Appellant, much like MacFarland himself.

Upon realizing during questioning that the CDC had never provided Appellant any of the documents on which she was being examined, the Panel Chair *sua-sponte* struck them from the record, and not only ordered Guerra to cease that line of questioning, but also *sua-sponte* instructed Guerra to cease all/additional TLAP questions, which were not tailored to respect the program's confidentiality **[CR-0280-0340].**

MacFarland had a documented history of threatening and harassing his prior attorneys, a dense history of violent offender felony criminal convictions, and had already been escorted from Appellant's Regus office by security once. **[CR-0280-0340].** The MacFarland facts reflected intentional manipulation by the Complainant of the attorney discipline process, in combination with the complete lack just cause/lack of any misconduct on the part of Appellant—the MacFarland IVH hearing concluded that date with Panel member Attorney asking Guerra, "Madame Chief Disciplinary Counsel -- ***what are we even doing here?"*** **[CR-0280-0340].**

This strategy by the CDC, a maneuver to intentionally send the email with the CDC's disclosure materials late, rendered no notice to Appellant of any of the CDC's evidence. Literally never having received the information prior to the hearings, the Panel Chair remedied same in MacFarland, but as the same occurred in North,– it did not come up in that hearing/Appellant never knew there were exhibits to which she was entitled. **[SCR-0553][APP 8].**

The day following the IVH hearing setting, November 13, 2020, Appellant reached out to the SBOT membership department via email to order a replacement bar card **[CR-0507-0508].** In which, **delivery was specifically requested by Appellant to her residential home address, 892 Union Station Parkway #8106. [CR-0507-0508].**

On November 20, 2020, Guerra sent Appellant the North post-IVH letter which offered the Grievance Referral Program:

> The GRP refer[s]..lawyers minor misconduct.[10] ..for a dismissal of the underlying complaint.., lawyer.. complete[s] a …program.[11] ..criteria ..requires...the misconduct **not** involve a "breach of fiduciary duties."[12] The Rules do not explicitly refer ..to fiduciary duty.. ..language no longer in.. annual reports, …remains ..State Bar Board Policy Manual.[13]
>
> Based on the criteria for an attorney to receive the GRP as alternative to a sanction, any "misconduct" was so minor that it did not contain any breach of fiduciary duties.
>
> Notably, the GRP is not listed in any definition of sanction in the TRDP, and was offered by the IVH Panel 6-3 after meeting with Appellant for only 25 minutes, where Appellant did not have any of the CDC exhibits and Appellant did not present any documents from her written CDC Response to the Panel, which included text messages and phone records to and from North over the years, and illustrate Appellant positions of the North communications, where it was Appellant seeking North's response without answer for his deposition date schedule.

Within the November 20, 2020 correspondence from Guerra, she provided an arbitrary December 7, 2020 deadline to respond. On or after November 21, 2020, based on the direct written notice of her residential address to the SBOT in the November 13, 2020 request, **the SBOT mailed Appellant the replacement bar card to her residential address. [SSCR-000530]. Notably, the North December 7, 2020 offer "deadline"**[14] expired **the day before** Guerra sent Appellant the MacFarland post-IVH correspondence, December 8, 2020, which reflected the:

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[10] TRDP Part XVI; State Bar of Texas, Commission for Lawyer Discipline, *Annual Report, June 1, 2023-May 31, 2024* (Aug. 31, 2024), at 7.

[11] *Id.*

[12] TRDP 16.02(C).

[13] State Bar of Tex. Bd. of Directors Policy Manual, Apr. 2024, Rule 6.09.01(C).

[14] TRDP Part XVI; State Bar of Texas, Commission for Lawyer Discipline, *Annual Report, June 1, 2022-May 31, 2023*, (Aug. 31, 2023), at 16 (If the lawyer does not fully complete the terms of the agreement...the underlying complaint moves forward through the usual disciplinary process.)

> District Grievance Committee determined there was not enough evidence to continue the investigation. Accordingly, the Chief Disciplinary Counsel's office has closed this investigation, dismissed the grievance and will take no further action. **[SCR-0025].**

C. THE EVIDENTIARY PROCEEDINGS

In spite of providing her home address to the SBOT on November 13, 2020, **[CR-0507-0508],** and despite the SBOT sending Appellant her bar card **to that address on or after November 21, 2020 [SSCR-00530],** ***Appellant did not receive any information related to the continuation of the Evidentiary Proceedings for the cause until February of 2023,*** upon surprise entry of the DFJ, suspending her right to practice law actively for six months, and "probated" for another six, which resulted in her termination from her from her newly obtained position of employment **[CR-0585-0587],** among many other detrimental events and occurrences suffered by Appellant from that date, to now, over a full two years later.

The Affidavit [SCR0163-0164} utilized to obtain substituted service from the Panel was notarized **August 25, 2021**, reflects as follows:

> On August 9, 2021 at 1:45 P.M. at 405 STATE HIGHWAY 121 BYPASS, SUITE A250, LEWISVILLE, DENTON COUNTY, TEXAS 75067 - I arrived at this business location and spoke to employee who informed me that Lauren Harris is no longer with the firm. No forwarding information available.
>
> On August 15, 2021 at 3:50 P.M. at 17303 DAVENPORT ROAD, DALLAS, DALLAS COUNTY, TEXAS 75248 - 1 arrived at this residential location and spoke to male who identified himself as the father of Lauren Harris. Male was hostile but confirmed this is the correct address for Lauren Harris and added she Is not at home. I left a call back card requesting contact.
>
> I request TRCP Rule 106 Substituted Service, For the reasons set forth above, it is Impractical to secure personal service on LAUREN ASHLEY HARRIS and I Will be unable to do so despite due diligence.

> In the course of my attempts to serve said documents listed above, I've determined that 17303 DAVENPORT ROAD, DALLAS, DALLAS COUNTY, TEXAS 75243 is LAUREN ASHLEY HARRIS usual place of business, usual place of abode, or other place where the Respondent can probably be found. **[SCR0163-0164}**

While Fennel was allegedly trying to serve Appellant at her parents' house, watching the residence to mark down when her parents turned on and off their lights – in that time period, Appellant was actually back and forth from El Paso, Texas for a then-incarcerated criminal client. The same week Fennel was executing erroneous affidavits, Appellant secured Orders of Felony dismissal from the District Court/ADA, executed August 24, 2021 in two cases **[SRC-062-065.]** In September 2021, where Regus serve had been transferred to the 121 address, a mailing address only **[SCR-0067-0068][SCR-0568],** and intended to forward to Appellant's residential address, Appellant determined that she was charged, but without actual completion of service:

> …I literally HAVE NOT received any mail for my business in months!!!!
> Regus response:
> ..regarding this issue…managed to get approval to credit the mail forwarding charges that was charged since Aug 2020 till March 2021…

The later-received SBOT PIA documents reflect that Appellant's online attorney profile changed at least three times from the information that Appellant herself entered, two times issue for the 17303 address as follows:

> On September 8, 2021 (from 405 State Highway 121 Suite A250, Lewisville, Texas 75067 to 17303 Davenport Rd Dallas, Texas 75248. **[SSCR-001137; 001150].**
> *Appellant changed it back on October 22, 2021 to 405 State Highway 121 Suite A250, Lewisville, Texas 75067).* **[SSCR-001138; 001150].**

> The address remained the incorrect address, to an address that Appellant specifically noted as confidential and not for public dissemination for forty-four days, (1 month and 14 days) this first time.
> The second time, a mere seven days after her correction, on October 29, 2021: from 405 State Highway 121 Suite A250, Lewisville, Texas 75067, changed to 17303 Davenport Rd. Dallas, Texas 75248 [**SSCR-001138;001149].**

On December 12, 2021, Appellant signed up with another virtual mail provider, Excella, for the mailing address of 2701 E. Grauwyler Rd. Building 1 DPT# 1072 Irving, TX US, 75061 **[SCR-0072-0073][SCR-0573-0574].** On March 3, 2022, Guerra filed the Motion for Substitute Service before the EVH-14-2 Panel stating that:

> According to the membership records of the State Bar of Texas, Respondent's usual place of abode is located at 17303 Davenport Rd., Dallas, Texas 75248… personal service attempts proved unsuccessful….. impractical because Respondent has consistently avoided service of process and does not respond to the process server's personal delivery attempts**.[CR-0366-0383][SCR-0159-0180]**

That same date, the Panel chair, Biles, executed the Order granting Substitute Service Process stating:

> "Received and reviewed requested substitute service motion, order, etc.I practiced my signature for 15 minutes and then signed it. Attached. Received and reviewed requested substitute service motion, order, etc.I practiced my signature for 15 minutes and then signed it. Attached"**[CR-100-102].**

On March 8, 2022, the CDC sent the process server a cover letter for service **[SCR-0119-0120].** The Affidavit of Fennel executed March 29, 20222 states that the documents came to hand on March 9, 2022 and that he secured to front door of 17303 **[SCR-0117, 0155]** on **March 16, 2022 at 12:55pm, <u>while Appellant was a residential tenant of 14606 Dallas Parkway #2.1041 Dallas, Texas 75254 [CR-0531-0535]</u>**

> >Appellant did not see that 17303 Davenport Road was once again, publicly available on the SBOT site, when Appellant did not herself input that address

for the publicly facing information nor did she authorize nor consent for same to be changed.

>> Therefore, based on the Excella subscription, Appellant changed the address to 2701 E. Grauwyler Rd. Bld. 1 DPT# 1072 Irving,Texas 75061 **on March 16, 2022 at 4:42AM [SSCR-001138;001149]. WHICH IS COMPARED to the CR-0104 date and time of Process Server's alleged posting – related as ON March 16, 2022 at 12:55 P.M. -******

>>> This time, the address remained the incorrect address and publicly available--of Appellant's parents' home which had always specifically noted as confidential and not for public dissemination – since October of 2021, for over one-hundred and thirty-eight days–or over four and a half months

>>>> in this time Guerra was free to assert that Appellant was responsible for her SBOT profile information, and thus, with 17303 listed as the registered address, this was the proper address for substitute service, etc.

On September 21, 2022, it appears Guerra filed the Motion for Default Judgment/Notice of Default Hearing, which lists the 17303 Davenport Address and the Grauwlyer address. **[SCR-0143-0144].** Fennel's Affidavit**, executed October 10, 2022, states that on** October 1, 2022 he securely attached the documents to the 17303 front door**. [CR-0177][SCR-0145].** Again, while Fennel was allegedly busy taping things to the residence of Dan and Teresa Harris at their North Dallas home, on October 13, 2022, Appellant was obtaining an Order for Withdrawal in the 265th Judicial Dist. Court of Dallas, County Texas for her last active litigation client as a solo-practitioner**, while she lived in her townhome at 7151 Gaston Ave. [CR-0541-0545] [SRC-0075]**

After two years and three interviews, Appellant was finally accepted for in-house counsel employment for a large insurer and therefore ordered, paid for and obtained from the CDC by e-mail communication a Certificate of Good Standing on December 12, 2022.

[CR-0566-0570]. No mention was made to Appellant from the CDC in this communication of any pending disciplinary proceeding, or motion for default, or hearing scheduled for a default judgment/sanctions against her law license.

On January 25, 2023, Guerra executed multiple affidavits and documents **[SCR-0141-0142], [SCR-0181-0182], [SCR-0139]** including the Non-Military Affidavit **[SCR-0140],** in which Guerra swore that "(Respondent), currently resides in Dallas County, Texas. To the best of my knowledge, Respondent was at the time of the institution of this suit a resident of **Tarrant County, Texas**." **[SCR-0140]**. That same date Affidavit Guerra executed her Attorney's Fees, Expenses Invoice/Resume. **[SCR-0184-0187].**

On January 27, 2023, Guerra went forward before EVH Panel 14-2 on the record **[RRDT/RRDE]**, that same date, Biggs executed the Order Granting Default **[APP 3],** and while the executed Panel Hearing Report is not dated for signature, it does list the hearing date as January 27, 2023 **[CR-0179-0181][SCR-0189-0191],** which resulted in the signed DFJ, executed on February 7, 2023, by Panel Chair of EVH 14-2, Biggs **[APP 4].**

Notably, on February 7, 2023, the CDC "Panel Clerk" sent Biggs an email with his signed Hearing Report for his reference, along with the proposed draft of the DFJ for signature; he replied with the signed version of the Judgment. **"[CR-0185-0203] However, the email has a subject line for Cause Numbers not for this case,** the North matter, **but instead** reflects:

> **"Case No's. 202005425 and 202005143; Commission for Lawyer Discipline vs. Lauren Ashley Harris" [CR-0185-0203].**

D. POST-JUDGMENT PROCEEDINGS/PROCEDURAL HISTORY

Also on February 7, 2023, Guerra sent Notice to the US District Court for the Northern District of Texas, before which Appellant is also admitted to practice; a separate action proceeded before Judge Jane Boyle to show Cause why reciprocal discipline should not have been entered against Appellant **[CR-0577-0579].** After making filings and showings of grave injustice and fatal error to the due process rights of Appellant before that tribunal, **the Court did not and has not entered reciprocal discipline; therefore, Appellant never suffered a suspension or any sanction before the Federal Courts for the DFJ entered by the SBOT EXH Panel 14-2 [CR-0577-0579].**

On February 20, 2023, Appellant sent/filed Respondent's Motion to Stay Judgment Motion to Stay Execution of Default Judgment for Partially Probated Suspension Pending Panel Rulings and/or Appeal and Request for Record **("**Motion to Stay**")[CR-0205-0222].**

On March 10, 2023, Guerra filed Petitioner's Response to Respondent's Motion to Stay Execution of Default Judgment for Partially Probated Suspension Pending Panel Rulings and/or Appeal and Request for Record **[CR-0225-0231].**

That same date **[CR-0280-0308],** and again on March 11, 2023 Appellant **[CR-0311-0339]** sent the CDC **the** Respondent's Verified Motion to Set-Aside/Vacate Default Judgment & for New Trial with the Original Exhibit Binder **[CR-0309][CR-0340**] both these pages have the active link to the binder, which currently opens from the original clerk's record to the original exhibits**. [SCR-0216-0240].**

On March 16, 2023, Guerra filed Petitioner's Response to Respondent's Verified Motion to Set-Aside/Vacate Default Judgment & for New **Trial [CR-0342-0364].** On March 23, 2023, Appellant filed Respondent's Verified Requests to the Panel **[CR-0413-0424];** Respondent's Verified Noice of Supplemental Facts **[CR-0357-0410]** and the supplemental Exhibit Binder, HARRIS.0480-0665.

On March 24, 2023, at 9:38am Appellant filed Respondent's Reply to the Petitioner's Response to Respondent's Motion to Stay [**CR-0615-0626].** That same date, the hearing went forward, over Appellant's objection/cancellation and hearing by submission, but Guerra stated that she was moving forward with the hearing, so Appellant appeared under duress, without a record, for Appellant's Motion to Stay.

On March 27, 2023, the CDC finally transmitted to Appellant the signed Orders **[CR-0639-0640][APP.5/6]** from the March 24, 2023 hearing, stating that it appeared Appellant had not been copied **[CR-0638]** on the communication**,** ***ex-parte.***

On April 27, 2023, Appellant filed Past Due FOFCOL **[CR-0633-0637].** ***Ex-parte*****, the CDC sent Biggs the proposed FOFCOL.** On May 2, 2023, Biggs signed both the FOFCOL and sent them only to Guerra and the CDC, stating that he did not have the email address for Respondent, so the CDC would need to "forward it on." **[CR-0645-0651],** ***ex-parte.***

On May 8, 2023, Appellant filed her Notice of Appeal before BODA**.[CR0653-0654].** On June 7, 2023, appellant filed the Verified Motion for FBOE [**SCR-0507-0512]** and attached the Exhibits I-V, containing the Original Exhibit Binder *HARRIS.0001-0479*, in

smaller files **[SCR-0004-1004].** On August 1, 2023, Guerra filed Petitioner's response to Respondent's Verified Motion for FBOE **[SCR-1070-1076].**

On October 25, 2023, Appellant filed Respondent's Verified Motion for Judicial Notice: *State Bar of Texas Open Records Department Release of Records pursuant to the Texas Public Information Act*, **[SSCR-000405-000418/001443-001455];** as well as Respondent's Brief to the Panel: *Proper Procedure Under Trap Rule 33.2 Discharging Duties Assigned On Remand Under Boda Mandate Signing & Filing Formal Bills of Exception* **[SSCR-000419-000446/001456-001525] –** and the Third Exhibit Binder**,** ***HARRIS.0666-1002*****,** with Appendix **[SSCR-00448-000787].**

On October 27, 2023, Appellant filed Respondent's Verified Objection to Notice of Hearing for the October 27, 2023 setting and three proposed Orders on the FBOE before the EVH-14-2 Panel**. [SSCR-0800-000806/000813-000819, SSCR-000797-000799].**

Further, that same date, Appellant filed before BODA Appellant's Emergency Motion to Avert Improper Evidentiary Panel 14-2 Hearing on Remand. Based on those filings, that same date, BODA granted Appellant a Temporary Stay/Cancellation of the October 27, 20923 hearing, where BODA **ordered:**

> "that the hearing scheduled for 1:00 p.m. on Friday, October 27, 2023, in Cause No. 202000647, be temporarily stayed pending a response from Appellee, the Commission for Lawyer Discipline, and consideration by the Board. The Board requests a response from Appellee on the motion be filed no later than 5:00 p.m. on Friday, November 3, 2023. Appellant's motion remains pending."

On November 13, 2023, Appellant filed Respondent's Verified Reply to Petitioner's Response to Respondent's Verified Motion for Formal Bill of Exception Objections & to Deem Matters Agreed: Express, Implied/Implicit Agreement *Panel's Ministerial/Statutory Authority-TRAP 33.2: Must Sign & File Agreed Bills.* **[SSCR-000834-000903/000905-000974].**

On November 22, 2023, BODA entered formal Order on Appellant's Emergency Motion to Avert Improper Evidentiary Panel 14-2 Hearing on Remand filed by the Appellant, which was granted "in-part" and set forth the requirements for the post-judgment FBOE hearing by the CDC and Appellant. **[SSCR-001528-001529].**

On December 21, 2023, the CDC filed Petitioner's Response to Respondent's Brief to Panel, and Respondent's Verified Motion for Judicial Notice **[SSCR-001546-001583].**

That same date, the CDC filed a new Notice of Hearing for the Appellant's FBOE, resetting the hearing to January 26, 2024**. [SSCR-001630-001636].**

Although requested to be included in the appellate record, missing therefrom is the January 19, 2024 CDC service of the ZOOM INVITE for January 26, 2024 at 1:00 p.m. CASE NO. 202000647 [North] Commission for Lawyer Discipline vs. Lauren Ashley Harris and "2024.01.19 Zoom Protocol Guidelines – EVIDENTIARY."

On January 26, 2024, the hearing was held on the record for the Appellant's FBOE. **[RRFT-pgs1-17]**

On February 5, 2024, Guerra sent her proposed Order denying the FBOE to the Panel Chair, Amie Peace **[SSCR-001648-001650].**

On February 7, 2024, EVH 14-2 Panel Chair Amie Peace entered her Order denying Respondent's FBOE, **[SSCR-001652-001655/001657-001658]** and on February 8, 2024, entered not the Respondent's proposed Orders for FBOE with "Refused" marked-thereon, but instead submitted the Respondent's Motion for FBOE, thereon marked "Refusal 2/8/2024 Amie Peace." **[SSCR-001664-001685].**

X. ARGUMENT & AUTHORITIES

I. STANDARDS OF REVIEW

This case requires BODA to review: legal issues interpreting the substantive rules of professional conduct; the Panel's fact findings; and the Panel's use of discretion in reaching its rulings.

A. DE NOVO

BODA reviews the legal conclusions of the evidentiary panel *de novo*, as questions of law are always subject to *de novo* review.[15] Challenge to a conclusion of law can be raised for the first time on appeal, and allows the appellate court to "re-determine the legal questions" including the correctness/if proper application of the conclusions of law to the

[15] *In re Humphreys*, 880 S.W.2d 402, 404 (Tex. 1994); *Comm'n for Lawyer Discipline v. A Texas Attorney*, 2015 WL 5130876 *2 (Texas Bd. Disp. App. 55619, August 27, 2015; no appeal); *Weir v. Comm'n for Lawyer Discipline*, 2005 WL 6283558 at *2 (Texas Bd. Disp. App. 32082, June 30, 2005; no appeal).

findings of fact was made by the underlying court.[16] Erroneous conclusions of law are not binding on an appellate court.[17] Conclusions of law will be upheld on appeal if the judgment can be sustained on any legal theory supported by the evidence --that is, an incorrect conclusion of law will not require reversal if the controlling findings of fact support a correct legal theory,[18] *i.e. if the outcome is correct, a judgment will be upheld, even if the legal theory was wrong.*

B. SUBSTANTIAL EVIDENCE

Substantial evidence is a two-part review, one being the legal and the other being the factual sufficiency of evidence. BODA reviews the legal and factual sufficiency of the trial court's findings in a bench trial in the same manner as the jury's findings in a jury trial.[19]

E. LEGAL SUFFICIENCY OF EVIDENCE:

Appellant may not challenge the Panel's conclusions of law for factual insufficiency; however, BODA may review the trial court's legal conclusions drawn from the facts to determine their correctness, and will uphold conclusions of law if the judgment can be sustained on any legal theory supported by the evidence.[20] Appellate courts have held that

[16]*Perry Homes v. Cull*, 258 S.W.3d at 598; *Curocom Energy LLC v. Young-Sub Shim,* __ S.W.3d __, 2013 WL 6029532 at *1 (Tex. App.—Houston [1st Dist.] 2013, no pet.); *Keisling,* 218 S.W.3d at 741.

[17]*Chavez v. Chavez*, 148 S.W.3d 449, 456 (Tex. App.—El Paso 2004, no pet.).

[18] *Johnston*, 9 S.W.3d at 277.

[19]*Brown v. Comm'n for Lawyer Discipline*, 980 S.W.2d 675, 679 (Tex. App.—San Antonio 1998, no pet.).

[20]*Id.* at 6; *see BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002).

"[w]hen we conduct a review of whether the evidence is legally sufficient, we consider only that evidence and the inferences therefrom which support the finding at issue, considered in the light most favorable to the finding, and disregarding contrary evidence and inferences.[21]

> ***A no-evidence or legal sufficiency challenge is sustained only when/***
> *Appellate Courts can find the evidence legally insufficient if:*
> (1) there is a complete absence of evidence for the finding,
> (2) there is evidence to support the finding, but rules of law or evidence bar the court from giving any weight to the evidence,
> (3) there is no more than a mere scintilla of evidence to support the finding, or
> (4) the evidence conclusively establishes the opposite of the finding. [22]

"More than a scintilla of evidence exists where the evidence supporting the finding, as a whole, 'rises to a level that would enable reasonable and fair-minded people to differ in their conclusions.'[23] A reviewing court is not bound by the reasons given by an agency in its order, provided there is a valid basis for the action taken by the agency.[24] Thus, the agency's action will be sustained if the evidence is such that reasonable minds could have reached the conclusion that the agency must have reached in order to justify its action.[25]

> ***F. FACTUAL SUFFICIENCY OF EVIDENCE:***

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[21] *Burroughs Wellcome Co. v. Crye,* 907 S.W.2d, 497, 499 (Tex.1995); *Holt Atherton Industries, Inc. v. Heine,* 835 S.W.2d 80, 84 (Tex.1992).

[22] *Keller*, 168 S.W.3d at 810; *BP America*, 282 S.W.2d at 220. *Merrell Dow Pharms., Inc. v. Havner,* 953 S.W.2d 706, 711 (Tex.1997) (citing Robert W. Calvert, *"No Evidence" and "Insufficient Evidence" Points of Error,* 38 Tex. L.Rev. 361, 362–63 (1960)).

[23] *Burroughs Wellcome,* 907 S.W.2d at 499 (quoting *Transportation Ins. Co. v. Moriel,* 879 S.W.2d 10, 25 (Tex.1994)).

[24] *Railroad Commission v. City of Austin,* 524 S.W.2d 262, 279 (Tex. 1975).

[25] *Suburban Utility Corp. v. Public Utility Commission,* 652 S.W.2d 358, 364 (Tex. 1983). *Texas Health Facilities Comm'n v. Charter Med.-Dallas, Inc.*, 665 S.W.2d 446, 452-53 (Tex. 1984).

If BODA determines the evidence is legally sufficient, it must then determine whether it is factually sufficient,[26] which means it reviews the evidence supporting the findings of fact leading to the conclusion that an attorney committed professional misconduct under the substantial evidence standard.[27]

> When reviewing a factual sufficiency challenge, the appellate court considers all the evidence and determines whether the evidence supporting a finding is so weak as to be clearly wrong and unjust or whether the evidence is so against the great weight and preponderance of the evidence to be clearly wrong and manifestly unjust. [28] A challenge to the sufficiency of the evidence in a bench trial can be raised for the first time in appellant's brief. There is no need to file a post-judgment motion raising it. [29]

BODA is not subject to the Texas Administrative Procedure Act[30], but cases construing substantial evidence under the Act are instructive.[31] "At its core, the substantial evidence rule is a reasonableness test or a rational basis test."[32] "The findings, inferences, conclusions, and decisions of an administrative agency are presumed to be supported by substantial evidence, and the burden is on the Appellant to prove otherwise."[33]

C. ABUSE OF DISCRETION

[26] *Id.*

[27] TEX. GOV'T CODE ANN. § 81.072(b)(7) (West Supp. 2014); Tex. Rules Disciplinary P. R. 2.24; *Wilson v. Comm'n for Lawyer Discipline*, 2011 WL 683809 *2 (Tex. Bd. Disp. App. 46432, January 30, 2011; aff'd March 3, 2012).

[28] *BP America*, 282 S.W.3d at 220; *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001).

[29] TRAP 33.1(d).

[30] TEX. GOV'T CODE ANN. §§ 2001.001—2001.092.

[31] *In re Humphreys*, 880 S.W.2d at 404.

[32] *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994).

[33] *Id., see City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d at 185.

A trial court abuses its discretion if it acts without reference to any guiding rules or principles or **fails to correctly analyze or apply the law**.[34]

II. POINTS OF ERROR

(1) ERROR NO. ONE

THE JUDGMENT IS FACIALLY DEFICIENT AS A RETROACTIVE JUDGMENT, BEGINNING BEFORE EXECUTION

The DFJ is facially deficient because it retroactively imposes an active suspension on a date preceding the judgment's entry, stated to be effective February 1, 2023, but actually executed on February 7, 2023. [**APP. 4]** Here, by purporting to impose an active suspension starting six-days (6) before the judgment was signed, Biggs impermissibly imposed a retroactive suspension, creating a fundamental error on the face of the judgment. In Texas, a judgment must speak as of its date of signing, not before, so Biggs could not retroactively impose judicial determinations that were not made at the time of executing; reformation *nunc pro tunc* allows a court to correct clerical errors to align the judgment with what was actually rendered.[35]

> Similarly, where the CDC's Attorney's Fees and Expenses chart attached to Guerra's Affidavit of Attorney's Fees attempts to bill a 1.5 on April 20, 2020 for "Reviewed case file" at a rate of $225.00/hour for a total of $337.50, this is improper based on the fact that the Evidentiary Petition was not even alleged to be filed until May of 2021, where the CDC did not yet represent the CFLD.[36]

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[34] **Emphasis added**, *Celestine v. Dep't of Family & Protective Servs.*, 321 S.W.3d 222, 235 (Tex. 2010).

[35] *Daniels v. Commission for Lawyer Discipline*, 142 S.W.3d 565, 573 (Tex. App.—Texarkana 2004, pet. denied).

[36]

Because the February 7, 2023 judgment purports to impose suspension before its own existence, it is clear the judgment does not conform to what the court could have legally rendered at that time. This procedural defect renders the judgment voidable and demands correction through, at minimum, reformation.

(2) ERROR NO. TWO

THE DISTRICT 14 GRIEVANCE COMMITTEE WAS THE WRONG VENUE FOR THE EVIDENTIARY PANEL PROCEEDINGS AND IS HARMFUL, REVERSIBLE ERROR

> Jurisdiction is the power of the court to decide a controversy between parties and to render and enforce a judgment, but venue, in contrast, is the proper place to exercise that power.[37] Any lawsuit prosecuted under a statute prescribing mandatory venue shall be brought in the county prescribed by such statute.[38] **If venue is shown to be improper while on appeal, the case must be reversed -- and reversal is required whether a motion to transfer is erroneously granted or denied**.[39] When a court of improper venue renders judgment, that court commits harmful, reversible error.[40]

Though not statutory, the TDRPC and the TRDP have the same force and effect as statutes, should be treated like statutes, and are interpreted using the usual rules of statutory construction.[41] TRDP Rule 2.11 provides that "venue shall be in the county of

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[37] *National Life Co. v. Rice,* 167 S. W.2d 1021, 1024 (Tex.1943).

[38] Tex. Civ. Prac. & Rem. Code Ann. § 15.061 (Vernon 1986).

[39] TEX. CIV. PRAC. & REM. CODE ANN. § 15.064(b); *Wilson*, 886 S.W.2d at 261; *Ruiz*, 868 S.W.2d at 758*; In re Masonite Corp*., 997 S.W.2d 194, 198 (Tex. 1999) (orig. proceeding); *Ford Motor Co. v. Miles*, 967 S.W.2d 377, 382 (Tex. 1998); *Wichita Cty. v. Hart*, 917 S.W.2d 779, 781 (Tex. 1996).

[40] *See* Tex. Civ. Prac. & Rem. Code Ann. § 15.064(b).

[41] *Powell v. Commission for Lawyer Discipline* (Tex.App.-Hous. (1 Dist.) 2024) 2024 WL 5249169; *Commission for Lawyer Discipline v. Webster* (Tex.App.-El Paso 2023) 676 S.W.3d 687, review granted, reversed 2024 WL 5249494.

Respondent's principal place of practice."[42] "Shall" imposes a duty, and is treated as mandatory language, unless the legislative intent directs otherwise.[43] Therefore, TRDP 2.11 is a mandatory venue statute. Section 311.002 of the Code Construction Act (the "Act") applies the Act to codes enacted after 1960 and to rules enacted under a code.[44] Section 81.024 of the government code empowers the Supreme Court of Texas to promulgate rules governing the state bar.[45] The Preamble to the Disciplinary Rules notes that the Disciplinary Rules are adopted and promulgated pursuant to that authority.[46] Thus, the Act applies to the TRDP. Therefore, "shall" is mandatory, and venue was proper only in Dallas County before a Dallas Panel.

The May 2020 Procedural Guide to Panel Proceedings authored by the CDC and provided to the DGC in the CDC's training of the Panels for their participation in the attorney discipline system, reflects the following for the definition of:

> Address - means the registered address provided by the attorney the subject of a Grievance as shown on the membership rolls maintained by the State Bar on behalf the Clerk of the Supreme Court ***at the time of receipt of the Grievance by the Chief Disciplinary Counsel's Office***.[47]

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[42] TRDP 2.11B.
[43] *See* TEX. GOV'T CODE ANN. § 311.016(2); *Albertson's, Inc*. v. *Sinclair*, 984 S.W.2d 958, 961 (Tex. 1999).
[44] TEX. GOV'T CODE ANN. § 311.002.
[45] TEX. GOV'T CODE ANN. § 81.024.
[46] TRDP Preamble.
[47] ***Emphasis added.*** *See* TRDP 1.06(A); APPENDIX B, 2020 TXCLE-ACAP 9 APP B, 2020 WL 5607163.

On January 15, 2020, the date of the CDC's receipt of the North Grievance, the address provided by Appellant was 9330 LBJ Freeway, Suite 900 Dallas, Texas 75243, reflecting the SBOT dates and time/information and change log of Appellant's online attorney profile data. **[SSCR000521-000536].** Further, where the TRDP mandate proper venue in the county of the respondent's principal place of practice, Appellant's principal place of practice was at all times relevant to the North Complaint, Dallas County, Texas, and notates same on the face of the Judgment **[APP. 4].**

> Within Respondent's Verified Request to the Panel and for BODA Appeal [**SCR-0415]**, Appellant raised this venue objection and provided her timeline of addresses, notating that a Dallas Panel was the original panel assigned to this matter, IVH 6-3. **[APP 9][CR 45].** The preliminary investigation and determination of an Investigatory Hearing Panel in attorney discipline proceedings is comparable to an inquisition by a grand jury.[48] IVH Panel 6-3 determined that the allegations of the CDC in the North case deserved the non-sanction[49] of the Grievance Referral Program.[50]

Furthermore, civil suits reflect that venue is determined "based on the facts existing at the time the cause of action that is the basis of the suit accrued."[51] All of the alleged complaints within North's Grievance were based on the case before the 134th Judicial

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[48] *State v. Sewell* 487 S.W.2d 716. (Sup. 1972).

[49] See APPENDIX B, 2020 TXCLE-ACAP 9 APP B, 2020 WL 5607163, definition of **Sanction** - means any of the following: 1. Disbarment. 2. Resignation in lieu of discipline. 3. Indefinite Disability Suspension. 4. Suspension for a term certain. 5. Probation or suspension…. 6. Interim suspension. 7. Public reprimand. 8. Private reprimand."

[50] *https://www.texasbar.com/Content/NavigationMenu/ForThePublic/ProblemswithanAttorney/GrievanceEthicsInfo1/ReferralProgram.htm*

[51] *See* Tex. Civ. Prac. & Rem. Code Ann. § 15.006.

District Court of Dallas County Texas [**APP 9].**

> Importantly, the TRDP anticipates that the respondent attorney will be "judged" by her local peers. Those are the lawyers and public members who can best adjudge the potential for harm to the community, if any, of the respondent attorney's alleged misconduct. Those are the people who can best adjudge whether sanctions are appropriate, and if so, in what severity. Those are the people who can best adjudge the rehabilitative effect of sanctions and the possible effect of sanctions on the respondent attorney, because they know what is regular or customary in the Respondent's county of residence and practiced before the courts of that county.[52]

A. ERROR NO. 2(A)
FUNDAMENTAL ERROR IS SHOWN ON THE FACE OF THE JUDGMENT, EXPRESSLY REBUTTING PROPER VENUE

TRDP Rule 2.11 reflects the mandatory venue provisions for each of the three types of Panel proceedings of the DGCs: Summary Disposition, Investigatory and Evidentiary.[53] Proper venue for an Investigatory Hearing Panel is the county where the alleged misconduct occurred; proper venue for an Evidentiary Hearing Panel is the attorney's principle place of practice.[54]

> The "DFJ" reflects on Page 1, Under "JURISDICTION AND VENUE":
>
> The Evidentiary Panel 14-2, having been duly appointed to hear this complaint by the Chair of the Grievance Committee for State Bar of Texas District 14 finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper ***[*in *Denton* County, Texas*]* [APP. 4]**
>
> Yet, on page 2 under "FINDINGS OF FACT" reflects:
>
> Respondent resides in and maintains her principal place of practice **in *Dallas* County, Texas [APP.4].**

[52] *DAVIS v COMMISSION FOR LAWYER DISCIPLINE* 2015 WL 5074525. (Texas Bd. Disp. App.)
[53] TRDP Rule 2.11.
[54] TRDP Rule 2.11(A), TRDP Rule 2.11(C).

Based on the mandatory venue provision stating that the EVH Panel venue is proper in the county of Appellant's principal place of practice, and acknowledges that Dallas County is Apellant's principal place of practice, then the "Jurisdiction and Venue" provision reflects error by the claim that the EVH Panel 14-2 was duly appointed, as it was not, and it was error to state that it had jurisdiction over the parties and subject matter, as it did not.

Instead, the judgment facially reflects that the proper venue was Dallas County, not Denton County. This is fundamental error which requires reversal as the EVH Panel 14-2 was not duly appointed, did not have proper jurisdiction of the Appellant or the subject matter of the action. However, the FOFCOL for the post-judgment motions attempts to insert the caveat that Denton County was the principle place of practice for appellant *at the time the Evidentiary Petition was filed* to explain this facially defective venue issue, argument for same is below, and fails. However, even if the facially defective error was upheld, as discussed above, venue was improper and is only error requiring reversal.

Because the EVH 14-2 that suspended Appellant sits and exists in Denton County and not in Dallas County, it lacked venue over this matter, and entry of its ""DFJ" is reversible error: "[o]n appeal from the trial on the merits, if venue was improper it shall

in no event be harmless error and shall be reversible error."[55] The Board is duty-bound to reverse the "DFJ" and dismiss this action against Appellant.

(3) ERROR NO. THREE

NEVER SERVED WITH PROCESS, THE EVIDENTIARY PANEL THEREFORE NEVER ACQUIRED PERSONAL JURISDICTION OVER APPELLANT IN THE PROCEEDINGS, THEREFORE, THE "DFJ" IS VOID.

Appellant challenges the default judgment on direct appeal as the form, substance, and/or manner of service were defective, and therefore violative of due process.[56] Constitutional violations, including violations of the right to due process of law, are reviewed *de novo*.[57] ***See X(I)(A).***

> The Fourteenth Amendment to the United States Constitution protects the citizens of Texas by preventing the State from depriving "any person of life, liberty, or property, without due process of law."[58] Article I, Section 19 of the Texas Constitution similarly protects a citizen from being deprived of "life, liberty, [or] property . . . except by the *due course* of the law of the land."[59]

To afford due process, "the government [must] provide the owner [of property to be taken] 'notice and opportunity for hearing appropriate to the nature of the case.'"[60] The

[55] *See* Tex. Civ. Prac. & Rem. Code Ann. § 15.064(b).
[56] *$6453.00 v. State*, 63 S.W.3d 533, 535–36 (Tex. App. 2001).
[57] *See McNeill v. Phillips*, 585 S.W.3d 109, 116 (Tex. App.—El Paso 2019, pet. denied).
[58] U.S. CONST. amend. XIV, § 1.
[59] TEX. CONST. art. I, § 19 (emphasis added).
[60] *Jones v. Flowers*, 547 U.S. 220, 223 (2006) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950)).

adequacy of this notice is *not* judged by whether actual notice was provided but by whether the government appropriately attempted to provide actual notice.[61]

> Notice must be "reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections."[62] In *Mullane,* the Supreme Court of the United States explained that "when notice is a person's due, process which is a mere gesture is not due process. **The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it."**[63]

And thus, notice must be effectuated under standards due diligence, which test is whether the plaintiff:

> (a) acted as an ordinary prudent person would have under the same circumstances, and
> (b) was diligent up until the Defendant was purportedly served[64] **Extended periods of time in which no attempt at service of process are made—which are unexplained—as a matter of law show lack of due diligence.**[65]

No actions of the CDC reflect that it actually sought to provide to Appellant notice of the proceedings – where not once in the *three year period* did the CDC or the process server: 1) call/leave a voicemail message on Appellant's *office line*; 2) or call or leave a voicemail message on Appellant's *cell phone number;* 3) or send Appellant a text message

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[61] *See Dusenbery v. United States*, 534 U.S. 161, 170 (2002).

[62] *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 84 (1988) (quoting *Mullane*, 339 U.S. at 314).

[63] *Mullane*, 339 U.S. at 315.

[64] *$6453.00 v. State*, 63 S.W.3d 533, 536 (Tex. App. 2001)(applied from standard for due diligence under objection for failure to serve before the expiration of statute of limitations).(citing *Seagraves v. City of McKinney*, 45 S.W.3d 779, 782 (Tex.App.—Dallas 2001, no pet.); *Eichel v. Ullah,* 831 S.W.2d 42, 44 (Tex.App.—El Paso 1992, no writ).

[65] *$6453.00 v. State*, 63 S.W.3d 533, 536 (Tex. App. 2001) citing *Butler v. Ross,* 836 S.W.2d 833, 836 (Tex.App.—Houston [1st Dist.] 1992, no writ); *Hansler v. Mainka,* 807 S.W.2d 3, 5 (Tex.App.—Corpus Christi 1991, no writ).

to her *cell phone*; 4) or send any notice at all *by fax* to Appellant of any hint of any documents related to the proceedings.

> Where, the CDC assuredly had the correct cell phone number of Appellant, still the same to date, and clearly listed on the order letter from the CDC to the process server **[SCR-0658-0659].** Further, Appellant's office line and fax number were and are, listed at minimum, on her website – to that end, neither did the server nor the CDC message Appellant through her website char or direct message option on the 'contact us' screen.

Here, the CFLD/CDC failed to accomplish service in accordance with constitutional and procedural requirements, and Guerra did not even attempt to cite or use the correct BODA precedents of *Sims* and *Shelton* before the Panel in obtaining the default judgment. *At minimum*, the CDC failed to comport with the strict requirements for substitute service under the TRCP rules, *but additionally,* the CDC failed any measure of the reasonable persons standard of due diligence.

> Jurisdiction over the defendant must affirmatively appear by a showing of due diligence in service of process, independent of recitals in a default judgment.[66]

The evidence is legally insufficient to support that the CDC used due diligence under its allegations that it served appellant with substitute service of process or by any other means of service permitted by the TRCP.[67] Where, the Process Server was paid to personally serve Appellant, but there is only one of those entries that even mentions how

[66] *Barker CATV Const. Inc. V. Ampro, Inc.*, 989 S.W. 2d. 789, 792 (Tex. App.-Houston [1 Dist.] 1999).
[67] Emphasis added. APPENDIX B, 2020 TXCLE-ACAP 9 APP B, 2020 WL 5607163; TRDP 2.17(A).

the process server allegedly completed the substitute service, by posting, but the other two times, no information at all.

Appellant provided her leases for each residential tenancy for the past slew of years to the Panel, as included in the exhibits; reflecting the improper argument of the CDC still fails, as Appellant was never avoiding process [**CR-0531-0535,0541-0545].** Although Guerra was in possession of Appellant's actual residential home information, she proceeded to obtain an improper Order for Substituted Service **[APP. 2]** based on material misrepresentations to the EVH Panel 14-2 and its own agent's deficient Affidavits which failed to strictly comply with TRCP 106(b) or BODA precedent, *Shelton*. Despite this, the CDC sought and obtained from EVH Panel 14-2 the wrongful Order for substitute service **[APP 3]** and then the "DFJ" against Appellant. **[APP 4].**

The TRDP reflects that the evidentiary petition must be served in accordance with TRDP Rule 2.09,[68] and 2.09(A) authorizes service by certified mail or "by other means of service permitted by the" TRCP.[69] Service of process under the TRCP are governed under Rules 103-109a.[70] BODA's precedents in *Sims*[71] and *Shelton*[72] reflect the standards required to support a default judgment. Guerra did not advise the Panel about *Sims* or *Shelton* in

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[68] TRDP 2.17(A).
[69] TRDP 2.09(A), TRDP 2.17(A). *See also* APPENDIX B, 2020 TXCLE-ACAP 9 APP B, 2020 WL 5607163.
[70] *See* TRCP Rules 103-109a.
[71] *Sims v. Comm'n for Lawyer Discipline*, Case No. 34229 (Tex. Bd. Disp. App. Aug. 16, 2006).
[72] *Shelton v. Commission for Lawyer Discipline*, Case No. 36059 (Tex. Bd. Disp. App. 2006).

the motion for substitute service, **[CR-0059-0061]** nor in the default motion **[CR-0110-0112]** nor in the default hearing **[RRDT-pg1-25]**, and instead, repeatedly argued through each exhibit of empty green slip or improper affidavit corresponding things like: [Appellant] **had everything before today" [RRDT Pg12 Lines 1-7];** "**just to be thorough," [RRDT-pg12/23]** "**we also sent her certified mail**...we wanted to make sure she knew of today's hearing, **in the event that she wanted to be here" [RRDT Pg11, lines 10-24].**

A. ERROR NO.. 3(A): AS IN SIMS, APPELLANT WAS NOT SERVED BY CERTIFIED MAIL RETURN RECEIPT REQUESTED, REFLECTING THE CDC'S IMPROPER ARGUMENT & WRONG LEGAL PRECEDENT TO THE PANEL

> To prove the default, the CFLD must establish proper service, absence of respondent's signature on certified mail green card rendered default judgment void for absence of due process.[73]

Guerra specifically argued to the Panel that "**someone did sign the green card" [RRDT-p12/14-15],** as if this fact ratified the ineffective substitute service of process, but:

> [i]f the individual who signs the receipt of delivery is not the addressee, service of process is invalid.[74]

As in *Sims,* Appellant participated in the investigatory hearing, but BODA found that even if the record reflected Sims knew of the charges or the evidentiary hearing,

[73] *See, e.g., Sims v. Commission for Lawyer Discipline,* Case No. 34229, 2006 WL 6242395, at *3-6 (Tex. Bd. Disp. App.—Aug. 18 2006).

[74] *Asset Protection & Security Services, L.P. v. Armijo,* 570 S.W.3d 377 (Tex. App. El Paso 2019).

proper service was still required to confer jurisdiction -- without proper service, Sims had no obligation to participate in the proceedings.[75] BODA held:

> "when the matter continues to a hearing before the tribunal with authority to impose discipline–either a district court or an evidentiary panel of the grievance committee.." the minimum requirements of due process require that "..the respondent attorney must be served with the pleading through which the tribunal acquires personal jurisdiction over the respondent in a manner affording the respondent a fair opportunity to appear and defend the charges against her."[76]

Not one "green slip," certified mail return receipt was returned with Appellant's signature **[CR0033-34, 45, 54].** Despite never having served Appellant by certified mail, or at all, Guerra presented the unsigned green slips to the Panel as if these supported the substitute service or counted as notice of the proceedings in a complete 180 from the *Sims* decision I improper argument and wrong precedent.

B. *ERROR NO. 3(B): AS IN SHELTON, APPELLANT WAS NOT SERVED BY: SUBSTITUTED SERVICE OF PROCESS, REFLECTING AGAIN, IMPROPER ARGUMENT & WRONG PRECEDENT*

BODA's decision in *Shelton*[77] is directly controlling as to reversal of a default judgment when the affidavit supporting substituted service failed to meet Rule 106(b)'s strict requirements, and as in *Shelton*[78] and the record here affirmatively demonstrates that Appellant was not served in a manner sufficient to confer personal jurisdiction. Moreover,

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[75] *Id.*
[76] *Id*.
[77] *Shelton v. Commission for Lawyer Discipline*, No. 36059 (BODA 2006).
[78] *Shelton v. Commission for Lawyer Discipline*, No. 36059 (BODA 2006),

Guerra utilized improper argument, riddled in the hearing transcript of the default setting which put an additional and unnecessary scienter/*mens rea* of intentional avoidance on the default judgment, but without ever having brought forth a rule violation of failure to respond to the CDC.

Texas law requires strict compliance with service rules to support a default judgment, where no presumptions of valid service may be indulged.[79] Service upon Appellant was allegedly attempted several times at the address of 17303 Davenport Rd. Dallas, Texas 75248 and at 405 Highway 121 Bypass Suite 250A Lewisville, Texas 75067, but, at all relevant times that the CDC was allegedly attempting to serve Appellant, it had actual, direct written notice and testimony that:

1) Appellant' office was by appointment only, a virtual office leasehold, provided in her Grievance Responses to the CDC and stated explicitly under Oath before the CDC and IVH Panel 6-3 upon Panel questioning in the November 12, 2020 IVH setting **[APP 9].**

Further, that

2) Appellant did not reside at 17303, in fact, it was her parent's house, and she had her own residential home addresses – only emergencies/irregular occurrence(s) would result in same as reiterated to Elena Wolfe on January 31, 2020 **[SCR-0027-0034]**.
3) Additionally, the day after the November 12, 2020 IVH setting, Appellant directly corresponded with the Membership Department of the SBOT to obtain a replacement and again **provided her residential home address** and receipt of her address/was confirmed when the SBOT made delivery to same. **[CR-0507-0508] [SSCR-000105].**

[79] *See Wilson v. Dunn*, 800 S.W.2d at 836; *Primate Construction, Inc. v. Silver*, 884 S.W.2d 151, 152 (Tex. 1994).

Notice of Appellant's actual addresses, known by the CDC, as principal, was imputed upon the process server, as agent when it comes to liability:

> to third-parties, where a principal/agent's own acts and statements would not otherwise constitute evidence against the other, they may nonetheless constitute such evidence" if ratified or if the principal/agent would be independently liable for the same conduct..[80]

Regardless, the Affidavits for service were not made in strict compliance with Texas law and did not satisfy due process or obtain jurisdiction over Appellant. Rule 106 of the Texas Rules of Civil Procedure sets out strict rules for an affidavit to be sufficient evidence to support the issuance of same:

> first, the Affidavit must include evidence that establishes the impracticality of personal service upon the party and secondly the affidavit must not be conclusory or otherwise insufficient.[81]

Where no phone call was ever received, no voicemail message, no internet website message, no alternative communications were sent, and the CDC never attempted to serve the addresses it had been provided as Respondent's actual residential addresses, impracticability was never tested. Yet, from the face of the Affidavit, the only information provided is based on one statement, being not only conclusory but more importantly, fraudulent information as no one residing at 17303 Davenport Rd. ever stated that the Appellant **lived there**, although the process server's Affidavit states that Apellant's

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[80] *Dreeben v. First Nat. Bank,* 100 Tex. 344, 99 S.W. 850 (1907); *Thompson v. Keys,* 162 S.W. 1196 (Tex. Civ. App. Fort Worth 1913).

[81] *See also, Coronado v. Norman,* 111 S.W. 3" 838 (Tex. App.-Eastland 2003.)

"hostile father" confirmed that she was not "at home**." [CR-0525**] This conclusory leap, did not relate that any delivery notice was left with the hostile father, does not explain that Appellant was ever put on notice by the conversation, nor any other facts to indicate that this was where Appellant resided such as sighting Appellant there, or Appellant's vehicle, etc., any actual signs she was even visiting, let alone living there.

Similar to *Furst*, where a Plaintiff's affidavit attempting to obtain substitute service on the father of one of the Defendants did not allege sufficient facts to warrant authorizing substituted service on the father of one of the Defendants, here Appellant's parents were not proper parties to the evidentiary proceeding, and nothing in the process server's affidavit demonstrated that notice to Appellant's father was reasonably effective notice as to Appellant.[82]

An affidavit that states no probative facts, but merely conclusory statements is insufficient on its face to be the basis for a valid order for substituted service and failure to comply strictly with Rule 106 of the TRCP render the service of process defective. The affidavit does not provide facts to support why this location was the residence or regular place of abode of Appellant,, and provides no way with any degree of certainty to determine exactly why this was Appellant's home address in the 'four corners' of that

[82] *Furst v. Smith,* 176 S.W.3d 864 (Tex. App. Houston 1st Dist. 2005).

affidavit. An affidavit must positively and unqualifiedly show that it is based on personal knowledge[83] which may be determined whenever an affidavit includes information explaining how the affiant gained that knowledge; an affidavit's failure to demonstrate a basis for personal knowledge renders it incompetent evidence.[84]

As to the Highway 121 address, this location at the alleged time of service was a Regus Virtual Office address, a fact which the ***affidavit from the CDC process server makes no mention,*** and instead ***explicitly mischaracterizes*** the information--the Affiant stated he was told that the location was a "firm" and that "Respondent no longer worked there," reflecting the credibility of the Affiant immediately speculative. **[CR-0525]** As the process server did not include the fact that many businesses of all varieties were housed in/from the same office address, because Regus would not misrepresent **that it was a law firm**. Nor would Regus assert that any one of their tenants **no longer worked there**, if at all, on terms of confidentiality alone, but at most, would only have stated that Appellant no longer **rented there**. **[CR-0525] [CR-0527]**

Affidavits such as the one at issue, containing 'unsubstantiated factual or legal conclusions' or "subjective beliefs' that are not supported by evidence are not competent

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[83] *Grotjohn Precise Connexiones Intern.. S.A. V. JEM Financial. Inc*.. 12 S.W. 3d 859. 866-867 (Tex. Aop.-Texarkana); *Brownlee v. Brownlee*, 665 S. W. 2d. 111, 112 (Tex. 1984*). In Llopa, Inc. v Nagel*, 956 S.W. 2d, 82, 86. (Tex. App.-San Antonio 1997).

[84] *Trostle v. Combs*, 104 $.W. 3d 206, 214 (Tex. App-Austin 2003).

proof because they are not credible or susceptible to being readily controverted.[85] The Affidavits herein are merely conclusory: the testimony is incompetent evidence because it consists of factual or legal conclusion or opinions that are not supported by facts.[86] In order to be legally sufficient, the affidavit should have addressed how the process server came to identify the listed Appellant to the abode with supporting information, other than one instance of Appellant's father being "hostile," and even in the actual words of the Affidavit, never stating that Appellant lived there. Without these questions being sufficiently answered by the affiant, the affidavit fails to give a basis for such knowledge and its supposition fail to meet the fundamental test of adequacy.

> In contrast to the usual rule that all presumptions including valid issuance, service, and return of citation will be made in support of a judgment, no such presumptions apply to direct attack on a default judgment.[87] A default judgment cannot withstand a direct attack by defendant who shows that service did not comply with applicable requirements.[88]

Under TRCP 106, where citation is executed by an alternative method such as substituted service, proof of service is to be made in the manner ordered by the court, per TRCP 107(f). However, as here, where the Court explicitly states that

> Absence of any showing that no one over age 16 was present when service was made by posting on door of defendant guarantor's residence was not trivial;

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[85] *Ryland Group, Inc. v. Hood*, 924 S.W. 2d. 120, 122 (Tex. 1996).
[86] *Brownlee v. Brownle*e, 665 S. W. 2d 111, 112 (Tex. 1984).
[87] *Primate Const. v. Sliver,* 884 S.W. 2d 151, 152 (Tex. 1994).
[88] *Wilson v. Dunn,* 800 S.W. 2d 833, 836 (Tex. 1990).

> order dictated first posting service to the front door of the residence, thereby expressing clear preference for personal service on anyone over 16.[89]

And further, where the Order for Substitute Service [APP 2] explicitly states that "IT IS ORDERED that service of Respondent in this disciplinary proceeding shall be made by leaving a true and correct copy of the following documents with anyone over sixteen years of age at Respondent's usual place of abode at 17303 Davenport Rd., Dallas, Texas 75248-1367" without showing that no one over 16 was present at the time of service the

> [b]urden was on *[the CDC]* to affirmatively show that no one over age 16 was present at the time of service… by posting on door…absent an affirmative showing that no one over age 16 was present.[90]

Strict compliance with the rules governing service of process must be affirmatively shown.[91] The CDC has failed to offer any legally sufficient proof that it complied with the service requirements necessary to support the Order granting substitute service [APP. 2] nor the Order on motion for Default, [APP. 3] nor the "DFJ. [APP 4]. As a result, the default judgment entered against Appellant is void.

(4) ERROR NO. FOUR

APPELLANT'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW WAS VIOLATED

> In *York v. State*, we observed that the law of Texas courts' creation includes the United States Constitution.[92] As explained, the Constitution requires a diligent inquiry into a defendant's whereabouts, including a search of public

[89] *See* TRCP106. *Pro-Fire & Sprinkler, L.L.C. v. Law Company, Inc.*, 637 S.W.3d 843 (Tex. App. Dallas 2021).
[90] TRCP106. *Pro-Fire & Sprinkler, L.L.C. v. Law Company, Inc.*, 637 S.W.3d 843 (Tex. App. Dallas 2021).
[91] *Uvalde Country Club v. Martin Linen Supply*, 690 S.W. 2d 884, 885 (1985).
[92] *York v. State*, 373 S.W.3d 3, 422 (Tex. 2012); *see also Burnham v. Superior Court*, 495 U.S. 604, 608–09 (1990) (invoking principle of *coram non judice* in determining validity of judgment challenged for alleged lack of personal jurisdiction).

> deed and tax records for the defendant's address.. Because the Constitution require a plaintiff to consult public deed and tax records as part of its diligent inquiry when a defendant's name or residence is unknown, the contents of those records should be regarded as part of the record of the suit rather than as extrinsic evidence. We therefore hold that when such public records contain the address of a defendant served, a court hearing a collateral attack on a judgment may consider that evidence in deciding whether service complied with the constitutional demands of due process. Having defined the scope of the record, we next consider whether it establishes a jurisdictional defect.[93] Although a judgment attacked collaterally is presumed valid, that presumption disappears when the record "exposes such personal jurisdictional deficiencies as to violate due process."[94]

Failure to give notice to a party of a trial setting violates the due process requirements of the United States Constitution.[95] It is also grounds for reversal of a default judgment.[96] A person who is not notified of a trial setting and consequently suffers a default judgment need not establish a meritorious defense to be entitled to a new trial.[97]

The version of Rule 107— entitled "Return of Service"—"then in effect provided: "The return of the officer or authorized person executing the citation shall be endorsed on or attached to the same; it shall state when the citation was served and the manner of service and be signed by the officer officially or by the authorized person."[98] It further

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[93] *See PNS Stores*, 379 S.W.3d at 273.

[94] *Id*.

[95] *Hanners v. State Bar of Tex.*, 860 S.W.2d 903, 907 (Tex. App.—Dallas 1993, writ dism'd) (citing *Lopez v. Lopez,* 757 S.W.2d 721, 723 (Tex.1988)) (citing *Peralta v. Heights Medical Ctr., Inc.,* 485 U.S. 80, 84, 108 S.Ct. 896, 899, 99 L.Ed.2d 75 (1988)).

[96] *Hanners v. State Bar of Tex.*, 860 S.W.2d 903, 907 (Tex. App.—Dallas 1993, writ dism'd)(citing *Trevino v. Gonzalez,* 749 S.W.2d 221, 223 (Tex.App.—San Antonio 1988, writ denied)).

[97] *Hanners v. State Bar of Tex.*, 860 S.W.2d 903, 907 (Tex. App.—Dallas 1993, writ dism'd)(citing *Lopez,* 757 S.W.2d at 723 (citing *Peralta,* 485 U.S. at 85, 108 S.Ct. at 899)).

[98] TRCP107 (1990, amended 2011).

provided that "when the officer or authorized person has not served the citation, the return shall show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if he can ascertain."[99] In addition, Rule 25 required then (and requires now) that the clerk's file show, "in brief form, the officer's return on the process."[100]

Courts have held that it is "the established law of this State that it is imperative and essential that the record affirmatively show a strict compliance with the provided mode of service."[101] Specifically, "that a failure to comply with the requirements of Rule 107 renders a default judgment invalid.[102]

In *Hubicki,*the Court held that the respondent's failure to establish return of service in compliance with the requirements of Rule 107 rendered service ineffective.[103] "Under these circumstances, as a matter law, Festina failed to establish that alternative service . . .was reasonably calculated to provide Hubicki with notice of the proceedings.[104]"

The Court noted "unless the party contesting service presents a preponderance of evidence to the contrary—for example, the party's testimony along with corroborating

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[99] *Id*.
[100] TRCP 25.11.
[101] *McKanna v. Edgar*, 388 S.W.2d 927, 929 (Tex. 1965).
[102] *Hubicki v. Festina*, 226 S.W.3d 405, 408 (Tex. 2007) (per curiam).
[103] *Id.*
[104] *Id.*

facts or circumstances—the officer's return of service is sufficient proof that the citation and petition were properly served."[105] Citations are also treated as presumptive evidence of service, unless the party challenging service carries its burden of showing, by a preponderance of the evidence, that service was not effected.[106]

Further, "[f]irst, state statutory requirements must give way to constitutional protections. Texas rules "must yield to contrary precedent from the U.S. Supreme Court."[107]. The failure to conduct a diligent inquiry into the county records means that service violated due process, which is sufficient to void a judgment[108]. As explained in E.R., "[a] complete failure of service deprives a litigant of due process and a trial court of personal jurisdiction; the resulting judgment is void and may be challenged at any time.[109]". Second, a statute of limitations "cannot place a temporal limit on a challenge to a void judgment filed by a defendant who did not receive the type of notice to which she was constitutionally entitled."[110] "'[A] judgment entered without notice or service is constitutionally infirm,' and some form of attack must be available when defects in personal jurisdiction violate due process."[111]

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[105] *State v. Bristol Hotel Asset Co.*, 65 S.W.3d 638, 648 (Tex. 2001).
[106] *Ward v. Nava*, 488 S.W.2d 736, 738 (Tex. 1972).
[107] *E.R.*, 385 S.W.3d at 566
[108] *Id.*
[109] 385 S.W.3d at 566
[110] *Id.*
[111] *PNS Stores*, 379 S.W.3d at 272–73 (quoting *Peralta*, 485 U.S. at 84).

The Supreme Court's observation in *Peralta* reflects"[w]here a person has been deprived of property in a manner contrary to the most basic tenets of due process, . . . only wiping] the slate clean . . . would . . . restore the petitioner to the position he would have occupied had due process of law been accorded to him in the first place."[112] Suit is a "proper collateral attack, independent of the statutory provision, based on a violation of due process rights that render[ed] the judgment void.[113]

A trial court does not have jurisdiction to enter a judgment or order against a respondent unless the record shows proper service of citation on the respondent, or an appearance by the respondent, or a written memorandum of waiver at the time the judgment or order was entered.[114] A court order entered without due process is void.[115] A void order has no force or effect and confers no rights; it is a mere nullity[116] and not subject to ratification, confirmation, or waiver [117] The invalidity of a void order may be asserted by any person whose rights are affected at any time and at any place.[118]

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[112] *Id.* at 592 (qoting *Peralta,* 485 U.S. at 86–87).
[113] *Sec. State Bank & Tr. v. Bexar Count*y, 397 S.W.3d 715, 724 (Tex. App.—San Antonio 2012, pet. denied).
[114] *In re Mask,* 198 S.W.3d 231 (Tex. App. San Antonio 2006).
[115] *In re Keeling*, 227 S.W.3d 391 (Tex. App. Waco 2007); *In re Taylor*, 130 S.W.3d 448 (Tex. App. Texarkana 2004).
[116] *Velasco v. Ayala*, 312 S.W.3d 783 (Tex. App. Houston 1st Dist. 2009); *In re Garza*, 126 S.W.3d 268 (Tex. App. San Antonio 2003).
[117] *Velasco v. Ayala*, 312 S.W.3d 783 (Tex. App. Houston 1st Dist. 2009); *In re Mask*, 198 S.W.3d 231 (Tex. App. San Antonio 2006).
[118] *El-Kareh v. Texas Alcoholic Beverage Com'n,* 874 S.W.2d 192 (Tex. App. Houston 14th Dist. 1994) (disapproved of on other grounds by, *Garza v. Texas Alcoholic Beverage Com'n,* 89 S.W.3d 1 (Tex. 2002)); *Qwest Microwave, Inc. v. Bedard,* 756 S.W.2d 426 (Tex. App. Dallas 1988).

A disciplinary judgment rendered without constitutionally sufficient service of process and without an opportunity to be heard is void and must be reversed, without any requirement for the aggrieved party to show harm.[119] Appellate courts owe no deference when fundamental constitutional rights are violated.[120] An Appellate court's jurisdiction in an appeal from a void order is limited to only determining that the order or judgment underlying the appeal is void, and making appropriate orders based on that determination.[121]

Here, no green slip returned with Appellant's signature, she was never presented with any certified mail to sign. The CDC did not even search the SBOT's own records for addresses used by Appellant, or would have had the residential address of Appellant; nor did they call or text, although it is clear they had, and have Appellant's cell phone number, as stated in the process server order forms.

If the CDC and the process server were truly trying the effectuate service – then the CDC should explain why it never called Appellant, or sent a fax? In two years: no voicemail message, text or missed call was EVER received from the SBOT, CDC, nor process server. Appellant had a work number, cell, and fax number, still does --yet no fax

[119] *See Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 84–87 (1988); *Wilson v. Dunn*, 800 S.W.2d 833, 836 (Tex. 1990).
[120] *See O'Quinn v. State Bar of Texas*, 763 S.W.2d 397 (Tex. 1988).
[121] *Matter of M.K.*, 514 S.W.3d 369 (Tex. App. Fort Worth 2017).

was received, no voicemail nor text message was received on any phone line. **The absence of this common-sense action that is complexly devoid from the record lends itself to the intentional CDC failure to serve**. Guerra DID know of Appellant's residential address, which was just used on or after November 21, 2020 by the SBOT. and provided to the SBOT on November 13, 2020. Guerra purposefully did not utilize same; but **regardless** she knew or should have known Appellant's address, *especially since Appellant provided Investigator Wolfe and Guerra evidence of her residential home address in January of 2020*. Further, within the MacFarland hearing on November 12, 2020, Appellant advised she was located in her apartment – not her parents home, but her own residence during the Zoom setting before IVH Panel 6-3, where also Appellant presented for North 6-3 IVH by ZOOM.**[APP-9].**

Appellant was never avoiding service, but **Guerra was certainly avoiding actual notice to Appellant.** Because Appellant was never properly served with the Evidentiary Petition, was given no notice of the adjudicatory proceeding, and was denied any meaningful opportunity to be heard, the DFJ is void as a matter of law. The only proper remedy is reversal and rendition, vacating the DFJ and all associated sanctions. Appellant maintains that there is but one result required under law: the February 7, 2023 "DFJ" rendered against her by the EVH 14-2 Panel be vacated for failure to comply with even the basic rudiments of service of process, notice/opportunity to be heard, fundamental fairness, and notions of fair play and justice.

(5) ERROR NO. FIVE

APPELLANT'S CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF LAW WAS VIOLATED, BEING TREATED DIFFERENTLY TO OTHER ATTORNEYS IN THE SAME FACTUAL SITUATION

Equal protection claims are reviewed de novo.[122] A governmental agency violates equal protection when it arbitrarily enforces its rules, treating similarly situated individuals differently without a rational basis.[123]

> An agency must act fairly and reasonably[124]and it must administer its authority so as to prevent discrimination and unequal treatment between persons subject to its jurisdiction.[125] A party must show clear, intentional discrimination in the agency's enforcement of a statute; even when a private entity has sought enforcement for selfish reasons, that entity's motives are not imputed to the state.[126]. The evidence must reflect that a regulation is enforced in a discriminatory manner.[127]

The CFLD/CDC and the Panels' treatment of Appellant violated her right to equal protection of the laws. In cases such as *Shelton* **[SCR-0730-0741]**and *Sims* **[SCR-0716-0728]** the Commission and appellate tribunals vacated default disciplinary judgments based on materially similar or lesser service defects. In both cases, the affected attorneys were afforded relief and without compulsion to satisfy void sanctions, moreover, the liberal

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[122] *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439–40 (1985); *Texas Dept. of Transp. v. Sunset Transp.*, 357 S.W.3d 691, 699 (Tex. App.—Austin 2011, no pet.).

[123] *See Motor Vehicle Mfrs. Association v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

[124] *Mesa Petroleum Co. v. Federal Power Commission,* 441 F.2d 182 (5th Cir. 1971); *Gulf Land Co. v. Atlantic Refining Co.*, 134 Tex. 59, 131 S.W.2d 73 (1939).

[125] *Gulf Land Co. v. Atlantic Refining Co.,* 134 Tex. 59, 131 S.W.2d 73 (1939); *Associated Indem. Corp. v. Oil Well Drilling Co.,* 258 S.W.2d 523 (Tex. Civ. App. Dallas 1953), judgment aff'd, 153 Tex. 153, 264 S.W.2d 697 (1954).

[126] .= *State v. Malone Service Co.,* 829 S.W.2d 763 (Tex. 1992)

[127] *State Bar of Texas v. Tinning,* 875 S.W.2d 403 (Tex. App. Corpus Christi 1994), writ denied, (July 28, 1994).

standard for new trials would also lend itself to the discriminatory state action, in the exclusion of the exhibit binder in evidence, ambushing Appellant with two hearings in one, where not permitted a court reporter, forced to argue two motions -- one which she literally had no concept would be heard that day at all, the other under duress where asking for submission as the movant, and denying her request for continuance based on ambush to rectify the exhibit binder issue and obtain a court reporter **[SCR-0006-0011].**

Here, despite more egregious service defects and more compelling evidence of lack of notice, the CDC/Commission did not itself take corrective remedial action, but instead assisted the EVH Panel in further harm to Appellant, itself violating multiple rules of professional conduct under the TDRPC and intentionally providing the wrong legal standards for service and default to the Panel, intentionally misrepresented the facts for service and by setting forth such inequitable opposition, assisted the EVH Panel to further violate Appellant's rights by denying and refusing all Appellant's requested relief which sought to vacate the DFJ levied against her.

Instead, Guerra did not advise the Panel about *Sims* or *Shelton* in the motion for substitute service, nor in the default motion nor in the default hearing, **[RRDTpgs 1-25].**

> The disclosure of adverse authority is compelled by the lawyer's "duty as an officer of the court to assist in the efficient and fair administration of justice."[128] Lawyers also violate the duty of candor when they misrepresent

[128] ABA Comm. on Ethics and Professional Responsibility, Informal Op. 84-1505 (1984).

> or misquote the record, misquote cases, or elide statements from cases that undercut their position.[129]

Instead repeatedly argued that "[Appellant] **had everything before today."[RRDT Pg12 Lines 1-7],** and "just to be thorough," even though they "did not have to" "**we wanted to make sure she knew of today's hearing, in the event that she wanted to be here." [*RRDT Pg11, lines 10-24]*.

Appellant was required to endure a default judgment, substantial unlawful sanctions, reputational harm, and such abuses of process before the Panel that have resulted in years of costly, needless litigation, continuing herein. She was compelled to satisfy void sanctions under the threat of harsher penalties.

> Where the statute granting a power prescribes the method of its exercise by the agency, the prescribed method excludes all others and is the only method that the agency may employe.[130] However, absent such prescription, state agencies may, generally, pursue legitimate purposes by any means having a rational relationship to those purposes.[131]

No rational basis justifies the CFLD/CDC/the Panel's inconsistent treatment of Appellant compared to similarly situated attorneys. Just as here, in *Nelson*, defective substituted service rendered a default judgment, and then the Panel did not give Appellant any notice that the Motion New Trial would be heard the same date as

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[129] *See* J. Michael Medina, *Ethical Concerns in Civil Appellate Advocacy*, 43 SW. L. J. 677, 697-703 (1989).

[130] *Cobra Oil & Gas Corp. v. Sadler,* 447 S.W.2d 887 (Tex. 1968); *Balios v. Texas Dept. of Public Safety,* 733 S.W.2d 308 (Tex. App. Amarillo 1987), writ refused, (Sept. 16, 1987); *Sexton v. Mount Olivet Cemetery Association,* 720 S.W.2d 129 (Tex. App. Austin 1986), writ refused n.r.e., (Jan. 28, 1987).

[131] *Stern v. Tarrant County Hosp. Dist.,* 778 F.2d 1052 (5th Cir. 1985).

previously set of the Motion to Stay Hearing, although in *Nelson*, he was denied totally a hearing, which would have been better than forcing Appellant to attend a hearing for which she had no notice and even still, all Exhibits were denied, a court reporter was denied, and a continuance was denied to obtain a court reporter or cure. As in *Nelson*, Appellant also claims the EVH Panel erred in (1) granting a motion for substituted service sought by Appellee Commission for Lawyer and (2) failing to grant Appellant a hearing with notice and meaningful opportunity to be heard.[132] Yet in *Nelson* the CDC agreed that Nelson did not have proper service and acquiesced to a new trial.

There exists no rational basis to distinguish Appellant's case from *Shelton* or *Sims*. Selective enforcement of rules without justification violates the Equal Protection Clause. The arbitrary and discriminatory treatment of Appellant deprived her of the equal application of fundamental procedural protections. The CDC/Commission and EVH Panel arbitrarily and irrationally denied Appellant the equal protection of its rules, the DFJ must be reversed and judgment rendered in favor of Appellant, vacating all disciplinary sanctions and consequences.

Due process and equal protection are not privileges to be dispensed or withheld at a tribunal's discretion; they are fundamental constitutional requirements that protect

[132] *Nelson v. Comm'n For Law. Discipline,* No. 14-03-00531-CV, 2004 WL 635348, at *1 (Tex. App. Apr. 1, 2004)

every citizen. Appellant's rights were violated in the most basic sense: she was denied notice, denied the opportunity to be heard, and treated unfairly compared to similarly situated individuals. The CDC/Commission's actions resulted in profound professional and personal harm without justification. At minimum, BODA must reverse the judgment and render judgment vacating all sanctions, findings, and consequences arising from the unlawful disciplinary proceeding.

(6) ERROR NO. SIX

EVH 14-2 ABUSED ITS DISCRETION WHEN IT DID NOT APPLY OR CONSIDER THE TRDP GUIDELINES– NO EVIDENCE OF AGGRAVATING OR MITIGATING FACTORS, OR THE ABSENCE OF ANY PRIOR SANCTIONS – IN FACT, DID NOT REFER TO ANY RULE OR PRINCIPAL, NOR STATE WHAT IT THOUGHT TO BE RELEVANT EVIDENCE IN MAKING ITS DECISION AT ALL. (*INSTEAD, THE RECORD REFLECTS THAT IMPROPERLY CONSIDERED EXTRA-RECORD EX-PARTE EVIDENCE)*

Although a disciplinary tribunal has broad discretion to determine the consequences of professional misconduct,[133] and sanctions will only be reversed upon a showing of abuse of discretion[134] -- the judgment of a tribunal in a disciplinary proceeding -- may be so light or heavy as to amount to an abuse of discretion.[135] Generally, a tribunal abuses its discretion when it acts in an unreasonable and arbitrary manner or acts without reference to any guiding rules and principles.[136]

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[133] *See, e,g., State Bar of Texas v. Kilpatrick*, 874 S.W.2d 656, 659 (Tex. 1994); *Olsen v. Commission for Lawyer Discipline*, 347 S.W.3d 876, 888 (Tex. App.—Dallas 2011, pet. denied); *Rosas v. Commission for Lawyer Discipline*, 335 S.W.3d 311, 320 (Tex. App.—San Antonio 2010, no pet.); *Butler v. Commission for Lawyer Discipline*, 928 S.W.2d 659, 666 (Tex. App.—Corpus Christi 1996, no writ); *Minnick v. State Bar of Texas,* 790 S.W.2d 87, 92 (Tex. App.—Austin 1990), writ denied.

[134] *Rosas*, 335 S.W.3d 311, 320.

[135] *State Bar of Texas v. Kilpatrick*, 874 S.W.2d 656, 659 (Tex. 1994); *Olsen v. Commission for Lawyer Discipline*, 347 S.W.3d 876, 888 (Tex. App.—Dallas 2011, pet. denied).

[136] *Furr's Supermarkets, Inc. v. Bethune,* 53 S.W.3d 375, 379 (Tex. 2001); *Olsen v. Commission for Lawyer Discipline*, 347 S.W.3d 876, 888 (Tex. App.—Dallas 2011, pet. denied); *Landerman v. State Bar of Texas*, 247 S.W.3d 426, 433 (Tex. App.—Dallas 2008, pet. denied); *Rodgers v. Commission for Lawyer Discipline*, 151 S.W.3d 602, 618 (Tex.

On August 28, 2018, the Supreme Court amended the TRDP, Rules 15.01- 15.09, declaring them effective for grievances filed on or after June 1, 2018, which provides sanctions guidelines for Panels to follow in standardizing the Grievance system[137]– under those current guidelines, a disciplinary tribunal **should** do the following

➔ **Identify the specific recommended sanction in Rules 15.04 through 15.07 for the specific rule violation "generally appropriate" sanction for professional misconduct;**

➔**Consider the four factors identified in Rule 15.02:**

(a) the duty violated;

(b) the Respondent's level of culpability;

(c) the potential or actual injury caused by the Respondent's misconduct; and

(d) the existence of aggravating or mitigating factors.138

→ Consider any of the aggravating and mitigating factors detailed in Rule 15.09, which details both aggravating and mitigating circumstances

Aggravating Circumstances. non-exclusive list of factors;

Mitigating Circumstances. non-exclusive list of factors :

Absence of a prior disciplinary record.

Absence of a dishonest or selfish motive.

Timely good faith effort/restitution or rectify consequences of misconduct.

Full/ free disclosure to disc. Auth. or cooperative during proceedings.

Character or reputation.

Delay in disciplinary proceedings.

Imposition of other penalties or sanctions.

Remorse.

Remoteness of prior sanctions.

App.—Fort Worth 2004, pet. denied); *Eureste v. Commission For Lawyer Discipline*, 76 S.W.3d 184, 202 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

[137] *See* Order of the Supreme Court of Texas, Corrected Order Giving Final Approval of Amendments to the Texas Rules of Disciplinary Procedure, Misc. Docket No. 18-9112 (Aug. 18, 2018).

[138] TRDP 15.02(a) to (d).

Only after giving due consideration to these factors, may the disciplinary tribunal then impose appropriate sanction.[139] Essentially, the Panels need to "show their work" to support their sanctions orders because how the Panels get the result is just as important as the decision itself.

The category applicable to Appellant is only identified and limited to 15.04 A, further, where the GRP was offered in November of 2020 in this cause, the implications from same could have been used but were not for the GRP eligibility factors, imputed to Appellant:

A. …not been disciplined within the prior three years.	*never any prior*
B. …not been disciplined for similar prior five years.	*never any prior*
C. …does not involve misapp. Funds/breach/fid. duties.	*no*
D. … does not involve dishonesty, fraud, or misrep.	*no*
E. …did not result substantial harm/prejudice to client	**no**
F. …maintained cooperative attitude in proceedings.	*yes*
G. …likely to benefit & goal public protection	*yes*
H. ..does not/crime/comp. disc. Part VIII TRDP	*no*

Here, where a default rendered the allegations as true, there was no evidence on the record to the EVH Panel 14-2 on the facts of 20200647, and the Rules taken as true to be violated do not list a **mental state of the attorney nor injury to the client**, so how the Panel could have inputted this data is beyond explanation, but even in the absence of those factors, the dissent of BODA recently noted that a Panel can abuse discretion by

[139] TRDP 15.01(B).

sanctioning beyond the recommendation of the guidelines after application of the factors to the facts and alleged Rule violation.[140]'

But, instead, in this case, the record reflects nothing at all regarding 1) the recommended fully probated year suspension by the CDC. Or 2) the decision to upward depart from that recommendation to an active 6 month suspension and is an abuse of discretion when no facts were found for the mental state of Appellant in the default, and nowhere on the record does Guerra argue any supporting information – not even aggravating factors to indicate how either the CDC arrived at the year-long probated sanction, and especially not how the EVH made the upward departure to an active six month suspension.

> **All, when the actual facts of the matter – even though only briefly heard by IVH Panel 6-3 in a 25-minute hearing [APP 9]**
>
> > wherein still, the CDC never provided to Appellant their hearing packet at all prior to the conclusion of the setting, and Appellant did not know there was a hearing packet she was not provided in order to object to same. The email from Guerra sent at 10:06 am was after the North IVH had concluded. Further, based on the Panel Chair striking the CDC exhibits for the exact same conduct in the second setting on November 12, 2020, Appellant still did not receive due process or even traditional notions of fair play/equity from the CDC –

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[140] *See* (Boatwright, dissenting) *Loyd v. Commission for Lawyer Discipline,* Case No. 67358, at *4-8 (Tex. Bd. Disp. App. Aug. 14, 2023).

but even with those detriments, all that 6-3 recommended for Appellant was the GRP.

Again, here, the EVH Panel 14-2 did not use any guiding principles nor mention anything at all about the reasoning or consideration of the guidelines, or any other information which led the Panel to impose the sanctions entered by the DFJ. **The ONLY evidence is the extra-record *ex-parte* evidence of Guerra' improper Panel forum shopping to create bias and prejudice against Appellant in these proceedings.** Punishing appellant for **"evading service"** when it was literally the CDC who intentionally did not serve Appellant at her residential address, which she provided in writing to the SBOT several times, and the day after the failed IVH setting – November 13, 2020. **The email tittle for the DFJ is a clear indication that the CDC and the Panels are not held to standards for impartiality, are not concerned about their own naked violations of the Disciplinary Rules, and the Panels are not an equitable forum with decorum of a tribunal – all only to the detriment of Respondent attorneys.**

Ex-parte communications are present throughout the record

→ as most relevant, the email title for the DJF which housed the Hearing Report and the Judgment for the Panel Chair to sign and he returned reflects the subject as the wrong cause number. Neither the CDC nor the Panel Chair even attempted to hide same, instead holding the subject of the other Grievance held by IVH 14-2 on August 27, 2021 without Appellant present and without notice of the proceedings, and further, improper venue, flagrant *ex-parte* taking of default and choice of EVH Panel, which have been a constant, ongoing, blatant abrogation of Appellant's rights, and fundamentally unjust.

→ beyond the DJF email, the Panel Chair does not send Appellant emails with Orders –

→ for both the March 24, 2023 orders – which the CDC staff only provided days later to Appellant late, "unintentionally" left off. **[SCR-0629, 0632, 0638]**

→ and the FOFCOL Orders**, the Panel chair stated "I do not have the email for Lauren Harris so you will need to forward it on, thanks." Notably, the emails TO the Panel Chair containing the proposed orders for signature are never provided to Appellant, nor part of the clerk's record. [CR-0647, 0651].**

→ **Additionally,** from the FBOE hearing transcript **Brittany Paynton never sent Appellant any email or copied her on any such email to the Panel Chair with the proposed Orders or any other information as Ms. Paynton promised on the record of the hearing she would provide, and explicitly advised she would copy Appellant on the transmission. [RRFBpg7/12-23; pg11/24-pg12/4].**

Where the Administrative Procedure Act is not controlling for these proceedings, as "BODA is not subject to the Texas Administrative Procedure Act, TEX. GOV'T CODE ANN. Ann. §§ 2001.001—2001.092, but cases … under the Act are instructive,[141] therefore, it is persuasive and shows:

> An administrative agency's decision is to be based on evidential facts and made by experienced officials with an adequate appreciation of the complexities of the subject which is entrusted to their administration.[142]
>
> An "agency can't enlarge its powers by own orders[143] handbooks, or internal policies;[144] nor exercise power of another agency government.[145] policies by authorized agency are within prerogatives, so long constitutional.[146]

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[141] *In re Humphreys*, 880 S.W.2d at 404.

[142] ***Emphasis Added.*** *Reliant Energy, Inc. v. Public Utility Com'n of Texas,* 153 S.W.3d 174 (Tex. App. Austin 2004).

[143] , *Sexton v. Mount Olivet Cemetery Association*, 720 S.W.2d 129 (Tex. App. Austin 1986), writ refused n.r.e., (Jan. 28, 1987); *Railroad Commission v. Fort Worth & D. C. Ry. Co.,* 161 S.W.2d 560 (Tex. Civ. App. Austin 1942), writ refused w.o.m., (June 3, 1942).

[144] *Gonzalez v. Avalos,* 866 S.W.2d 346 (Tex. App. El Paso 1993), writ granted, (June 8, 1994) and writ dismissed w.o.j., 907 S.W.2d 443 (Tex. 1995) and writ withdrawn, (Mar. 2, 1995).

[145] *City of Amarillo v. Stapf,* 129 Tex. 81, 101 S.W.2d 229 (Comm'n App. 1937).

[146] *Texas Dept. of Human Resources v. Texas State Employees Union* CWA/AFL-CIO, 696 S.W.2d 164 (Tex. App. Austin 1985).

Here, the CFLD/SBOT's decisions were not based on evidence, facts, nor by experienced officials with adequate appreciation of the complexities of the subject matter entrusted to their administration:

> as seen in Committee/Panel Chair Biggs' Denton County public record personal injury malpractice suit, **Cause No. 2011-20661-0158, ELIZABETH MICHELLE SNIDER, Plaintiff v. W. TRAVIS BIGGS & LAW OFFICES OF W. TRAVIS BIGGS, PLLC Defendants, which was held before the 158th Judicial District Court of Denton County, Texas**
>
> > *--reflecting professional misconduct far more egregious in neglect, matters of moral turpitude, monetary & breach of fiduciary duties, misappropriation of funds, deceit and intentional misrepresentations—a host of rule violations--* FAR more/more serious than ever alleged against Appellant, **in this suit or any other;**
>
> → YET, THE SBOT
>
> allows this individual to suspend Appellant from the practice of law, get terminated from employment and deny her notice, hearing or meaningful opportunity to be heard, on each and every matter before this "tribunal."
> The Panel/Committee Members serve at the pleasure of the SBOT Board, nominated/chosen to undertake role in these proceedings, sitting as equal to the Texas judiciary to adjudicate the acts of Texas attorneys.

Neither are the remainder of the Panel qualified to serve on the DGC, as seen in the new Panel chair, Amie Peace's conduct in the January 26, 2024 hearing on the record, stating that the members had:

> "**redeliberated,** and we have a unanimous agreement. And we're going to deny the **bill of review**. And we would like Ms. Guerra to please prepare and circulate a proposed order, if you would do that, please**." [RRFBpg12/20-25].**

The panel chair stated that the panel had "re-deliberated," although Appellant had painstakingly described that the underlying orders and rulings from the March 24th, 2023 hearing were **not being re-litigated, merely that the events that occurred not on the**

record would be recorded, and confirmed, indeed, Appellant lost both hearings, which were not at issue again. But, the fact that the panel chair called this a "**bill of review"** and explicitly stated that the panel had done exactly the opposite of its duty by "re-deliberating" shows a complete **abuse of discretion <u>because the panel wasn't even aware what they were making a ruling on for this hearing,.</u>**

> Even after Appellant had explicitly stated on the record that the FBOE was for an agreement about the evidence and facts as they occurred on March 24, 2023 only, and not about the reasoning behind the facts of the hearing, then Guerra still argued the content as if it was up for ruling requiring opposition? It seriously appears as if the Panel never saw nor read any filing of Appellant's and then, additionally, totally ignored her statements of explanation in the setting. Even thoughb TRAP 33.2 was a short **paragraph to read, it was clearly too much for the 14-2 Panel and CDC attorney.**

To that end, neither is Guerra qualified to run Grievance Panels, especially of smaller counties, where she presented the WRONG LEGAL precedent and standard to the Panels as if it is was gospel good law, and argues improper argument which would warrant sanctions and mistrial in a civil setting, inflammatory allegations not supported by any rule violation actually charged against Appellant for avoiding process, "So she had everything before today."**[RRDT Pg12 Lines 1-7]** "So we wanted to make sure she knew of today's hearing**<u>, in the event that she wanted to be here."</u> [RRDT Pg11, lines 10-24]** "served at that Davenport address, which, I believe, was her home address; and that's where she was served, by substitute service." **[RRDT page 10 lines 2-13]<u>[APP 17].</u>**

Additionally, she is not qualified based on the Panel-forum shopping and intentional *ex-parte* dissemination of the other Grievances before 14-2, stacking that one

panel to stoke the bias and prejudice against Appellant, evidenced by at least the title of the email which transmitted the suspension judgment, being the different cause number for Appellant,, similarly prosecuted by Guerra in her continued prosecutorial misconduct **"Case Nos. 202005143, 202005425."[CR-0185, 0203].**

> A lawyer is forbidden to seek to influence a tribunal concerning a pending matter by means that are prohibited by law or by applicable rules of practice or procedure.[147]

The email title **which** makes clear the ***ex-parte*** extra-record consideration, otherwise not explained for how the Panel reached the sanctions, but depicting **the bias which actually fueled the inexplicably heavy result,** so heavy as to be an abuse of direction, made explicitly as result of the *ex-parte* communications. Exactly the example, *although for an EVH setting and more violative of the Rules,* made the basis of the grievance task force's report to the SBOT in June 2021, which questioned

> **"the propriety of the private session between the Investigative Hearing panel and the CDC counsel. Where the current adversarial feel of the Investigative Hearing, being ex parte communication, deviates from all other established standards in tribunal decorum."**[148] **In ex parte proceedings, there is no balance of presentation by opposing advocates, yet the object of the proceeding is to yield a substantially just result**[149]

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[147] Tex. R. Prof. Conduct, Rule 3.05(a).

[148] Task Force on Public Protection, Grievance Review, and the Client Security Fund, *Report*, 11-12, June 16, 2021, available at https://www.texasbar.com/AM/Template.cfm?Section=Meeting_Agendas_and_Minutes&Template=/CM/ContentDisplay.cfm&ContentID=53664.

[149] Tex. R. Prof. Conduct, Rule 3.03, Comment 4.

Without all information and briefing to only offset the GRP – the 14-2 Panel departed upward too harshly in an undoubted abuse of its discretion and did not apply any guiding principles on the record, and the only evidence of evidence utilized to make the determination is that of ex-parte improper extra-0record consideration from the CDC to the Panel Chair, backlighting the impropriety of the CDC attorney and the Panel in the abuses against appellant orchestrated by Guerra.

> The inequitable conduct of the CDC in these proceedings depicts an institutional norm, where some level of oversight condones the prosecutorial misconduct/litigation without regard for the disciplinary rules upon which the CDC operate/enforces.
>
> The litigation strategies reflect a systemic issue within the CDC culture and operational norms, where committing the very rule violations that the CDC is tasked to enforce. Its attorney employees and staff prosecuting grievances against respondents intentionally operate outside of the rules and are so flagrant with same that they are not even concerned with the appearance of propriety.
>
> Absolute immunity has made the prosecutorial and administrative roles/functions of this system cavalier in implementing bad faith strategic gamesmanship in litigation, seemingly without any measure of ethical rebuke or punishments for institutional wrongdoing.
>
> It is clear the CFLD and SBOT have supported this mentality, or these CDC attorneys would not be so openly comporting themselves in violation of the rules as an ongoing theme in abrogation of the important rights of Respondent attorneys in this system.
>
> Without any checks and balances that would require them to at **least appear outwardly** to conduct themselves by the example they expect from the attorneys they prosecute -- for far less serious infractions than they themselves are committing -- without correction or requirement to abide by an ethical code, the public trust in attorneys will never improve if we are incapable of even our own self self-governance under principles of integrity, fairness and notions of fair-play and justice.

(7) <u>ERROR NO. SEVEN</u>

MARCH 24, 2023 POST-JUDGMENT HEARING: THE PANEL: ABUSED DISCRETION, ACTED ARBITRARILY AND CAPRICIOUSLY, AND VIOLATED APPELLANT'S DUE PROCESS RIGHTS

If considering in combination all factors that went into the events of the March 24, 2023 hearing, then no measure of justice or good faith can be seen from the CDC nor EVH Panel 14-2, exacted against Appellant, only to her detriment. Under a totality of the circumstances, Appellant was afforded no equity in the proceedings, and each standard from which BODA must review the events of that date must reflect a decision on each point of error finding that the Panel abused its discretion and/or did not have a rational basis and/or substantial evidence to rule as it did, and for each and every instance, decidedly against Appellee and for Appellant. The record as a whole does not support the abrogation of Appellant's basic rights and impugns the façade of equity that the attorney discipline system purports to provide Respondent attorneys, as follows:

a) Upon the filing of her Motion to Stay on February 20, 2023, Appellant did not ask for a hearing date nor file a Notice of hearing,
b) instead, on February 23, 2023, the CDC assistant advised Appellant that the CDC had set a hearing on March 24, 2023 by ZOOM
c) based on the fact Appellant never requested the setting, she objected to the hearing and moved for its cancelation as she had "never requested oral argument," and asserted her actual request for a ruling by submission
d) Over Appellant's objection and request, Guerra advised that her office would be going forward with the hearing, regardless. Where Appellant could not afford any additionally allegations from Guerra of "failing to appear," Appellant presented for the hearing by ZOOM, although under duress.
e) Not until he hearing began did Appellant learn that:
1) no court reporter was present,
2) she had to argue BOTH the Motion to Stay and the Motion for New Trial, without any notice at all the second motion was to be heard
3) the CDC was not including her Exhibit Binder into the Record because they could not open the file;

4) not only was it not part of the record for reference, but when Appellant advised she would merely move to admit the documents before the Panel through her argument, she was denied the right to enter any of the Exhibit binder as evidence for the setting because it was "late filed"

5) similarly, Appellate was not allowed to bring forth any portion of her Reply to the Response to the Motion to Stay, or the Second Exhibit binder or the Notice of Supplemental Facts, and all were excluded from the Panel's consideration /Appellant was not allowed to argue or enter any of same, because they were all "late-filed"

6) on each request to continue the hearing, which were several and re-urged, she was denied: to obtain a court reporter, remedy the exhibit binder issue, allow consideration of her recent filings and generally, to be prepared for the Motion for New Trial hearing -- upon each time, Guerra incredulously advised no or scoffed at the request, asserted that each of the issues was of Appellant's own doing, because SHE was the one who was responsible for a court reporter, she filed the documents late, she did not resubmit the binder when the file was not working, and she should have known the hearing was for both motions. From same, the Panel Chair overruled/ denied each of Appellant's objections and oral motions with little to no commentary but for echoing the "late-filed" premise.

A. ERROR NO. 7(A):

EVH 14-2 & THE CDC VIOLATED APPELLANT'S DUE PROCESS RIGHTS WHERE THE ONLY HEARING SET FOR MARCH 24, 2023 WAS THE MOTION TO STAY & APPELLANT WAS NEVER PROVIDED ANY NOTICE THAT THE MOTION FOR NEW TRIAL WAS ALSO GOING FORWARD THAT DAY AND TIME, FORCING APPELLANT TO ARGUE THAT MOTION BY SURPRISE AND AMBUSH

The only hearing even contemplated was the Motion to Stay, on which Appellant sought ruling by submission, but CDC attorney forced attendance under duress.

The May 2020 Panel Procedural Guide authored by the CDC and provided to the DGC in the CDC training of the Panels provides:

> The State Bar Act provides that the rules must "(10) authorize[e] all parties to an attorney disciplinary hearing, to be present at all hearings at which testimony

> is taken and requiring notice of those hearings to be given…;"[150] A party is entitled to reasonable notice of [hearings] to comport with due process under the United States Constitution.[151]
>
> If a party does not receive service of a document, he may lodge his objection with the trial court and present evidence to rebut a presumption of service.[152] To preserve such a complaint for appeal, he must obtain a ruling from the trial court or object to the trial court's refusal to rule, or the issue is waived.[153]

Here, service is the least of the issues, where an attempt at service would even satisfy colorable due process -- instead, it is asserted that the hearing was set merely by some sort of presumption, without serving any documents or making any statements to that effect before the setting – by telepathy, as her arguments tend to indicate. Unlike *Sarfo*,[154] where, according to Sarfo, the Court held a hearing without giving him proper amount of notice, here Appellant will show that she had zero notice – not merely a timeframe violated, but by no notice, unfair surprise and ambush.

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[150] TEX. GOV'T CODE ANN. § 81.072(b)910) (West).

[151] *Long v. Comm'n for Law. Discipline,* No. 14-11-00059-CV, 2012 WL 5333654, at *3 (Tex. App. Oct. 30, 2012), c*iting See Boateng v. Trailblazer Health Enters.*, 171 S.W.3d 481, 492 (Tex.App.-Houston [14th Dist.] 2005, pet. denied); *see also PNS Stores, Inc., v. Rivera,* No. 10–1028, S.W.3d, 2012 WL 3800817, at *3 (Tex. Aug.31, 2012) (citing *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 84, 108 S.Ct. 896, 99 L.Ed.2d 75 (1988)); *In re Marriage of Parker,* 20 S.W.3d 812, 818–19 (Tex.App.-Texarkana 2000, no pet.).

[152] *Lempar v. Ballantyne*, No. 04-22-00621-CV, 2023 Tex. App. LEXIS 9609, at *10 (Tex. App.—San Antonio Dec. 27, 2023, no pet. h.)(citing *Stettner*, 611 S.W.3d at 106; *Johnson v. Harris Cnty.*, 610 S.W.3d 591, 595 (Tex. App.—Houston [14th Dist.] 2020, no pet.).

[153] *Lempar v. Ballantyne*, No. 04-22-00621-CV, 2023 Tex. App. LEXIS 9609, at *10 (Tex. App.—San Antonio Dec. 27, 2023, no pet. h.)(citing TRAP33.1; *Hightower v. Baylor Univ. Med. Ctr.*, 251 S.W.3d 218, 224 (Tex. App.—Dallas 2008, pet. struck); *accord In re R.A.*, 417 S.W.3d 569, 581 (Tex. App.—El Paso 2013, no pet.)).

[154] Appellant's Opening Brief, *Sarfo v. Comm'n for Lawyer Discipline*, No. 03-19-00146-CV, 2019 WL 4138411, at *10, *29 (Tex. App.—Austin, Aug. 21 2019)

. On February 20, 2023, Appellant filed Respondent's Motion to Stay Execution of the DFJ before the Panel and copied BODA.**[SCR-001553-001570]** The "Clerk" provided "notice of the setting" merely three days later, February 23, 2023 and the Motion for New Trial was not filed until March 10, 2023. Therefore, the setting, made fifteen days before the Motion for New Trial was filed, **was not** for the Motion for New Trial. No rational basis exists to say that Appellant had notice of a setting for the Motion for New Trial, where Guerra has again misapplied the law to her benefit, but presented same to the Panel as if it is controlling.

Settings do not somehow grow to account for more filings without explicit notice from a party or by statute, and hearings do not magically "anticipate" additional motions when set, no matter how Guerra has attempted to misrepresent the legal standard or facts within her Response to Appellant's Brief to Panel and Motion for Judicial Notice, filed December 21, 2023. Further, the actual email notice of the setting, the ZOOM notice within the body of the email, made zero reference to what the hearing was for **[SCR-1064]** not even the Motion to Stay, for which it was actually set, let alone the Motion for New Trial. BUT most critically, the ZOOM attachment for evidentiary panel proceedings delivered with the March 23, 2023 Zoom notice **[CR-1063, one must double-click on the Attachments: Zoom Protocol Guidelines-EVIDENTIARY.pdf]** state explicitly that the proceedings are described under rule 2.17 of the TRDP, which then explicitly reflect that the CDC was responsible for the Court Reporter under same:

IMPORTANT INFORMATION FOR EVIDENTIARY HEARINGS TAKING PLACE VIA ZOOM

The parties must consult all applicable rules including the Texas Rules of Civil Procedure,Texas Rules of Evidence and Texas Rules of Disciplinary Procedure. **Proceedings before an Evidentiary Panel are described in Rule 2.17 of the Texas Rules of Disciplinary Procedure. [CR-1063, one must double-click on the Attachments: Zoom Protocol Guidelines-EVIDENTIARY.pdf]**

Within Guerra's Response to Appellant's Brief to Panel and Motion for Judicial Notice, filed December 21, 2023, Guerra states that when the Panel Clerk reached out to Appellant regarding the hearing -- (*which was unilaterally set without request, or conference)* – that because Appellant mentioned that a motion for new trial was to be filed imminently, it was somehow known that this hearing would encompass both:

> [o]n February 23, 2023, the Evidentiary Clerk emailed Respondent to advise that because the Panel regularly meets only once a month, the next available hearing date on Respondent's motion would be March 24, 2023, at 1:00pm. The Clerk advised that a hearing would be scheduled for that date. See EXHIBIT 2. This hearing would serve to address all issues raised by Respondent, including matters related to the stay, setting aside/modifying/vacating the judgment, and new trial.
>
> > On March 24, 2023, at 11:29am, Respondent emailed the Panel Chair, Petitioner, and Evidentiary Clerk to confirm whether the hearing had been cancelled. At this late hour, Petitioner replied to Respondent by email (and copied the Panel Chair and Evidentiary Clerk) to advise that Petitioner intended to move forward with hearing. See EXHIBIT 6. Petitioner then left the matter of hearing cancellation to the Panel's discretion when they met at the appointed time for hearing. The Panel proceeded with hearing as scheduled. Petitioner was present at hearing. Respondent failed to appear and did not file a continuance.**[SSCR-001556-001552] compare [APP 7][APP 8].**

Not only are all the assertions that the CDC somehow provided notice via telepathy beyond the scope of zealous advocacy, but most notably, Guerra's assertion that RESPONDENT FAILED TO APPEAR: this is an intentional misrepresentation, and where Appellant already pointed this out to the Panel and to Guerra in the pleadings in the

underlying cause (Respondent's Verified Reply **[SSCR-000834-000851]) and no corrective action was even contemplated, let alone completed,** the bad faith of the CDC is so prevalent, it's cavalier.

Four orders came out of the hearing; where the two Orders denying the Motion to Stay **[APP 5]** and the Motion for New Trial **[APP 6]** are merely check yes or no substances-less forms. **But both the FOFCOL Orders, drafted by the CDC and signed by the Panel Chair, explicitly recite that:**

> On March 24, 2023, the Evidentiary Panel conducted a hearing regarding Respondent's Motion to Stay…. Petitioner appeared through counsel. **Respondent appeared pro se….[APP 7].**
>
> On March 24, 2023, the Evidentiary Panel conducted a hearing regarding Respondent's Verified Motion …For New Trial. Petitioner appeared through counsel of record. **Respondent, Lauren Ashley Harris, appeared pro se [APP. 8].**

Just because the CDC prevented Appellant from making a record and forcing her to appear under duress, does not provide the CDC license to allege Appellant failed to appear/was absent; the FOFCOL explicitly both reiterate that Appellant was present at the hearing for the two orders denying her relief**. [APP 7], [APP 8}.**

Moreover, the CDC repeatedly bases the proposition that Appellant's address on the SBOT attorney profile website was listed as 17303 Davenport Rd. by Appellant, and this is rebutted directly by the release of Appellant's SBOT online attorney profile data from the Appellant's PIA Requests made to the SBOT. In January 2020, Appellant's office address was 9330 LBJ Freeway, Suite 900, Dallas, Texas 75243 **[SSCR-000080, 000109-000110].** The Appellant's office address was **never listed by Appellant** as 17303

Davenport Road, Dallas, Texas 75248 on her public facing online attorney profile**, in fact,** when Appellant had specifically listed that address, it was under home address, **and only** under provision as **specifically confidential, and not to be released to the public** --since 2013, as seen in the SBOT Public Information Act returned documents, **[SSCR-000080, 000109-000110]** under: **Texas Government Code § 552.1176. Confidentiality of Certain Information Maintained by State Bar: § 552.352. Distribution or Misuse of Confidential Information discusses penalties for violations, this is** official misconduct.

Therefore, the SBOT violated Appellant's rights under all provisions above, where the Open Records Act contains enforcement procedures, including criminal sanctions reflecting that a custodian of public information is subject to a jail terms and fines under TEX. GOV'T CODE ANN. § 552.352, TEX. GOV'T CODE ANN. § 552.351 *see also*, Texas Penal Code § 37.10, sanctions for tampering with governmental records and the release of confidential information.[155] Appellant never waived or changed the protected from disclosure status of her parents' home address, having filled the form which explicitly reflects:

> restricted public access to personal information pursuant to §552.1176 of the Texas Government Code, is maintained under Chapter 81 is confidential and may not be disclosed to the public under this chapter if the person to whom the information relates... chooses to restrict public access to the information; and... notifies the State Bar of Texas of the person's choice, in writing or electronically, on a form provided by the state bar..." I understand that any of

[155] TEX. GOV'T CODE ANN. § 552.352, TEX. GOV'T CODE ANN. § 552.351; *see also*, Texas Penal Code § 37.10.

> my personal information which is solely protected under §552.1176 of the Texas Government Code will be subject to public disclosure if I do not make an election. I also understand that if my home address is the only address on file with the State Bar, I should provide an alternate public contact (or office) address (e.g., a post office box number) for clients and potential clients by updating the "office address" in my online contact information on the State Bar website at www.texasbar.com. Pursuant to §552.1176 of the Texas Government Code, this designation shall remain valid and in effect unless and until I rescind it electronically or in writing on a form provided by the State Bar. **[SSCR-000113}**

The NCOA License Agreement to the SBOT specifically held that the SBOT was not authorized to disseminate the addresses obtained therefrom to third-parties, where the SBOT **publicly disseminated** via the NCOA changes to Appellant's online attorney profile made without her consent, knowledge or approval:

> "Furthermore, addresses obtained as a result of the NCOALink process cannot be shared with parties outside of your organization. The NCOALink License Agreement states (Sections 13.6-13.7):
>
> > '**Licensee agrees to control and restrict any access to address information in or from the NCOALink Product to employees….Due to the sensitive nature of the confidential and proprietary information contained in the Service Materials, Licensee acknowledges that unauthorized use and/or disclosure of Service Materials will irreparably harm…, Licensee (a) agrees to reimburse … any unauthorized use and/or disclosure at a rate of treble (3) times the current annual fee charged to Licensee …or treble the total revenue Licensee obtained through its use of the Service Materials during the period of breach, whichever amount is greater, and (b) consents to such injunctive, equitable or other monetary relief as a court of competent jurisdiction may deem proper.'"[SSCR-000214-000215113}**

Beyond it being a violation of Appellant rights and incumbent with civil and criminal penalties – the unauthorized disclosure of the address would not have imparted notice to third parties of Appellant's address for due diligence purposes.

> Although a person is charged with constructive notice of the actual knowledge that could have been acquired by examining public records,[156] a "document filed for record without statutory authorization does not impart constructive notice to third parties."[157]

B. ***ERROR NO. 7(B):***

> ***CDC – I.E. THE PANEL REFUSED TO ALLOW APPELLANT TO ADMIT/ENTER INTO THE RECORD THE PREVIOUSLY SERVED FIRST EXHIBIT BINDER, NO BASIS FOR THE OBJECTION WHICH WAS FILED/SENT TO THE CDC "CLERK" ON MARCH 10 AND 11TH, 2023, WITHOUT CLEAR NOTICE OF DEFICIENCY, NOR INSTRUCTIONS OR PARAMETERS FOR CURE AND NO BASIS FOR THE EXCLUSION AS THE LINK IS STILL WORKING VIA CR-1052 & CR-1053.***

The Texas Rules of Civil Procedure reflect under Rule 21(f)(11) the process to cure a deficiency in electronic filings to the Clerk of the Courts, and this was not followed, nor referenced at all; in fact, no guiding principles whatsoever were explained for the arbitrary and flippant refusal to include Appellant's first Exhibit volume into the record:

> The clerk may not refuse to file a document that fails to conform with this rule, but the clerk may identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format.[158]

> Appellant emailed her original exhibit binder HARRIS.0001-0479 to the CDC on March 10, 2023 and March 11, 2023, *(although mistitled/incorrect title, HARRIS.0001-0219 2023.03.10 HARRIS).*

> EVH Panel 14-2 excluded from evidence original exhibit binder HARRIS.0001-0479 in the March 24, 2023 post-judgment hearing, where told that evidence was not accepted because of her "failure to resubmit" the file when no

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[156] *Trousdale v. Henry*, 261 S.W.3d 221 (Tex. App. Houston 14th Dist. 2008); *Marathon Corp. v. Pitzner ex rel. Pitzner*, 55 S.W.3d 114 (Tex. App. Corpus Christi 2001), judgment rev'd on other grounds, 106 S.W.3d 724 (Tex. 2003); *Hodge v. Northern Trust Bank of Texas, N.A.*, 54 S.W.3d 518 (Tex. App. Eastland 2001).

[157] *Countrywide Home Loans, Inc. v. Howard*, 240 S.W.3d 1 (Tex. App. Austin 2007).

[158] TRCP 21(f)(11).

> clear notice of deficiency was actually received, nor communicated opportunity to cure, and was not on notice it needed to be resent.
>
> In discussing the complexities resulting from e-filing, the issue have been posed as follows: [i]s a document considered "filed" if the e-filing party cancels its electronic transaction before the trial court file-stamps the document? What if the e-filing service provider fails to forward the document to the trial court clerk?
>
> In each instance, the plain language of Rule 21(f)(5) makes "[transmission]" to the e-filing service provider the dispositive act, and "[the original transmission date is the effective date regardless of the clerk's file stamp…[159] "the focus on 'transmission]' is 'carried] forward' in Rule 21(f)(6).[160]". In other words, Rule 21(f)(6)'s 'technical failure' provision similarly contemplates the clerk's receiving a document after the deadline despite the document's timely transmission to the e-filing service provider."[161]

The exclusion of this evidence not only rendered an improper verdict but wholly prevented Appellant from presenting her cause on appeal, where the lack of a court reporter at the 24th hearing, and the denial of a continuance to obtain one, and the no notice additional of the second hearing in that setting – that she did not request and sought instead submission ruling on the stay -- are all inequitable and equate to last-minute ambush on Appellant. For: both hearings in one, and the entire exhibit binder denied from the record without cause, where it contains so many key documents to reflect that the CDC was on notice of the actual places that Appellant lived each time they purported to present service of process as under due diligence:

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[159] TRCP 21(f)(5).
[160] TRCP 21(f)(6).
[161] TRCP 21(f)(6).

to rectify the record, Respondent submitted five volumes of exhibits with respondent's verified motion for formal Bills of exception, filed on June 7, 2023, containing the original exhibit binder HARRIS.0001-0479, and it is included in the record for BODA review. **[SSCR-001476]**

Evidentiary Rulings. The Panel Chair makes all rulings on the admissibility of evidence. The Panel Chair shall admit "all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the Texas Rules of Evidence."[162]

A decision to admit or exclude evidence rests within the sound discretion of the trial court.[163] A reviewing court must uphold the trial court's evidentiary ruling if there is any legitimate basis for the ruling and will not disturb the trial court's ruling absent an abuse of discretion.[164] A trial court abuses its discretion when a decision is arbitrary, unreasonable, or without reference to guiding rules or principles[165] A trial court's ruling, even an erroneous evidentiary ruling will not be reversed unless the error probably caused the rendition of an improper judgment or probably prevented the appellant from properly presenting his case to the court of appeals.[166]

Moreover, a reviewing court will not reverse a trial court for an erroneous evidentiary ruling **unless the error probably caused rendition of an improper judgment.**[167] A person seeking to reverse a judgment based on evidentiary error need not prove that but for the error a different judgment would necessarily have been rendered, but only that the error probably resulted in an improper judgment.[168] A successful challenge to evidentiary rulings usually requires the complaining party to show that the judgment turns on the particular evidence

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[162] APPENDIX B, 2020 TXCLE-ACAP 9 APP B, 2020 WL 5607163, (*citing* TDRP 2.17(L)).

[163] *K-Mart Corp. v. Honeycutt,* 24 S.W.3d 357, 360 (Tex.2000) (per curiam); *McIntyre v. Comm'n for Lawyer Discipline,* 247 S.W.3d 434, 442 (Tex.App.-Dallas 2008, pet. denied). *See also Gee v. Liberty Mut. Fire Ins. Co.* 765 S.W.2d 394, 396 (Tex.1989).

[164] *Anglo-Dutch Petroleum Inti, Inc. v. Greenberg Peden, P.C.,* 267 S.W.3d 454, 465 (TexApp.-Houston [14th Dist.] 2008, pet. filed).

[165] *See Carpenter v. Cimarron Hydrocarbons Corp.,* 98 S.W.3d 682, 687 (Tex.2002); *Honeycutt,* 24 S.W.3d at 360. See also *City of Brownsville v. Alvarado*, 897 S.W.2d 750, 753–54 (Tex. 1995), (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex.1985)).

[166] TRAP44.1(a); *Owens-Corning Fiberglas Corp.,* 972 S.W.2d at 43; *Benavides v. Cushman,Inc.,* 189 S.W.3d 875, 879 (Tex. App.—Houston [1st Dist.] 2006, no pet.).*Lawrence v. Geico* (Tex.App.- Houston [1st Dist.] Jul. 2, 2009).

[167] *See* Tex.R.App. P. 44.1.

[168] *McCraw v. Maris,* 828 S.W.2d 756, 758 (Tex.1992); *King v. Skelly,* 452 S.W.2d 691, 696 (Tex.1970).

> excluded or admitted.[169] The Court determines whether the case turns on the evidence excluded by reviewing the entire record.[170]

The decision to exclude the evidence of the 1st Exhibit Binder was not explained in any way that made sense by evidentiary objection, not even by technical failures --- and where thought to be arbitrary and capricious, without any reasoning at all – it is now known to actually be malicious, as seen below, where the link works to this day, **and was only provided back in this form via the record compiled by the CDC**. Within the email which originally housed the transmission, **[CR-1052 & CR-1053] --** the link is STILL available, where that email was sent to the Panel Clerk, Panel Chair and Guerra in March of 2023 and – to this date, one can click the link, and the exhibit binder has just become available for opening – without any issue whatsoever; see **[CR-1052 & CR-1053]**. *the link populates on mouse-over as follows:*

https://zmdownload.zoho.com/download?sign=170cb47f11a4bb8ecbb368f0505e1f3561b2874e20b655ca46394f1db6330db8&digest=0801122916bce9717dbec57fcea93e91000058f9519ecca0818db8acf768eae17abf92f94a65521b84d55716aa%2364769127

It was always a working link. No explanation was ever provided, not even caring enough to disable the link before producing, clearly without any fear as to it being revealed that nothing was wrong with the documents and the CDC could access them

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[169] *See GT & MC, Inc. v. Texas City Ref., Inc.*, 822 S.W.2d 252, 257 (Tex.App.—Houston [1st Dist.] 1991, writ denied).

[170] *Boothe v. Hausler*, 766 S.W.2d 788, 789 (Tex.1989); *Gee*, 765 S.W.2d at 396.

from the date they were transmitted. The working document link is now open and accessible, built-in to the record, just as Appellant asked for all along -- sent to the very party from whom it was refused and from the very party who made the refusal. The CDC caused an entire year of unnecessary expense, hardship, litigation and heartache in these proceedings only to the disadvantage of Appellant.

Where under the TDRPC, Rule 3.02 reflects "[i]n the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter."[171] This proposition is salient to the this (and all) positions taken by the CDC and the "Panel Clerk"/legal assistant to Guerra. The entirety of the FBOE, which asked BODA to oversee on remand, was made necessary largely in part for that one exhibit binder, which exclusion is beyond arbitrary as exemplified in **[CR-1052 & CR-1053].**

The Panel abused its discretion, as it made the ruling to exclude the evidence without any legal reasoning provided and on the assertion it was not submitted properly by Appellant, although clearly, not true, and even if it was somehow the case for the CDC not accessing the document -- it never provided Appellant with a clear statement of/understanding of the deficiency or path to re-file, instructions to cure, or time frame for

[171] TDRPC 3.02.

re-submission -- and abused any discretion it was allowed in supporting the exclusion without any guiding principles. Appellant prays for equitable relief from BODA for this and all other wrongs suffered by Appellant herein, including findings against the CDC.

C. ERROR NO. 7(C):

THE CDC UNILATERALLY SCHEDULED AND SET THE MARCH 24, 2023 HEARING, THEN, OVER APPELLANT'S OBJECTION & REQUEST FOR RULING BY SUBMISSION ON THE MOTION TO STAY, GUERA INSISTED IT WAS GOING FORWARD -- MAKING IT THE CDC/CFLD'S HEARING -- BUT GUERRA DID NOT PROVIDE A COURT REPORTER & DENIED REQUEST FOR A COURT REPORTER

Court reporters are not required to transcribe court proceedings unless a party requests it.[172] Where Appellant did request same, it was denied and then overruled where seeking a continuance to obtain a court reporter to make a record of the proceedings. Appellant's objection to lack of court reporter, and Appellant's motion to continue to obtain a Court reporter/cure any alleged defects in Exhibit filing is abuse of discretion. "When the appellant, through no fault of his own, is unable to obtain a reporter's record, the appellate court may reverse the judgment."[173]

> The CDC scheduled the March 24, 2023 hearing held in this cause. Respondent objected to the setting before the hearing, but the CDC pushed it forward over the objection, Appellant appeared at the setting under duress where although it was Appellant's Motion, and therefore should have been Appellant's hearing, it was instead the CDC's hearing, based on their setting without request, or conference then opting to go forward with the setting over Appellant's clear

[172] TEX. GOV'T CODE ANN. § 52.046(a).

[173] *See Smith v. Smith,* 544 S.W.2d 121, 123 (Tex. 1976) (granting a new trial to the petitioner based on his "inability to procure a statement of facts" or reporter's record).

> assertion to cancel and proceed on submission. As Being the CDC's hearing, it was therefore the CDC's duty to schedule the court reporter.

Similar to the older "statement of evidence" the where there may have been an unavailability of transcripts, as here, where there was no reporter, this is why the FBOE were filed to create a record in the void of the hearing's wake without a record. The FBOE filing and the hearing on the record creates the missing evidence record supporting the contentions of Appellant in the post-judgment activities of the EVH 14-2 with this case. And all made in the effort to assist BODA in lieu of a transcript, a right to have a record to which Appellant was otherwise denied.

> Petitioner did not Schedule a court reporter under 2.17. Respondent objected in the setting as she only sought submission – when in attendance under duress, the setting containing two motions was provided as to both respondent's motion to stay And respondent's motion to set/aside vacate/for new trial, the exclusion of the original exhibit binder HARRIS.0001-0479 and attempted to offer the original exhibit binder HARRIS.0001-0479, the second exhibit binder HARRIS.048-0665, as well as Respondent's Reply To Petitioner's Response To Respondent's Motion To Stay, Respondent's Verified Motion Of Supplemental Facts And Respondent's Verified Requests To The Panel and requested a continuance for obtaining a Court reporter, and to cure the exhibit issue, denied.**[SSCR-001477]**

> A reporter's record is required to preserve evidentiary complaints for appellate review when evidence is introduced in open court.[174] "If the proceeding's nature, the trial court's order, the party's briefs, or other indications show that an evidentiary hearing took place in open court, then a complaining party must present a record of that hearing to establish harmful error." An Appellant has the burden to bring forth a sufficient record on appeal, including a reporter's record--points dependent on the state of the evidence cannot be reviewed in the absence of a complete [reporter's record].[175] The burden is on a party appealing from a trial

[174] *Id.* At 782, 783.

[175] *Lane v. Fair Stores,* 150 Tex. 566, 243 S.W.2d 683, 684 (1952)

> court judgment to show that the judgment is erroneous in order to obtain a reversal; when the complaint is that the evidence is factually or legally insufficient to support vital findings of fact, or that the evidence conclusively refutes vital findings, this burden cannot be discharged in the absence of a complete or an agreed [reporter's record]."[176]
>
> "If all the evidence is filed with the clerk and only arguments by counsel are presented in open court, the appeal should be decided on the clerk's record alone."[177]A reporter's record is required to preserve evidentiary complaints for appellate review when evidence is introduced in open court, where absent a specific indication or assertion to the contrary, presumed pretrial hearings are non-evidentiary -- but, "[i]f the proceeding's nature, the trial court's order, the party's briefs, or other indications show that an evidentiary hearing took place in open court, then a complaining party must present a record of that hearing to establish harmful error."[178]

Here, the March 24, 2023 hearing was evidentiary – or should have been, yet, the Appellant was prevented from introducing even one of her documentary exhibits – and Appellant DID object to the lack of a court reporter which was overruled, then asked for a continuance to obtain a court reporter which was denied. Appellant reflects throughout her Motin for New Trial that the evidence "conclusively reflects" indicating that evidence was to be taken, and cites to her 479 pages of exhibits, requesting an evidentiary hearing and asserting that lack of personal jurisdiction would be established by the evidence submitted with the motion to be offered at the hearing. The Orders of the Panel further

[176] *The Englander Co. v. Kennedy,* 428 S.W.2d 806, at 807 (Tex. 1968).
[177] *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 782 (Tex. 2005).
[178] *Id.* at 782-783.

state that "[a]fter consideration of any and all evidence and argument submitted, the Panel is of the opinion that Respondent's motion should he and is hereby denied." **[APP. 5, 6}].**

Although an Appellant "challenging sufficiency of the evidence to support the trial court's judgment cannot meet that burden without presenting a sufficient record on appeal because it is presumed that the omitted portions of the record support the trial court's judgment."[179] Where the lack of a record from a court reporter is a void in the record, Appellant vehemently asserts that this void may not be a bar to BODA reviewing the rulings for error based upon Appellant's filing of the FBOE. Where otherwise, BODA could only speculate as to the nature of the hearing, the FBOE clearly has made those portions part of the clerk's and reporter's record to be as close as it could be before the the EVH Panel on the date of the hearing March 24, 2023, and certainly must be considered by BODA as it now can constitute "**evidence in the relevant portion of the appellate record."**[180]

> The burden for showing harmful error because of the state of the record, whether on "abuse of discretion" or "no evidence" grounds, is the same -- if an appellant files a partial [reporter's record], the reviewing court must presume the omitted portions of the record would have been relevant to the determination of appellant's evidentiary arguments.[181] By following this rule the presumption is the reverse of that in the usual appeal, in that the appellate court will assume that nothing in the

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181 *The Englander Co.,* 428 S.W.2d at 807.

> record that was not brought forward is relevant to the determination of the appeal.[182]

BUT a court may consider matters that are fundamentally erroneous even in the absence of a report's record.[183]

It is undisputed that the original post-judgment hearing went forward on March 24, 2023, and that no court reporter was present. **What is disputed, however, is if the CDC recorded the setting,** and apparently, if Appellant was present – per the Response filed by CDC attorney on December 23, 2023, but FOFCOL **[APP6],[APP 7]** reflect Appellant appeared *pro-se.* The multiple failures -- to provide a court reporter, or allow Appellant a continuance to obtain a court reporter, the exclusion of Appellant's evidence, as well as the second motion's forced presentation by ambush without any notice all -- necessitated Appellant's filing the FBOE, and the emergency relief from BODA staying the FBOE setting until the CDC/Panel allowed for Appellant to have a court reporter present. On January 26, 2024, the hearing finally occurred. Appellant did everything in her power to meet her burden for the record on appeal to show with a sufficient record that the EVH Panel 14-2's Judgment and Orders require reversal.

The post-trial hearing was evidentiary, as the Motion for New Trial asserted the documents within the First Exhibit Binder would show the Panel the *Craddock* factor and

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[182] *Producer's Const. Co. v. Muegge*, 669 S.W.2d 717, 718 (Tex. 1984).

[183] **Emphasis added**. *Lane*, 243 S.W.2d at 684-85.

a failure of service of process as improper/that the Default should be set-aside/vacated and asserted both legal and factual matters for its proposition, where the CFLC/CDC did the same in opposition to the motion and the orders denying the relief further explicitly state: the motions were "filed in the above-styled and numbered cause. After consideration of any and all evidence and argument submitted, the Panel is of the opinion that Respondent's motion should be and is hereby denied." Further, elsewhere in the record the void of missing the documents is central to the FBOE.[184]

Based on the lack of a report's record for the March 24, 2023 settings, Appellant had to file and demand a hearing to satisfy the elements of TRAP 33.2, and although the recording of the setting was requested and Guerra initiated "no recording exists" albeit **not under oath** nor otherwise corroborated or verified, **BODA did not see fit to Order her to answer for same as in other cases,** and again, would likely change the outcome of that hearing, and this appeal. **The trial court abused its discretion because of the state of the record**.[185] Here, in these Panel proceedings, the hearing transcript was not omitted from the appellate record, but simply does not exist, because the CFLD/CDC and EVH 14-2 Panel prevented Appellant from a court reporter, which under TRDP 2.17 the CDC

[184] *see Cf. Schafer v. Conner*, 813 s.w.2d 154, 155 (tex. 1991); *Guthrie v. Nat'l homes corp.*, 394 S.W.2d 494, 495 (Tex. 1965)

[185] *See, e.g., Ward v. Cornyn*, 700S.W.2d 281, 282 (Tex.App. — San Antonio 1985, orig. proceeding)).

was intended to provide. Since there was repeated attempts by Appellant to rectify the lack of a court reporter and attempt to place the contents for appeal before BODA, the court **should not** presume that the omitted portion of the [reporter's record] supports the trial court's judgment.[186] The denial of the reporter was an abuse of discretion where not based on any principles of law, evidence, technology nor common sense and was in no event harmless error based on all steps taken to rectify.

D. ERROR NO. 7(D):
THE PANEL ABUSED DISCRETION WHEN IT DENIED APPELLANT'S ORAL MOTION FOR CONTINUANCE

TRDP 2.17.O provides that "[n]o continuance may be granted unless required by the interests of justice."[187] The grant[188] or denial[189] of a motion for continuance is reviewed for an abuse of discretion.[190] There is no mechanical test for determining when the denial of a continuance is so arbitrary[191] as to violate due process;[192] rather, the reviewing court must consider the circumstances presented to the trial judge at the time when the request is denied.[193] The entire record must be examined in a review for abuse of discretion

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[186] *Christiansen v. Prezelski*, 782 S.W.2d 842, 843 (Tex. 1990).
[187] TRDP 2.17.O.
[188] *In re C.P.V.Y.*, 315 S.W.3d 260 (Tex. App. Beaumont 2010);
[189] *Wilborn v. Life Ambulance Services, Inc.*, 163 S.W.3d 271 (Tex. App. El Paso 2005).
[190] *Matter of Marriage of Ramsey and Echols*, 487 S.W.3d 762 (Tex. App. Waco 2016), reh'g overruled, (May 4, 2016) and review denied, (Dec. 2, 2016
[191] *In Interest of S.M.H.*, 523 S.W.3d 783 (Tex. App. Houston 14th Dist. 2017);
[192] *McAleer v. McAleer*, 394 S.W.3d 613 (Tex. App. Houston 1st Dist. 2012); *In re C.P.V.Y.*, 315 S.W.3d 260 (Tex. App. Beaumont 2010);
[193] *Guerrero-Ramirez v. Texas State Bd.* of Medical Examiners, 867 S.W.2d 911 (Tex. App. Austin 1993). *See also In re Stern*, 321 S.W.3d 828 (Tex. App. Houston 1st Dist. 2010);).

regarding a motion for continuance[194] including evidence introduced on the hearing of a motion for a new trial.[195] The Court of Appeals will sustain a trial court's ruling on a motion for a continuance absent a finding that the trial court acted without reference to any guiding rules and principles, such that its ruling was arbitrary or unreasonable.[196] When reviewing an order denying a motion for continuance, the Court of Appeals considers same on a case-by-case basis.[197]

> In reviewing a trial court's exclusion …denial of a motion for continuance, the Court of Appeals does not substitute its judgment for that of the trial court, instead determines whether the trial court reached a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.[198] Test for determining whether denial of continuance is abuse of discretion is not mechanical; rather, case's individual circumstances must be examined.[199]A successful claim of denial of due process purportedly arising from the denial of a motion for continuance must be premised on "the reasons presented to the trial judge at the time the request [for continuance] is denied."

The record shows that Appellant's motion for continuance was requested and only through the FBOE, present in any capacity in the record, to reflect occurrence, although the new EVH Panel Chair Peace marked "Refused" on the Motion for FBOE, not the proposed orders; and based on the information presented to the Panel at the time of the

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[194] *Roob v. Von Beregshasy*, 866 S.W.2d 765 (Tex. App. Houston 1st Dist. 1993), writ denied, (Mar. 9, 1994).
[195] *Texas Emp. Ins. Association v. Yother*, 306 S.W.2d 730 (Tex. Civ. App. Fort Worth 1957), writ refused n.r.e.
[196] *Interest of A.B.,* 646 S.W.3d 83 (Tex. App. Texarkana 2022), review denied, (July 1, 2022).
[197] *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789 (Tex. 2002); *Coats v. Ruiz,* 198 S.W.3d 863 (Tex. App. Dallas 2006); *see also Guzman v. City of Bellville*, 640 S.W.3d 352 (Tex. App. Houston 14th Dist. 2022).
[198] *Kinder Morgan Production Company, LLC v. Scurry County Appraisal District*, 637 S.W.3d 893 (Tex. App. Eastland 2021), rule 53.7(f) motion granted, (Feb. 11, 2022).
[199] *Sims v. Sims,* 623 S.W.3d 47 (Tex. App. El Paso 2021).

request, which was surprise, and prejudice – lack of notice and due process - the denial of the motion for continuance constituted the continued denial of procedural due process, and Appellant has met the requirements for preserving any constitutional point of error by the filing of the FBOE, and testimony on the record from the FBOE hearing.

The requirement for a written and verified motion for continuance is not applicable and is waived when made orally in the course of the proceeding and based on facts that only became known by virtue of the setting -- only based on events which occurred in the hearing, and without same a continuance was not contemplated at any point prior— merely, instead, or alternatively, at that time, a motion for the Panel to rule on the stay by submission.

> TRCP 251 applies in lawyer disciplinary proceedings, and this was an oral motion based on facts only known to Appellant at the time the hearing began, which was therefore an abuse its discretion when ambushed with the hearing, ambushed with no court reporter, ambushed with the second motion to be argued then, and ambushed with the exclusion of her exhibits. The Continuance was yet again denied, so, as the continuance was requested for unfair surprise, prejudice, lack of notice and to seek cure of the preparation time, exhibits and court reporter – the motion was denied without reason or findings and therefore was denied without due process of law.

Denial of the motion for continuance constituted the denial of procedural due process, "the reasons presented to the trial judge at the time the request was denied were violative of the constitutional right of Appellant in its actions. The Panel is therefore

shown to have erred in denying that motion in significant error under TRCP 251,[200] and in no event harmless.

(8) ERROR NO. EIGHT

***POST-JUDGMENT RULE 2.21 AND VENUE RULE 2.11 ARE VOID FOR VAGUENESS --* UNCONSTITUTIONALLY VAGUE AND FACIALLY VAGUE**

"Disciplinary Proceeding" is defined as the processing of a Grievance, the investigation and processing of an Inquiry or Complaint, the proceeding before an Investigatory Panel, presentation of a Complaint before a Summary Disposition Panel, and the proceeding before an Evidentiary Panel".[2] Under Rule 1.06 O, the singular definition for "Evidentiary Hearing" means an adjudicatory proceeding before a panel of a grievance committee." The Panel Procedure Guide for the year 2020, in effect at the time the North Grievance was filed and heard by IVH (November 12, 2020), and when the election letter was sent, etc. the plural of this phrase is stated under Rule 2.17. "Evidentiary Hearings" which reflects:

> that the assignment of the Panel to hear the complaint: Within fifteen days of the earlier of the date of Chief Disciplinary Counsel's receipt of Respondent's election or the day following the expiration of Respondent's right to elect, the chair of a Committee having proper venue shall appoint an Evidentiary Panel to hear the Complaint. The Evidentiary Panel may not include any person who served on a Summary Disposition or an Investigatory Panel that heard the Complaint and must have at least three members but no more than one-half as many members as on the Committee. Each Evidentiary Panel must have a ratio of two attorney members for every public member. And include :A-P, where O Record of the Proceeding and N. Setting. The parties may

[200] *Ungar v. Sarafite,* 376 U.S. 575, 589-590 (1964).

examine witnesses and present argument at the evidentiary hearing, which is recorded by a court reporter.[201]

A. RULE 2.21 POST-JUDGMENT PROCEEDING, UNCLEAR ON THE DUTIES OF PROCEEDINGS, HEARING, COURT REPORTER/SCHEDULING OR TIME-FRAMES FOR DISCIPLINARY PROCEEDINGS POST- JUDGMENT AND DUTIES OF PARTIES IN REGARDS TO SAME IS VOID FOR VAGUENESS -- UNCONSTITUTIONALLY VAGUE AND FACIALLY VAGUE

The Panel Procedural Guide reflects under Post Judgment Motions.[202]

All rulings on post judgment motions (motion for new hearing, motion to set aside default, motion to modify judgment, etc.) **require a majority vote of a quorum of the entire panel under the standards of the Texas Rules of Civil Procedure.[203]**

If a party timely files a post judgment motion and requests a hearing, the Panel Chair should set a hearing as soon as practical. The most common post-judgment motions are:

• Motion for New Trial/Hearing. A motion for new hearing must be filed within thirty (30) days after the judgment is signed. Texas Rule of Civil Procedure 329b(a). Any amended motion for new hearing must be filed within 30 days after the judgment is signed. TRCP 329b(a). If the motion is not determined by written order signed within 75 days after the judgment is signed, it shall be considered overruled by operation of law. TRCP 329b(c). The panel retains **plenary power to grant a new hearing, or to vacate, modify, correct, or reform the judgment, for 30 more days after the motion has been overruled either by written order or by operation of law.204**

• Motion to Set Aside Default. To receive a new hearing after a default judgment, Respondent must establish three elements set forth in Craddock**205** which are: 1) the failure to answer or appear was the result of mistake, rather than conscious indifference; 2) Respondent has a meritorious defense to his misconduct; and 3) Respondent is ready to proceed to trial.[206]

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[201] TRDP 2.17(L) & (N).

[202] APPENDIX B, 2020 TXCLE-ACAP 9 APP B, 2020 WL 5607163.

[203] TRCP 2.21.

[204] TRCP 329b(e).

[205][205] *Craddock v. Sunshine Bus Lines*, 134 Tex. 388, 133 S.W.2d 124 (1939)

[206] APPENDIX B, 2020 TXCLE-ACAP 9 APP B, 2020 WL 5607163, citing *Molina v. Commission for Lawyer Discipline*, BODA No. 35426 (November 4, 2005)(p.25).

Wherein, the procedure for the setting and the record are provided in sufficient detail to preserve the rights of the litigants therein, at least facially. But, for a Court Reporter, or hearing setting in the post-judgment proceedings, under Rule 2.21 -- the CDC is free to arbitrarily discriminate and violate the notice and record needs for litigants, especially onerous if the attorney is merely attempting to preserve the record and properly present the matter for an appeal/preserve their right to appeal as Appellant has attempted at every stage herein.

The CDC believes they can make the rules for the post-judgment matters and without an improvement or clarity to Rule 2.21 then they will continue to violate the rights of attorneys, under the Rule 2.21 Post Judgment processes and Motions before the EVH Panels of the DGCs.

As such, Rule 2.21 is unconstitutionally vague in as applied to Appellant, it has it has allowed subjective enforcement of law based on arbitrary or discriminatory interpretations by the CDC, government officials; impinging on Appellant's rights to due process and equal protection, and where it is clear, even from the CFLD appellate counsel's Response to Appellant's Emergency Motion. To Avoid Improper Hearing November of 2023 – even the CDC understands that this procedure is one without clear brightline guideposts and therefore the CDC are free to continue to violate it in ragged interpretations/abuse the good faith and inequitable positions of attorneys in this system.

Because the post-judgment Rule, 2.21 is excluded from the Evidentiary Hearing 2.17 rule number or sub-parts, and because it does not state that the 2.17 procedures -- or even any procedures for keeping a record of the proceedings or how to go about setting hearings or duties or requirements for same, -- (other than the TRCP rules for the relief itself in the motions) before the DCGs in the attorney discipline system for Texas. – it is unconstitutionally vague.

> It is a basic principle of due process that a statute or regulation is void for vagueness if it does not sufficiently identify the conduct that it proscribes or prohibits.[207] Unconstitutionally vague laws are void for three reasons: (1) to avoid punishing people for behavior that they could not have known was forbidden; (2) **to avoid subjective enforcement of laws based on arbitrary or discriminatory interpretations by government officials; and** (3) to avoid any chilling effect on the exercise of free speech rights.[208] The traditional test for vagueness in regulatory prohibitions is whether the regulation is "set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest.[209] Also important is the particular context in which the regulation applies.[210]

Thus, when reviewing a disciplinary rule that only applies to attorneys, the "ordinary person" becomes the "ordinary lawyer."[211] The ordinary lawyer is different because lawyers have "the benefit of guidance provided by case law, court rules and the

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[207] *See Grayned v. City of Rockford,* 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972).

[208] *See Grayned,* 408 U.S. at 108–09, 92 S.Ct. 2294.

[209] ." *United States Civil Serv. Comm'n v. National Ass'n of Letter Carriers,* 413 U.S. 548, 579, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973); *see also Howell v. State Bar,* 843 F.2d 205, 208 (5th Cir.1988) (reviewing the constitutionality of former Texas Disciplinary Rule 1–102(A)(5)); *Musslewhite v. State Bar,* 786 S.W.2d 437, 441 (Tex.App.—Houston [14th Dist.] 1990, writ denied) (reviewing the constitutionality of former Texas Disciplinary Rule 2–101).

[210] *See Gentile v. State Bar,* 501 U.S. 1030, 1048, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991).

[211] *See Howell,* 843 F.2d at 208

'lore of the profession.' "[212] **Even the ordinary lawyer could not discern the procedural due process norms from the Rule 2.21 lack of procedures.**

In general, there is "greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe."[213] In Texas, disciplinary proceedings are civil in nature.[214] However, there is a competing interest that requires this Court to review alleged statutes under this test for under a higher standard than normally applied to civil regulations when a regulation is capable of interfering with a party's right to free speech, courts should "demand[ ] a greater degree of specificity than in other contexts."[215]

> The Supreme Court has stated that "perhaps the most important factor affecting the clarity that the Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally protected rights. If ... the law interferes with the right of free speech ... a more stringent vagueness test should apply." [216]
>
> While courts have repeatedly held that a lawyer's free speech rights can be restricted more than that of the ordinary person, this does not mean that the First Amendment does not constitutionally protect a lawyer's speech.[217] "[A] lawyer is a person and he too has a constitutional freedom of utterance and may exercise it to castigate courts and their administration of justice."[218]

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[212] *Howell,* 843 F.2d at 208 (citing *In re Snyder,* 472 U.S. 634, 645, 105 S.Ct. 2874, 86 L.Ed.2d 504 (1985)).

[213] *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 498–99, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982).

[214] *See State Bar v. Evans,* 774 S.W.2d 656, 657 n. 1 (Tex.1989).

[215] *Smith v. Goguen,* 415 U.S. 566, 573, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974); *see also Grayned,* 408 U.S. at 109 n. 5, 92 S.Ct. 2294.

[216] *Village of Hoffman Estates,* 455 U.S. at 499, 102 S.Ct. 1186.

[217] *See Gentile,* 501 U.S. at 1071, 111 S.Ct. 2720.

[218] *In re Sawyer,* 360 U.S. 622, 666, 79 S.Ct. 1376, 3 L.Ed.2d 1473 (1959) (Frankfurter, J., dissenting).

Here Rule 2.21 is capable of interfering with lawyers' free speech rights and that[219] Rule 2.21 contains a constitutional regulation of speech, that does not change the fact that the Rule is capable of interfering with speech. Therefore, irrespective of the Rule's civil nature and irrespective of whether Rule 2.,21. is a constitutionally permissible restriction on speech, the more stringent void-for-vagueness standard applies and greater degree of specificity is required.[220] "[V]agueness challenges to statutes *which do not involve First Amendment freedoms* must be examined in the light of the facts of the case at hand."[221] However, the United States Supreme Court has held in other cases that when a statute purports to prohibit speech, a defendant may challenge it for vagueness though the statute is not vague as applied to the defendant's conduct.[222] Otherwise, the "continued existence of the statute in unnarrowed form would tend to suppress constitutionally protected rights."[223] Whether it is considered an impingement free speech, or not, it is absolutely an impingement of the rights of attorneys under the CDC's thumb. A statute which prohibits conduct that is not sufficiently defined is void for vagueness.[224]

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[219] *Comm'n for Law. Discipline v. Benton,* 980 S.W.2d 425, 436 (Tex. 1998).

[220] *See Smith,* 415 U.S. at 572–73, 94 S.Ct. 1242; *see also Gentile,* 501 U.S. at 1051, 111 S.Ct. 2720 (concluding that though a lawyer disciplinary rule was a constitutional restriction on speech, a more stringent void-for-vagueness standard applied because the rule prohibited speech).

[221] *Village of Hoffman Estates,* 455 U.S. at 495 n. 7, 102 S.Ct. 1186 (emphasis added).

[222] *See Kolender v. Lawson,* 461 U.S. 352, 358 n. 8, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983); *Gooding v. Wilson,* 405 U.S. 518, 521, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972); *Coates v. City of Cincinnati,* 402 U.S. 611, 619–20, 91 S.Ct. 1686, 29 L.Ed.2d 214 (1971) (White, J., dissenting).

[223] *Coates,* 402 U.S. at 620, 91 S.Ct. 1686 (White, J., dissenting); *see also Gooding,* 405 U.S. at 521, 92 S.Ct. 1103.

[224] *See Grayned v. City of Rockford,* 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972).

> The vagueness doctrine is a component of the Constitution's due process guarantee.[225] A vague statute offends due process in two ways: first, it fails to give fair notice of what conduct may be punished, forcing people to guess at the statute's meaning, [226] and threatening to trap the innocent.[227]. Second, it invites arbitrary and discriminatory enforcement by failing to establish guidelines for those charged with enforcing the law, "allow[ing] policemen, prosecutors, and juries to pursue their personal predilections."[228] To survive a vagueness challenge, a statute need not spell out with perfect precision what conduct it forbids. "Words inevitably contain germs of uncertainty."[229] Due process is satisfied if the prohibition is "set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply."[230] Because we are concerned with whether an enactment gives "fair notice to those to whom [it] is directed in [231]scrutinizing a disciplinary rule directed solely at lawyers we ask whether the ordinary lawyer, with "the benefit of guidance provided by case law, court rules and the 'lore of the profession,' " could understand and comply with it, where a disciplinary rule forbidding "conduct that is prejudicial to the administration of justice" not unconstitutionally vague.[232]

"Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."[233] In considering the vagueness challenge to Rule 2.21, the court of appeals must examine the language of the rule on its face.[234]

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[225] *See id.*

[226] *see Coates v. City of Cincinnati,* 402 U.S. 611, 614, 91 S.Ct. 1686, 29 L.Ed.2d 214 (1971).

[227] *see Grayned,* 408 U.S. at 108, 92 S.Ct. 2294

[228] *Smith v. Goguen,* 415 U.S. 566, 575, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974).

[229] *Broadrick,* 413 U.S. at 608, 93 S.Ct. 2908.

[230] *United States Civil Serv. Comm'n v. National Ass'n of Letter Carriers,* 413 U.S. 548, 579, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973).

[231] *Grayned,* 408 U.S. at 112, 92 S.Ct. 2294 (alteration in original) (citing *American Communications Ass'n v. Douds,* 339 U.S. 382, 412, 70 S.Ct. 674, 94 L.Ed. 925 (1950)),

[232] *Howell v. State Bar of Texas,* 843 F.2d 205, 208 (5th Cir.1988).

[233] *See Village of Hoffman Estates,* 455 U.S. at 497, 102 S.Ct. 1186; *NAACP v. Button,* 371 U.S. 415, 433, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963)

[234] *See* 933 S.W.2d at 787–88.

Appellant will also show the rule is vague as applied to her, because the as-applied result provided no clarity for the post-judgment rights and responsibilities of the CDC as prosecutor and Appellant as Respondent, stripped of her law license and ability to earn an income after so many years of hard work to obtain the privilege to practice law, just to have it ripped out from under her by surprise removal. [235] While statutes that "d[o] not indicate upon whose sensitivity a violation ... depend[s]" are likely to run afoul of the vagueness doctrine,[236] a restriction banning only "what men of common intelligence would understand would be words likely to cause [harm]" is less objectionable.[237] Defining the prohibited speech in terms of what effect an ordinary lawyer would expect the speech to have assuages the vagueness doctrine's concern with whether "men of common intelligence must necessarily guess at [the statute's] meaning."[238] Similarly, it reduces the danger of arbitrary enforcement by guaranteeing that the line between compliance and violation does not simply "depend upon whether or not a policeman is annoyed.[239] But the correct question for vagueness purposes is whether the statute's

[235] *Whiting v. Town of Westerly,* 942 F.2d 18, 22 (1st Cir.1991).
[236] *See Coates,* 402 U.S. at 613, 91 S.Ct. 1686.
[237] *See id.* (quoting *Chaplinsky v. New Hampshire,* 315 U.S. 568, 573, 62 S.Ct. 766, 86 L.Ed. 1031 (1942)).
[238] *See id.* at 614.
[239] *Comm'n for Law. Discipline v. Benton,* 980 S.W.2d 425, 439 (Tex. 1998).

language is so unclear that it "encourages" [240], or is "an obvious invitation to" arbitrary enforcement.[241]

A statute or regulation is vague on its face not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all. As a result, "men of common intelligence must necessarily guess at its meaning.". The United States Supreme Court has held that statutes lacking any objective standard do not give notice of the conduct prohibited and are open to arbitrary and discriminatory enforcement.[242]

The post-judgment rules of the TRDP are unconstitutionally vague, where the definition of proceedings includes all hearings of the EVH Panel, but the commission has argued that the post-judgment proceedings are not the Rule 2.17 Evidentiary Hearing, so the Respondent is not entitled to the procedures for a court reporter. **[SCR-1012]**

> A statute, rule, regulation, or order is fatally vague only if it exposes a potential actor to some risk or detriment without giving fair warning of the nature of the proscribed conduct.[243]
>
> Due process is violated only when a required course of conduct is stated in terms so vague that persons of common intelligence must guess at what is required or when there is a substantial risk of miscalculation by those whose acts are subjected to regulation.[244]

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[240] *Comm'n for Law. Discipline v. Benton,* 980 S.W.2d 425, 439 (Tex. 1998). *Kolender,* 461 U.S. at 361, 103 S.Ct. 1855.
[241] *Coates,* 402 U.S. at 616, 91 S.Ct. 1686.
[242] *Comm'n for Law. Discipline v. Benton*, 980 S.W.2d 425, 458 (Tex. 1998). *See Coates,* 402 U.S. at 614, 91 S.Ct. 1686; *accord Kramer,* 712 F.2d at 178.
[243] *See Texas Liquor Control Bd. v. Attic Club, Inc*., 457 S.W.2d 41, 45 (Tex.1970); *State Bar v. Tinning*, 875 S.W.2d 403, 408 (Tex.App.- Corpus Christi 1994, writ denied).
[244] *See Texas Liquor Control Bd*., 457 S.W.2d at 45; *Tinning,* 875 S.W.2d at 408.

> When applying the fair notice test, courts allow business activity greater leeway than they allow penal statutes. [245] In particular, when applying the fair notice test to rules governing lawyers, courts take into consideration the skills and resources available to lawyers to assist them in evaluating the propriety of their conduct.[246]
>
> Reasonable certainty does not preclude use of ordinary terms/express ideas in common understanding.[247]
>
> So as to not waive the issue, this argument requires adequate briefing[248] and to that end, the Supreme Court has held that a reviewing court should address constitutional issues that are raised, even if not fully argued in a brief.[249]

As seen even in the CFLD appellate Counsel's Responses to the post-judgment events before the EVH Panel 14-2 on remand, the area of law is not set and confusing to each party, indicating that the statute fails the fair notice test, where even the CDC's counsel admits that there is no procedure – which has caused inordinate delays and inequity to Appellant in these proceedings. At minimum, the rule being unconscionably vague necessitated BODA's emergency relief and November 2023 ruling to determine how the Panel hearings must transpire for recording the post-judgment proceedings. The application to Appellant and the general application to Respondent attorneys is unconstitutional, and as they stand shall remain so for other Respondent attorneys (*and also the CFLD and CDC for that matter*).

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[245] *See Pennington v. Singleton,* 606 S.W.2d 682, 689 (Tex.1980); *Tinning,* 875 S.W.2d at 408.

[246] *See People v. Morley*, 725 P.2d 510, 516 (Colo.1986); *Tinning,* 875 S.W.2d at 408.

[247] *See Tinning*, 875 S.W.2d at 408.

[248] *See Fredonia State Bank v. American Life Ins.Co.,* 881 S.W.2d 279, 284-85 (Tex.1994); *Kosowska v. Khan*, 929 S.W.2d 505, 509 (Tex.App.-San Antonio 1996, writ denied).

[249] *See Federal Sign v. Texas Southern Univ.,* 951S.W.2d 401, 410 (Tex.1997).

B. RULE 2.11 FOR VENUE IS SIMILARLY VOID FOR VAGUENESS AS THE TIME PERIOD ON WHICH THE CDC GETS TO DECIDE ARBITRARILY IT WILL APPLY THE VENUE PROVISION ARE INEQUITABLY APPLIED WITHOUT STANDARD RESULT/CHOOSING TO APPLY TO THE PROVISION ON A WHIM AND IN VIOLATION/AGAINST ITS OWN POLICY/PROCEDURAL GUIDE'S DICTA

Further, the Rule 2.11 venue provisions, while seeming straight forward, do not specify **when** the location of proper venue is to be determined. Although understanding that different versions of he rules would need a rule to specify what version of the rules would apply to a grievance – and make it clear that the applicable version to a given grievance is the version in effect at the time the grievance is filed, then the absence of this timing delineator makes the 2.11 venue provisions void for vagueness.

By not specifically stating that the venue for an IVH is proper in the venue of where the allegations are to have occurred or the date of filing the grievance, or on the first date of misconduct occurred as cited in the grievance – or for an EVH, where venue is proper for the Respondent's principal place of practice **at the time the grievance is filed, or the principal place of practice at the time just cause it determined, or at the time the election letter is sent, etc.,** or any other time, then the rule is void for vagueness as it has created opportunity for Guerra to arbitrarily define what the definition of principal place of practice means, choosing Denton apparently, because Appellant did not receive or answer the election letter, even though Appellant never asserted that Denton was her principal place of practice, merely placed the Regus office address as her mailing address on the

SBOT website. Therefore, as applied, the Rule is unconstitutional as it has allowed for Guerra's arbitrary application on her whim for venue.

Even though, the CDC-drafted Guide to Panel Proceedings for the year that the North Grievance was filed, 2020, relates exactly the missing "when," (under venue provisions, default provisions and address provisions) to provide the context which are otherwise missing from the rules. **It explicitly states** that venue is proper for the Respondent's principal place of practice WHEN THE GRIEVANCE IS FILED.[250] Therefore, Guerra's assertion/the Panel's signed Orders for FOFCOL **[APP7] [APP 8]** of venue being proper in Denton County, Texas because that is where Appellant's principal place of practice *was at the time the Evidentiary Petition was filed* -- is against even the CDC's internally drafted state agency handbook for these proceedings; not to mention, patently false, as Appellant's principal place of practice has always been Dallas County, Dallas, Texas.

(9) ERROR NO. NINE

THE EVH-14-2 PANEL ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT'S MOTION TO STAY THE JUDGMENT, APPELLANT MET HER BURDEN OF PROVING THAT HER INTERIM PRACTICE WAS NOT A DANGER TO ANY CLIENTS OR THE PUBLIC

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Pursuant to TDRP 2.24, when a Respondent attorney has received a suspension, they have 30 days from entry of judgment to petition the Evidentiary Panel to stay a judgment of suspension, and the

> Respondent carries the burden of proof by preponderance of the competent evidence to establish that the Respondent's continued practice of law does not pose a continuing threat to the welfare of clients or to the public. An order of suspension must be stayed during the pendency of any appeals therefrom if the Evidentiary Panel finds that the Respondent has met that burden of proof.[251]

On a motion to stay a judgment of suspension, the Appellant was to prove, by preponderance of the evidence, "that the [Attorney's] continued practice of law does not pose a continuing threat to the welfare of [Attorney's] clients or to the public."[252] Where the rules do not appear to expressly contemplate an appeal from an order denying a motion to stay, the substantial-evidence standard of review under Rule 2.24 is generally applicable in a disciplinary appeal, and per the CDC in *Scarborough,*[253] it should govern here. Under same, the Panel's findings are presumed to be supported by substantial evidence, and the Appellant challenging the findings bears the burden of proving otherwise[254] – by a showing that the record does not provides any reasonable basis for the body's findings, and denial.[255] But even if it is instead, the standard is an abuse of

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[251] TRDP 2.24.
[252] TRDP. 2.25.
[253] *See* Brief of Appellee, BODA Cause No. 56375.
[254] *City of El Paso v. Pub. Util. Comm'n of Tex.,* 883 S.W.2d 179, 185 (Tex. 1994).
[255] *City of El Paso v. Pub. Util. Comm'n of Tex.,* 883 S.W.2d 179, 185 (Tex. 1994); *Granek v. Texas State Bd. Of Med. Examiners*, 172 S.W.3d 761, 778 (Tex. App. Austin 2005, pet. denied).

discretion, where the Panel did not apply any rules, did not provide any findings of fact applicable to the standard, and did not have evidence it used to support its decision nor make the decision based on any principals, instead arbitrarily denying same.

> For the IVH held on November 12, 2020 IVH 6-3 Panel thought that a non-sanction was warranted (and Appellant did not even get to present any of her documentary evidence in the hearing, nor did she have any of the CDC's evidence prior or during the setting). Still, so minor as to not warrant a sanction at all – where the allegations of not communicating and not fully complying with discovery can easily be shown as mischaracterizations of the facts when the client was the one not communicating, running off to another state and in a remote location without service and not responding to many other persons in the personal injury claims process so as to warrant his termination as a patient from his medical providers **[SCR-0579-0580]** and ignoring the claims process, which included Appellant, as his attorney

Here, the record is devoid of any evidence that Appellant's continued practice of law would have posed any threat, let alone a continuing threat to the welfare of clients or to the public. First, the allegations in this case –although never heard by the EVH Panel based on the default, and all allegations merely taken as true – but even still, are only those of a failure to communicate with the client and did not keep up with discovery responses from opposing counsel -- not crimes of dishonesty or financial gain or any allegation of the moral turpitude variety or any that allege actual injury which would reflect that Appellant was ever a danger to clients or the public.

Second, the alleged harm, although there was none, and --as seen in the GRP eligibility criteria-- Appellant's conduct did not result in any substantial injury to the client, but even still, literally occurred in 2019, and the case dismissal, which could be viewed as injury objectively, could not here because the client would not provide dates to

Appellant to give to opposing counsel to take his deposition, and further, would not participate in his own continued medical treatment and sought instead to only use future cost of surgery recommendations. This was a non-starter because without causal connection to prove-up same, being an aggravation case instead of an acute injury matter, upon learning of the extensive claims history and previous juries sustained by North, therefore, there was no real monetary injury in the case being dismissed. Which, was only a direct result of the choice and option of the client in monetary loss/case value, and the dismissal itself was only at the decision of the client by refusing to provide his deposition dates for opposing counsel in discovery.

> This grievance filed in January of 2020, was based on October 2019 UM case dismissal which very clearly states in the dismissal order that Plaintiff's deposition was the outstanding matter never provided.
>
> Appellant was still a solo-practitioner, and the DFJ was not entered until three years later in 2023, now 2025, five years later --and there have not been any grievance turned complaint since 2020, which were STILL only based on vestiges of 2019 and Appellant's solo-practice but in any event, Appellant closed out the last case for the last client associated with her law firm, as an attorney independent an organization, in October 2022**. [SRC-0075]. No possible threat to the public can be seen from any of the facts before the Panel.**

EVH-14-2 Panel wholly ignored the facts as Appellant presented them. Denying Appellant the stay was without substantial evidence and in an abuse of its discretion, because any person applying the standard of harm and risk to clients and the public, who heard Appellant's status quo and request, would have allowed her to continue the brand-new job it took two years and three interviews to obtain; would have comprehended that

Appellant's brand-new job of January 17, 2023, was the most insulated from clients or harm as one can be and still have the tile of attorney.

> Appellant showed that the position, as a temporary worker -- but in the door, in-house for an insurer, which newly began January 17, 2023. **[CR-0585]** did not yet afford her any independence at all, she did not have any assigned cases nor her own docket; she was not speaking to any clients directly, only adjusters, if at all, she was not filing any documents herself with the Courts.
>
> So new, she was not assigned to court appearances or even arguing the motions she was drafting but merely completing various drafting tasks and projects on other attorneys' cases for their review and filing. She had no clients from her solo-practice and she had ceased being a solo-practitioner years before.
>
> The farthest thing from even the possibility of harming the public while still completing tasks appropriate for a law license.

What the denial of a stay actually did was earn Appellant the first ever termination of her entire life, from a position of employment that she will never get again, and that took two years and three interviews to obtain.

Where the burden was on Appellant to show that she was not a danger to clients or the public, she did just that. It was an abuse of discretion to deny her motion to stay the judgment pending this appeal, especially in light of the non-findings issued. The Order denying the relief and the devoid FOFCOL are devoid of any evidence supporting the Panel's decision -- where not one fact finding is included as to the elements Appellant did nor did not meet. The allegations of her sanction were not heard by the EVH 14-2 Panel because it was a default, so the allegations were merely taken as true without the Panel having heard evidence at all, therefore even more relevant to its review should have been the information presented to the Panel for the first time in the post-judgment proceedings.

> Yet, without any guiding principles and with literally no reasoning whatsoever the Panel arbitrarily denied same without any substantial evidence to support the findings, the FOFCOL wholly devoid of fact, actually drafted in the least effective way FOFCOL could be presented. If this were an abuse of discretion standard, then the Panel was arbitrary and capricious, flippant, even, in all rulings. No reasoning or application or legal analysis was used on any one of the orders entered against Appellant.

The court of Criminal Appeals actually applied the standard to criminal attorneys for ineffective assistance claims by Defendants represented by the attorney while suspended and held that "[a]n attorney's failure to respond to a grievance committee, even a pattern of failing to respond, does not indicate an inability to represent criminal defendants capably,"[256] and where the evidence will show that IVH Panel 6-3 found no sanction applicable, if any, at most only minor misconduct-- then Appellant could not be considered a danger to any clients and definitely not the public. She satisfied her burden, and thus, should have had the judgment stayed pending the outcome of this appeal, for which BODA is implored to find error.

(10) ERROR NO. TEN

THE EVH-14-2 PANEL ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT'S MOTION FOR NEW TRIAL:

Denial of a motion for new trial is reviewed for abuse of discretion.[257] The Panel abused its discretion when it denied Appellant's motion for new trial: improperly

[256] *Cantu v. State* 930 S.W.2d 594, *594; 1996 Tex. Crim. App. LEXIS 190.
[257] *Waffle House, Inc. v. Williams*, 313 S.W.3d 796, 813 (Tex. 2010).

applying the law -- and improperly excluding the evidence Appellant was entitled to introduce, demonstrating why the default should have been set-aside.

> The ***Craddock* Factors**: the court set forth three requirements that a defendant must satisfy to set aside a default judgment and obtain a new trial **when properly served**: (1) the failure to file an answer or appear at a hearing was not intentional or the result of conscious indifference, but was a mistake or accident; *[(2) a meritorious defense; and (3) a new trial will not result in delay or prejudice to the plaintiff.]*[258] The first element is the only inquiry required for the new trial threshold when the service at issue was not properly executed by the rules, as here.

The CDC/Commission and EVH 14-2 Panel's refusal to vacate the void judgment by Motion for New Trial, even after Appellant presented undisputed proof of defective service, is irreconcilable with constitutional mandates and binding precedent. Rule 2.21 of the Texas Rules of Disciplinary Procedure provides the following instructions for post-judgment motions: "Any motion for new hearing or motion to modify the judgment must comport with the provisions of the applicable Texas Rules of Civil Procedure pertaining to motions for new trial or to motions to modify judgments."[259] Rule 320 of the Texas Rules of Civil Procedure states that "[n]ew trials may be granted, and judgment set aside for good cause, on motion or on the court's own motion on such terms as the court shall direct.[260] Further, Rule 324(b) provides that "a point in a motion for new trial is a

[258] *Craddock v. Sunshine Bus Lines, Inc.*, 134 Tex. 388, 133 S.W.2d 124, 126 (1939).
[259] TRDP 2.21.
[260] TRCP 320.

prerequisite to the following complaints on appeal: (1) A complaint on which evidence must be heard such as…. failure to set aside a judgment by default."[261]

> A motion for new trial following a defective default judgment does not have to meet the Craddock requirements and should not be confused with a motion for new trial after a proper default judgment….when "the record fails to show a valid issuance and service of citation to the defendant, or a voluntary appearance prior to rendition of the default judgment, the judgment must be reversed" without the defendant having to "excuse his failure to appear, and set up a meritorious defense.[262]
>
> "[W]hen a default judgment is attacked by motion for new trial[,]" the parties may introduce evidence such as "affidavits, depositions, testimony, and exhibits" that demonstrate why the default judgment should be set aside.[263]

Appellant filed/emailed notice of the sims and Shelton case holdings with her Motion for New Trial, and the original Exhibit Binder the first time on March 10, 2023, and then again on March 11, 2023. Those links, still present within the CDC's original emails were re-produced back to Appellant and BODA from the CDC **in the Clerk's record. To date, currently available for download in the emails, produced by the CDC and reflecting the links work now, and therefore, worked then, too; illustrating that there was no reason to exclude the exhibit binder and the CDC's assertions about the file not opening were false.**

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[261] TRCP 324(b)(1).

[262] *See Dan Edge Motors, Inc. v. Scott*, 657 S.W.2d 822, 824 (Tex. App.—Texarkana 1983, no writ).

[263] *Fid. & Guar. Ins. Co. v. Drewery Constr. Co.,* 186 S.W.3d 571, 573–74 (Tex. 2006) (per curiam) (*citing Gold v. Gold,* 145 S.W.3d 212, 214 (Tex. 2004) (per curiam)).

Further, the information contained within that binder, now available in the record from the formal bills of exception, wherein reflecting the dates the CDC was provided Appellant's correct address information, corroborating that the CDC intentionally did not serve Appellant with process. Each time Appellant provided her residential address to the SBOT **was relevant and material to the motion for new trial/*Craddock* factors, even if reviewed under the wrong standard for "proper" service, which this was not, as Appellant was never served with process.**

Yet, Guerra improperly provided the standard under *Craddock* to the Panel for proper service of process cases, **not for improper service,** and informed the EVH Panel 14-2 it must only consider the evidence as they heard it, which was solely based on **the default hearing**, not on the March 24, 2023 setting. If the Panel even applied any law, it was the wrong law. However, based on the FOFCOL filed for the Motion for New Trial, it is unclear what was applied where no factual findings explaining the ruling were actually made, but based on the erroneous exclusion of the exhibit binder and its contents – which Biggs advised Appellant was denied and she could not introduce at the March 24, 2023 hearing because it was "late filed," being wholly without any legal basis.

In a hearing by ambush, **as it was never noticed at all**, let alone for the date and time of a hearing that Appellant did not set and Guerra ran rough-shod over Appellant's wishes for submission forcing her to appear and argue **both** Motions under duress –

without a court reporter, or else she would be considered in default under a failure to appear -again

Failing to file an answer intentionally or due to conscious indifference means "the defendant knew it was sued but did not care."[264] When determining whether the defendant's failure to file an answer was intentional or due to conscious indifference, a court looks to the knowledge and acts of the defendant,[265] "some excuse, although not necessarily a good one, will suffice to show that a defendant's failure to file an answer was not because the defendant did not care."[266]

Because the *Craddock* standard is equitable, its application will vary on a case-by-case basis.[267] The arbitrary denial of all Appellant's documentary Exhibits submitted to the CDC "Clerk of the Panel" prior to the setting date, but without clear notification to cure, where those documents were material to the Panel's rendition of evidence, inclusion should have changed the outcome of the hearing. The Exhibits further negated the allegations of professional misconduct and satisfied meritorious defense to the rule violations alleged, even though the CDC was aware of all these facts since Appellant turned in her Grievance Response to Wolde on April 6, 2020; further, Guerra was on notice

[264] *Fid. & Guar. Ins. Co. v. Drewery Const. Co.*, 186 S.W.3d 571, 576 (Tex. 2006).
[265] *Dir., State Emps. Workers' Comp. Div. v. Evans*, 889 S.W.2d 266, 269 (Tex. 1994).
[266] *Sutherland v. Spencer*, 376 S.W.3d 752, 755 (Tex. 2012) (quoting *In re R.R.*, 209 S.W.3d 112, 115 (Tex. 2006)).
[267] *Sutherland v. Spencer*, 376 S.W.3d 752, 756 (Tex. 2012).

of all the reasons that the underlying case did not reflect just cause for misconduct at least as of the date of the IVH Hearing, making the filing of the Evidentiary Petition frivolous and in bad faith, abusing her prosecutorial powers in bad faith knowing that Appellant had not committed misconduct on these facts, and then intentionally failing to serve notice of the action and improperly Panel forum shopping and panel-stacking to create bias and prejudice against Appellant in the proceeding to wrongfully obtain the DFJ.

Appellant established that the failure to timely file an answer was neither intentional nor the result of conscious indifference. In general, courts view this factor with a significant degree of leniency: a defendant satisfies her burden as to the first *Craddock* element when 1) her factual assertions, if true, negate intentional or consciously indifferent conduct by the defendant ***and 2)*** those factual assertions are not controverted by the plaintiff.[268]

> a law office mistake was found to satisfy the lack of conscious indifference prong: holding conscious indifference negated where defendant entrusted a friend to drop off the citation at her attorney's office and the defense attorney noted that the citation was inadvertently placed in defendant's old file.[269] [270]
>
> Still more relevant herein, in another case, opposing counsel caused **"accidents leading" to default judgment --** drafted an original petition that contains confusing references, did not communicate after towards **serving citation, did not warn of the impending default judgment,** which supports contentions of

[268] *See Fidelity and Guar. Ins. Co.*, 186 S.W.3d at 576.
[269] *See In re A.P.P.*, 74 S.W.3d 570, 574 (Tex. App.—Corpus Christi 2002, no pet.)
[270] *XL Ins. Co. of New York, Inc. v. Lucio*, 551 S.W.3d 894, 898–903 (Tex. App. 2018).

> *Cervantes*[271], *Levine*[272], *and* ***the*** **Texas Lawyer's Creed provision: a lawyer will not take advantage, by causing any default or dismissal to be rendered, when the lawyer knows the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.**[273]

In determining if the defendant's factual assertions are controverted, the court looks to all the evidence in the record.[274] **Here, Guerra did not swear to or verify her response, or in any filing, and she did not bring forth any evidence that controverted Appellant's plethora of information regarding her mailing addresses, her physical residence or the email filter misconfiguration, all verified and brought under Declaration of Appellant.** No service was had on Appellant, she never received notice of the Evidentiary proceeding until the Judgment email from Biggs. Where the misconfigured email filter was a mistake, it still did not justify the failure of personal service on Appellant.

The EVH Panel abused its discretion when it did not grant the Motion for New Trial, having no rational basis on which to deny the motion, and where Petitioner offered no evidence to support ruling against Appellant; especially in viewing the trend in Texas courts for equity in granting new trials. In no event did Guerra provide any legal precedent to support ruling in favor of Appellee either *(with the exception of providing the*

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[271] *Cervantes*, 2009 WL 3682637, at *8,

[272] *Levine v. Shackelford, Melton & McKinley, L.L.P.*, 248 S.W.3d 166, 167 (Tex. 2008) (per curiam).

[273] *See* Tex. Lawyer's Creed—A Mandate for Professionalism, § III Lawyer to Lawyer, ¶ 11, reprinted in Texas Rules of Court 736 (West 2018).

[274] *In re R.R.*, 209 S.W.3d at 115 (citing *Dir., State Employees Workers' Comp. Div. v. Evans*, 889 S.W.2d 266, 269 (Tex. 1994)).

three Craddock factors, still being the wrong legal framework, as the full three are for proper service cases, but this case was of improper service, and even still – the factors were not applied to the facts herein).

The CDC prevailed ***without any justification as no legal citation or application*** **of the non-evidence *it did not raise* to the law *it did not cite* to support the legal or factual outcome of the hearing –**brought in bad faith without notice and without any meaningful opportunity to be heard in continued violations of Appellant's right to due process. The Panel abused its discretion in denial of the relief and Appellant seeks a ruling on this error from BODA.

(11) ERROR NO. ELEVEN

THE EVIDENCE DOES NOT SUPPORT THE EVH 14-2 PANEL'S FOFCOLS WHICH ORDERS ARE SO CONCLUSORY, THEY'RE FRIVOLOUS.

> Under the TRCP 297-299, the non-prevailing party must timely request findings of fact and conclusions of law or all findings necessary to the court's judgment, **if supported by the record**, will be implied.[275]
>
> Complaint regarding the legal or factual insufficiency of evidence—including a complaint that the damages found by the court are excessive or inadequate—may be made for the first time on appeal in the complaining party's brief.[276] *(challenges to the legal or factual sufficiency of the evidence in a nonjury case could be raised for the first time on appeal[277]).*

[275] TRCP 297-299; *Vickery v. Commission for Lawyer Discipline*, 5 S.W.3d 241, 251 (Tex. App.—Houston [14th Dist.] 1999, pet. denied); *Commission for Lawyer Discipline v. Texas Attorney,* No. 55619, 2015 WL 5130876, at *2 (Tex. Bd. Disc. App.—Aug. 27 2015).

[276] TRAP 33.1(d).

[277] *Quinn v. Nafta Traders, Inc.*, 360 S.W.3d 713 (Tex. App. Dallas 2012).

Appellate complaints relating to findings of fact and conclusions of law fall into three categories:

1) the absence of findings of fact;
2) the sufficiency of the evidence supporting the findings of fact and correctness of conclusions of law, if findings are filed; and
3) the omissions or lack of completeness of the findings of fact, if filed.

When no FOFCOL are issued, it will force an Appellant to challenge sufficiency **of each ground, disadvantaged without findings of fact**. When the FOFCOL **do not make any specific factual findings relative to the motion or relief at issue,** it is a nullity, **and equates to a failure to enter**, which is exactly what happened here: no relevant or meaningful facts are contained in the FOFCOL, merely improperly characterized propositions of law regurgitated in both sections, which are to be reviewed de novo by BODA herein. ***See Section X.I.A***

Both the FOFCOL for the Motion to Stay and the Motion for New Trial are identical from numbers 1-7, and therefore numbers 1-7 of both the FOFCOL are set forth by analysis below:

NO.	Purported Findings of Fact	Purported Conclusions of Law	In actuality…
1	Petitioner is the Commission for Lawyer Discipline ("Petitioner").		Yes, fact, not challenged.
2	Respondent is Lauren Ashley Harris, Texas Bar Number 24080932 ("Respondent")		yes, fact, not challenged.
3	Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.		yes, fact, not challenged.
4	Respondent's principal place of practice was Denton County, Texas, at time of filing the Evidentiary Petition. ~~This~~	This Court has jurisdiction over the parties and subject matter of this case, and venue is	Partially Fact and partially conclusion of lawchallenged

	~~Court has jurisdiction over the parties and subject matter of this case, and venue is appropriate in Denton County, Texas.~~	appropriate in Denton County, Texas.	
5	~~The Evidentiary Panel finds that Respondent was properly served with the Evidentiary Petition~~. Respondent was required to file a responsive pleading to the Evidentiary Petition pursuant to Rule 2.17B of the Texas Rules of Disciplinary Procedure. Respondent failed to timely file a responsive pleading to the Evidentiary Petition.	The Evidentiary Panel finds that Respondent was properly served with the Evidentiary Petition.	Partially Fact and partially legal conclusion— challenged
6	~~The Evidentiary Panel finds that Respondent was properly served with notice of default hearing; though, notice was not required, as per Rule 2.170~~. Respondent failed to appear at default hearing-	The Evidentiary Panel finds that Respondent was properly served with notice of default hearing; though, notice was not required, as per Rule 2.170.	Partially Fact and partially legal conclusion
7	The Evidentiary Panel finds that the Default Judgment of Partially Probated Suspension, entered on February 7, 2023, for twelve-month partially probated suspension, and which includes a six-month active suspension period from the practice of law, imposed upon Respondent in this disciplinary matter for violating Rules 1.01 (b)(1) and 1.03(a) of the Texas Disciplinary Rules of Professional Conduct, ~~was properly entered with an appropriate sanction.~~	"Properly entered for violating Rules 1.01 (b)(1) and 1.03(a) of the Texas Disciplinary Rules of Professional Conduct, with appropriate sanction of Default Judgment of Partially Probated Suspension, entered on February 7, 2023, for twelve-month partially probated suspension, and which includes a six-month active suspension period from the practice of law,	Partially Fact and partially legal conclusion— challenged

But still, putting Appellant at a disadvantage where without findings of fact, unable to merely refine the issues on appeal, and instead must raise error to any that could be a result of the blanket rulings denying her relief; forced to expend resources to brief all issues, rather than those forming the basis of the Panel's decision.

> Putting Appellant in the position of having to guess the Panel's reasons for rendering judgment defeats the inherent purpose of Rules 296 and 297, which is to narrow the basis of the judgment to the relevant portion of the multiple claims and

> defenses and hereby reducing the number of contentions that the Appellant must brief.[278]

The FOFCOL in this matter issued by the EVH Panel 14-2 and drafted by Guerra do not provide any facts at all relative to the motions denied by the Panel. The entre purpose of FOFCOL is frustrated if the FOFCOL do not make findings of fact which explain the ruling of the Panel as applied to the law of the matter on which the ruling was made, nor do they narrow down the contentions that Appellant must raise in this appeal. In fact, the content of the FOFCOL demonstrates that Guerra does not comprehend FOFCOL, as a concept, and furthermore, does not/did not comprehend the FBOE proceeding, either. This is supported by the complete failure to make any legal analysis or citation, throughout the EVH case in any filing, and where none of the Petitioner's filings were sworn or made under declaration or affidavit *(but for servicemen's and attorney's fees),* nor attached relevant evidence or proof of any of Petitioner's positions, combined with quality of the Petitioner's filings in this action.

Failure to adequately research is a breach of the standards of maintaining competence in matters for which an attorney has knowledge -- or becomes -- knowledgeable for standards of competence owed to clients, and to the courts. Guerra's lack effort in attempting to complete correctly any of the matters, in drafting, research

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[278] *See Liberty Mut. Fire Ins. v. Laca,* 243 S.W.3d 791, 794 (Tex. App.—El Paso 2007, no pet.).

citation, or proper procedure made in the proceedings before the EVH Panel 14-2, where the content of each and every filing were both factually and legally deficient – are tantamount to Petitioner 's counsel failing to appear.

Where DGC 6, IVH Panel 6-3 was the equivalent of a grand jury, but the only body to have heard the facts of this matter akin to a bench trial, IVH Panel 6-3 was the sole judge of the Appellant's credibility, and the Panel was free to choose to believe one witness over another.[279] The reviewing court "may not substitute our judgment for that of the trial court.[280] Yet, there is not substantial evidence ***to support EVH 14-2s Findings of Disciplinary Rule Violations:*** the Commission did not present sufficient facts to support its allegations that Appellant violated Disciplinary Rules 1.01(b)(1), and 1.03(a):

> Rule 1.01(b)(1) provides that, in representing a client, a lawyer shall not "neglect a legal matter entrusted to the lawyer."[281] Rule 1.01 specifies that, as used in that rule, " 'neglect' signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients."[282]
>
> Rule 1.03(a) requires a lawyer to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."[283] Rule 1.03(b) provides that a lawyer shall "explain a matter to the extent reasonably necessary to permit the client to make informed

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[279] *Woods*, 501 S.W.3d at 196 (citing *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 761 (Tex. 2003), and *Zenner v. Lone Star Striping & Paving, L.L.C.*, 371 S.W.3d 311, 314 (Tex. App.—Houston [1st Dist.] 2012, pet. denied)).

[280] *McKeehan v. Wilmington Sav. Fund Soc'y, FSB*, 554 S.W.3d 692, 698 (Tex. App.—Houston [1st Dist.] 2018, no pet.); *Woods*, 501 S.W.3d at 196.

[281] TDRPC. 1.01(b)(1), reprinted, TEX. GOV'T CODE ANN. , tit. 2, subtit. G, app. A (Tex. State Bar R. art. X, § 9).

[282] TDRPC. 1.01(c).

[283] TDRPC 1.03(a).

decisions regarding the representation."[284] A lawyer may not "withhold information to serve the lawyer's own interest or convenience."[285]

A. FOFCOL MOTION TO STAY

The EVH 14-2 Panel's denial of Respondent's Motion to Stay Execution of the DFJ in itself reflects a procedural posture, not an adjudication, but the accompanying FOFCOL contains no meaningful factual application, whatsoever. The order simply reiterates that Respondent "failed to meet her burden under Rule 2.24," without referencing the extensive arguments and record that were before the Panel. This refusal to consider the actual evidence before it, especially in the context of a motion to stay that raised separate legal questions, constitutes arbitrary and capricious action. The Panel did not address Respondent's request for preservation of the record, did not evaluate the harm from immediate suspension, and did not offer any balancing of public risk versus procedural fairness. The conclusion that Respondent poses a "continuing threat to the public" is declared without explanation or evidence, and Appellant's other requests for relief were all denied pursuant to the Orders' stipulation for same, if not granted but never referenced the evidentiary objections Respondent raised, and never addressed the denial of exhibits, venue objections, lack of Panel voting records, or additional Panel hearing reports, or absence of notice—all issues squarely presented. Because the Panel included no elements

[284] TDRPC 1.03(b).
[285] TDRPC 1.03 cmt. 4.

of those issues in its findings, Rule 299 expressly prohibits any presumption that they were resolved in support of the judgment.

The Panel was required, but failed, to make specific findings on the material issues raised by Appellant. Its refusal to do so is not harmless—it undermines the law's requirement that judicial decisions be reasoned, reviewable, and just. Instead, the Panel issued a procedurally defective denial, illustrated by a conclusory FOFCOL devoid of record support, further demonstrating that the judgment should be reversed. The FOFCOL for the Motion to Stay numbers 8-12 present as follows **[APP. 7]**

NO.	Purported Findings of Fact	Purported Conclusions of Law	In actuality…
8	~~The Evidentiary Panel finds that Respondent failed to meet her burden under Rule 2.24 of the Texas Rules of Disciplinary Procedure, which prescribes that Respondent carries the burden of proof by preponderance of the evidence to establish by competent evidence that the Respondent's continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public".~~	The Evidentiary Panel finds that Respondent failed to meet her burden under Rule 2.24 of the Texas Rules of Disciplinary Procedure, which prescribes that Respondent carries the burden of proof by preponderance of the evidence to establish by competent evidence that the Respondent's continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public".	Legal conclusion De Novo
9	Upon hearing on March 24, 2023, regarding Respondent's Motion to Stay Execution of Default Judgment for Partially Probated Suspension Pending Panel Rulings and/or Appeal and Request for Record, the Evidentiary Panel denied Respondent's motion.	~~Upon hearing on March 24, 2023, regarding Respondent's Motion to Stay Execution of Default Judgment for Partially Probated Suspension Pending Panel Rulings and/or Appeal and Request for Record, the Evidentiary Panel denied Respondent's motion.~~	Completely A Finding of Fact and challenged

10		The Evidentiary Panel concludes that Respondent has failed to meet her burden of proof by preponderance of the evidence, under Rule 2.24 of the Texas Rules of Disciplinary Procedure, and has failed to show that her continued practice of law as an attorney would not pose a continuing threat to the welfare of her clients or to the public.	Conclusion of Law, Challenged DUPLICATE of No. 8
11	default judgment is not stayed but will remain in effect in accordance with the terms of said judgment.	The Evidentiary Panel concludes that the Default Judgment of Partially Probated Suspension, entered on February 7, 2023, was properly entered with an appropriate sanction ~~and that this default judgment is not stayed but will remain in effect in accordance with the terms of said judgment.~~	Partially Fact and partially legal conclusion— Challenged REPEAT IDENTIACAL TO NUMBER 7
12	The Order on Respondent's Motion to Stay Execution of Default Judgment for partially Probated Suspension Pending Panel Rulings and/or Appeal and Request for Record, was signed by the Panel Chair and was entered on March 24, 2023, and denied Respondent's motion.	~~The Order on Respondent's Motion to Stay Execution of Default Judgment for partially Probated Suspension Pending Panel Rulings and/or Appeal and Request for Record, was signed by the Panel Chair and was entered on March 24, 2023, and denied Respondent's motion.~~	Completely A Finding of Fact and challenged

B. FOFCOL MOTION FOR NEW TRIAL

Respondent presented a timely, well-grounded motion that challenged the lack of proper service, the entry of a default judgment without due process, the improper escalation of the recommended sanction, and the serious prejudicial impact of imposing

an active suspension without a hearing or notice. Respondent attempted to file all relevant documents so the record could be preserved and reviewed. None of these requests were granted and summarily denied by blanket assertion in the Orders stated as to all other relief not granted. The Panel's response was to cut and paste its prior language from the default order – ruling outside of the scope of the motions and requests before the Panel in the post-judgment proceedings and declare, in essence, "denied."

EVH 14-2 Panel's FOFCOL state that Appellant appeared at the hearing on March 24, 2023, but otherwise state —without citation, explanation, or competent support—that Respondent was "properly served" and "failed to appear**." [APP 8}.** The record contains no admissible proof of service at Respondent's correct address, and Respondent consistently and specifically disputed service, both in writing and through sworn assertions. The Panel made no evidentiary finding supporting its conclusion that service was proper, nor did it address the procedural timeline that confirms Respondent acted promptly after learning of the DFJ **[APP 8}.**

The Panel's repeated claim that Respondent "failed to appear" at the default hearing is not a finding of fact—it is a self-serving assertion deployed to justify a default judgment that was procedurally flawed from inception**. [APP 8}.** The record shows that Respondent filed a Verified Motion to Set Asid/Vacate and /or for New Trial and promptly engaged with the process after discovering the entry of judgment**. [APP 8}.**

To declare that she "failed to appear," and use that as the basis to deny relief, is not a neutral finding—it is an adversarial position that lacks legal or factual foundation, and wrongly applied the *Craddock* standards, although "apply" is the incorrect word, it would be wrongly regurgitated the *Craddock* elements, where not nuanced nor distinguished from Appellant's argument that two kinds of defaults exist and only one requires all three *Craddock* elements, which is not the case here, under improper service of process failure of the Panel to acquire personal jurisdiction over Appellant in the proceedings**. [APP 8]. [APP 6]**.

It offers no explanation as to why Respondent's uncontroverted evidence of lack of notice and prompt response did not satisfy the first prong, or why her asserted defenses were deemed unmeritorious, or how her request for relief would prejudice the Commission. The conclusion that Respondent "failed to meet her burden" is merely a restatement of the outcome—it is not legal reasoning. This failure is compounded by the Panel's disregard for the TRCP specific determinations. Despite this, the Panel issued conclusory findings that merely mirrored its own judgment and refused to address the specific evidence and objections Respondent raised**. [APP 4, 6, 8].** This is a direct violation of Rule 299, which prohibits appellate courts from presuming findings in favor of a judgment where the issue was properly requested and no element of the ground of recovery or defense was actually included in the **findings. Rule 299 provides that:**

> "The judgment may not be supported upon appeal by a presumed finding upon any ground of recovery or defense, no element of which has been included in the findings of fact."[286]

Here, Appellant properly raised challenges to service, to the absence of notice, and to the sufficiency of the default record. The Panel failed to include any element of those defenses in its findings. Under Rule 299, no appellate court may presume those issues were resolved against her. The Panel's refusal to include even the basic factual predicate for its judgment renders its order conclusory, unreviewable, and fundamentally defective. The FOFCOL for the Motion for New Trial numbers 8-12 present as follows **[APP. 8]**

NO.	Purported Findings of Fact	Purported Conclusions of Law	In actuality…
8	~~The Evidentiary Panel finds that Respondent fails to satisfy the conditions required under *Craddock v. Sunshine Bus Lines, 133* S.W.2d 124 (Tex. 1939) to set aside the default judgment, by: 1) failing to show that Respondent's failure to file a timely Answer was not intentional or the result of conscious indifference but due to mistake or accident, 2) failing to set up a meritorious defense in the motion for new trial, and 3) failing to show that the granting of her motion would cause no delay or otherwise work an injury to the Petitioner.~~	The Evidentiary Panel finds that Respondent fails to satisfy the conditions required under *Craddock v. Sunshine Bus Lines, 133* S.W.2d 124 (Tex. 1939) to set aside the default judgment, by: 1) failing to show that Respondent's failure to file a timely Answer was not intentional or the result of conscious indifference but due to mistake or accident, 2) failing to set up a meritorious defense in the motion for new trial, and 3) failing to show that the granting of her motion would cause no delay or otherwise work an injury to the Petitioner.	Legal conclusion De Novo
9	Upon hearing on March 24, 2023, regarding Respondent's Verified Motion to Set Aside/Vacate Default Judgment &	~~Upon hearing on March 24, 2023, regarding Respondent's Verified Motion to Set Aside/Vacate Default Judgment & For New~~	Completely A Finding of Fact and challenged

[286] TRCP 299.

	For New Trial, the Evidentiary Panel denied Respondent's motion	~~Trial, the Evidentiary Panel denied Respondent's motion~~.	
10		The Evidentiary Panel concludes that Respondent has failed to satisfy the conditions required under *Craddock v. Sunshine Bus Lines*, 133 S.W.2d 124 (Tex. 1939) to set aside the default judgment, by: 1) failing to show that Respondent's failure to file a timely Answer was not intentional or the result of conscious indifference but due to mistake or accident, 2) failing to set up a meritorious defense in the motion for new trial, and 3) failing to show that the granting of her motion would cause no delay or otherwise work an injury to the Petitioner.	Conclusion of Law, Challenged DUPLICATE of No. 8
11	and that this default judgment is not set aside nor vacated but will remain in effect in accordance with the terms of said judgment, and the request for new trial is denied.	The Evidentiary Panel concludes that the Default Judgment of Partially Probated Suspension, entered on February 7, 2023, was properly entered with an appropriate sanction ~~and that this default judgment is not set aside nor vacated but will remain in effect in accordance with the terms of said judgment, and the request for new trial is denied.~~	Partially Fact and partially legal conclusion— Challenged REPEAT IDENTICAL TO NUMBER 7
12	The Order on Respondent's Verified Motion to Set Aside/Vacate Default Judgment & For New Trial, was signed by the Panel Chair and was entered on March 24, 2023, and denied Respondent's motion.	~~The Order on Respondent's Verified Motion to Set Aside/Vacate Default Judgment & For New Trial, was signed by the Panel Chair and was entered on March 24, 2023, and denied Respondent's motion.~~	Completely A Finding of Fact and challenged

The additional misrepresentation—that Respondent **"<u>failed to appear" entirely</u>** at the March 24, 2023 hearing in the Response to Motion for Judicial notice —further

undermines the integrity of the proceeding. As a matter of legal ethics, such drastically deceitful misrepresentation before a tribunal should deter an attorney working for the SBOT from such action -- where it does not/did not assist the Petitioner's position at all in this suit, especially when the FOFCOL drafted by Guerra and signed by the Panel Chair explicitly state that Appellant appeared pro-se on each FOFCOL, merely only prevented from a record of the proceeding from the very attorney who then attempts to use the absence of a record to allege Appellant was not in attendance at all.

> Guerra's misstatements implicate multiple disciplinary rule violations, far worse than Appellant has ever been alleged to commit, yet this theme of bad faith is clearly the CDC's operating procedure: and includes, at minimum, violation of Rule 3.01 (frivolous assertions), Rule 3.03(a)(1) (false statements to a tribunal), and Rule 8.04(a)(3) (dishonesty or deceit).[287]
>
> Disciplinary sanction levied against an attorney who has not herself been accused of such rule violations -- cannot abide by sanctions from the SBOT agency prosecutor who freely does same; beyond the violation of the right to practice, it is a blemish on the proceedings in which attorneys seek to be viewed with respect by the public. But, in our own system of self-governance the SBOT cannot even facially reflect equity upon other attorneys.
>
> Ultimately, under any standard of review, but especially de novo review, neither of the FOFCOL can withstand any scrutiny and where the Panel was required, but failed, to make specific findings on the material issues raised by Appellant, its refusal to do so is not harmless—it undermines the law's requirement that judicial decisions be reasoned, reviewable, and just. Instead, the Panel issued a procedurally

[287] *See* TRDP 3.03(a)(1); TRDP 8.04(a)(3); TRDP 3.01.

defective FOFCOL, so conclusory/devoid of record support, further demonstrating that the judgment should be reversed.

(12) ERROR NO. TWELVE

THE EVIDENCE DOES NOT SUPPORT THE EVH 14-2 PANEL'S DENIAL/"REFUSAL" OF APPELLANT'S FBOE; WHETHER FROM LACK OF CARE OR COMPREHENSION, REGARDLESS, THE ORDERS ENTERED ARE ILLOGICAL. THE EVH 14-2 PANEL'S DENIAL/REFUSAL ON THE APPELLANT'S FBOE ARE INSTEAD SUBJECT TO BODA'S REVIEW TO DISCERN THE TRUTH THEREOF.

Appellant demonstrated by 1) her filing on June 7, 2023 of the verified motion for FBOE covering the events of the March 24, 2023 hearing date, and 2) her testimony on January 26, 2024 in the hearing on the record for the FBOE– and the objection to the Petitioner's lack of affidavit, verification, or legal citation or any case law, in combination with its misrepresentations made in the Petitioner's filings, including repeated arguments already made moot by the BODA ruling of August 15, 2023 for timeliness of Appellant's filings before BODA, essentially lack of substantive reason for the blanket opposition to the FBOE, and the Petitioner's lack of testimony or evidence that supported the Panels' "refusal' of the FBOE and the entrance of the Order denying the Proposed bills as prepared by the CDC and entered by the panel instead of the Appellant's actual "bills" being three "proposed orders" and the motion for FBOE was actually refused by the Panel Chair.

Appellant demonstrate her: (1) attempts to object to the lack of a court reporter, object to the no notice surprise setting of the motion for new trial that day and time by ambush, attempt to offer/introduce the original exhibit binder into evidence, the second exhibit binder, the reply to response on. Motion to stay and the supplemental notice of additional facts, which were all denied for late filed or not resubmitted; and object to the exclusion, moved to continue on each basis to rectify the evidence. Obtain a court reporter and provide time to prepare for the hearing all originally during the evidentiary portion of post-judgment proceedings before the Panel 14-2 on March 24, 2023; (2) wherein Guerra did not provide a court reporter, Guerra told the Panel that Appellant was not entitled to bring in her exhibit binder, that it was Appellant's duty to bring a court reporter and that she objected to the continuance for any of the reasons requested, mostly because the motion for notice of supplemental facts, the second exhibit binder and the reply to response on the motion to stay were "late-filed" and because Appellant had not "resubmitted" the original exhibit binder. The Panel Chair sustained all her objections and overruled Appellant, therefore Appellant filed the FBOE to lodge the events

> of the hearing, each with the purpose of the evidence and provided the court reason(s) for its admissibility; and (3) obtaining a ruling from the trial court as to the exclusion of such evidence, which results were all denied.[288]

> The PIA release of appellant's online profile data ***conclusively shows that*** Section three of Petitioner's Response to FBOE is wholly without merit (among all of Petitioner's filing related to address of the Respondent as reflected on the SBOT website/the attorney profile) because the address on her SBOT a**ttorney profile changed by system identifier "NCOA," not by the login/access or action of Appellant, at all**.

Specifically for any time that the CDC has alleged it was entitled to use such address in seeking substituted service by default judgment herein; these facts, pre-record release were already brought before this Evidentiary Panel by Respondent within the March 23, 2023 filing of Respondent's Verified Notice of Supplemental Facts. Therefore, the entirety of section 3, pages 3-4 of Petitioner's Response should have been and still should be struck or judicially noticed as misrepresentation before the Court.

The panel's ruling, *if we can call it that*, on Appellant's Verified Motion for Formal Bills of Exception under TRAP 33.2(c)(2), reflected that the Panel did not read the statute, Appellant's Motion, and did not see nor care about Appellant's proposed orders, the Brief, or anything at all that was occurring in the hearing on January 26, 2024. The chair called it a "bill of review" **[RRFT-pg12/21-24].**

> Appellant has fully submitted herein to this administrivia system and has tried over and over again to swim upstream, against the current of improper action and bad faith in this system, but explicitly before the 14-2 Panel (as the 6-3 Panel-- the only experience Appellant has had with a Panel but for 14-2 --was

[288] *Bishop*, 2020 WL 4983246, at *11-14; *see also* TRAP 33.1(a).

> not a proceeding of the same inequity or low-bar tof lawyering). If this is intended to be the model of equity, a system for attorney adjudication, organized and overseen by attorneys, then District 14 Grievance EVH Panel 14-2 is so off message, it should be culled – resulting in outcomes wholly opposite the stated goals of this administrative system and its procedures – instead fitting exactly as example of why the public has a distrust of the judiciary/legal system.

The Verified Motion for FBOE was brought by Appellant to enter matters into the record which had been excluded from the EVH Panel proceedings and denied Appellant by the CFLD/CDC/Guerra and the EVH 14-2 Pane Chair Biggs -- predominately resultant from the events and actions occurring in/around the March 24, 2023 post-judgment hearing. Appellant made multiple requests to agree and simplify the FBOE process with Petitioner's counsel. But those attempts and Appellant's explanations failed to illustrate that the FBOE proceedings were no longer combative or adjudicatory so much as administrative, being merely to preserve the appellate record**. [SSCR-000018-000019}**.

The Petitioner/CDC either did not grasp its simplicity – where no re-adjudication of the facts was necessary, merely the Panel's agreement that the items Appellant asserted were missing from the record were in fact, missing from the record, and the events that occurred – occurred. Without any logic or justification that, even to date, can be seen in the filings/positions of the parties, and truly, without any actual dispute that each item was excluded, or event **did** occur or **did not** occur, merely reflecting the Petitioner as blanket "opposed" to the requests for relief, without it appears, even comprehending the relief requested. Trying to provide additional reasons for the exclusion or denial was

outside the scope of what the FBOE needed from the Petitioner or the Panel, yet, the result apparently needed to reflects that Petitioner "won."

Which, it only followed, that the EVH 14-2 Panel would similarly deny all the relief, as it has not, and was not, functioning in any capacity as a tribunal, but merely a rubber stamp for Guerra. The filings Appellant wasted to assist the EVH Panel in understanding the process under TRAP 33.2 included a detailed Respondent's Brief to the Panel: Proper Procedure Under Trap Rule 33.2 **[SSCR 000418-000486]. Wherein the Appellant's Reply to Guerra's Response in Oppoosion to the FBOE reflects:**

> **"[t]**he right to make an offer of proof or perfect a bill of exception is absolute,"[289] and "it is reversible error to refuse a party the right to perfect his bill of exceptions."[290] 'Error is preserved for appellate review if trial court prevents party from making bill of exceptions to any adverse ruling.[291] as it is fundamental error for the Panel to fail to rule upon Respondent's Verified Motion for Formal Bills of Exception, and the "grounds" themselves are instead conceded by the Petitioner in the body of its own Response -- the TRAP 33.2 procedures dictate that the Panel must enter/sign and file bills as provided therein, not "deny" the relief but apply the rule to the facts by the established procedure.

The statutory requirements set forth under TRAP. 33.2 reflect the Evidentiary Panel [trial court] had a mandatory duty to carry out the ministerial task to enter a Formal Bill of

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[289] *See M.A.B. v. State*, 718 S.W.2d 424, 425-26 (Tex.App — Dallas 1986, no pet.)." Scott v. State, 940 S.W.2d 353, 358 (Tex. App. 1997)

[290] *See Ledisco Fin. Servs., Inc. V. Viracola,* 533 S. W.2D 951, 959 (Tex. Civ. App.-Texarkana 1976, No Writ) (citing *Dorn V. Cartwright*, 392 S. W.2d181 (Tex.Civ.App. Dallas 1965, Writ Ref D N.R.E.).

[291] *See Johnson v. Garza* (App. 3 Dist. 1994) 884 S.W.2d 831, Rehearing Overruled, Writ Denied, Rehearing Of Writ Of Error Overruled.

Exception, similar to the procedure for FOFCOL under the TRCP, as seen in *Hamlett v. Commission for Lawyer Discipline:*

> following a bench trial, the trial court ignored Hamlett's timely filed requests for findings of fact and conclusions of law/notice of past due for same. After filing the appeal, Hamlett sought an order from the appellate court directing the trial court to enter the findings, and abatement of the appeal pending trial court compliance. The appellate court agreed with Hamlett and ordered the trial court to file the findings and conclusions by a date certain, "with the appeal to continue thereafter" observing that "[w]hen properly requested, the trial court has a mandatory duty to file [findings of fact [a formal bill of exception]]."[292]

If harm exists based on the trial court's failure to issue [findings] [a formal bill of exception]], then the appropriate remedy is to abate the appeal and direct the trial court to correct its error pursuant to TRAP 44.4.[293] But, there is "no need for abatement when record shows no factual dispute and reasons for ruling are clear from the record,"[294] as the "test for harm looks to whether the reasons for the trial court's ruling are obvious from the record."[295]

> Further, based on new information received from the return of documents received from Appellant's SBOT PIA Requests, Appellant filed her Verified Motion for Judicial Notice, [SSCR-000404-000417] which explicitly reflected that at each date the SBOT attorney profile for Appellant was changed to the improper address of 17303 Davenport Rd. Dallas, Texas 75248, it was not Appellant who did same – it was the system identifier "NCOA" as compared to Respondent's logins and changes made/IP address and author in the system data.

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[292] (Emphasis added); *See Hamlett v. Comm'n for Lawyer Disp*., No. 07-16-00256-CV, 3-5 (Tex. App. Oct. 24, 2016*).*

[293] *See Acad. Corp. v. Interior Buildout & Turnkey Constr., Inc.*, 21 S.W.3d 732, 739 n.1 (Tex. App.-Houston [14th Dist.] 2000, no pet.); TRAP 44.4.

[294] *See Lubbock Cty Cent. Appraisal Dist. v. Contrarez*, 102 S.W.3d 424, 426 (Tex. App.—Amarillo 2003, no pet.)

[295] *Sheldon Pollack Corp. v. Pioneer Concrete of Tex., Inc*., 765 S.W.2d 843, 845 (Tex. App.—Dallas 1989, writ denied).

Even after receipt of this information, Guerra filed the Response in opposition to the FBOE, which the November 13, 2023 Reply of Respondent **[SSCR-001456]** moved to strike the moot portions of the Response, as BODA had already made ruling, denying the Appellee's Plea to the Jurisdiction.

> Further, the Respondent's Reply pointed out that the CDC had failed to actually rebut any one item of the FBOE, and therefore was either a direct, implied or implicit agreement to the contents thereof. Additionally, Appellant set forth therein, again highlights once more the CDC's improper factual assertions in its Response, regarding the Respondent's address as inputted into the State Bar of Texas ("SBOT") online attorney member profile:
>
> > The CDC had actual or constrictive knowledge/notice of the falsity based upon the contents of the SBOT's public records release data for the SBOT website portal, and on explicit notice as of the date the Respondent's Verified Motion for Judicial Notice was filed, October 23, 2023, before the Panel containing the SBOT public records information.
> >
> > Therein, establishing conclusively that the SBOT improperly changed the Respondent's registered address on the SBOT website without notice to/nor Respondent's authorization/consent based upon its USPS NCOA agreement – but where the changes to Respondent's address were in violation of the NCOA agreement/the Privacy Act of 1974, the State Bar Act Sec. 81.115(e) the State Bar Policy Manual Rule 9.04(C):
> >
> > > **"[n]o State Bar Officer, member of the Board, or employee will disclose or distribute confidential information" and the Texas Government Code, Texas Public information Act ("PIA") Section 552.1176.**

The Brief was presented to the Panel with relevant caselaw, statutes and excerpts regarding the procedure the Panel must complete to discharge its duties on remand, by order of BODA in the pending, abated appeal. Appellant submitted the Brief for the Panel's information and convenience regarding this procedure.Petitioner's initial response, served on August 4, 2023, was conclusory and lacked any substantive legal

arguments; the absence of factual or legal opposition implies agreement on the proposed orders FBOE #1, #2, and #3. Where if any disputes were found, a notice and hearing are required under TRAP 33.2(c), but the lack of substantive or legal argument against the propositions of the bills was implicit agreement to the matters presented. Appellant made efforts to confer with the Petitioner regarding any agreement or disputes, but received no meaningful feedback, **[SSCR-000018-000019].**

Appellant duly requested proper notice for hearings to ensure a court reporter is present to preserve the record both globally and specifically for appellate review, reflecting the importance of BODA's appellate jurisdiction, trying to evince the proper level of deference to the Evidentiary Panel's subordinate jurisdiction, but literally the same actions occurred on repeat for the new hearing date from Guerra, requiring emergency relief requested from BODA for the temporary stay to order the CDC to reasonably allow a court reporter -- **FOR a hearing only necessary because the CDC prevented Appellant from the exact same right to have a record of the proceedings – an entire year prior.**

Appellant raised multiple objections to the Petitioner's Response, where the Petitioner's claims were frivolous and unsupported by competent evidence; the objections included the lack of legal citations, no personal knowledge, or lack of affidavit or verification of any of the matters set forth, where the conclusory assertions constituted no evidence. Appellant objected to the misrepresentation of documentary evidence by Petitioner, where the Exhibit "J" document does not support the contentions of the CDC

attorney, at all. **[CR-1063, one must double-click on the Attachments: Zoom Protocol Guidelines-EVIDENTIARY.pdf]. Appellant set forth:**

> The one single issue presented in Petitioner's Response which even slightly requires an inquiry as to whether the matter is actually "disputed," for purposes of a hearing under TRAP 33.2(c), is the newly found position, as of the August 4, 2023 filing of the Response, that the CDC DID in fact notice the Respondent's Motion to Set-Aside/Vacate and for New Trial for the March 24, 2023 Zoom setting, and is the one matter -- the only single matter --but still unequivocally negates opposition as the CDC attorney proffered one single documentary exhibit/submitted same as conclusive evidence to prove the assertions of counsel -- that the CDC properly noticed the second motion for the March 24, 2023 setting -- yet, still, again, the purported opposition is wholly without merit when considering:
>
> 1) the single exhibit, "J," presented as the conclusive documentary evidence for this argument, is the opposite -- the Zoom email does not at all reflect the contentions of counsel, where the exhibit lacks any reference whatsoever to any motion on which the hearing was set -- even excluding any reference to the motion for which the hearing was actually contemplated (the motion to stay), let alone reflect the second motion, where "ERRONEOUS EVIDENCE IS THE EQUIVALENT OF NO EVIDENCE."[296]
>
> 2) the unverified statements made by Petioner's counsel -- not asserted within personal knowledge -- are conclusory, and therefore incompetent evidence. Many of the duties overlap between the appellate standards and the disciplinary

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[296] "[a]n attorney's statements are generally not evidence. An attorney's unsworn statements at a hearing may be considered evidence in some cases—when the circumstances clearly indicate that the attorney is tendering evidence on the record based on personal knowledge." See Tex. R. Evid. 602 (providing that witness may testify to matter only if the witness has personal knowledge); Windrum v. Kareh , 581 S.W.3d 761, 770 (Tex. 2019) (noting that conclusory evidence is considered no evidence); Montes v. Montes , No. 04-20-00474-CV, 2021 WL 3174262, at *3 (Tex. App.—San Antonio July 28, 2021, no pet.) (mem. op.) (stating that conclusory testimony amounts to no evidence); Salaymeh v. Plaza Centro, LLC , 264 S.W.3d 431, 439 (Tex. App.—Houston [14th Dist.] 2008, no pet.) ("A bare conclusion with no basis in fact cannot support a judgment even when no objection was made to the statements at trial."); see also Robison , 2021 WL 2117936, at *6 (holding that evidence that at most created a mere surmise or suspicion that judgment debtor had nonexempt property was insufficient to support turnover order).

rules as they pertain to a lawyer's duty to the court.[297] In *Twist*, the court found "as to case cited by relator and material that relator placed in quotation marks, "we have reviewed that case, and no such statement appears in the opinion"[298] A lawyer "shall not bring or defend a proceeding, or assert or controvert an issue therein," unless he or she reasonably believes that there is a nonfrivolous basis for doing so, or in the course of litigation, otherwise "take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter."[299]"Lawyers owe a duty of candor to the court under the various rules and standards, they should not knowingly "misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage, "or fail to disclose controlling, directly adverse authority to the court."[300] Misrepresenting evidence is a violation of the duty of candor, when a document does not support assertions of counsel [301] "TDRP 3.03, requiring candor, applies equally to the duty of diligence in terms of disclosing and accurately representing...facts applicable to a particular case."[302]"Distinguishing case cited by appellee because the statement relied upon was "taken out of context."[303] Attorneys should provide a "fair and accurate" understanding of the facts and law that apply to their cases both in their briefs and in their oral arguments.[304]

All of the above amount to, and Respondent objects to, the Petitioner's misrepresentation of the record before the tribunal, including

a. the misrepresentation facts in statements of counsel in the Response,
b. the misrepresentation of documentary evidence attached to the Response and attributed to the record without any basis from the document itself supporting same,
c. the Petitioner's refusal to present to the Panel/dismissed Respondent's jurat -- without so much as an acknowledgement it existed let alone that it was an objectionable issue,

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[297] *See Wilkinson*, 41 ST. MARY'S L.J. at 667–95.

[298] *Twist v. McAllen Nat'l Bank*, 248 S.W.3d 351, 366 (Tex. App.— Corpus Christi–Edinburg 2007, orig. proceeding [mand.denied]) aff'd, 408 S.W.3d 373, 375 (Tex.2013).

[299] TDRPC. 3.01–.02; *see also Wilkinson*, 41 ST. MARY'S L.J., Disciplinary Rules of Professional Conduct 3.01–.03).

[300] See TDRPC. 3.03(a).

[301] *See Zanchi v. Lane*, 349 S.W.3d 97, 105 n.15 (Tex. App.—Texarkana 2011) (Carter, J.,concurring).

[302] See TDRPC 3.03; *see also Wilkinson*, 41 ST. MARY'S L.J. at 674–86 (comparing appellate standards 3, 4, 5, and 6 to Disciplinary Rule of Professional Conduct 3.03).

[303] *See also City of El Paso v. Varela*, 656 S.W.3d 451, 455 (Tex. App.—El Paso 2022, pet. filed).

[304] *See* Standards, Lawyers' Duties to the Court, preamble, 1–4, 6, TEXAS RULES OF COURT at 324–25.

d. the failure to provide any case law or legal precedent and instead impute positions not based in fact and without any reference to caselaw, at all,

e. applying some arbitrary/incorrect standard that apparently makes its false and conclusory evidence equal to or greater than that of sworn evidence and testimony

f. all while ignoring the assumptions of evidence based upon acts properly executed, such as verifications/declarations or sworn statements, which fails to address the verified/nonverified weight of evidence in its positions and submissions as compared to Respondent (where verified statements under penalty of perjury vs. unverified pleadings/evidence and lack of personal knowledge are relevant and necessary concepts to this action on remand, and where Texas caselaw is well--established regarding these topics/proper authentication/burden of proof/weight of evidence etc.). and ignores the validity of Respondent's arguments and evidence submitted under penalty of perjury, e.g. the CDC impermissibly detracts/essentially strips a party who filed sworn motions and evidence of the right to stand on same, and instead equates the unverified misrepresentations of the CDC as equal to or greater than the weight of evidence/submissions filed by Respondent, although Texas case law clearly indicates the opposite.[305]

The factual inaccuracies raised to intentional misrepresentations, appellant again cited the duty of attorneys to provide accurate and relevant legal authority as the CDC was in violation, again, showing:

The Panel chair stating that the Panel "unanimously" agreed after "REDELIBERATING" that the "BILL OF REVIEW" was denied.

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[305] *See* Tex. R. Evid. 602 (providing that witness may testify to matter only if the witness has personal knowledge); *Windrum v. Kareh* , 581 S.W.3d 761, 770 (Tex. 2019) (noting that conclusory evidence is considered no evidence); Montes v. Montes , No. 04-20-00474-CV, 2021 WL 3174262, at *3 (Tex. App.—San Antonio July 28, 2021, no pet.) (mem. op.) (stating that conclusory testimony amounts to no evidence); *Salaymeh v. Plaza Centro, LLC* , 264 S.W.3d 431, 439 (Tex. App.—Houston [14th Dist.] 2008, no pet.) ("A bare conclusion with no basis in fact cannot support a judgment even when no objection was made to the statements at trial."); *see also Robison* , 2021 WL 2117936, at *6 (holding that evidence that at most created a mere surmise or suspicion that judgment debtor had nonexempt property was insufficient to support turnover order). *See Mapco, Inc. v. Carter* , 817 S.W.2d 686, 687 (Tex. 1991) ; *Phillips v. Phillips* , 296 S.W.3d 656, 668 (Tex. App.—El Paso 2009, pet. denied) ; cf. *DeWoody v. Rippley* , 951 S.W.2d 935, 946 (Tex. App.—Fort Worth 1997, no writ) (noting that statements made by a party's attorney in the course of judicial proceedings that are not based on personal knowledge are not judicial admissions).

Years of litigation have been buried into this suit, to the detriment of Appellant, where all actions of the Panel, at the direction of the CDC, were arbitrary, capricious, even malicious. The CDC conduct and the EVH0-14-2 Panel in the proceedings require BODA reversal.

(13) ERROR NO. THIRTEEN

THE EVIDENCE WAS LEGALLY AND FACTUALLY INSUFFICIENT TO SUPPORT THE SANCTIONS UNDER THE "DFJ" BASED ON THE RECORD AS A WHOLE

BODA shall reverse the evidentiary panel's decisions when "not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole."[306]

The EVH 14-2 Panel's DFJ states, "having found Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is a Partially Probated Suspension."**[APP 3][CR 1225].**

This fails to make any connections between its decision to enter the sanction imposed and the next section's PART XV of the TRDP's listed and required factors. Not only does it not make the required connections, it omits any discussion about how any of the factors affected its decision to sanction Appellant, at all. Furthermore, the "DFJ"" is

[306] TEX. GOV'T CODE ANN. § 2001.174.

devoid of any discussion of how the factors mandate the chosen sanction as opposed to other sanctions. Therefore, the EVH Panel 14-2's decision to issue a year-long suspension, active 6-month period and a probated 6-month period against Appellant, who has never had any disciplinary history prior to this default, and where no changes occurred in between the IVH Panel 6-3 hearing the matter and the EVH Panel 14-2 rule on the action –where Guerra did same, each a misstatement of law and fact before a tribunal, the record as a whole does not support the imposition of the sanctions in the DFJ.

Because the record lacks substantial evidence to support the Sanctions by the DFJ (*let alone the Default Order, Substitute Service Order or denial of any of Appellant's post-judgment relief*) the record does not support the legal or factual sufficiency of the rulings entered in this matter. EVH 14-2's DFJ and sanctions, are not supported by the record and as a whole, lacks substantial evidence to support the EVH 14-2's conclusion that Appellant warranted the sanctions imposed.

Moreover, where a party is limited **by its pleadings, judicial estoppel and , s**: the Texas Supreme Court held in *Capitol Brick, Inc.,* -- "[i]t is impermissible in a default judgment to render damages in excess of the relief specifically pled."[307] Without any

[307] *XL Ins. Co. of New York, Inc. v. Lucio,* 551 S.W.3d 894, 898–903 (Tex. App. 2018), citing *Capitol Brick, Inc. v. Fleming Manufacturing Co.*, 722 S.W.2d 399, 401 (Tex. 1986) *903 (op. on reh'g), (citing *Mullen v. Roberts*, 423 S.W.2d 576, 579 (Tex. 1968)); *see also* TRCP301 (providing that the judgment of the court shall conform to the pleadings).

discussion on the record for ANY factors considered or evidence adduced for the result, should have been limited by Guerra' judicial admissions -- statements made in the course of proceedings by counsel may be considered "judicial admission[s] or quasi-admission[s]" when made within the attorney's personal knowledge and is a "deliberate, clear, and unequivocal assertion"[308]

in a fully probated suspension **[RRDT-pg 17/3-6];** the upward departure in punishment from the relief sought by the CDC without any substantiating factors is an arbitrary and capricious result. **Where, in fact,** *the only evidence at all of any considerations* are of:

1) **improper argument of counsel**/prosecutorial misconduct argument as to Appellants "avoidance of service," ***while no rule violations were charged against Appellant for same*; [APP 17]** being improper and incurable argument – where no contemporaneous objection is necessary – is shown when an argument was sufficiently prejudicial to cause a juror of ordinary intelligence to agree to a verdict contrary to one that he or she would have agreed to but for the argument,[309] and include charges that opposing counsel manufactured evidence, suborned perjury, or was untruthful, where highly improper and incurable.[310]
2) improper evidence, the extra-record ***ex-parte*** consideration of the 14-2 Panel's recent IVH setting of wholly improper venue, placed before the Panel by Guerra without proper venue for this very purpose, to create prejudice with the Panel members in advance of these rulings. This information was clearly considered by the Panel based on the CDC's email subject line for the Default Judgment

[308] *See Mapco, Inc. v. Carter* , 817 S.W.2d 686, 687 (Tex. 1991) ; *Phillips v. Phillips* , 296 S.W.3d 656, 668 (Tex. App.—El Paso 2009, pet. denied) ; cf. *DeWoody v.Rippley* , 951 S.W.2d 935, 946 (Tex. App.—Fort Worth 1997, no writ) (noting that statements made by a party's attorney in the course of judicial proceedings that are not based on personal knowledge are not judicial admissions).

[309] *Dunn v. Bank-Tec South,* 134 S.W.3d 315 (Tex. App. Amarillo 2003).

[310] *Jones v. Republic Waste Services of Texas, Ltd.,* 236 S.W.3d 390 (Tex. App. Houston 1st Dist. 2007).

to/from the Panel Chair, being two cause numbers not related to this action yet improperly brought before the **same panel.**

Critically, that cause number had mandatory venue provisions under TRDP Rule 2.11(A) specifically dictating that IVH proper venue is in the county where the alleged misconduct occurred: and that cause arose ONLY from Dallas Complainants for a Dallas filed lawsuit, before the Dallas County Courts.[311] The arbitrary decisions made on venue are not merely discretionary for the CDC to follow, or not follow, or decide when they will follow. The placement of this IVH before the 14-2n Panel was made by Guerra for the wholly improper purpose of influencing the tribunal to Appellant's detriment, and is a violation of the disciplinary rules.

Dallas was, and has always been Appellant's principal place of practice --***and not because it is the county of her parents' residence at 17303 Davenport Road --*** no matter how hard Guerra sought for Appellant, a grown person, to live with her adult parents. The CDC clearly agrees, which is why the subsequently filed EVH proceeding in that cause recognizes Dallas as the proper venue, now before Panel EVH 6-3.

Guerra's arbitrary address allegations switch from venue to venue without any justification other than to influence the proceedings, and not to mention, publicly disseminate Appellant's privately designated address and confidential information, only

[311] TRDP 2.11(A).

gained from her position in a state agency, tantamount to official oppression and prosecutorial misconduct in the role of the CDC.

Regardless of the label, the abuse of power against Appellant in this attorney discipline system reflects improper, bad-faith panel forum-shopping. The totality of the record reflects the impropriety of all orders entered herein against Appellant. Each, a result of Guerra's intentional creation of bias and panel-stacking against Appellant in these proceedings, of proper venue, citing the wrong law to the Panel, providing improper argument, failing wholly at candor to the tribunal, all which resulted in the unlawful taking of Appellant's valuable property rights, her license to practice law -- without due course of law, and to suffer immense professional reputational harm.

XI. CONCLUSION & PRAYER FOR RELIEF

BODA HAS THE AUTHORITY TO RENDER THE APPROPRIATE SANCTION FOR THE APPELLANT ATTORNEY.[312]

APPELLANT SEEKS RELIEF FROM BODA IN A JUDGMENT WHICH SHALL REVERSE AND VACATE THE "DEFAULT JUDGMENT OF PARTIALLY PROBATED SUSPENSION" AND RENDER A DISMISSAL[313] BECAUSE MERELY REMANDING FOR NEW TRIAL IS NO LONGER AN EQUITABLE RESULT. APPELLANT HAS ALREADY:

A) *SERVED AN ACTIVE SUSPENSION FROM THE PRACTICE OF LAW FOR SIX MONTHS, AND ANOTHER SIX MONTHS OF "PROBATED SUSPENSION,"*

[312] **Emphasis added,** *CFLD v. Texas Attorney*, No. 55619, 2015 WL 5130876, at *2 (Tex. Bd. Disp. App.—Aug. 27 2015) ("neither party had requested remand"); BODA IPR 4.07(a)(3).

[313] TEX. GOV'T CODE ANN. § 81.0751(b)(3).

B) *SUFFERED THE HUMILIATING TERMINATION FROM THE--THEN NEWLY ACHIEVED-- HIGHEST PAYING POSITION OF EMPLOYMENT OF APPELLANT'S CAREER TO DATE (WHICH TOOK TWO YEARS & THREE INTERVIEWS TO OBTAIN)*

C) *UNDERWENT AND CONTINUES TO UNDERGO EACH AND EVERY INSTANCE OF RIDICULE, DEGRADATION, EMBARRASSMENT AND SHAME RESULTING FROM THE PERMANENT ENTRY OF DISCIPLINARY SANCTION ON APPELLANT'S PROFESSIONAL HISTORY IN ALL INTERVIEWS, ATTEMPTS, EXPLANATIONS AND OPPORTUNITIES LOST FOR OVER THE LAST TWO YEARS.*

Trial counsel Guerra of the CDC wrongfully prosecuted Appellant in every step of the underlying proceedings, including the IVH Panels, and especially within the EVH Panel proceedings. Guerra intentionally brought the action before a DGC of the wrong venue. Guerra charged Appellant with TDRPC rule violations in the Evidentiary Petition while already in possession of exculpatory evidence pre-IVH/from IVH which fully negated misconduct as to both rules Appellant was alleged to have violated.[314] Guerra wholly failed to abide by any standards of due diligence in service of process by intentionally utilizing an address that was not Appellant's regular place of abode, and thereafter; asserting the wrong legal standard -- against BODA precedent -- before the tribunal to acquire a wrongful default judgment. The EVH 14-2 Panel abused its discretion

[314] *Galindo v. State* 535 S.W.2d 923 (Civ.App. 1976)(Proceeding before grievance committee is not an adversary process; the aim of committee's inquiry is to collect and assemble facts and information that will enable committee to take such future action as it may deem expedient for public welfare.)

and entered Orders that were not only arbitrary and capricious, but reflect lack of impartiality/bias, especially when viewing the record as a whole.

Most notably, though is the imposed sanction, so heavy, without any guiding principles or application of the mandatory guidelines whatsoever in making the determination, that although Appellant had no prior history and where the original IVH Panel 6-3 had not referred a sanction at all, but merely the GRP, by definition excluded from sanctions under the TRDP. The DFJ was wrongfully obtained and void. At minimum, these proceedings are rife with reversible error, and blatant in the violations of Appellant's constitutionally protected rights, including due process protection under the law. At every juncture, since 2019, fundamentally inequitable and only to Appellants' detriment.

Appellate remedy is sought in BODA's review for reverse, render and grant Appellant: disgorgement of the $2,700 fee remitted under void orders, the issuance of Snapback Letters/Exculpatory Letters, expunction of Appellant's SBOT online attorney profile, and for fees and costs where these proceedings have caused Appellant to incur (non-*pro-se*) attorney's fees in the amount of at least **$5,587.00, [APP.10]** and additional fees/costs which at least total**: $1,014.59,** (*which includes $350.00/Court Reporter FBOE Hearing* **[APP. 11]**; *$415.00/Court Reporter Default* ***[SCR-0081] [SCR-0582]***; *and $249.59/Fee for SBOT PIA requests to the SBOT* ***{SSCR-000474-000485****]).*

WHEREFORE, PREMISES CONSIDERED, for the foregoing reasons, Appellant,

Lauren Ashley Harris, prays that BODA issue its appellate mandate to reverse and render in this case by either, or in combination:

A. rendering judgment which reverses the "DFJ" executed February 7, 2023 by the of Denton County, Texas District 14 Grievance Committee, Evidentiary Panel 14-2 of the State Bar of Texas, finding same was of improper venue, vacate the "DFJ," dismiss this action against Appellant; and/or

B. that BODA hold that the "DFJ" is void, void on its face, void at the time of issuance, and thereby vacating the disciplinary sanction of the active six-month and probated six-moth suspension periods Appellant underwent from 2023-2024. Instead, vacating the "DFJ" and dismissing this action against Appellant; and/or

C. that BODA reverse the Denton County EVH Panel 14-2's "DFJ" for lack of substantial evidence, and/or all post-judgment rulings and Orders of the EVH Panel 14-2 were arbitrary, capricious and/or an abuse of discretion,

D. All, such errors being harmful and requiring reversal-- in no event harmless, for which no other relief but to vacate, dismiss and issue judgment in favor of Appellant will be adequate to address the rendition of error, including:

a. the disgorgement and return to Appellant of the $2,700.00 remitted to the CDC for attorney's fees;

b. an order directing the CDC to issue a formal Letters of Retraction for the disciplinary judgment and suspension, which fully and completely exonerates Appellant *from the humiliation and stigma created by the CDC's intentional actions in these proceedings, which amounted to an abuse of process and official oppression all made only to annoy, harass, injure and embarrass Appellant,* addressed specifically to

   i. Justice Jane Boyle of the United States District Court for the Northern District of Texas;

   ii. the employer with whom the CDC's actions caused Appellant's humiliating termination from her position of employment in 2023, *(which name and address Appellant shall confidentially provide to BODA outside of this Brief);* and,

   iii. to "Whom it May concern," which Appellant can distribute to those whom the CDC's unlawful actions created or caused Appellant to suffer humiliation, embarrassment and shame, in profound injury to her professional reputation, especially in the context of former, prospective or failed employers, and/or recruiters;

c. enter an Order instructing the appropriate State Bar of Texas contact to fully and finally remove the improper listing of a disciplinary sanction from Appellant's State Bar of Texas online attorney profile, and

d. render Appellant an award at minimum, of the [non-*pro-se]* attorney's fees Appellant incurred to employ counsel at great personal expense and hardship in the amount of at least **$5,655.84 and costs of at least $1,014.59.**

Appellant prays for all further relief, general, special, in law or in equity, to which she shows herself justly entitled.

Respectfully submitted,

/s/***LAUREN A. HARRIS***

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XII. CERTIFICATE OF COMPLIANCE

Pursuant to the Board of Disciplinary Appeals Internal Procedural Rules, foregoing brief on the merits contains approximately 40,255 words (total for all sections of brief that are required to be counted), which is more than the 15,000 total words permitted by the Board's Internal Procedural Rule 4.05(d), and leave for exceeding the word count is requested in the predecessor Motion for Leave to file same; Appellant relies on the word count of the computer program used to prepare this brief.

/s/ Lauren A. Harris
Lauren A. Harris

XIII. CERTIFICATE OF SERVICE

This is to certify that the above and foregoing brief of Appellant has been served on BODA and Michael Grahm, appellate counsel for the CDC on this date, the 27th of June 2025, in accordance with the TRAP, BODA IPR, and the TRCP:
Office of the Chief Disciplinary Counsel
Michael Graham

Appellate Counsel
michael.graham@texasbar.com

/s/ Lauren A. Harris
Lauren A. Harris

XIV. APPENDIX