

NO. 67843

BEFORE THE BOARD OF DISCIPLINARY APPEALS

APPOINTED BY

THE SUPREME COURT OF TEXAS

LAUREN ASHLEY HARRIS

STATE BAR OF TEXAS NO. 24080932,

APPELLANT,



FILED

Jul 31 2023

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

v.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE.

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

**APPELLANT'S MOTION TO CORRECT &
SUPPLEMENT THE REPORTER'S RECORD**

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TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

COMES NOW, APPELLANT, LAUREN ASHLEY HARRIS, and files this her Motion to Correct and Supplement the Reporter’s Record, seeking an Order from the Board of Disciplinary Appeals (“BODA”) directing the Recorder/Reporter for the evidentiary proceedings to supplement, certify and transmit the complete and accurate Recorder/Reporter’s Record to the BODA Clerk; these items are material

to the record of this appeal.¹ Appellant’s requested relief is brought pursuant to the Texas Rules of Appellate Procedure (“TRAP”) Rules 13, 34.5(c)(1), and 34.6,² as well as the BODA Internal Procedure Rules (“IPR”): 4.02(c)(2), 4.02(h), and specifically, 4.03(d), which reflects:

[i]f anything *material* to either party is omitted from the clerk’s record or reporter’s record, *BODA may, on written motion of a party or on its own motion*, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.³

In support of this requested relief, Appellant will show as follows:

I. INTRODUCTION

1. The Texas Supreme Court has delegated “the responsibility for administering and supervising lawyer discipline and disability . . . to the Board of Directors of the State Bar of Texas” (“SBOT”).⁴ The SBOT has a statutorily defined status as a state “agency.”⁵ The SBOT President appoints the attorney members of

¹ Appellant submits that the Clerk’s Record is also wholly deficient in this action, for which Appellant shall also file request for relief/supplementation under a separate, sister motion. References to the existing record are made in this motion if possible as well as the corresponding bates label from Appellant’s original submissions; but, where the deficiency renders reference impossible, bates label *HARRIS.0001-0479* is denoted,¹ or by Appendix attached hereto.

² See Tex. R. app. R. 13; Tex. R. App. P. 34.5(c)(1)] (the Appellate record may be supplemented at any time; the distinction is eliminated from former rules between supplementation requests made before submission and those made after submission; see also Tex. R. App. P. 34.6 (If relevant item has been omitted from clerk’s record or reporter’s record, either trial court, appellate court, or any party by letter, may direct clerk or reporter to prepare, certify, and file supplement containing omitted item in appellate court).

³ See TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.02(c)(2), *Reporter/Recorder duty to produce Reporter’s Record*; see TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.02(h), *Inaccuracies or Defects*; and (**emphasis added**) see TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.03(d) *Supplemental Record*. See also *Gallagher v. Fire Ins. Exchange*, 950 S.W.2d 370, 371 (Tex. 1997)(*holding that supplementation is available whether the party omitted items from the record by mistake or on purpose*).

⁴ Tex. R. Disc. P. preamble.

⁵ Tex. Gov’t Code Ann. § 81.011(a),

the Commission for Lawyer Discipline (“CFLD”), Appellee herein, which in turn selects the attorneys/employees of the Office Chief Disciplinary Counsel (“CDC”).⁶

2. The CFLD oversees the CDC who, at its direction “shall administer the attorney discipline and disability system in accordance with the Texas Rules of Disciplinary Procedure” (TRDP).⁷ Therefore, Appellant notes that *the first role, of six total enumerated roles*, all held by the CDC in these proceedings, is that as *custodian/manager of the entire attorney disciplinary system*.⁸

3. The SBOT directors nominate, and the SBOT President appoints the members of local grievance committees, which preside over disciplinary proceedings.⁹ The State Bar Board Policy Manual, Sec. 6.03.05, *Grievance Committee Training*, reflects the CDC:

shall conduct annual training sessions for all grievance committee members. The training shall include, among other topics, structure of the attorney discipline system, grievance procedure, and committee organization, duties and authority with appropriate references to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. **In addition, members shall be provided with a procedural guide on conducting evidentiary hearings.**¹⁰

4. Therefore, in its *second role*, the CDC operates as the *Trainer to the District Grievance Committees*, (“DGC”) teaching, organizing and counseling the

⁶ Tex. Gov’t Code Ann. § 81.076(b),

⁷ See page 87 of 129 STATE BAR BOARD POLICY MANUAL – January 2023; Commission for Lawyer Discipline 2022 Annual Report (the Texas attorney discipline system is administered by the CDC whose work is overseen by the CFLD).

⁸ See *Id.*; Tex. Gov’t Code 81.076(g) (the Commission selects the CDC to serve as the administrator of the State Bar’s disciplinary procedures).

⁹ Tex. Rules Disciplinary P. R. 2.02, 2.07, 2.11-15, 2.17.1.

¹⁰ (*emphasis added*) see Page 87 of 129 STATE BAR BOARD POLICY MANUAL – January 2023.

DGCs to discharge their respective duties in the three types of Panels: Summary Disposition, Investigatory and Evidentiary.¹¹ In accordance with the State Board Policy Manual, Sec. 6.03.05, the 2019 and 2020 CDC-authored Procedural Guides which was used to train the Panels relevant to this appeal are included in the Appendix hereto. [APP.1] and [APP. 2].

3. Appellee, the CFLD, is represented herein¹² by the appellate arm of the CDC, and therefore, the third role occupied by the CDC is that of advocate, and appellant counsel of record on behalf of the CFLD.¹³

4. The fourth role assumed by the CDC in this action is similarly that of counsel of record, but in the underlying evidentiary panel proceedings¹⁴ (Appellee CFLD therein is “Petitioner,” and Appellant “Respondent”).¹⁵

Notably, this role tier to date has been held exclusively by one CDC attorney assigned as opposing counsel in every disciplinary matter which Appellant has been forced to defend: Assistant Disciplinary Counsel Laurie Lee Guerra (“Guerra”).¹⁶

¹¹ See Tex. R. Disciplinary P. 2.12, 2.13, 2.17.

¹² See https://www.txgoc.com/files/ugd/531469_4ed841830a3a4b21b63fbb84300de138.pdf; 2022 CFLD Annual Report (CDC represents the Commission in disciplinary litigation);

¹³ See TRDP 2.14(A) (Client of CDC. The Commission is the client of the CDC for every Complaint not dismissed after an investigatory hearing, resolved through a negotiated judgment entered by an Investigatory Panel, or dismissed by the Summary Disposition Panel); see also Tex. Gov’t Code § 81.075; TRDP 4.06; and Tex. R. Disciplinary P. 5.02.

¹⁴ See 48A Tex. Prac., Tex. Lawyer & Jud, Ethics §18.9, (the lawyer representing the CFLD is an advocate, not a prosecutor. Actual prosecutors are held to a different standard than an advocate and are afforded a higher level of credibility for that reason. The Commission lawyer, though, is an advocate to the same extent as the lawyer representing the respondent, therefore the CDC represents the Commission for Lawyer Discipline in the role as zealous advocate); see also The Board of Disciplinary Appeals Appointed by the Supreme Court of Texas Report 2016, at 8; see also *Schultz v. Comm’n for Lawyer Discipline*, BODA No. 55649, 2015 WL 9855916 (Texas Bd. Disp. App. Dec. 17, 2015, no appeal) (this is CDC); see Tex. Disc. R. Prof. Conduct 3.09, 5.02, 5.03.

¹⁵ See Tex. R. Disciplinary P. 1.06 EE.

¹⁶ This assertion excludes only the Grievance filed in 2015 against Appellant, and dismissed as an Inquiry the same year as it did not allege professional misconduct (*filed by a previous landlord in improper attempt to collect alleged carpet damages from Appellant/no attorney-client interaction*).

5. *The fifth role*, also in the underlying evidentiary proceedings, is as *Clerk of the Evidentiary Panel*.¹⁷ This role is held by CDC legal assistants, here,

Guerra's sometimes legal assistant/CDC employee, Cassidy M. Orozco,¹⁸ but:

*the role/title itself: "Evidentiary Panel Clerk" or "Clerk of the Evidentiary Panel" is not listed even once within the entire text of the TRDP: procedural rules governing attorney discipline.*¹⁹ In contrast, the IPR, laden with the reference, lists multiple duties of same; however, even the IPR does not define the term, nor set forth that the CDC holds the role.

Where limited or silent in the procedural rules, Appellant has found secondary sources invaluable in supplying context, no matter how brief:

answers from BODA's FAQ webpage:

How do I file the record from the evidentiary hearing with BODA?

The State Bar [CDC]'s office will file the clerk's record from the evidentiary hearing with BODA after receiving our acknowledgment that an appeal has been filed...²⁰

CDC 2019 & 2020 Procedural Guides²¹ reflect:

EVIDENTIARY COURT FILE. *The Evidentiary Panel's official file is maintained by the [CDC]* pursuant to the confidentiality requirements of TRDP 2.16. All pleadings, motions, orders, and other matters related to the Evidentiary Proceeding are filed with the [CDC].²² **[APP. 1] [APP. 2].**

¹⁷ See the *Appellant's Motion for a Complete and Accurate Clerk's Record: Corrections and Supplement*, to be filed imminently after this submission.

¹⁸ Made known to Appellant for the first time only by the filing on June 1, 2023 of the Clerk's Record to BODA; before that filing, Ms. Orozco only occasionally transmitted documents to/received submissions from Appellant on behalf of Guerra.

¹⁹ Within the TRDP, the term "clerk" is only present for the "Clerk of the Supreme Court" and "district clerk for the county of alleged venue" under Section III. In fact, no procedure for a Respondent attorneys "filing" of required documents before the Evidentiary Panel is even provided in the rules, except when interchanging the words "notify" with "service" and "filing" in Tex. R. Disciplinary P. 2.15. See also Tex. R. Disciplinary P. 2.16 (A)(1), the CDC will hold all records as confidential, but focuses on the release rather than the duty to hold them – no custodian assignment is specifically explained nor that the CDC would serve as the Clerk for the filings of Respondent attorneys.

²⁰ <https://www.txboda.org/frequently-asked-questions>.

²¹ See Section III. Motion for Judicial Notice.

²² **[APP. 1 pg. 9] [APP. 2 pg. 10].**

6. Finally, *the sixth role* held by the CDC, made the basis of this motion, is as Court Recorder/Court Reporter for the Evidentiary Panel. The two types of panel proceedings in which Respondent attorneys participate before the DGC²³ are: Investigatory Hearings²⁴ (“IVH”), TRDP Rule 2.12(F):

[a]n investigatory hearing is strictly confidential **and any record may be released only for use in a disciplinary matter.**²⁵

and Evidentiary Hearings;²⁶ TRDP Rule 2.17(N):

Record of the Hearing: A verbatim record of the proceedings will be made by a certified shorthand reporter in a manner prescribed by the Board of Disciplinary Appeals....²⁷

but, the TRDP do not detail how the reporter is retained. Secondary sources confirm that the CDC records both types of hearings²⁸[APP.1][APP.2] and that the CDC arranges for the court reporter to attend the hearings:²⁹ [APP.1][APP.2].

BODA’s FAQ webpage:

How do I file the record from the evidentiary hearing with BODA?

....It is the appealing party's responsibility to order, pay for, and file the reporter's record from the hearing. *The appellant should contact the CDC to obtain the court reporter's name....*³⁰

CDC 2019 & 2020 Procedural Guides.³¹

RECORD OF HEARINGS. All Evidentiary Panel proceedings are recorded by a court reporter. (TRDP 2.17(N)) **It is the policy of CDC to make a record of Investigatory Hearings by audio/visual taping.**

²³ Summary Disposition Panel hearings do not include Respondent attorney participation, *see* Tex. R. Disciplinary P. 2.13.

²⁴ *See* T. R. Disc. P. 2.12(F).

²⁵ (*emphasis added*) *See* T. R. Disc. P. 2.12(F).

²⁶ *See* T. R. Disc. P. 2.17.

²⁷ (*emphasis added*) *See* T. R. Disc. P. 2.17(N).

²⁸ *See* [APP. 1 pg. 9] [APP. 2 pg. 8] and *see* T. R. Disc. P. 2.12(F).

²⁹ *added*) *See* T. R. Disc. P. 2.17(N) and [APP. 1 pg. 9] [APP. 2 pg. 8].

³⁰ <https://www.txboda.org/frequently-asked-questions>

³¹ *See* Section III. Motion for Judicial Notice to this filing.

Note: The administrative support staff of the Office of the Chief Disciplinary Counsel will arrange for the presence of a court reporter or audio/visual recording at hearings.[APP. 1] [APP. 2].

7. Due to the importance of the information within the Procedural Guides authored by the CDC -- essentially the state agency handbook for these proceedings -- especially because the CDC's interpretation of the rules and procedures provide context not included in the plain language of the TRDP, Appellant seeks the BODA to take judicial notice of these materials. [APP. 1] [APP. 2].

III. MOTION FOR JUDICIAL NOTICE

A. Legal Standard

8. Judicial notice may be taken at any point a proceeding³² on request by a party or *sua sponte*. Judicial notice is proper for adjudicative facts and the law,³³ and mandatory when "requested by a party and [*the court is*] supplied with the proper subject of judicial notice, a fact must be by resort to sources whose accuracy cannot reasonably be questioned and "capable of accurate and ready determination necessary information."³⁴ The test on review is whether the fact to be judicially noticed is "verifiably certain"³⁵ and cannot reasonably be questioned."³⁶ A reviewing court may take judicial notice of records for the first time on appeal.³⁷ Generally, appellate courts take judicial notice of facts outside

³² See TRE 201.

³³ See TRE 201-204; *Hill v. Heritage Res. Inc.*, 964 S. W.2d 89, 137 (El Paso 1997, pet. den.).

³⁴ TEX.R.CIV.EVID. 201(d).

³⁵ *Id.*; *Levit v. Adams*, 841 S.W.2d 478, 485 (Tex. App.—Houston [1st Dist.] 1992, no writ).

³⁶ See Tex. R. Ev. 201; 201(b); 201(b)(2); see, e.g., *City of Hous. v. Todd*, 41 S.W.3d 289, 301 & n.16 (Tex. App.—Houston [1st Dist.] 2001, pet. denied) (verified by history sources); *Tex. Dep't of Pub. Safety v. Ackerman*, 31 S.W.3d 672, 676 (Tex. App.—Waco 2000, pet. denied) (Dallas County's pop. over 1,800,000: 1990, verified census). *Freedom Commc'ns, Inc. v. Coronado*, 372 S.W.3d 621, 623 (Tex. 2012); *In re Z.W.*, No. 02-18-00190-CV, at *11 n.8 (Tex. App. Sep. 13, 2018).

³⁷ See *In re Calpakis*, No. 14-13-00422-CV, at *2 (Tex. App. June 11, 2013) citing *Office of Pub. Util. Counsel v. Pub. Util. Comm'n*, 878 S.W.2d 598, 600 (Tex.1994) (court of appeals judicial notice but not by trial court); Tex. R. Evid. 201

the record only to determine jurisdiction or to resolve matters ancillary to decisions which are mandated by law.³⁸ Appellate courts:

do not typically consider documents included in an appendix to a brief when those documents are not part of the appellate record.³⁹ However, [Rule 201 of the Texas Rules of Evidence](#) provides that, at any stage of the proceedings, a court may take judicial notice of an adjudicative fact if that fact is not subject to reasonable dispute because it is generally known within the trial court's territorial jurisdiction or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned" and if the standards set forth in [Rule 201](#) are met, an appellate court may take judicial notice of a fact for the first time on appeal of matters not contained within the appellate record.⁴⁰

9. Appellate courts, for the first time on appeal, have taken judicial notice of all the following categories of material:

state agency administrative handbooks: "[w]e do have the power to take judicial notice of the policy;"⁴¹ Attorney General letter rulings;⁴² publicly-available property records to determine ownership of the property;⁴³ published obituary in the El Paso Times/news reports of burial;⁴⁴ permit

(permitting court to take judicial notice, whether or not requested). *See generally*, [Tex. R. Evid. 201\(b\)](#), (c)(1); *Office of Pub. Util. Counsel v. Pub. Util. Comm'n of Tex.*, [878 S.W.2d 598, 600](#) (Tex. 1994) (appellate court judicial notice first time on appeal)." *Ex parte Landry*, No. 02-21-00166-CR, at *4 n.1 (Tex. App. Dec. 16, 2021); *Freedom Communications, Inc. v. Coronado*, [372 S.W.3d 621, 623](#) (Tex. 2012); [TEX. R. EVID. 201\(c\)\(2\)](#).

³⁸ *SEI Business Systems, Inc. v. Bank One Texas, N.A.*, [803 S.W.2d 838, 841](#) (Tex.App.-Dallas 1991, no writ); *see Freedom Communications, Inc. v. Coronado*, [372 S.W.3d 621, 624](#) (Tex.2012)(judicial notice of facts: plea agreement relevant to jurisdiction). *See* [Tex. R. Evid. 201\(b\)](#); *Freedom Commc'ns, Inc. v. Coronado*, [372 S.W.3d 621, 623](#) (Tex. 2012) (*In re Z.W.*, No. 02-18-00190-CV, at *11 n.8 (Tex. App. Sep. 13, 2018))

³⁹ *See, e.g., Hogg v. Lynch, Chappell & Alsup, P.C.*, [480 S.W.3d 767, 773](#) (Tex.App.—El Paso 2015, no pet.) *Robb v. Horizon Communities Improvement Ass'n, Inc.*, [417 S.W.3d 585, 589](#) (Tex.App.—El Paso 2013, no pet.) ; *see also Nicholson v. XTO Energy, Inc.*, No. 02-16-00045-CV, 2016 WL 6648755, at *1 (Tex.App.—Fort Worth Nov. 10, 2016, no. pet. h.).

⁴⁰ *See* [TEX. R. EVID. 201\(a-d\)](#); *see Freedom Communications, Inc. v. Coronado*, [372 S.W.3d 621, 624](#) (Tex. 2012) (appellate court's right to take judicial notice of documents pursuant to [Rule 201](#)); *Office of Pub. Util. Counsel v. Pub. Util. Comm'n of Tex.*, [878 S.W.2d 598, 600](#) (Tex. 1994) (ordinarily constrained to evaluating an appeal solely from the four corners of the record, a "court of appeals has the power to take judicial notice for the first time on appeal" pursuant to [Rule 201](#)).

⁴¹ *See T.L. v. Cook Children's Med. Ctr.*, [607 S.W.3d 9, 50](#) (Tex. App. 2020); *In re M.S.*, No. 02-18-00379-CV, at *24 n.3 (Tex. App. Apr. 22, 2019).[Tex. R. Evid. 201\(d\)](#); *Office of Pub. Util. Counsel v. Pub. Util. Comm'n of Texas*, [878 S.W.2d 598, 600](#) (Tex. 1994)

⁴² *Aim Media Tex. v. City of Odessa*, No. 11-22-00052-CV, at *41 (Tex. App. Mar. 16, 2023)

⁴³ *Cnty. of El Paso v. Navar*, [584 S.W.3d 73, 77-79](#) (Tex. App.—El Paso 2018, no pet.) citing [TEX. R. EVID. 201\(b\), \(c\)](#); *Off. of Pub. Util. Couns. v. Pub. Util. Comm'n of Tex.*, [878 S.W.2d 598, 600](#) (Tex. 1994); *Taylor v. Margo*, [508 S.W.3d 12, 24](#) (Tex. App.—El Paso 2015, pet. denied)).

⁴⁴ *In re Estate of Hemsley*, [460 S.W.3d 629, 638-39](#) (Tex. App.—El Paso 2014, pet. denied).

issued by United States Army Corps of Engineers;⁴⁵ self-authenticating records and information located on government websites;⁴⁶ appraised fair-market value of certain real property published on the Harris County Appraisal District's website;⁴⁷ approval by the National Mediation Board published on the agency's website;⁴⁸ and judicial notice of Texas agency website.⁴⁹

B. The CDC Procedural Guides

10. Pursuant to Tex. R. Evid. 201 and 202, Appellant moves the BODA to take judicial notice of the CDC authored "Procedural Guide - Evidentiary Panel Proceedings - Investigatory Hearing Panel Proceedings" authored by the Office of the Chief Disciplinary Counsel of the State Bar of Texas, in May 2019 and May 2020, respectively. [APP. 1] [APP. 2].

11. These training materials/pamphlets were authored/produced by the CDC explicitly for the purpose of training DGC members empaneled for attorney discipline proceedings, *i.e.* these Procedural Guides were specifically used to train both the Panels before which this matter was presented:

- (a) **District 6 Grievance Committee, Investigatory Hearing Panel 6-3:** which heard 202000486 and this matter on November 12, 2020 and did not issue sanctions but instead dismissal [APP 4]. and recommended the Grievance Referral Program, offer November 20, 2020,⁵⁰ [APP. 5] and
- (b) **District 14 Grievance Committee, Evidentiary Hearing Panel 14-2:** from which BODA appeal is taken for all rulings, *orders and judgment contemplated in this appeal*

⁴⁵ *City of Shoreacres v. Tex. Comm'n on Env't Quality*, 166 S.W.3d 825, 82838 & n.2 (Tex. App.—Austin 2005, no pet.)

⁴⁶ *see, e.g., Newton v. Holland*, 2014 WL 318567, at *1 n.1 (E.D. Ky, Jan. 29, 2014) (mem. op.)

⁴⁷ *Kew v. Bank of Am., N.A.*, CIV. A. H-11-2824, 2012 WL 1414978, at *3 (S.D. Tex. Apr. 23, 2012)

⁴⁸ *Kitty Hawk Aircargo, Inc. v. Chao*, 418 F.3d 453, 457 (5th Cir. 2005)

⁴⁹ *Coleman v. Dretke*, 409 F.3d 665, 667 (5th Cir. 2005) (per curiam)

⁵⁰ *See HARRIS.0562,*

12. Appellant contends that this particular request for judicial notice does not require inquiry as to presentation of the Procedural Guides to the underlying evidentiary panel/any determination if these Procedural Guides are present in the record of this appeal, as irrelevant:

the Procedural Guides were the essential training material of the CDC mandatory to the Grievance Committees under the State Bar Board Policy Manual, and Appellant was under no duty to present these documents in the post-judgment proceedings – **where the CDC itself presented** these Procedural Guides to the District Grievance Committees/made the basis of the IVH and evidentiary panels’ training, understandings and reference to conduct/proper procedures while empaneled.

13. Further, the CDC Procedural Guides comply with Rule 201 because they were published by the CDC – the state agency handbook. Just as judicial notice was taken of the DFPS policy was taken for the DFPS handbook for the first time on appeal in *T.L. v. Cook Children’s Med. Ctr.*, 607 S.W.3d 9, 50 (Tex. App. 2020) and *In re M.S.*, No. 02-18-00379-CV, at *24 n.3 (Tex. App. Apr. 22, 2019).

14. Further, the Procedural Guides were re-published for public dissemination **with CDC permission** by Texas ethics attorneys: the 2019 edition on Hunt Huey’s firm blog/website⁵¹ and the 2020 edition presented by the State Bar of Texas in CLE materials for attorney ethics education courses;⁵² therefore, as

⁵¹ Published by the Office of the Chief Disciplinary Counsel, State Bar of Texas, MAY 2019;; verified by re-publish in Hunt Huey PLLC’s legal blog, 67 pages at <https://legalethics.today.com>; specifically <https://legalethics.today.com/2019/04/22/hot-of-the-presses-texas-grievance-procedural-guide-explains-it-all/>.

⁵² Published by the Office of the Chief Disciplinary Counsel State Bar of Texas MAY 2020;; verified by re-publish as APPENDIX B within attorney Anita Kajawa’s CLE primer, 48 pages, to “The Texas Attorney Disciplinary Process (aka the Grievance System).” A copy of the entire CLE course, including Appendix B, reflects the CDC pamphlet was presented within the 38th Annual School Law Conference February 9-10, 2023.

the state agency policy book, and also both made matters of public record, of which BODA as appellate court may take judicial notice.⁵³

15. As the CDC is the officially designated entity responsible for administering the attorney discipline system, Custodian/manager and overseer of the system hereto for the entire State of Texas,⁵⁴ promulgated by the CFLD, derived from the SBOT, organized by the Supreme Court: the CDC's training resources for these proceedings "cannot reasonably be questioned" in accordance with Rule 201. BODA should take judicial notice of the Procedural Guides for appellate review.⁵⁵

IV.

RELEVANT PROCEDURAL BACKGROUND: REPORTER'S RECORD

A. The Omitted items are Material to the Record

16. Three disciplinary proceedings against Appellant, including this action, were ongoing simultaneously in 2020 before the CDC;⁵⁶ all assigned the same CDC Investigator, Elena Wolfe, and the same CDC attorney, Guerra. The Second, Third and instant Fourth were concurrently and actively defended by

⁵³ See, e.g., *City of El Paso v. Fox*, 458 S.W.3d 66, 71-72 (Tex.App.—El Paso 2014, no pet.)(taking judicial notice of minutes from meeting of city council that were available on city's website); see also *Bridgeport Ind. Sch. Dist. v. Williams*, 447 S.W.3d 911, 916 n.4 (Tex.App.—Austin 2014, no pet.) (taking judicial notice of undisputed facts contained in a letter from the Texas Education Agency because those facts impacted the court's jurisdictional inquiry).

⁵⁴ See page 87 of 129 STATE BAR BOARD POLICY MANUAL – January 2023; Commission for Lawyer Discipline 2022 Annual Report (the Texas attorney discipline system is administered by the CDC whose work is overseen by the CFLD). See *Id.*; Tex. Gov't Code 81.076(g) (the Commission selects the CDC to serve as the administrator of the State Bar's disciplinary procedures).

⁵⁵ *W. Hills Harbor Owners Ass'n v. Baker*, 516 S.W.3d 215, 219-20 (Tex. App. 2017).

⁵⁶ The First Grievance filed in 2015 against Appellant was dismissed as an Inquiry the same year -- which did not allege professional misconduct (*filed by a previous landlord in improper attempt to collect alleged carpet damages from Appellant/no attorney-client interaction*).

Appellant before the CDC and included multiple and supplemental written responses, with hundreds of pages of exhibits tendered in support thereof:

- a. filed on or about October 31, 2019, the Second Grievance/Complaint was brought in Cause No. 201906965 (**dismissed by SDP 6-1 on April 1, 2020: no just cause**);⁵⁷ [APP. 3]
- b. filed on or about January 3, 2020, the Third Grievance/Complaint was brought in Cause no. 202000486 (**dismissed by IVH 6-3 on December 8, 2020 after IVH setting November 12, 2020: not enough evidence to continue investigation/no just cause**);⁵⁸ [APP. 4]
- c. filed on or about January 15, 2020, the Fourth Grievance/Complaint brought in Cause No. 202000647 -- the instant matter -- (**offer of Grievance Referral Program after same setting November 12, 2020 IVH Panel 6-3 setting**).⁵⁹ [APP. 5]

17. The communications made to the CDC in those proceedings are directly relevant to these proceedings, and include the same parties: Guerra as CDC attorney, Wolfe as CDC Investiagtor, and Appellant; and where Appellant delivered explicit written notices to the CDC, received by the CDC, as to her office locations being virtual leases wherein she was never physically present, by appointment only, her home residences being apartments or townhomes separate and apart from her parent's residence in north dallas, and providing such addresses readily as he contact information -- these negate any presumption of good faith in the service of process/due diligence of the CDC within the underlying default proceedings taken herein against Appellant.

⁵⁷ HARRIS.0008-0010.

⁵⁸ HARRIS.0011.

⁵⁹ HARRIS.0562; CR 0509.

18. Specifically, on November 12, 2020, the CDC held two combined attorney discipline Investigatory Hearings of which Appellant was Respondent, both before District 6 Grievance Committee, Investigatory Hearing Panel 6-3 of the State Bar of Texas; Cause No. 202000486 and the instant action, Cause No. 202000647 (North). [APP. 6] [APP. 7].

19. The recording of this hearing are materials to Appellant;s appeal, as the information provided by Appellant to the CDC therein, as well as the CDC pattern of inequitable conduct will be supported by the contents of the November 12, 2020 recording/record of that hearing, (*and the March 24, 2023 setting*), necessitating BODA to enter an Order directing the CDC to produce the recordings. The matters which support this premise, and reflect the CDC acts in contravention to the TRDP include, but are not limited to:

-201906965: January 30, 2020 email to CDC Investigator providing apartment address/explicitly notice the North Dallas location was parent’s house, irregular place abode of Appellant,;⁶⁰

-202000486 October 2020, etc. several documents clearly indicated that Appellant’s business office addresses were remote, virtual offices at which Appellant would never be physically located;⁶¹

-202000486 & 202000647 November 12, 2020 IVH setting: Appellant was physically located in her residential apartment at time of Zoom setting, location recited on the record; further, testimony confirmed remote/appointment only virtual office location; [APP. 6] [APP. 7].

-202000486 IVH Panel 6-3 *sua sponte* ordered: 1) CDC attorney to cease lines of questioning as improper: engaged in unrestricted direct

⁶⁰ HARRIS.0013-0014; HARRIS.0017-0018; 17671 Addison Rd. #1603 Dallas, Texas 75287 (November 2019-May 2020), advised Elena Wolfe that as power had been out at residential address, only stayed at North Dallas residence until issue resolved.

⁶¹ HARRIS.0002-0007; clearly labeled and communicated to be locations by appointment only.

questioning of confidential TLAP communications; and 2) IVH Panel 6-3 *sua sponte* struck all CDC exhibits from the record as never provided to Appellant;⁶² hearing concluded upon Panel member demanding of Guerra “what are we even doing here?” [APP.6]

-202000647 similarly, exhibits only transmitted to Appellant after the hearings had been underway 30 minutes so again, did not receive same for hearing;⁶³ not all evidence submitted before IVH 6-3 in Appellant’s defense, yet still only warranted GRP;⁶⁴ [APP.5]

-202000486 & 202000647 November 13, 2020 SBOT membership department ordered replacement bar card, provided/clearly indicating residential home address; received same delivered by SBOT to home address.⁶⁵ {APP. 8}

-202000647: December 12, 2022 Appellant communicated directly with the CDC by email and payment for a Certificate of Good Standing, who never made mention of an evidentiary action, any pending default hearing, any attempts to contact Appellant or need for personal service. [APP. 9]

20. Appellant is entitled to supplement the record as requested in this motion based on the inter-related positions/communications of the Appellant to the CDC in all three actions. The events which resulted in those matters’ dismissals, especially dismissal from IVH in 202000486, clearly illustrate the procedural irregularities/defects of the CDC which began in those matters and have continued into this matter to date, all to the detriment of the Appellant.

23. Appellant asserts that these reasons, while not exhaustive, more than demonstrate the requested items are material to the record of this appeal and

⁶² HARRIS.0037, HARRIS.0045 (emails reflect they were not even transmitted to Appellant for 202000486 until after the hearings had completed and all exhibits were not even related to 202000468, but other client who had contacted CDC Investigator by asking Third Grievance client for CDC contact, but never filed a Grievance and sought only to injure Appellant upon Appellant’s refusal to act on matters which were illegal and improper before a Court;)

⁶³ HARRIS.0037-0038; HARRIS.0045-0046. to which appellant never had opportunity to review before or during, as completely immersed in presentation before the panel.

⁶⁴ HARRIS.0562; CR 0509; and still – IVH 6-3 found qualifications for Grievance Referral Program.

⁶⁵ CR.0506-0508; HARRIS.0558-0561; HARRIS.0533-0546 892 Union Station Parkway #8106, Lewisville, Texas 75067 (May 2020-May 2021).⁶⁵

and require supplementation to the record.

B. Repeated Requests Ignored, Necessitating Order of BODA

24. As the custom of the CDC is to record their hearings, Appellant has made multiple requests for information related to her disciplinary file to both the CDC directly outside of these proceedings, in these proceedings, as well as to the SBOT Open Records Department under the Public Information Act -- including *specific requests for a copy of the CDC's recording of the November 12, 2020 Zoom Investigatory Hearings*. Appellant's multiple requests since February 20, 2023 are as follows:

- a. **February 20, 2023:** Appellant requested these recordings in the record of this cause filed this date under TRDP 2.12 within *Respondent's Motion to Stay Execution of Default Judgment of Partially Probated Suspension Pending Panel Rulings/Appeal and Request for Record* which specifically stated:
Respondent hereby makes formal request ... **the record captured of the proceedings in which it was entered, including all transcriptions and recordings and/or Zoom conferences, for this Evidentiary Panel or prior to its inception, in which record was kept related to the Respondent and this Grievance.**⁶⁶
- b. **February 23, 2023:** Appellant made a request for these materials under the Public Information Act through the SBOT Open Records Department Portal accompanied by the CDC Release Form:⁶⁷ **[APP. 11]**
... I hereby tender the attached form and request all records held by the Office of the Chief Disciplinary Counsel of the State Bar of Texas pertaining to me. This request includes both public and confidential records, including dismissed and pending grievances and/or complaints and documents pertaining to confidential sanctions."⁶⁸
- c. **March 9, 2023:** Following the SBOT March 1, 2023⁶⁹ **[APP. 11]** denial of the request and instructions, Appellant made the request again to the CDC directly in a formal request for a full copy of Appellant's disciplinary file,

⁶⁶ CR 205.

⁶⁷ HARRIS.0627; CR.0574.

⁶⁸ HARRIS.0628; CR.0575.

⁶⁹ HARRIS.0641; CR.0588

accompanied by a copy of the denial from SBOT ORD to cdcinfo@texasbar.com attaching the Release: [APP. 12].

...I specifically seek to request the verbal or stenographic recordings of the November 12, 2020 IVH hearings held on two separate matters. Please let me know if I need to do anything further or remit a fee, or otherwise complete any additional steps to assist in the request.⁷⁰

That same date, the CDC responded:

Thank you for contacting the Office of the Chief Disciplinary Counsel. Please do not reply to this email. You will receive a response to your email as soon as possible. If you have filed a grievance and wish to provide additional information please fax the information to our fax line at (512) 427-4169 or mail the information to our address at Office of Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711.⁷¹

(No follow-up was ever received from this formal Request to the CDC).

- d. **March 10, 2023:** Appellant made the request again within the filing this date of *Respondent's Verified Motion to Set-Aside/Vacate the Default Judgment of Partially Probated Suspension and/or for New Trial* was filed, wherein Appellant:

Made note the materials were requested for presentation before the Panel for its review, specifically the recording of the Investigatory Hearing held November 12, 2020.⁷²

- e. **March 23, 2023:** Appellant made the request again the filing this date of *Respondent's Requests for Panel Review*.⁷³

- f. **March 23, 2023:** Appellant made the request again in the filing this date of *Respondent's Notice of Supplemental Facts*⁷⁴ under Section III:

Respondent files this ...contemporaneously with her Requests for an Order directing the Office to produce the IVH recordings/Respondent's Disciplinary files.⁷⁵

...Respondent cannot fully present her positions regarding address when the Office of the Chief Disciplinary Counsel will not provide the full copy of her disciplinary file, especially the recordings of the IVH hearings on November 12, 2020...⁷⁶

- g. **March 24, 2023:** Appellant requested the records once more in her *Reply to Petitioner's Response to Respondent's Motion to Stay* under

Record still requested: Lastly, the respondent seeks her full copy of the disciplinary file as formally requested, including the IVH hearing transcript and the record of the hearing for substitute service. As well as the matters in

⁷⁰ HARRIS.0642; CR.0589

⁷¹ HARRIS.0643 CR.0590

⁷² CR 280; CR 311.

⁷³ CR 0413; 0420-0422 specific request.

⁷⁴ CR 0397.

⁷⁵ CR 0407

⁷⁶ CR 0408

the pia request, but which may be separately pursued under those procedures.⁷⁷

- h. March 24, 2023: Appellant again requested, within the hearing this date: the Evidentiary Panel Order release of the recoding as requested to the CDC; Guerra made the non-sensical assertion that ‘the transcript would be a part of the appellate record/provided to the appellate court, and that the other case’s transcript would “just confuse the issues.”’
- i. May 8, 2023: Appellant made the request again within the filing of Appellant’s *Notice of Appeal*.⁷⁸

Respondent/Appellant would further request a copy of the panel hearing on this matter conducted on November 20, 2020 and January 27, 2023 and March 24, 2023, including a transcript of the motions made prior to the taking of evidence, the witness testimony at said hearing, and all exhibits, admitted or not admitted, at such hearing. Internal Rules for the Board of Disciplinary Procedures, Rule 4.02(c)(2).
- j. June 7, 2023: Appellant mentioned all these requests in the filing of the *Formal Bill of Exceptions*.

25. However, Respondent has not been provided her Disciplinary file, nor received any of the information from the Office of the Chief Disciplinary counsel as requested: materials/transcript/recording of the November 12, 2020 IVH hearing before IVH 6-3, nor received any response from the CDC about the requests such as any CDC claim of privilege, objection or explanation for the refusal (**but for** Guerra’s illogical assertions in the March 24, 2023 setting).

26. Such matters are specifically delineated as subject to production in disciplinary actions, and the confidentiality provision for the CDC’s duty to keep same **does not apply to requests made by Respondent for her file, only to the public**. Further, although again specifically requested in the Notice of Appeal, Respondent has not been provided any materials/transcript/recording of any hearing, including the record of the March 24, 2023 hearing.

⁷⁷ CR 0613; CR 0624

⁷⁸ CR 0653.

V.

REPORTER'S RECORD: CORRECTIONS & SUPPLEMENTS

27. Appellant asserts that she is entitled to an Order from BODA which directs a supplemental record to be certified and transmitted by the court reporter for the evidentiary panel, in this case, the CDC for the omitted/missing items. This includes the recording/transcription/logs of the November 12, 2020 Zoom hearings for Cause No.s 202000486 and 202000647; the recording/logs held by the CDC of the January 27, 2023 hearing, and most especially the recording/transcription/logs of the March 24, 2023 hearing,

28. Appellant, seeking clarification/sources of authority for the CDC's positions, acts and omissions in these disciplinary proceedings, has found the rules strangely silent as to these very important delegations of duties and powers. Most poignantly, the additional roles assumed by the CDC herein –which are typically those held in litigation cases by disinterested third-parties who have duties to the integrity of the judicial system and court operations::

Clerks of the Court, are elected officials granted powers/duties directly by the Texas Constitution,⁷⁹ squarely tucked in under the Judge of the Court/Judicial Branch oversight from the Judicial Conduct Committee, the Office of Judicial Administration with standards of conduct governing their acts as clerk; and

Court Reporters: educated, trained, tested, and licensed under duties of candor and moral turpitude/ beholden to their own Board/tribunals for misconduct;⁸⁰

⁷⁹ TEX. CONST. 5 (Judicial Department) § 5a.: Clerks of Appellate Courts (Supreme court, Court of Criminal Appeals and each Court of Appeals); TEX. CONST. 5 § 9.: Clerks of the District Court; and TEX. CONST. 5 § 20 Clerks of the County Court).

⁸⁰ An Official Court Reporter is defined as the shorthand reporter appointed by a judge under Section 52.041 of the Texas Government Code as the official court reporter for a particular court, "[e]ach judge of a court of record shall

29. The Texas Office of Court Administration⁸¹ training materials reflect:

CLERKS AND COURT PERSONNEL MUST REMAIN NEUTRAL

Remain neutral and do not promote or recommend a particular course of action to court users. ☉ Although you may have processed many similar types of cases, you do not know what is in a court user's best interest. Only they or their attorneys can make that determination.

CLERKS AND COURT PERSONNEL MUST REMAIN IMPARTIAL

Impartiality is similar to neutrality, but focuses on equal treatment of court users. ☉ Court knowledge must be shared fairly and equally. ☉ Never give advice or information that favors one side or the other. ☉ Do not disclose confidential information or become involved in or facilitate an *ex parte* communication.⁸²

30. In *Schaefer*, the BODA specifically addresses the CDC's assumption of dual roles in these proceedings:

importantly, the Office of the Chief Disciplinary Counsel acts as staff for the grievance committee panel in limited circumstances such as those now before us and must scrupulously adhere to the rules when [acting as such] for Evidentiary Panels."⁸³

31. BODA's holding reflected that the possibility for self-dealing arises when one party is serving multiple roles, so the:

*[CDC]'s adherence to disciplinary rules is essential and must avoid even the appearance of impropriety*⁸⁴

The CDC serves in a dual capacity in evidentiary proceedings. How the CDC performs its responsibilities is critical to accomplishing the disciplinary system's goal of protecting the public.

appoint an official court reporter." TEX. GOV'T CODE § 52.041. Court Reporters are overseen by The Judicial Branch Certification Commission, promulgated by Sec. 152.101, 155.151, and 155.203 of the Texas Government Code.

⁸¹ Co-authored by Texas Access to Justice Commission, Texas Access to Justice Foundation, Texas Legal Services Center have provided these guidelines for the roles:

<https://www.txcourts.gov/media/1162112/legalinformationvslegaladviceguidelines.pdf>

⁸²*Id.*

⁸³ (*emphasis added*) *Schaefer v. Commission for Lawyer Discipline*, No. 44292, (Tex. April 20, 2012).

⁸⁴ *Schaefer v. Comm'n for Lawyer Discipline of the State Bar of Tex.*, Bd. Of Disciplinary Appeals Case No. 44292 (Jan. 28, 2011) at 8–11.

Along with filing and prosecuting formal disciplinary proceedings, the CDC also provides staff support to the grievance committees which have no independent clerk or staff.

After finding just cause and before filing an evidentiary petition against an attorney, the CDC requests the appointment of the Evidentiary Panel from the committee chair.

The CDC maintains the case file and forwards all pleadings and motions filed by either party to the panel chair. The CDC assists in preparing the Hearing Report for the panel chair to complete at the conclusion of the hearing, drafts the judgment, and prepares the clerk's record if the judgment is appealed to BODA.

Allowing the entity responsible for obtaining panel appointments and substitutions to argue that its failure to strictly comply with the clear statutory requirements is harmless so long as the respondent does not object *creates opportunity for a conflict of interest and improper handling of the panel.* To prevent even the appearance of impropriety, the CDC must therefore meticulously follow the letter and the spirit of the TRDP to preserve the impartiality of the Evidentiary Panels and public confidence in their decisions.⁸⁵

32. Here, the CDC has explicitly refused to follow the TRDP, to the detriment of Appellant, without regard for even the appearance of propriety, in contravention to BODA precedents⁸⁶ and its own operating procedures.[APP.1][APP.2]

33. The CDC's roles, operating *designated as Custodian for the entire system, Trainer of the DGC*, and in these proceedings as Clerk of the Evidentiary Panel and Court Recorder/Reporter for the Evidentiary Panel, *while also concurrently* the zealous advocate of the Petitioner/Appellee CFLD opposite

⁸⁵ (*emphasis added*) *Schaefer v. Commission for Lawyer Discipline*, No. 44292, at *9-10 (Tex. Jan. 30, 2011).

⁸⁶ *HARRIS.0196-0208 HARRIS.0209-0221*. See *Sims v. Comm'n for Lawyer Discipline*, Texas Board of Disciplinary Appeals Case No. 34229 (Aug. 16, 2006). See and *Shelton v. Comm'n for Lawyer Discipline*, Texas Board of Disciplinary Appeals Case No. 36059 (June 9, 2006). See

Respondent/Appellant -- is implicitly a conflict of interest for the CDC under the TDRPC, the *Schaefer* standard for self-dealing, and common sense.

34. Without any direct, unambiguous promulgation of these powers and duties to the CDC, nor clarity of the rules to create less likelihood of seal-dealing - – the CDC is permitted to effectively control the entire proceedings without notions of fair play, justice, equitable regard for Appellant, nor rebuke.

35. While the CDC properly delegated the function to a licensed Court Reporter for the January 27, 2023 hearing, (*albeit without notice to Appellant*), the Default Judgment hearing was therefore attended by court reporter Ms. Leigh, who has prepared the transcript and exhibits. [APP. 10]. Appellant paid Ms. Leigh's reporter's fee on February 24, 2023, receiving the transcript shortly thereafter;⁸⁷ Ms. Leigh also timely filed her portion of the partial reporter's record with BODA on May 11, 2023, a few days after Appellant's May 8, 2023 Notice of Appeal requested same. However, Guerra made the decision to move forward with the March 24, 2023 setting over the clear and unequivocal objections of Appellant, and also made the decision to forego arranging attendance of a Court Reporter. [APP. 13]

36. Where the TRDP have been consistently interpreted/held to:

⁸⁷ HARRIS.0067-0069.

...have the force and effect of statutes.⁸⁸ We apply statutory construction principles to discern the meaning of the TRDP.⁸⁹ If a statute is silent as to the consequences for noncompliance, we look to the statute's purpose to determine the proper consequences.⁹⁰ All parts of a statute must be read together and given effect, if possible.⁹¹ One provision should not be interpreted inconsistently with other provisions.⁹²

37. The CDC does not have discretion in providing a court reporter to attend/record the evidentiary panel hearings under TRDP 2.17(N); the language of this rule is not permissive, but mandatory. The Procedural Guides also specifically denote the CDC arranges court reporters/recordings. [APP.1][APP. 2]

38. Therefore, in violation of a duty to provide/schedule a certified short-hand reporter, (*amongst many other mandatory provisions of the TRDP*) the CDC's attorney acted *ultra vires*.

39. Further, as Appellant has asked for the recordings of the hearings, and it is the CDC policy to record all of same, Appellant submits TRAP Rule 13.1 is mandatory and requires that whenever a request for a court recorder/reporter is made, the refusal to furnish the court reporter and require a transcription of the proceedings is *per se* prejudicial; as here, upon objection of Appellant, harm need not be shown,⁹³ although harm is clear from the omission, where Appellant:

⁸⁸ *Schaefer v. Commission for Lawyer Discipline*, No. 44292, at *11 (Tex. Jan. 30, 2011) citing *O'Quinn v. State Bar of Texas*, 763 S.W.2d 397, 399 (Tex, 1988); *State Bar of Texas-v. Wolfe*, 801 S.W.2d 202, 203 (Tex. App.-Houston [1st Dist.] 1990, no writ).

⁸⁹ *Schaefer* citing *In re Caballero*, 272 S.W.3d 595, 599 (Tex. 2008)

⁹⁰ *Schaefer* citing *Helena Chemical Co. v. Wilkins*, 41 S.W.3d 486, 494 (Tex. 2001).

⁹¹ *Id.* at 493

⁹² *Schaefer* citing *Caballero* at 600 (citing *Helena Chemical*, 47 S.W.3d at 493 ("We should not give one provision a meaning out of harmony or inconsistent with other provisions, although it might be susceptible to such a construction standing alone").

⁹³ See Tex. R. App. P. 13.1; see *Valle v. State*, 109 S.W.2d 500 (Tex.Cr.App. 2003).

objected before the March 24, 2023 hearing: due to Appellant’s non-setting and request for ruling by submission, but Guerra advised she was moving forward with the hearing regardless; then attending the hearing for the Motion to Stay, under duress;⁹⁴ [APP. 13]

further objecting at the hearing: requested a continuance for the **reasons of: obtaining a court reporter**, correcting the newly alleged deficiency of the exhibits, having time to actually prepare for the *Motion to Set-Aside, Vacate and for New Trial* -- as no notice was provided that motion was even set at all, let alone to be heard, until the start of the setting -- Guerra effectively denying all Appellant’s relief and providing rebuttal contrary to logic, yet positions which were granted without explanation by the Panel rulings;⁹⁵ also objecting after the hearing, in filings with the Panel/Notice of Past Due findings of fact and conclusions of law⁹⁶ and the Formal Bill of Exceptions.⁹⁷

40. The San Antonio Court of Appeals considered a lawyer’s duties under the disciplinary rules and standards for appellate court conduct in its decision to impose sanctions based upon a party and its counsel’s submission of a misleading record before the appeals court.⁹⁸

ADT included in the record only five pages of a one hundred eighteen page reporter’s record.⁹⁹ After the real parties in interest filed a response and motion for sanctions, pointing out the deficiencies in ADT’s record, ADT filed a response to the motion for sanctions and a supplemental record that included the full reporter’s record.¹⁰⁰

41. The court of appeals imposes sanctions “with caution and only after careful deliberation.”¹⁰¹ ADT responded that it was not necessary to submit the full transcript with its petition to comply with the rules of appellate procedure,

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⁹⁷ Not yet entered in the record, but transmitted to all counsel and the BODA on June 7, 2023 via dropbox link.

⁹⁸ *Id.* at *5 (citing TEX. R.APP. P. 52.11(d)).

⁹⁹ *Id.* at *2.

¹⁰⁰ *Id.* at *3.

¹⁰¹ *Id.* at *4 (citing TEX. R. APP. P. 52.11(d)).

which “require only that a relator attach a ‘transcript of any relevant testimony from any underlying proceeding.’”¹⁰² The court disagreed. The court concluded that:

ADT clearly failed to provide this court with that portion of the reporter’s record that would have informed this court of [the trial judge’s] reasoning for not granting the motion for continuance.¹⁰³ Had ADT provided this court with the full reporter’s record . . . it is highly unlikely that this court would have granted the stay of the ongoing trial or requested a response from [the real parties in interest].¹⁰⁴ The conduct of ADT’s counsel was considered in light of a lawyer’s obligations to maintain the highest standards of ethical conduct and to provide a fair and accurate understanding of the facts and law applicable to their case.¹⁰⁵ **The court also stated that a lawyer’s duty of honesty and candor to the appellate court includes fairly portraying the record on appeal and in original proceedings.**¹⁰⁶ Accordingly, the court concluded appropriate the imposition of a sanction for the attorneys’ fees expended in responding to the petition for writ of mandamus pursuant to Rule of Appellate Procedure 52.11.¹⁰⁷

42. Subsequent to the responses and/or supplementation of the record as requested herein, the applicability of remedies such as those set forth above or in TRAP 34.6(f) can be assessed.¹⁰⁸

43. Appellant has the burden to bring forward a record on appeal that shows that trial court (evidentiary panel) erred in denying her claims, but cannot

¹⁰² *Id.* (citing TEX. R. APP. P. 52.7(a)(2)).

¹⁰³ *Id.* at *5.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at *4 (citing Tex. R. Disciplinary Prof’l Conduct preamble, para. 1; Texas Supreme Court, Standards for Appellate Conduct, available at <http://www.supreme/rules/conduct.asp>).

¹⁰⁶ (*emphasis added*) *Id.* (citing *In re Lerma*, 144 S.W.3d 21, 27 (Tex. App.—El Paso 2004, orig. proceeding); *Schlaflly v. Schlaflly*, 33 S.W.3d 863, 873 (Tex. App.—Houston [14th Dist.] 2000, pet. denied)).

¹⁰⁷ *Id.* (citing TEX. R. APP. P. 52.11(d)).

¹⁰⁸ See Tex. R. App. P. 34.6(f); see *Exocet, Inc. v. Cordes*, 815 S.W.2d 350, 355–356 (Tex. App.—Austin 1991), *overruled for other reasons*, *Fairfield Fin. Group, Inc. v. Synnott*, 300 S.W.3d 316 (Tex. App.—Austin 2009))(It is not appropriate to simply attach copies of lost or destroyed documents to an appellate brief.

show that the trial court (evidentiary panel) erred without providing a copy of the record from the proceedings upon which same was based.¹⁰⁹

44. However, as the CDC still made a verbatim recording of the setting as the Recorder, then the CDC's role as Recorder must also equate to Reporter when the CDC fails to assign a Court Reporter to the Evidentiary Panel hearings as set forth by the TRDP. 2.17(N); rendering its recordings the only proof of the proceedings. Under TRAP 13.2, the CDC's role as Recorder is set forth in detail.

45. BODA's IPR Rule 4.02(c), Responsibilities for filing the record, (2) Reporter's Record reflects::

- (i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:
 - a) a notice of appeal has been filed;
 - b) a party has requested that all or part of the reporter's record be prepared; and
 - c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.
- (ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.¹¹⁰

46. BODA IPR Rule 4.02(f), Preparation of the Reporter's Record reflects:

- (1) The appellant, at or before the time prescribed for perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

¹⁰⁹ *Guajardo v. State*, 109 S.W.3d 456, 462 & n.17 (Tex. Crim. App. 2003) (noting that it is "the appealing party's burden to ensure that the record on appeal is sufficient to resolve the issue he presents").

¹¹⁰

- (2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.
- (3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.
- (4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise
- (6¹) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

47. Where Appellant has specifically made written request "at or before the time of filing" her Notice of Appeal (and each time as listed above under section IV) Appellant specifically requested within the May 8, 2023 Notice of Appeal that the November 12, 2020 and March 24, 2023 hearings transcripts/recordings be prepared and certified by the Court Reporter in accordance with 4.02(c)(2)(i)(a),(b), and 4.02(f)(1). As such, under 4.02(f)(2) the CDC is charged/must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

48. Further, as the CDC has failed to comply with 4.02(c)(ii), where, acting as court reporter, it has been unable to prepare and transmit the reporter's record by the due date, when under the duty to promptly notify BODA/the parties with an explanation why the reporter's record has not be timely filed/provide the date by which it expects the reporter's record to be filed, it has also violated the BODA IPR.

49. Therefore, appellant seeks Order from BODA which grants this Motion to Correct and Supplement the deficit Report's Record, directs the CDC to certify and submit all duplicates of all audio and video recordings relating to this case that are in the possession, custody or control of the CDC and/or its agents of

1) all transcripts, recordings or notes regarding the Zoom hearings it held/conducted on November 12, 2020 before District 6 Evidentiary Panel 6-3, Cause Nos. 202000486 and 202000647 as well as all hearing reports therefrom, (as none were ever produced to Appellant) as well the official log as set forth in TRAP 13.2;

2) all transcripts, recordings or otherwise responsive Court Reporter/Recorder recordings of the March 24, 2023 setting by Zoom before Evidentiary Panel 14-2, as well as the hearing report, (as no hearing report for this setting was ever produced to Appellant) and the TRAP 13.2 log; and

3) all transcripts, recordings or otherwise responsive Court Reporter/Recorder recordings it may have of any other hearings for Appellant, including but not limited to the January 27, 2023 setting/TRAP 13.2 log for same.

VI. CONCLUSION & PRAYER

50. Appellant will further show that without BODA action in an Order directing the CDC to comply with the rules of procedure in supplementing the record, **BODA is without a full and complete appellate record from which it should make ruling on the pending motions/responses currently before BODA in this matter.** Where the Formal Bill of Exceptions has yet to be signed by the Evidentiary Panel Chair in the underlying Panel, and both the Clerk's Record and the Reporter's Record are egregiously deficient, especially in the CDC attorney's decisions to withhold a court reporter for the March 24, 2023 setting. **[APP. 13]**

Therefore, Appellant further asks that BODA affirmatively abate ruling on the pending Appellee Motion to Dismiss until the final rendition of the record in this appeal.

WHEREFORE, PREMISES CONSIDERED, Appellant respectfully requests that BODA grant this motion in all things, and *affirmatively delay its ruling on the pending motions before it,* pending completion/final rendition of the records; *enter an Order which grants Appellant's request for judicial notice* of the Procedural Guides attached hereto in the Appendix of this motion; and *enters an Order which directs the CDC to Correct and Supplement the deficit Report's Record:* certify and submit all duplicates of all audio and video recordings relating to this case that are in the possession, custody or control of the CDC and/or its agents, consisting of at least the following:

1) all transcripts, recordings, or notes regarding the Zoom hearings it held/conducted on **November 12, 2020** before District 6 Evidentiary Panel 6-3, Cause Nos. 202000486 and 202000647 as well as all hearing reports therefrom, (as none were ever produced to Appellant) as well the official log as set forth in TRAP 13.2;

2) all transcripts, recordings or otherwise responsive Court Reporter/Recorder recordings of the **March 24, 2023** setting by Zoom before Evidentiary Panel 14-2, as well as the hearing report, (as no hearing report for this setting was ever produced to Appellant) and the TRAP 13.2 log; and

3) all transcripts, recordings or otherwise responsive Court Reporter/Recorder recordings it may have of any other hearings for Appellant, including but not limited to the **January 27, 2023** setting/TRAP 13.2 log for same.

Appellant requests all other relief, in law or equity, general or special, to which BODA finds Appellant justly entitled.

RESPECTFULLY SUBMITTED,

/s/Lauren A Harris
LAUREN A. HARRIS
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PRO-SE APPELLANT

CERTIFICATE OF CONFERENCE TEX. R. APP. P. 10.1(A)(5)

Appellant conferred with counsel for Appellee, Michael Graham, on the substance of this motion and he has indicated that on behalf of the CFLD, this motion is Opposed.

/s/Lauren Harris
Lauren A. Harris

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Appellant's Motion to Correct & Supplement the Clerk's Record has been served by electronic transmission on Appellee, The Commission for Lawyer Discipline, through its counsel, the Office of the Chief Disciplinary Counsel, and filed with the Board of Disciplinary Appeals on this day, the 31st day of July, 2023, as follows:

VIA E-MAIL:

MICHAEL G. GRAHAM
APPELLATE COUNSEL
OFFICE OF THE CHIEF DISC. COUNSEL
STATE BAR OF TEXAS
P.O. BOX 1248
AUSTIN, TEXAS 78711-2487
MICHAEL.GRAHAM@TEXASBAR.COM
FOR APPELLEE COMMISSION FOR LAWYER DISCIPLINE

VIA E-MAIL:

THE BOARD OF DISCIPLINARY APPEALS
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/s/Lauren Harris
Lauren A. Harris

DECLARATION

STATE OF TEXAS

§

§

COUNTY DALLAS

I, LAUREN A. HARRIS, DOB 08/07/86, address 4975 Morris Ave., Apt 1343 Addison Texas 75001, am of sound mind, over 18 years of age and fully comprehend this sworn declaration upon which I sign below. Under penalty of perjury, I swear the facts as recited herein are within my personal knowledge, or known to me and are true and correct. Further, the documents attached hereto were personally created, obtained or captured/personally received by me, and are true and correct copies of same. I have personally found and inserted the citations and web-published links provided the foregoing motion, AI was not utilized in this document. All materials and information have been personally placed herein or attached hereto are true and correct copies of/from the original versions.

Dated: 07/31/2023 /s/Lauren Harris

Lauren A. Harris

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*

**APPENDIX TO APPELLANT’S MOTION TO CORRECT &
SUPPLEMENT THE REPORTER’S RECORD**

Appellant attaches the following documents in support of the foregoing
Appellant’s Motion to Correct & Supplement the Reporter’s Record:

APPENDIX NO. 1.....May 2019.....CDC
Procedural Guide Investigatory Hearings
Evidentiary Panels, Office of the Chief
Disciplinary Counsel

APPENDIX NO. 2.....May 2020.....CDC
Procedural Guide Investigatory Hearings

Evidentiary Panels, Office of the Chief
Disciplinary Counsel

APPENDIX NO. 3.....April 1, 2020. HARRIS.008-0010
201906965 SDP 6-1
Complaint Dismissal

APPENDIX NO. 4.....December 8, 2020. HARRIS.0011
202000486 Post IVH 6-3
Complaint Dismissal

APPENDIX NO. 5.....November 20, 2020 HARRIS.0562/CR.0509
202000647 North IVH 6-3 Offer
Grievance Referral Program

APPENDIX NO. 6.....November 6, 2020 _____
Zoom Settings

November 12, 2020 HARRIS.0045
202000486 Guerra Asst. to LAH
“Hearing Packet” @ 11:30 a.m.
(Exhibits RECALLED)

November 12, 2020 HARRIS.0037
202000486 Guerra Asst. to LAH
“Hearing Packet” @ 11:31 a.m.
Exh. C-E

APPENDIX NO. 7.....November 6, 2020 _____
Zoom Settings and Protocols

November 12, 2020 HARRIS.0038
Guerra to LAH 202000647
Hearing Packet @ 10:06 a.m.

APPENDIX NO. 8.....November 13, 2020. HARRIS.0559-0561/CR 0506-0508;
Replacement State Bar Card
Order to SBOT with Residential
Address and Payment Form

APPENDIX NO. 9.....December 12, 2020 HARRIS.0041-0044

Certificate of Good Standing,
Receipt, Transmission email, and
CDC Email Response attaching

APPENDIX NO. 10.....February 23, 2023; HARRIS.0067

Payment \$415.00 Reporter's Record

February 24, 2023; HARRIS.0068-0069

Amanda Leigh 01/27/2023

Report's Record

APPENDIX NO. 11.....February 23, 2023;HARRIS.0627-0628/CR.0574-0575

LAH to SBOT ORD Request

R001880-022323, Disc. File

March 1, 2023 HARRIS.0641/CR.0588

SBOT ORD Response, Disc. Matters

not subject to PIA, contact CDC

APPENDIX NO. 12.....March 9, 2023; HARRIS.0642-0643/CR.0588-0589

LAH to CDC Formal Request for

Disciplinary File (including Nov. 12,

2020 Recordings/Transcripts)

APPENDIX NO. 13.....March 24, 2023

Emails LAH for submission and

confirmation of cancellation,

Guerra's response, her hearing

APPENDIX 1



Procedural Guide



Evidentiary Panel Proceedings



Investigatory Hearing Panel Proceedings

Office of the Chief Disciplinary Counsel
State Bar of Texas

MAY 2019

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PROCESSING A GRIEVANCE

GRIEVANCE FILED WITH CHIEF DISCIPLINARY COUNSEL. All disciplinary actions and proceedings begin with the filing of a Grievance with the Chief Disciplinary Counsel's office ("CDC"). There is no privity required between the complaining party and Respondent attorney. Grievances can be filed against any lawyer licensed in the State of Texas by any person or entity. The Chief Disciplinary Counsel may also initiate a Grievance. (Tex. R. Disciplinary P. ("TRDP") 1.06(R))

CLASSIFICATION. Upon receipt of the Grievance, CDC *within 30 days* examines the Grievance to determine whether it constitutes an Inquiry or a Complaint. If the Grievance does not, even if true, describe conduct that would constitute professional misconduct, it is classified as an *Inquiry* and dismissed with notice to Complainant and Respondent. If the Grievance states an allegation of professional misconduct, it is classified as a *Complaint* and notice of the Complaint, along with a photocopy of the Complaint, is served on Respondent informing him or her of the duty to respond within 30 days from receipt of the notice. (TRDP 2.10)

INVESTIGATION AND DETERMINATION OF JUST CAUSE. *Within 60 days* from Respondent's response deadline, CDC must conclude its investigation and determine whether there is Just Cause to proceed. *Just Cause* is defined as "such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed, or suffers from a Disability that requires either suspension as an attorney licensed to practice law in the State of Texas or probation." (TRDP 1.06(Z))

INVESTIGATORY SUBPOENA. During the investigation of a Complaint filed on or after June 1, 2018, CDC, with the Committee Chair's approval, may issue a subpoena that relates directly to a specific allegation of attorney misconduct for the production of documents, electronically stored information, or tangible things or to compel the attendance of a witness, including Respondent, at an investigatory hearing. (TRDP 2.12(B)) A subpoena must notify the recipient of the time, date and place of appearance or production and must contain a description of materials to be produced. The types of documents that may be subpoenaed include bank records, communication records (jail logs, telephone records, correspondence, etc.) settlement fund distribution documents and court or agency records.

Respondents or persons commanded to appear or make production can contest the materiality of the production or testimony sought by presenting all objections to the chairman of the Investigatory Panel, if an Investigatory Hearing has been set, or to the Committee Chair, if an Investigatory Hearing has not been set. (TRDP 2.12(D)) If an agreement is not reached, the Panel or Committee Chair will conduct a hearing and make his/her ruling on the materiality of the requested production or testimony.

SUMMARY DISPOSITION PANEL. If no Just Cause is found, CDC will present the Complaint to a Summary Disposition Panel of the Grievance Committee without the presence of the Complainant, Respondent, or witnesses. The Summary Disposition Panel will consider the documents, evidence, and CDC's report and recommendation and determine whether the

Complaint should be dismissed or, if the panel disagrees with CDC's no-Just-Cause finding, should proceed. A tie vote results in dismissal. (TRDP 2.07). There is no appeal from this decision. (TRDP 2.13)

INVESTIGATORY HEARING. For all grievances filed on or after June 1, 2018, CDC may set a Complaint for a non-adversarial Investigatory Hearing before a local Grievance Committee Panel. Venue for an Investigatory Hearing will be in the county where the alleged Professional Misconduct occurred, in whole or in part. (TRDP 2.11(A)) Based on the Investigatory Panel's recommendations, the Complaint may be dismissed or, if the panel finds Just Cause, the parties may enter into an agreed judgment or proceed to litigation.

NOTIFICATION OF COMPLAINT AND ELECTION. If the CDC or an Investigatory Panel finds Just Cause (and a negotiated settlement is not entered into) or the Summary Disposition Panel votes to proceed, the CDC will notify Respondent in writing of the Just Cause decision. Respondent will also be notified of the acts and/or omissions of alleged Professional Misconduct, the rules allegedly violated, and election options. *Within 20 days* from the receipt of the notice of allegations, Respondent must elect to have the Complaint heard in district court or by an Evidentiary Panel. A failure to timely elect will result in the Complaint proceeding before an Evidentiary Panel. (TRDP 2.13; 2.14(A); 2.14(D); 2.15)

See Flow Chart — Processing a Grievance, p. 67

GENERAL RULES GOVERNING INVESTIGATORY HEARINGS & EVIDENTIARY PANEL PROCEEDINGS

INVESTIGATORY HEARING PANEL AND EVIDENTIARY PANEL COMPOSITION. Grievance Committees act through panels to conduct investigatory and evidentiary hearings. Panels must be composed of two attorney members for each public member. Most panels in the state are 6-member panels, each composed of 4 attorneys and 2 public members. (TRDP 2.07)

APPOINTMENT OF EVIDENTIARY PANEL. Within 15 days of receipt of Respondent's election or the day following the election deadline, the Grievance Committee Chair appoints an Evidentiary Panel to hear the Complaint. The Evidentiary Panel may not include any person who served on Summary Disposition Panel or on Investigatory Panel and must have a ratio of two attorney members for every public member. (TRDP 2.17) No member may be appointed to an Evidentiary Panel pertaining to the same disciplinary matter that the member considered at either an investigatory hearing or a summary disposition hearing. (TRDP 2.07).

SETTING BEFORE AN INVESTIGATORY HEARING PANEL. When the CDC determines that a case will proceed to an Investigatory Hearing, CDC shall set the matter before a Grievance Committee Panel on a date sufficient to give Respondent at least 45 days' notice of the hearing. No later than twenty days before a scheduled hearing, CDC will make available to the Panel materials relevant to the hearing ("hearing packet"). (See p. 28)

QUORUM REQUIRED. In order for an Evidentiary Panel or an Investigatory Hearing Panel to conduct business, a quorum of the members of the panel must be present. A quorum consists of a majority of the membership of the panel and must include at least one public member for every two attorney members present.¹ On a 3-member panel, a quorum may consist of two members as long as one of the members is a public member. (TRDP 2.07)

Note: The administrative support staff from the Office of Chief Disciplinary Counsel will contact panel members before any scheduled hearing to determine attendance and existence of a quorum. If no quorum will be obtained, the hearing will be continued. Once a hearing begins, a quorum must be maintained at all times.

¹ *Boma O. Allison v. Commission for Lawyer Discipline*, BODA No. 41135 (June 20, 2008), *aff'd*, 288 S.W.2d 413, (Tex. 2009).

SIX-MEMBER PANEL

ATTENDANCE	QUORUM	WHAT TO DO
2 Public 4 Attys	Yes	Go forward with hearing
2 Public 3 Attys	Yes	Go forward with hearing
2 Public 2 Attys	Yes	Go forward with hearing
2 Public 1 Atty	No	Hearing cannot go forward
1 Public 4 Attys	No	Hearing may go forward if 1 attorney is excluded; panel chair determination
1 Public 3 Attys	Yes	Go forward with hearing
1 Public 2 Attys	No	Hearing cannot go forward
0 Public 4 Attys	No	Hearing cannot go forward

THREE-MEMBER PANEL

ATTENDANCE	QUORUM	WHAT TO DO
1 Public 2 Attys	Yes	Go forward with hearing
1 Public 1 Atty	Yes	Go forward with hearing
0 Public 2 Attys	No	Hearing cannot go forward

PANEL CHAIR TIP

Hearings that must be postponed at the last minute due to lack of a quorum cause a waste of time and resources for Grievance Committee members, the parties and witnesses involved in the hearing, and CDC staff. It is the responsibility of the Panel Chair to ensure that the members of their panel routinely attend scheduled hearings and promptly notify CDC of conflicts that would prevent their attendance at a hearing. The Panel Chair should ensure that a proper quorum is obtained for scheduled hearings or that a substitute panel member is requested timely. Attendance problems should be promptly addressed with panel members and are a basis for removal from the Grievance Committee.

GENERAL RULES GOVERNING PANEL PROCEEDINGS (CONT.)

RECUSAL AND DISQUALIFICATION. A member is disqualified or is subject to recusal as a panel member for an evidentiary hearing if a district court judge would, under similar circumstances, be disqualified or recused. If a member is disqualified or recused, another member shall be appointed by the Grievance Committee Chair. (TRDP 2.06)

Grounds for recusal and disqualification are governed by the Texas Constitution, Art. 5, §11 and Texas Rule of Civil Procedure 18b.

Disqualification: Generally, the grounds for disqualification are: 1) a panel member or associate served as a lawyer in the same (underlying) matter; 2) a panel member has an interest in the subject matter in controversy (typically a financial interest, but can include a direct personal interest in the result of the case); 3) a panel member is related to the Complainant or Respondent.

Note: Disqualification is mandatory and cannot be waived. Any judgment entered by a panel that includes a disqualified member renders the judgment void.

Recusal: Generally, grounds for recusal include: 1) impartiality might reasonably be questioned; 2) bias or prejudice; 3) a panel member has personal knowledge of a disputed fact; or 4) a panel member's spouse or relative is a material witness or acting as an attorney in the case.

Note: Recusal is discretionary and can be waived.

Any alleged ground for recusal of a panel member is conclusively waived if not brought to the attention of the panel within 10 days after receipt of notification of the names and addresses of members of the panel; however, grounds for recusal not reasonably discoverable within the ten-day period may be asserted within ten days after they were discovered or, in the exercise of reasonable diligence, should have been discovered. (TRDP 2.06)

Note: A motion to recuse or for disqualification will be determined by the Chair of the Grievance Committee. The motion will be forwarded to the Chair upon filing and the Chair will conduct a hearing upon request. If the motion is granted, the Chair will appoint a substitute member to the applicable evidentiary panel.

Note: If a panel member is subsequently substituted, Respondent is notified and will have 10 days from receipt of notification to object to the substituted member.

VENUE. Evidentiary Panel proceeding shall be conducted by a panel for the county where Respondent's principal place of practice is maintained; or if Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent's residence; or if Respondent maintains neither a residence nor a principal place of practice in Texas, then in the county where the professional misconduct occurred, in whole or in part. In all other

instances, venue is in Travis County, Texas. (TRDP 2.11(C)) Proceedings of an Investigatory Panel shall be conducted by a panel for the county where the alleged Professional Misconduct occurred, in whole or in part. If the alleged misconduct occurred wholly outside the State of Texas, proceedings shall be conducted by a panel for the county of Respondent's residence and, if Respondent has no residence in Texas, by a panel for Travis County, Texas. (TRDP 2.11(A))

Note: *An objection to venue is determined by majority vote of the Evidentiary Panel.*

PARTIES. The parties to an Evidentiary Panel proceeding are the Commission for Lawyer Discipline (represented by the Chief Disciplinary Counsel) and the respondent. (TRDP 2.17(A)(1-2) Complainant is a potential witness but is not a party. (TRDP 1.06)

BURDEN OF PROOF. In an Evidentiary Hearing, the Commission for Lawyer Discipline has the burden to prove its material allegations by a preponderance of the evidence. (TRDP 2.17(M))

Note: *"Preponderance of the evidence" means the greater weight and degree of the credible evidence, and is the level of proof required to prevail in most civil cases. It has been described as "The judge must be persuaded that the facts are more probably one way (the plaintiff's way) than another (the defendant's)."*

JUST CAUSE FINDING. An Investigatory Panel or CDC may find Just Cause upon a reasonable inquiry a reasonably intelligent and prudent person would be induced to believe that an attorney either committed an act or acts of Professional Misconduct requiring that a Sanction be imposed. (TRDP 1.06(Z))

RECORD OF HEARINGS. All Evidentiary Panel proceedings are recorded by a court reporter. (TRDP 2.17(N)) It is the policy of CDC to make a record of Investigatory Hearings by audio/visual taping.

Note: *The administrative support staff of the Office of Chief Disciplinary Counsel will arrange for the presence of a court reporter or audio/visual recording at hearings.*

CONFIDENTIALITY. Investigatory and Evidentiary Panel proceedings are confidential. Only if Respondent has waived confidentiality, or the proceeding is based upon a conviction for a serious crime, may the pendency, subject matter, and status of an Evidentiary Panel proceeding be disclosed by the Chief Disciplinary Counsel.

Any record of an Investigatory Hearing is strictly confidential and may be released only for use in a disciplinary matter. (TRDP 2.12(F))

The deliberations of an Evidentiary or Investigatory Panel are strictly confidential and not subject to discovery. No person is competent to testify as to such deliberations and voting. (TRDP 2.16(B))

If the Evidentiary or Investigatory Panel finds that Professional Misconduct has occurred and imposes any sanction other than a private reprimand, the final judgment is a public record from the date the judgment is signed. (TRDP 2.16(A)(3)(a)) Once all appeals, if any, have been exhausted and the judgment is final, the Office of Chief Disciplinary Counsel shall, upon request, disclose all documents, statements, and other information relating to the Disciplinary Proceeding that came to the attention of the Evidentiary Panel during the Disciplinary Proceeding. (TRDP 2.16(A)(3)(b))

Note: The Office of Chief Disciplinary Counsel will not publicly comment on any case pending before an Evidentiary Panel. A panel member who receives a request for information concerning a pending or closed matter should refer the matter to the Office of Chief Disciplinary Counsel.

EVIDENTIARY PANEL PROCEEDINGS

EVIDENTIARY PANEL AS A TRIBUNAL. The Evidentiary Panel sits as the tribunal deciding all questions of fact and law and all matters related to the imposition of sanctions in cases assigned to that panel. As the tribunal, all members of the Evidentiary Panel should refrain from discussing pending disciplinary matters except in the presence of all members constituting the quorum deciding the case and only in the due course of their panel duties; *e.g.*, deliberations. Panel members should refrain from conducting their own investigation or considering any evidence not offered and admitted during a hearing.

Panel members should not engage in *ex parte* communications with the parties or witnesses to a proceeding, including CDC attorneys or staff, Respondent or Respondent's counsel, or Complainant. Discussions related to a pending matter should only occur in the presence of representatives from both parties.

In addition, State Bar Board Policy prohibits grievance committee members from engaging in the following actions while serving on the Committee:

- giving opinions on ethical or unauthorized practice of law matters while serving on the committee, other than through the member's role on the committee;
- representing any complainant or respondent in any disciplinary matter pending or filed during the member's term of service on a grievance committee;
- testifying in any capacity in connection with any disciplinary matter pending or filed during the member's term of service on the grievance committee; or
- counseling any complainant or respondent or any attorney representing any complainant or respondent in any disciplinary matter pending or filed during the member's term of service on the grievance committee.

(State Bar of Texas Board of Director's Policy Manual, § 6.04.10 – June 20, 2018)

EVIDENTIARY COURT FILE. The Evidentiary Panel's official file is maintained by the Office of Chief Disciplinary Counsel pursuant to the confidentiality requirements of TRDP 2.16. All pleadings, motions, orders, and other matters related to the Evidentiary Proceeding are filed with the Office of Chief Disciplinary Counsel.

EVIDENTIARY PANEL DECISIONS. Generally, all decisions in an Evidentiary Panel Proceeding must be made by a majority vote of a quorum of the panel (*i.e.*, motion for new trial; motion to stay judgment; final decision). Any tie vote is a vote in favor of the position of Respondent. (TRDP 2.07)

AUTHORITY OF PANEL CHAIR. The Panel Chair may rule alone in matters involving discovery (modification of discovery limitations, discovery dispute resolution, and issuing subpoenas

[See TRDP 2.17(F – H)), and rulings related to the admission or exclusion of evidence during a hearing. (TRDP 2.17(L))

In an Evidentiary Panel proceeding, the presiding Panel Chair has the authority, consistent with the Texas Rules of Disciplinary Procedure, to:

- (A) Administer oaths and affirmations;
- (B) Make rulings upon motions and other requests;
- (C) Rule upon offers of proof, receive relevant evidence, and examine witnesses;
- (D) Regulate the course of the hearing and ensure that all members have taken the required oath;
- (E) Hold or provide for the holding of conferences to settle or simplify the issues;
- (F) Receive and consider oral or written arguments on facts or law;
- (G) Adopt procedures consistent with the Texas Rules of Disciplinary Procedure and modify them from time to time as occasion requires for the orderly disposition of proceedings; and
- (H) Perform acts and take measures, consistent with the Texas Rules of Disciplinary Procedure, as necessary to promote the efficient and timely conduct of the hearing.

State Bar of Texas Board of Directors Policy Manual, § 6.04.09 – June 20, 2018

The Panel Chair, without a majority vote of the Panel, may also sign agreed judgments, agreed or unopposed continuances, set hearings, order the parties to alternative dispute resolution, and attend to other non-dispositive matters.

PANEL CHAIR TIP

The Panel Chair should remind other panel members not to discuss the facts of a proceeding, the sanction to be imposed, or any substantive issue related to a disciplinary proceeding with anyone other than the panel members or in the presence of all the parties. The Panel Chair should ensure that the panel members do not conduct any independent investigation into the facts of a proceeding and ensure that all decisions are made based upon the evidence offered and admitted during the hearing.

HEARINGS. Telephonic hearings may be conducted with the agreement of the parties or upon order of the Panel Chair on some issues that do not require the taking of evidence (*i.e.* discovery requests, motions for continuance, etc.).

Note: The administrative support staff of the Office of Chief Disciplinary Counsel will determine the availability of dates and times for hearings and will notify panel members of the scheduled dates and times of all hearings.

EVIDENTIARY PETITION FILED. The Evidentiary Petition should be filed with the Evidentiary Panel within 60 days from receipt of Respondent's election or the election deadline and must contain the following:

- a. notice that the action is brought by the Commission for Lawyer Discipline;
- b. the name of Respondent and the fact that he or she is an attorney licensed to practice law in the State of Texas;
- c. venue facts;
- d. factual allegations of professional misconduct (fair notice);
- e. list of disciplinary rules allegedly violated;
- f. demand for judgment; and
- g. any other matter that is required or may be permitted by law or the Texas Rules of Disciplinary Procedure. (TRDP 2.17(A))

SERVICE OF THE EVIDENTIARY PETITION. Service of the petition must be in accordance with Rule 2.09 which provides for service by certified mail, return receipt requested, at the address provided by Respondent as shown on the membership rolls maintained by the Clerk of the Supreme Court at the time of receipt of the Grievance by the CDC or by any other means of service permitted by the Texas Rules of Civil Procedure. (TRDP 2.17(A))

SUBSTITUTED SERVICE. If efforts to serve Respondent personally or by certified mail are unsuccessful, the Commission may seek an order from the Panel authorizing substituted service. Substituted service must strictly comply with Texas Rule of Civil Procedure 106.

Rule 106 requires that the motion for substituted service be supported by an affidavit stating the location of Respondent's usual place of business or usual place of abode or other place where Respondent can probably be found. The affidavit must also state specifically the facts showing that service has been attempted under either Texas Rule of Civil Procedure 106(a)(1)(*personal service*) or Texas Rule of Civil Procedure 106(a)(2)(*certified mail*) at the location named in the affidavit, but has not been successful. *See Shelton v. CFLD*, BODA No. 36,059 (March 30, 2006)(p. 24).

RESPONDENT'S ANSWER. Respondent is required to file a responsive pleading specifically admitting or denying each allegation of Professional Misconduct. The answer must be filed no later than 5:00 p.m. on the first Monday following the expiration of 20 days after service. (TRDP 2.17(B))

DISCOVERY.

- ❖ **REQUEST FOR DISCLOSURE.** No later than 30 days prior to the first setting of the Evidentiary Hearing, each party may obtain disclosure of:
 - correct names of the parties;
 - factual basis of the claims or defenses;
 - name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of the person's connection to the case;
 - identification of experts and description of the expert's opinions; and
 - witness statements (TRDP 2.17(D))

In addition to the Request for Disclosure, other limited discovery is afforded the parties in all cases and must be conducted between the time the petition is filed and 30 days before the Evidentiary Hearing date. The discovery limitations may be modified by agreement or by the Evidentiary Panel Chair upon a showing of reasonable need.

- ❖ **DEPOSITIONS.** No more than 6 hours total per party to examine and cross-examine all witnesses. (TRDP 2.17(E)(2))
- ❖ **INTERROGATORIES.** No more than 25 written interrogatories. (Each subpart counts as a full interrogatory; interrogatories asking for identification or authentication of documents not counted) (TRDP 2.17(E)(3))
- ❖ **REQUESTS FOR PRODUCTION.** No limits. (TRDP 2.17(E)(4))
- ❖ **REQUESTS FOR ADMISSIONS.** No limits. (TRDP 2.17(E)(5))
- ❖ **SUBPOENA POWER.** Each party may compel the attendance of a witness or the production of documents by subpoena. The requesting party must submit a written subpoena in proper form to the Panel Chair for issuance, and the requesting party is responsible for service. The Panel Chair decides any disputes regarding the materiality of testimony or production sought by a subpoena. Enforcement of subpoenas is through the district court. (2.17 (H – I))

EVIDENTIARY HEARING.

- ❖ **SETTING.** Evidentiary Panel proceedings are set for hearing within 180 days after the date the answer is filed, except for good cause shown. In addition, there is a minimum 45-day notice of hearing requirement unless waived by the parties. (2.17(O))
- ❖ **EVIDENCE.** The Evidentiary Panel sits as an adjudicatory body with the Panel Chair serving as the “presiding judge” by calling the case, asking for argument, and making rulings on objections and the admission or exclusion of evidence. The Commission, as the party with

the burden of proof, is given the opportunity to make an opening statement and then will proceed with its case-in-chief in much the same manner as a district court case:

- Panel Chair's opening remarks (See p. 35, 36)
- Commission's Opening Statement (optional)
- Respondent's Opening Statement (optional and/or may reserve until opening of Respondent's case)

Note: After opening statements, either party may request that the "rule be invoked." This generally means that no witness can be present while other witnesses testify. If the request is made, the Panel Chair should identify all potential witnesses and ask that they leave the hearing room until called to testify. A party can request that a witness be exempted from "the rule." The party then has the burden of proving that the witness's presence is essential to the presentation of the case.

- Commission presents Case-in-Chief (Respondent has right of cross-examination; panel members allowed to question any witness)
- Commission rests
- Respondent presents defense (Commission has right of cross-examination; panel members allowed to question any witness)
- Respondent rests
- Rebuttal by Commission
- Commission's Closing Statement
- Respondent's Closing Statement
- Commission's Rebuttal
- Panel deliberations (private)
- Decision announced on record

◆ Evidentiary panel members may question any witness. (TRDP 2.17(L))

◆ Respondent may have counsel present during the hearing and is allowed to participate fully in the presentation of evidence and questioning of witnesses. (TRDP 2.17(L))

◆ Complainant may have counsel present, but may not present evidence, question witnesses, or present argument to the Panel. (TRDP 2.17(J)(L))

❖ 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." (TRDP 2.17(L)) "[N]o ruling upon the evidence shall be a basis for reversal solely because it fails to strictly comply with the Texas Rules of Evidence." (TRDP 2.17(L))

PANEL CHAIR TIP

It is important to ensure that evidentiary hearings encompass the same procedural formality as a district court trial. It may be beneficial, prior to the beginning of each hearing, to remind the other panel members of the applicability of the rules of evidence and specifically how that governs their consideration of certain evidence.

E.g., an evidentiary exhibit is not available for consideration unless and until it is offered into evidence; statements made during opening statements or closing arguments are not “evidence” that can be considered in a panel member’s decision-making.

Note: *Handling of Exhibits.* At the end of the hearing, all original exhibits should be given to the court reporter for safekeeping.

- ❖ ALTERNATIVE DISPUTE RESOLUTION. Upon motion or otherwise, the Evidentiary Panel Chair may order the Commission and Respondent to participate in mandatory alternative dispute resolution as provided by Chapter 154 of the Civil Practice and Remedies Code or as otherwise provided by law when deemed appropriate. (TRDP 2.17(K))

DECISION. After conducting the Evidentiary Hearing, the Evidentiary Panel must issue judgment within 30 days. The Evidentiary Panel may:

- find Professional Misconduct and impose sanctions;
- find no Professional Misconduct and dismiss the case; or
- find that Respondent suffers from a disability and forward the finding to the Board of Disciplinary Appeals. (TRDP 2.17(P))

Note: *If the panel finds Professional Misconduct, the judgment must include findings of fact, conclusions of law, and the sanction to be imposed. See “Imposition of Sanctions” below.*

Typically, after deliberating in private, the Panel Chair will announce the decision on the record. The Panel Chair will be provided a Hearing Report to complete which includes the panel’s findings of misconduct and sanction imposed. (See p. 37).

If misconduct is found, the judgment will be drafted by the Commission’s lawyer and sent to the panel with a copy to Respondent. The Panel Chair signs the judgment.

If the panel finds no Professional Misconduct, the Commission’s lawyer will draft a judgment of dismissal which is sent to the panel with a copy to Respondent. The Panel Chair signs the judgment of dismissal.

PANEL CHAIR TIP

It is the responsibility of the Panel Chair to direct the panel's deliberations so that decisions are made timely, the hearing report is prepared promptly, and a judgment is entered within 30 days of the panel's decision.

DEFAULT. If Respondent fails to answer timely, the Commission will seek a default. The Commission will file a motion for default, and the matter will be set for a default hearing. (TRDP 2.17(C))

Upon a showing of default, all facts alleged in the Evidentiary Petition are taken as true and Professional Misconduct found. A sanctions hearing is held to determine the appropriate sanction. This hearing can be held immediately or at a later date. (TRDP 2.17(C))

IMPOSITION OF SANCTIONS

Every disciplinary Complaint is different and there are many factors that go into the imposition of the appropriate sanction. While the new guidelines are important and are designed to promote consistency across the state, there is nothing in the guidelines that limits the authority of the Evidentiary Panel.

BIFURCATED HEARING. The Evidentiary Panel may, in its discretion, conduct a separate hearing on sanctions after Professional Misconduct is found. (TRDP 2.18)

In determining the appropriate sanctions, the Evidentiary Panel shall consider either the factors contained in Rule 2.18 of the 2015 TRDP for cases filed before June 1, 2018, or the guidelines contained in Section 15 of the 2018 TRDP for cases filed on or after June 1, 2018. See Appendix p. 45 for the factors contained in TRDP 2.18 and Appendix p. 47 for the Guidelines and Appendix A to the TRDP.

Note: A respondent's disability may not be considered in mitigation, unless Respondent demonstrates that he or she is successfully pursuing in good faith a program of recovery or appropriate course of treatment.

(Old TRDP 2.18 and New TRDP 15.09(C)(2)(h))

AVAILABLE SANCTIONS. The panel may consider the following sanctions:

- Private Reprimand
- Public Reprimand
- Probated Suspension (Respondent may practice law with conditions)
- Partially-probated Suspension (combination of active and probated suspension)
- Suspension for a term certain (Respondent may not practice law during active term)
- Disbarment (loss of license to practice law)

RESTRICTIONS ON IMPOSITION OF CERTAIN SANCTIONS.

There are restrictions on the imposition of some sanctions. The restrictions vary depending on whether the Grievance was filed before or after June 1, 2018. Restrictions are listed in the Appendix along with the 2.18 Factors (p. 45) and the Sanction Guidelines (p.47).

ADDITIONAL SANCTIONS. The term “Sanction” may include:

- Restitution to client(s) or to the Client Security Fund
- Reasonable attorneys’ fees and all direct expenses associated with the proceedings. (TRDP 1.06(FF)(a)(b))

Note: *In all cases in which the evidence establishes that Respondent’s misconduct involved the misappropriation of funds and Respondent is disbarred or suspended, the panel’s judgment must require Respondent to make restitution during the period of suspension, or before any consideration of reinstatement from disbarment. The judgment must further provide that the suspension remain in effect until evidence of satisfactory restitution is made by Respondent and verified by the Chief Disciplinary Counsel.* (TRDP 2.19)

Note: There is no provision for the imposition of a fine. Restitution does not include damages to Complainant or disgorgement of the attorney’s fee.

See *Cafiero v. Commission for Lawyer Discipline*, BODA No. 37811 (May 10, 2007). (p. 24)

TERMS AND CONDITIONS OF PROBATION.

(FULLY OR PARTIALLY PROBATED SUSPENSION JUDGMENTS)

A judgment of suspension that is fully or partially probated will include “terms of probation.” Respondent is required to comply with these terms during the period of probation. Terms of probation must be reasonable and appropriate under the circumstances. Judgments of fully or partially-probated suspension will generally include the following standard terms:

- Respondent shall not engage in Professional Misconduct
- Respondent shall not violate any state or federal criminal statutes
- Respondent shall keep State Bar of Texas membership notified of Respondent’s current address and telephone number
- Respondent shall comply with Minimum Continuing Legal Education requirements
- Respondent shall comply with Interest on Lawyer Trust Account (IOLTA) requirements
- Respondent shall respond to any request for information from the Grievance Committee or the Chief Disciplinary Counsel

The judgment may also include the following terms of probation if the evidence supports inclusion:

- Additional hours of Continuing Legal Education (CLE) courses
- Rehabilitative Monitor

- Psychological Assessment and Compliance (Quarterly) Reports
- Law Practice Monitors
- Random Drug Screens
- Trust Account Reporting
- Trust Account Audit

See Sample Terms and Conditions of Probation, p. 62-66.

Note: *Restitution and attorneys' fees are typically incorporated into terms of probation with inclusion of due dates. See Sample Hearing Report, p. 37.*

PANEL CHAIR TIP

Partially-probated suspension judgments can be structured in one of two ways. (1) Setting a term certain for the active suspension, after which Respondent automatically enters the probationary period of suspension, without regard to whether Respondent has complied with the terms of the suspension up to that point. (Non-compliance is addressed by the filing of a motion to revoke probation, which is heard and decided by the Board of Disciplinary Appeals.) (2) Setting a date on which the active suspension is to end (and probation begin), conditioned upon Respondent's compliance with the terms of suspension up to that point. (With this type of judgment, Respondent does not enter the probationary period of suspension until full compliance with the terms of suspension has been achieved.)

POST JUDGMENT MOTIONS. 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. (TRCP 2.21)

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. (TRCP 329b(e))

◆ Motion to Set Aside Default. To receive a new hearing after a default judgment, Respondent must establish three elements set forth in *Craddock v. Sunshine Bus Lines*, 134 Tex. 388, 133 S.W.2d 124 (1939) 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. *Molina v. Commission for Lawyer Discipline*, BODA No. 35426 (November 4, 2005)(p.25).

◆ Motion to Stay Judgment. A judgment of disbarment cannot be superseded or stayed. A respondent may, within 30 days from entry of judgment, request a stay of a judgment of suspension. A hearing must be held on such motion. Respondent carries the burden of proving by a preponderance of the evidence that Respondent's continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public. The panel may condition its stay upon reasonable terms. (TRDP 2.24)

APPEALS

The Commission or Respondent may perfect an appeal to the Board of Disciplinary Appeals (BODA) by filing a notice of appeal within 30 days from judgment or within 90 days after judgment if any party timely files a motion for new trial or a motion to modify the judgment.

All appeals are determined under the standard of substantial evidence. Appeals from a BODA decision are to the Supreme Court of Texas under the substantial evidence standard. (TRDP 2.23)

BOARD OF DISCIPLINARY APPEALS DECISIONS.

In considering an appeal, BODA may:

- Affirm in whole or in part the decision of the Evidentiary Panel;
- Modify the panel's finding(s) and affirm the finding(s) as modified;
- Reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered; or
- Reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:
 - the panel that entered the finding(s); or,
 - a statewide grievance committee panel appointed by BODA and composed of members selected from a state bar district other than the district from which the appeal was taken. (TRDP 2.25)

Note: The "remand" of a case means that the matter is returned to the panel for further consideration. BODA can remand a case in whole (a new hearing for a determination of Professional Misconduct and any Sanction) or in part (a new hearing on Sanctions). Panel members will be notified of the remand of a cause and of any subsequent hearing dates.

Note: While on appeal, the parties may settle the case. In such an event, BODA grants a joint motion and enters an order remanding the case for entry of the agreed judgment and the panel is directed to enter the agreed judgment.

OPINIONS. BODA may render judgment with or without opinion. BODA has issued several written opinions in connection with appeals from evidentiary judgments. The opinions are available on BODA's website at www.txboda.org.

Opinion Summaries

Hamlett v. Commission for Lawyer Discipline, Seventh Court of Appeals, Appellate Cause No. 07-16- 00256-CV (December 28, 2017).

The Seventh Court of Appeals affirmed the judgment of the district court finding a violation of Rules 3.01, 3.02, and 8.02(a) of the Texas Disciplinary Rules of Professional Conduct. The Court re-affirmed the applicable standard of review for lawyer discipline cases. The applicable standard is preponderance of the evidence, rejecting the Appellant's argument that a "clear and convincing evidence" standard should apply. The Texas Rules of Disciplinary Procedure promulgated by the Supreme Court mandate that "Disciplinary Actions must be proved by a preponderance of the evidence." Tex. Rules Disciplinary P. R. 3.08(C). Being promulgated by our Supreme Court, the Court held it must follow the rules and defer to that body regarding the decision whether to impose both heightened standards of proof at trial and of review on appeal. On appellate review, a court must affirm if there is "anything more than a scintilla of evidence" to support the verdict. Based on the Respondent's admission that certain statements in a motion previously filed were not accurate, and given that she admitted to using these motions as a dilatory tactic, the Court found there was more than sufficient evidence to uphold the verdict of violation of Rules 3.01, 3.02, and 8.02(a).

Commission for Lawyer Discipline v. Schaeffer, 364 S.W.3d 831 (Tex. 2012).

BODA vacated a judgment of disbarment because the hearing report from Respondent's evidentiary hearing noted that one position on the Panel was "vacant." Respondent did not raise the issue with the Panel or in the BODA appeal. BODA raised the issue *sua sponte* and held that the face of the record disclosed fundamental error due to the Panel's failure to satisfy the mandatory requirement that an Evidentiary Panel must be composed of two-thirds attorney members and one-third public members. BODA held that the error deprived the Panel of the capacity to act even though a properly composed quorum convened to hear and decide the case.

The Texas Supreme Court reversed BODA's decision and reinstated the disbarment. The Supreme Court held that the vacancy on the Panel caused the Panel to be out of compliance with the panel composition requirements of Rules 2.07 and 2.17 of the Texas Rules of Disciplinary Procedure. That violation, however, did not deprive the Evidentiary Panel of its capacity to select a quorum, hear evidence, and issue a judgment. Because the Panel retained its capacity to act, in the absence of a timely objection, any error was waived. Respondent's failure to complain about the Panel's composition at any point in the proceedings before the Panel waived her right to complain about the issue on appeal.

Mustafa E. Derkunt v. Commission for Lawyer Discipline, BODA No. 48512 (November 7, 2011).

BODA reversed one finding of misconduct in a Judgment of Active Suspension and remanded the case to the Evidentiary Panel for a new sanctions hearing. On remand, the Evidentiary Panel disbarred Respondent. In a second appeal, BODA reversed the disbarment and imposed a suspension equal to the amount of time the attorney had served on suspension and disbarment. BODA explained that where an attorney successfully appeals a disciplinary judgment and the case is remanded for a new sanctions hearing, the imposition of a more severe sanction carries a presumption that the sanction is retaliatory. The presumption may be overcome only if the reasons for the higher sanction affirmatively appear in the record and are supported by objective information and facts that are part of the record.

BODA's decision was affirmed by the Texas Supreme Court on August 31, 2012. *Derkunt v. Commission for Lawyer Discipline*, Case No. 11-0941 (Tex. 2012).

Joe Marr Wilson v. Commission for Lawyer Discipline, BODA No. 46432 (January 28, 2011).

BODA affirmed the Evidentiary Panel's judgment of public reprimand. BODA interpreted TDRPC 1.14(c) and found that Respondent violated the rule by failing to disburse funds only to the party entitled to receive them. Respondent had received a letter from his client terminating his services and requesting a refund of money she had given him for child support arrearages. In response to the letter, Respondent sent the client a partial refund along with a billing statement indicating he had used the remainder of the client's money to offset legal fees owed to him by the client. BODA found that whether the client disputed the fees was immaterial because funds entrusted to an attorney by a client for a specific purpose may be used only for that purpose unless the client affirmatively agrees that the funds may be used for another purpose. Otherwise, any unused portion of the funds must be returned to the client with a full accounting.

BODA's decision was affirmed by the Texas Supreme Court on March 9, 2012. *Wilson v. Commission for Lawyer Discipline*, Case No. 11-0133 (Tex. 2012).

Boma O. Allison v. Commission for Lawyer Discipline, BODA No. 41135 (June 20, 2008).

BODA affirmed the Evidentiary Panel's judgment of a partially probated suspension for Allison. BODA interpreted the quorum language of TRDP 2.07 ("A quorum must include at least one public member for every two attorney members present...") to mean that for each "group" of two attorney members present, there must be at least one public member present. At the hearing, there were three attorney members and one public member present. Since there was not more than one "group" of two attorneys, only one public member was required to be present. Thus, a quorum existed for the Evidentiary Panel that heard and decided the matter and the judgment was not void.

BODA's decision was affirmed by the Texas Supreme Court on June 26, 2009. *In the Matter of Boma O. Allison*, 288 S.W.2d 413 (Tex. 2009).

***Cafiero v. Commission for Lawyer Discipline*, BODA No. 37811 (May 10, 2007).**

BODA held the Evidentiary Panel's judgment void on the basis of an improper quorum. In this case, a public member of the Evidentiary Panel left during the evidentiary hearing. The remaining members included one public member and four attorneys. The fourth attorney did not vote. BODA held that the fourth attorney's continued participation in the hearing after the public member's departure resulted in an improper quorum. As a result, the judgment rendered by the Panel was declared void. BODA explained that a quorum must include one public member for every two attorneys "present" and that a quorum must be maintained throughout the proceedings. The lack of a proper quorum cannot be cured by a member's refraining from voting after being present during the proceedings.

In addition, the Evidentiary Panel ordered Respondent to pay restitution equal to the total amount of all funds received on behalf of the complainants, including his legal fees. In dicta, BODA noted that the restitution award was improper. BODA stated that "restitution" under the Texas Rules of Disciplinary Procedure does not include the equitable remedy of disgorgement or total fee forfeiture. BODA further explained that restitution cannot be awarded as a punitive measure because punitive sanctions are "not within the purpose of the disciplinary sanctions."

***Bonnie F. Sims v. Commission for Lawyer Discipline*, BODA No. 34229 (June 8, 2006).**

BODA held the Evidentiary Panel's default judgment of disbarment void on the basis of defective service. BODA held that service by certified mail requires the signature of Respondent on the return receipt ("green card") in order to satisfy due process and that absent Respondent's signature, the Panel failed to acquire jurisdiction over the attorney.

***Catherine M. Shelton v. Commission for Lawyer Discipline*, BODA No. 36059 (March 30, 2006).**

BODA held the Evidentiary Panel's default judgment of disbarment void on the basis that the substituted service obtained to serve her with the evidentiary petition did not strictly comply with the requirements of the Texas Rules of Civil Procedure. The Commission filed the required motion and process server's affidavit. The process server's affidavit outlined all attempts made at personal service (including speaking with Respondent's legal assistant who said Respondent could not receive the paperwork because she was not feeling well) and specifically identified the address (same as Respondent listed on the Bar's membership records). BODA, however, found the affidavit defective because it did not specifically state that the address where personal service was attempted was the "location of the defendant's usual place of business or usual place of abode or other place where the defendant can

probably be found." BODA also noted that the affidavit failed to state that the facts stated were within the affiant's personal knowledge and were true and correct.

Jesse R. Molina v. Commission for Lawyer Discipline, BODA No. 35426 (November 4, 2005).

BODA affirmed the Evidentiary Panel's entry of a default judgment and its imposition of a six-month fully probated suspension for Respondent's failure to keep his client reasonably informed, failure to respond to requests for information, and failure to timely respond to the grievance. [TDRPC 1.03(a), 1.03(b), 8.04(a)(8)]. BODA held that the panel did not abuse its discretion in denying Respondent's motion for new trial because Respondent failed to show that his failure to answer the evidentiary petition was the result of mistake or accident. In addition, BODA held that an Evidentiary Panel has broad discretion to impose discipline and must consider the factors set out in TRDP 2.18. BODA found the Evidentiary Panel considered the relevant factors as required by the rules, including mitigating evidence, and did not act in an arbitrary or unreasonable manner in tailoring the sanctions imposed.

Cindy Renea Weir v. Commission for Lawyer Discipline, BODA No. 32082 (March 31, 2005).

BODA reversed the Evidentiary Panel's finding that Respondent charged an unconscionable fee [TDRPC 1.04(a)]. BODA held that the "reasonableness" factors of Rule 1.04(b) do not apply to disciplinary actions, but are intended as guidance in the enforcement of fee contracts and awards of attorneys' fees in civil actions. BODA held that unconscionability for disciplinary purposes is generally determined at the outset of representation, based "on what the parties knew at the time of the fee agreement, not 'with 20-20 hindsight.'" BODA held that a \$3,000 retainer to make demand and pursue a contested law suit does not meet the test for unconscionability as a matter of law under Rule 1.04(a), and that the evidence focused on whether, after the fact, the amount of work performed justified the fee after Respondent refunded two-thirds of the initial retainer. This, BODA found, was a "reasonableness" question, and not a Rule 1.04(a) action.

In re State Bar of Texas, 440 S.W.3d 621 (Tex. 2014) (orig. proceeding).

The Texas Supreme Court granted mandamus relief to the Commission after a district court ordered the Commission to turn over all records in its possession related to an expunged criminal case. The Commission had been in possession of a partial transcript from the criminal trial because the lead prosecutor for the State was the subject of a disciplinary complaint for his alleged failure to disclose exculpatory evidence to the defense. The criminal defendant gave his consent for the Commission to use the expunged records in disciplinary proceedings.

The Supreme Court held that the district court abused its discretion in ordering the turnover of the Commission's records because (1) the criminal defendant voluntarily waived his

expunction rights; (2) the district court's construction of the expunction statute contravened the primary purpose of the expunction statute, which is to protect acquitted defendants; and (2) the district court's order interfered with the disciplinary process, thereby disrupting the regulatory scheme promulgated by the Texas Supreme Court to govern cases of attorney discipline.

***Sebesta v. Commission for Lawyer Discipline*, BODA No. 56406 (February 8, 2016).**

BODA affirmed the Evidentiary Panel's judgment of disbarment. The only issue raised by Respondent on appeal was that because both *res judicata* and quasi-estoppel barred the disciplinary proceedings against him, the Panel had erred by denying his pretrial motion to dismiss.

BODA acknowledged prior decisions holding that *res judicata* does not apply to a grievance committee's pretrial decision not to take disciplinary action, and BODA rejected Respondent's contention that amendments to the disciplinary rules in 2004 made the prior decisions distinguishable. BODA noted that the 2004 amendments had not transformed the grievance screening process into an adjudicatory proceeding. Rather, it remained inquisitorial in nature, so *res judicata* could not apply to decisions made during the screening phase.

BODA also rejected Respondent's arguments regarding quasi-estoppel. BODA held that (1) quasi-estoppel was normally not available against a governmental entity, (2) quasi-estoppel is not available to a party with unclean hands, (3) it was not unconscionable for "a screening entity of a disciplinary authority" to reach one conclusion when presented with information in 2007 and another conclusion when presented with information in 2014, and (4) there was a reasonable basis in the record for the Evidentiary Panel's decision.

***Schultz v. Commission for Lawyer Discipline*, BODA No. 55649 (December 17, 2015).**

BODA affirmed the Evidentiary Panel's judgment of fully probated suspension. Respondent had been the lead prosecutor in an aggravated assault prosecution in Denton County and had failed to disclose to the defense that the victim admitted she did not see her attacker's face and based her identification of the defendant (her husband) on the attacker's smell, the appearance of the bottom of his boot, and the stature of his shadow.

Respondent argued that Rule 3.09(d) codifies the *Brady* doctrine and his nondisclosure did not violate *Brady*; the Commission was improperly attempting to impose multiple disclosure standards on prosecutors, which would inevitably lead to confusion and disciplinary issues; Rule 3.04(a) imposes a "knowing" standard and the Commission did not prove that the attorney acted knowingly; Rule 3.04(a) applies only to the intentional destruction of evidence, which did not occur; and "unlawfully" in Rule 3.04(a) is unconstitutionally vague.

BODA held that the disclosure obligations imposed by Rule 3.09(d) are broader than those imposed by the *Brady* doctrine. BODA rejected Respondent's argument regarding multiple

disclosure standards after noting that the standard for disclosure set forth in Rule 3.09(d) is the same as the new disclosure standard set forth in the Texas Code of Criminal Procedure (art. 39.14(h)). BODA also held that the failure to disclose information where disclosure is required by law constitutes the unlawful obstruction of access to evidence in violation of Rule 3.04(a) regardless of intent. BODA further held that Rule 3.04(a) is not unconstitutionally vague and that its plain language prohibits an attorney from concealing or failing to disclose information “contrary to a legal obligation to disclose, whether under law, a court order, or applicable rules of practice or procedure.”

***Commission for Lawyer Discipline v. A Texas Attorney*, BODA No. 55619 (July 24, 2015).**

BODA reversed the Evidentiary Panel’s take-nothing judgment and rendered a judgment of private reprimand. Respondent had admitted that he refused to obtain a final order in a custody matter because his client owed him money.

BODA held that Respondent’s neglect was established as a matter of law by his own testimony that the only reason he did not complete the work for twenty months was because he believed his client still owed him money for legal services. BODA explained that if an attorney is unwilling to complete work due to a client’s failure to pay the attorney’s fee, the attorney should terminate the representation and move to withdraw if necessary and if allowed by Rule 1.15. BODA also held that harm to a client is not a consideration in determining whether an attorney has violated the disciplinary rules. Harm is relevant to sanctions only.

INVESTIGATORY HEARING PROCEEDINGS

Effective September 1, 2017, as a result of the Sunset Review process the Texas Legislature revised the State Bar Act. The primary changes to the Texas Rules of Disciplinary Procedure related to local Grievance Committees include:

- Subpoena authority during the investigation of a Complaint;
- Investigatory Hearings before local Grievance Committee Panels to resolve grievances earlier in the process short of formal litigation; and
- Adopted Sanction Guidelines to replace the Sanction Factors in Rule 2.18.

NATURE OF THE INVESTIGATORY HEARING. The Investigatory Hearing is a component of the investigation and is a non-adversarial proceeding.

DECISION TO HOLD INVESTIGATORY HEARING. CDC has discretion to determine which Complaints go to an Investigatory Hearing. It is the intention of CDC that most Complaints will go to an Investigatory Hearing unless the matters involved are too complex or have too many witnesses to handle in an informal setting or there is no chance that the Complaint will be resolved by agreement. (TRDP 2.12(F))

SETTING AND NOTICE. CDC will set an Investigatory Hearing on a Panel's docket for the earliest date available. While the procedural rules do not specify a required notice period, the policy of CDC is to follow the notice requirement in the Texas Rules of Civil Procedure and provide Respondent a 45 day notice of an Investigatory Hearing.

HEARING LOCATION. Investigatory Hearings will be conducted in a neutral location to preserve confidentiality.

HEARING PACKETS. No less than 20 days before the Investigatory Hearing, CDC will make available to the Panel members materials relevant to the hearing. The Hearing Packet will contain:

- The grievance;
- Respondent's formal response to the grievance;
- Supplemental information from Respondent and/or Complainant
- Investigator's Report, which will contain:
 - A summary of the allegations of misconduct;
 - A summary of Respondent's defenses;
 - An analysis of the facts and law;
 - Recommendation on disciplinary rules that may have been violated; and
 - May recommended a range of sanctions appropriate pursuant to the sanction guidelines;
- Documents and witness statements obtained during the investigation.

INVESTIGATORY HEARING. A CDC lawyer or investigator will attend all hearings. Respondent, Respondent's Counsel, Complainant and other witnesses may attend hearings. The Investigatory Panel Chair will administer oaths to all witnesses and will set forth procedures

for eliciting evidence, including witness testimony. Witness examination may be conducted by the Panel Chair and Panel members, CDC, and Respondent or Respondent's Counsel. (TRDP 2.12(F))

The Panel Chair has the sole discretion to determine what evidence will be presented and should limit the evidence to what is necessary for the Panel to make its misconduct and sanction decisions. If the Complainant requests to ask a question of any witness, the Panel Chair will determine whether the question is relevant and, if appropriate, the Panel Chair will ask the witness the question requested by Complainant or his/her attorney. The Complainant does not have a right to directly question a witness.

SUBPOENA AUTHORITY. The Panel Chair may issue subpoenas for documents or other tangible things and to compel the attendance of a witness at an Investigatory Hearing. See additional information on subpoenas on page 4.

TELEPHONIC PARTICIPATION. While the rules permit a party or Panel member to participate by telephone, in-person participation is the most effective method to question witnesses, review documents and judge the credibility and veracity of witnesses. Telephone participation should only be used for a witness who cannot travel to the hearing or to fulfill the quorum requirements of the Panel. (TRDP 2.12(F))

DELIBERATIONS. Upon completion of the hearing, the Investigatory Panel will dismiss Respondent and his/her attorney and witnesses, and deliberate. CDC's lawyer and/or investigator will remain for the deliberations. After deliberations, the Investigatory Panel will complete a hearing report. See Sample Investigatory Hearing Report (p. 43).

DECISIONS. If the Investigatory Panel believes the evidence supports a finding of Professional Misconduct, the Panel will recommend what rules they believe were violated and recommend an appropriate sanction range. The Panel will consider the **Sanction Guidelines** when determining an appropriate sanction range (p. 47). The range of sanctions available to the Investigatory Panel are from a referral to the Grievance Referral Program to disbarment. If the Investigatory Panel does not believe Respondent committed Professional Misconduct, the Panel will recommend that CDC dismiss the Complaint. (TRDP 2.12(G))

AGREED JUDGMENT. Based on the Investigatory Panel's recommendations, CDC will attempt to negotiate an agreed judgment with Respondent. If an agreement is reached, the agreed judgment will be presented to the Investigatory Panel Chair for his/her signature. (TRDP 2.12(G))

NO AGREED JUDGMENT. If the Complaint does not result in an agreed judgment, the matter will proceed to formal litigation before an Evidentiary Panel or district court. No Panel member who participated in the Investigatory Hearing is permitted to be on an Evidentiary Panel hearing the same matter. (TRDP 2.07)

ONLINE TRAINING

The Office of Chief Disciplinary Counsel has developed and produced five separate online training sessions designed specifically to assist Grievance Committee members by addressing issues commonly faced in disciplinary cases. It is hoped that members will access these training sessions on a regular basis to better their understanding of these issues as well as prepare for evidentiary hearings.

These sessions, entitled "Common Disciplinary Rule Violations," "Imposing Sanctions," "What to Expect in an Evidentiary Panel Hearing," "Grievance Symposium 2014," and "Grievance Committee Training: Attorneys' Fees in Criminal Defense, Family and Personal Injury Cases," are available online at the State Bar Website (www.texasbar.com), at TexasBarCLE.

Additionally, the State Bar of Texas offers complimentary online library with papers relevant to the Texas attorney grievance/discipline process² to grievance committee members. Titles such as, "Navigating the Minefield—Avoiding Malpractice Claims and Grievances," "Grievances: Understanding the Process," "Grievances and the Board of Disciplinary Appeals," and many more can be found on Texas Bar CLE's online library.

To access the online library go to <http://www.texasbarcle.com/CLE/OLEthics.asp>

- Register as a new user (if necessary)
- Go to "Online Classes"
- Choose a course
- Click on "Register Now"
- On the next page, select the box for the discount for "I affirm I am an Officer or Director of a . . . District Grievance Committee."
- The class charge should zero out
- Check out
- Begin the class

Classes that are not complementary:

- The full Online Library
- In-person events or live/replayed webcasts

If you have any difficulty, please call the CLE support line at 800-204-2222, ext. 1749, identify yourself as a grievance committee member, and you will be walked through the process. The direct local number is 512-427-1749. If you still have difficulty contact Anne Davis at 512-427-1342.

² Only relevant coursework is provided free of charge, allowing committee members supplemental and continuing education related to their work as a committee member. For all other CLE, please register the normal way. Those courses are not free of charge.

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DEFINED TERMS APPLICABLE TO EVIDENTIARY PANEL PROCEEDINGS (TRDP 1.06)

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.

CHIEF DISCIPLINARY COUNSEL – means the person serving as Chief Disciplinary Counsel (“CDC”) and any and all of his or her assistants. CDC attorneys will represent the Commission for Lawyer Discipline in all Evidentiary proceedings.

COMPLAINANT – means the person, firm, corporation, or other entity, including CDC, initiating a Complaint or Inquiry. A Complainant may be a witness during the Evidentiary proceeding but is not a party to the proceedings and cannot question witnesses, file motions, appeal rulings or take any other actions typical of a party to the proceeding.

RESPONDENT – means any attorney who is the subject of a Grievance, Complaint, Disciplinary Proceeding, or Disciplinary Action.

COMPLAINT – means those written matters received by the Office of the Chief Disciplinary Counsel that, either on the face thereof or upon screening or preliminary investigation, allege Professional Misconduct or attorney Disability, or both, cognizable under these rules or the Texas Disciplinary Rules of Professional Conduct.

DISABILITY – means any physical, mental, or emotional condition that, with or without a substantive rule violation, results in the attorney’s inability to practice law, provide client services, complete contracts of employment, or otherwise carry out his or her professional responsibilities to clients, courts, the profession, or the public.

DISCIPLINARY PROCEEDINGS – includes 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.

EVIDENTIARY HEARING – means an adjudicatory proceeding before a panel of a Grievance Committee.

EVIDENTIARY PANEL – means a panel of the District Grievance Committee performing an adjudicatory function other than that of a Summary Disposition Panel with regard to a Disciplinary Proceeding pending before the District Grievance Committee of which the Evidentiary Panel is a subcommittee.

INVESTIGATORY HEARING – A non-adversarial proceeding before a panel of a Grievance Committee.

INVESTIGATORY PANEL – means a panel of the Committee that conducts a non-adversarial proceeding during the investigation of the Complaint by the Chief Disciplinary Counsel.

Just Cause – means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed, or suffers from a Disability that requires either suspension as an attorney licensed to practice law in the State of Texas or probation.

PROFESSIONAL MISCONDUCT – includes:

1. Acts or omissions by an attorney, individually or in concert with another person or persons, that violate one or more of the Texas Disciplinary Rules of Professional Conduct.
2. Attorney conduct that occurs in another state or in the District of Columbia and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.
3. Violation of any disciplinary or disability order or judgment.
4. Engaging in conduct that constitutes barratry as defined by the laws of this state.
5. Failure to comply with Rule 13.01 of these rules relating to notification of an attorney's cessation of practice.
6. Engaging in the practice of law either during a period of suspension or when on inactive status.
7. Conviction of a Serious Crime, or being placed on probation for a Serious Crime with or without an adjudication of guilt.
8. Conviction of an Intentional Crime, or being placed on probation for an Intentional Crime with or without an adjudication of guilt.

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, which probation may be concurrent with the period of suspension, upon such reasonable terms as are appropriate under the circumstances.
6. Interim suspension.
7. Public reprimand.

8. Private reprimand.

The term “Sanction” may include the following additional ancillary requirements:

- a) Restitution (which may include repayment to the Client Security Fund of the State Bar or any payments made by reason of Respondent’s Professional Misconduct);
and
- b) Payment of Reasonable Attorneys’ Fees and all direct expenses associated with the proceedings.

SAMPLE EVIDENTIARY PANEL OPENING STATEMENT
(CONTESTED HEARING)

Good Morning/Afternoon:

My name is _____. I am the Chair of this Evidentiary Panel of the District _____ Grievance Committee hearing Case No. _____, styled Commission for Lawyer Discipline v. _____.

I now call this hearing to order.

This panel consists of _____ members. I am the Panel Chair and a lawyer. A quorum is present. The other Panel members present are:

_____, who is a lawyer;

_____, who is a lawyer;

_____, who is a lawyer;

_____, who is a public member and not a lawyer; and

_____, who is a public member and not a lawyer.

Present as counsel for the Commission for Lawyer Discipline is _____;

Respondent _____, Respondent's Counsel _____.

(Identification of others present).

We are here to consider the allegations of professional misconduct pertaining to [Respondent]. If this Panel finds professional misconduct, we may impose sanctions ranging from private reprimand to disbarment.

The procedures followed by this Panel allow examination of witnesses by Respondent or Respondent's attorney, counsel for the Commission for Lawyer Discipline, and members of this Panel.

All probative and relevant evidence necessary for a fair hearing is admissible. I will rule as to the admissibility of any evidence and on any objections.

Pursuant to Rule 2.16, this hearing is a confidential proceeding. This hearing is being recorded by a certified court reporter. Cameras or tape recorders are not allowed into this room. The Panel will conduct its deliberations in private.

At this time, I ask anyone present who will give testimony today to rise and be sworn.

DO YOU SWEAR OR AFFIRM TO TELL THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

Is the Commission ready to proceed?

Is Respondent ready to proceed?

_____, you may proceed.

SAMPLE EVIDENTIARY PANEL OPENING STATEMENT
(DEFAULT HEARING)

Good Morning/Afternoon:

My name is _____. I am the Chair of this Evidentiary Panel of the District _____ Grievance Committee hearing Case No. _____, styled Commission for Lawyer Discipline v. _____. I now call this hearing to order.

This panel consists of _____ members. I am the Panel Chair and a lawyer. A quorum is present. The other Panel members present are:

- _____, who is a lawyer;
- _____, who is a lawyer;
- _____, who is a lawyer;
- _____, who is a public member and not a lawyer; and
- _____, who is a public member and not a lawyer.

(Identification of others present)

This Evidentiary Hearing is held to consider Petitioner’s Motion for Default Judgment against Respondent for failing to answer in accordance with Texas Rule of Disciplinary Procedure 2.17B.

In this proceeding, the Commission for Lawyer Discipline has the burden to prove that a default has occurred. For the default portion of the hearing, testimony on the underlying complaint will not be taken. If a default is established, the facts alleged in the Evidentiary Petition will be accepted as true in accordance with Texas Rule of Disciplinary Procedure 2.17C.

If Respondent is found to be in default, the Panel will then proceed to a hearing on the appropriate Sanction to be imposed. The Panel may consider any probative relevant evidence on the issues of sanctions. I will rule as to the admissibility of any evidence and on any objections.

The procedures followed by this Panel allow examination of witnesses by Respondent or Respondent’s attorney, counsel for the Commission for Lawyer Discipline, and members of this Panel.

Pursuant to Texas Rule of Disciplinary Procedure 2.16, this hearing is a confidential proceeding. The hearing is being recorded by a certified court reporter. Cameras or tape recorders are not allowed into this room. The Panel will conduct its deliberations in private.

At this time, I ask anyone present who will give testimony today to rise and be sworn.
DO YOU SWEAR OR AFFIRM TO TELL THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

Is the Commission ready to proceed?
_____, you may proceed.

SAMPLE EVIDENTIARY HEARING REPORT

PANEL: _____ COMMITTEE: _____ HEARING DATE: _____

CASE NO: _____ STYLE: _____

LOCATION: _____

COURT REPORTER: _____

PANEL MEMBERS (INDICATE ATTY OR PUBLIC). Please note presiding member with an asterisk (*).

- | | | |
|----------|----------|----------------------------|
| 1. _____ | (Atty)* | Present / Absent / Recused |
| 2. _____ | (Atty) | Present / Absent / Recused |
| 3. _____ | (Atty) | Present / Absent / Recused |
| 4. _____ | (Atty) | Present / Absent / Recused |
| 5. _____ | (Public) | Present / Absent / Recused |
| 6. _____ | (Public) | Present / Absent / Recused |

I. TYPE OF HEARING: (Check One)

- Evidentiary and Sanction
 Continued Evidentiary and Sanction
 Sanction Only
 Default

II. HEARING RESULT: (Check as Applicable)

- Hearing Continued
 Dismissed
 Default Granted
 Default Denied
 Professional Misconduct Found (If selected, please continue)

PROFESSIONAL MISCONDUCT FOUND

The Panel finds the following Disciplinary Rules were violated: _____

III. SANCTIONS: (Check One)

- Private Reprimand
 Public Reprimand
 Disbarment
 Suspension: (If selected, please choose one of the following: Fully Active, Fully Probated or Partially Probated)

Fully Active Suspension:
Length: _____
Beginning: _____

Fully Probated Suspension:
Length: _____
Beginning: _____

Partially Probated Suspension:
Total Length: _____
Length of Active Portion: _____
Beginning of Active Portion: _____
Length of Probated Portion: _____
Beginning of Probated Portion: _____

_____ LAW OFFICE MANAGEMENT PROGRAM EDUCATION COURSES
No. of hours **Deadline**

_____ TRUST ACCOUNT REPORTING (Utilize only if supported by evidence of Trust Account Violation)
Start Date **Frequency**

_____ TRUST ACCOUNT AUDIT (Utilize only if supported by evidence of Trust Account Violation)
Deadline

_____ OTHER: _____

By my signature below, I request the Office of the Chief Disciplinary Counsel to prepare a Judgment in accordance with this hearing report.

District No. _____
Presiding Member

(Date)

DOCUMENTS COMMONLY FILED IN CONTESTED EVIDENTIARY CASES

JUST CAUSE/ELECTION LETTER TO RESPONDENT

RESPONDENT'S ELECTION TO EVIDENTIARY

PANEL ASSIGNMENT REQUEST

EVIDENTIARY PANEL APPOINTMENT

TRANSMITTAL OF EVIDENTIARY PANEL APPOINTMENT TO RESPONDENT

EVIDENTIARY PETITION [& REQUEST FOR DISCLOSURE]

TRANSMITTAL OF EVIDENTIARY PETITION [& REQUEST FOR DISCLOSURE] TO RESPONDENT

RESPONDENT'S ANSWER

TRANSMITTAL OF HEARING NOTICE TO PANEL

TRANSMITTAL OF HEARING NOTICE TO RESPONDENT

BUSINESS RECORDS AFFIDAVIT

NOTICE OF FILING OF BUSINESS RECORDS AFFIDAVIT

MOTION FOR CONTINUANCE

ORDER ON MOTION FOR CONTINUANCE

TRANSMITTAL OF ORDER TO RESPONDENT

EVIDENTIARY HEARING REPORT

TRANSMITTAL OF FINAL JUDGMENT TO CHAIR FOR SIGNATURE

FINAL JUDGMENT

TRANSMITTAL OF FINAL JUDGMENT TO RESPONDENT

RESPONDENT'S MOTION FOR NEW TRIAL OR OTHER POST-JUDGMENT MOTION

PETITIONER'S RESPONSE TO RESPONDENT'S MOTION

ORDER ON RESPONDENT'S MOTION

TRANSMITTAL OF ORDER TO RESPONDENT

NOTICE OF APPEAL

DOCUMENTS COMMONLY FILED IN DEFAULT EVIDENTIARY CASES

JUST CAUSE/ELECTION LETTER TO RESPONDENT

RESPONDENT'S ELECTION TO EVIDENTIARY

PANEL ASSIGNMENT REQUEST

EVIDENTIARY PANEL APPOINTMENT

TRANSMITTAL OF EVIDENTIARY PANEL APPOINTMENT TO RESPONDENT

EVIDENTIARY PETITION [& REQUEST FOR DISCLOSURE]

TRANSMITTAL OF EVIDENTIARY PETITION [& REQUEST FOR DISCLOSURE] TO RESPONDENT

MOTION FOR DEFAULT

NON-MILITARY AFFIDAVIT

CERTIFICATE OF LAST KNOWN ADDRESS

TRANSMITTAL OF MOTION AND HEARING NOTICE TO PANEL

TRANSMITTAL OF MOTION AND HEARING NOTICE TO RESPONDENT

BUSINESS RECORDS AFFIDAVIT

NOTICE OF FILING OF BUSINESS RECORDS AFFIDAVIT

ORDER ON MOTION FOR DEFAULT

EVIDENTIARY HEARING REPORT

TRANSMITTAL OF FINAL JUDGMENT TO CHAIR FOR SIGNATURE

FINAL JUDGMENT

TRANSMITTAL OF FINAL JUDGMENT TO RESPONDENT

RESPONDENT'S MOTION FOR NEW TRIAL OR OTHER POST-JUDGMENT MOTION

PETITIONER'S RESPONSE TO RESPONDENT'S MOTION

ORDER ON RESPONDENT'S MOTION

TRANSMITTAL OF ORDER TO RESPONDENT

NOTICE OF APPEAL

SAMPLE INVESTIGATORY HEARING PANEL OPENING STATEMENT

Good Morning/Afternoon:

My name is _____. I am the Chair of this Investigatory Panel of the District _____ Grievance Committee hearing Case No. _____. This is an Investigatory Hearing on a grievance filed by (Complainant's Name) against (Respondent's Name).

I now call this hearing to order.

This panel consists of _____ members. I am the Panel Chair and a lawyer. A quorum is present. The other Panel members present are:

_____, who is a lawyer;

_____, who is a lawyer;

_____, who is a lawyer;

_____, who is a public member and not a lawyer; and

_____, who is a public member and not a lawyer.

Also present are:

_____, from the Chief Disciplinary Counsel's Office

_____, Respondent

_____, Respondent's Counsel

_____, Complainant

_____, others in attendance

We are here to investigate allegations of professional misconduct. This is an informal and non-adversarial proceeding but testimony will be taken under oath and this proceeding is being recorded. Other than the recording device of the Chief Disciplinary Counsel's Office, cameras or tape recorders are not allowed into this room.

All participants are asked to conduct themselves with respect as if you are in a court of law. If you become adversarial or disruptive, you will be excused from the hearing.

Pursuant to Rule 2.12(F) of the Texas Rules of Disciplinary Procedure, this hearing is strictly confidential and the record of this hearing can only be released for use in further disciplinary matters.

At the conclusion of this hearing, all witnesses will be dismissed and the Panel will deliberate. If this Panel believes there is enough credible evidence to support a finding of Professional Misconduct, the Panel will recommend a sanction ranging from private reprimand to disbarment. Respondent will be advised of the Panel's recommendations in writing.

At this time, I ask anyone present who will give testimony today to rise and be sworn.
DO YOU SWEAR OR AFFIRM TO TELL THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

(Proceed with summarizing the grievance, the Respondent's defenses and questioning of the witnesses.)

SAMPLE INVESTIGATORY HEARING CLOSING REPORT

PANEL: _____ CASE NOS.: _____

DATE: _____ STYLE: IN THE MATTER OF: INVESTIGATORY PANEL OF
(NAME OF RESPONDENT) DISTRICT (DIST. NO.)
(BAR NUMBER) GRIEVANCE COMMITTED

LOCATION: _____

PANEL MEMBERS (INDICATE ATTY OR PUBLIC). Please note presiding member with an asterisk (*).

1. _____ (Atty)*	Present / Absent / Recused
2. _____ (Atty)	Present / Absent / Recused
3. _____ (Atty)	Present / Absent / Recused
4. _____ (Atty)	Present / Absent / Recused
5. _____ (Public)	Present / Absent / Recused
6. _____ (Public)	Present / Absent / Recused

I. TYPE OF HEARING: (Check One)

Investigatory
 Continued Investigatory

II. HEARING RESULT: (Check as Applicable)

Hearing Continued
 Dismissed
 Professional Misconduct Found

PROFESSIONAL MISCONDUCT FOUND

The Panel believes the following Disciplinary Rules were violated: _____

RECOMMENDED SANCTION RANGE

The Panel believes the following sanction range is appropriate:

From: _____

To: _____

Restitution: (amount, to whom)

**2.18 FACTORS FOR IMPOSING SANCTIONS IN EVIDENTIARY PROCEEDINGS
(FOR CASES FILED PRIOR TO JUNE 1, 2018)**

In determining the appropriate sanctions, the Evidentiary Panel shall consider:

- A. The nature and degree of the Professional Misconduct for which Respondent is being sanctioned;
- B. The seriousness of and circumstances surrounding the Professional Misconduct;
- C. The loss or damage to clients;
- D. The damage to the profession;
- E. The assurance that those who seek legal services in the future will be insulated from the type of Professional Misconduct found;
- F. The profit to the attorney;
- G. The avoidance of repetition;
- H. The deterrent effect on others;
- I. The maintenance of respect for the legal profession; and
- J. The conduct of Respondent during the course of the Disciplinary Proceeding.

In addition, the Respondent's disciplinary record, including any private reprimands, is admissible on the appropriate Sanction to impose. Respondent's disability may not be considered in mitigation, *unless* Respondent demonstrates that he or she is successfully pursuing in good faith a program of recovery or appropriate course of treatment.

RESTRICTIONS ON IMPOSITION OF CERTAIN SANCTIONS

- ❖ A Private Reprimand is not available if:
 - A Private Reprimand has been imposed upon Respondent within the preceding five-year period for a violation of the same Disciplinary Rule; or
 - Respondent has previously received two (2) or more Private Reprimands, whether or not for violations of the same Disciplinary Rule, within the preceding ten (10) years; or
 - The misconduct includes theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or
 - The misconduct has resulted in a substantial injury to the client, the public, the legal system, or the profession; or
 - There is a likelihood of future misconduct by Respondent; or
 - The misconduct was an intentional violation of the ethics rules.

(Commission for Lawyer Discipline Internal Operating Rule 13; approved by Order of the Supreme Court).

❖ A Public Reprimand is not available if:

- A Public Reprimand has been imposed upon Respondent within the preceding five-year period for a violation of the same Disciplinary Rule, or
- Respondent has previously received two or more Public Reprimands whether or not for violations of the same Disciplinary Rule within the preceding five-year period.

(Old TRDP 15.11)

❖ A Fully Probated Suspension is not available if:

- A Public Reprimand or Fully Probated Suspension has been imposed upon Respondent within the preceding five-year period for a violation of the same Disciplinary Rule; or
- Respondent has previously received two or more Fully Probated Suspensions whether or not for violations of the same Disciplinary Rule within the preceding five-year period; or
- Respondent has previously received two or more sanctions of Public Reprimand or greater imposed for conflict of interest, theft, misapplications of fiduciary property, or the failure to return, after demand, a clearly unearned fee.

(Old TRDP 15.11)

❖ Suspension for Term Certain (Active Suspension):

- There are no limitations on the application of Active Suspensions.

GUIDELINES FOR IMPOSING SANCTIONS (For cases filed on or after June 1, 2018)

These guidelines for Imposing Sanctions were adopted pursuant to a Legislative mandate as a means of promoting more consistency across the state. The new sanction guidelines follow the basic structure of the American Bar Association Standards for Imposing Sanctions. The guidelines are divided up into general areas of misconduct and take into consideration general factors contained in TRDP 15.02 below.

Every disciplinary Complaint is different and there are many factors that go into the imposition of the appropriate sanction. While the new guidelines are important and are designed to promote consistency across the state, there is nothing in the guidelines that limits the authority of a Grievance Committee to make a finding or issue a decision. However, a private reprimand shall not be imposed if:

- A. A private reprimand has been imposed upon Respondent within the preceding five (5) year period for a violation of the same disciplinary rule; or
- B. Respondent has previously received two (2) or more private reprimands, whether or not for violations of the same disciplinary rule, within the preceding ten (10) years; or
- C. The misconduct includes theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or
- D. The misconduct has resulted in substantial injury to the client, the public, the legal system or the profession; or
- E. There is likelihood of future misconduct by Respondent; or
- F. Respondent's misconduct was an intentional violation of the Texas Disciplinary Rules of Professional Conduct; or
- G. The misconduct involves the failure of a prosecutor to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense.

(Commission for Lawyer Discipline Internal Operating Rule 13; approved by Order of the Supreme Court)

15.02. GENERAL FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS

In imposing a sanction after a finding of Professional Misconduct, the Evidentiary Panel should consider the following factors:

- 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.

15.04. VIOLATIONS OF DUTIES OWED TO CLIENTS

A. Lack of Diligence

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving neglect, frequent failure to carry out completely the obligations owed to a client, failure to communicate, failure to provide competent representation, or failure to abide by client decisions:

1. Disbarment is generally appropriate when:

- a) Respondent abandons the practice and causes serious or potentially serious injury to a client; or
- b) Respondent knowingly fails to perform services for a client, fails to adequately communicate with a client, fails to provide competent representation, or fails to abide by client decisions and causes serious or potentially serious injury to a client; or
- c) Respondent engages in a pattern of neglect with respect to client matters, inadequate client communications, lack of competent representation, or failure to abide by client decisions and causes serious or potentially serious injury to a client.

2. Suspension is generally appropriate when:

- a) Respondent knowingly fails to perform services for a client, fails to adequately communicate with a client, fails to provide competent representation, or fails to abide by client decisions and causes injury or potential injury to a client, or
- b) Respondent engages in a pattern of neglect with respect to client matters, inadequate client communications, lack of competent representation, or failure to abide by client decisions and causes injury or potential injury to a client.

3. Public reprimand is generally appropriate when Respondent does not act with reasonable diligence in representing a client, communicating with a client, providing competent representation, or abiding by client decisions and causes injury or potential injury to a client.

4. Private reprimand is generally appropriate when Respondent does not act with reasonable diligence in representing a client, communicating with a client, providing competent representation or abiding by client decisions and causes little or no actual or potential injury to a client.

B. Failure to Preserve the Client's Property

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving the failure to preserve client property, including the failure to surrender papers and property or to refund any advance payment of fee that has not been earned on the termination of representation:

1. Disbarment is generally appropriate when Respondent knowingly converts client property and causes injury or potential injury to a client.
2. Suspension is generally appropriate when Respondent knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
3. Public reprimand is generally appropriate when Respondent is negligent in dealing with client property and causes injury or potential injury to a client.
4. Private reprimand is generally appropriate when Respondent is negligent in dealing with client property and causes little or no actual or potential injury to a client.

C. Failure to Preserve the Client's Confidences

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving improper disclosure of information relating to the representation of a client:

1. Disbarment is generally appropriate when Respondent, with the intent to benefit the Respondent or another, knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
2. Suspension is generally appropriate when Respondent knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
3. Public reprimand is generally appropriate when Respondent negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
4. Private reprimand is generally appropriate when Respondent negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes little or no actual or potential injury to a client.

D. Failure to Avoid Conflicts of Interest

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving conflicts of interest:

1. Disbarment is generally appropriate when a Respondent, without the informed consent of client(s):

- a) engages in representation of a client knowing that the Respondent's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
 - b) simultaneously represents clients that Respondent knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
 - c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit Respondent or another, and causes serious or potentially serious injury to a client.
2. Suspension is generally appropriate when Respondent knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.
 3. Public reprimand is generally appropriate when Respondent is negligent in determining whether the representation of a client may be materially affected by Respondent's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.
 4. Private reprimand is generally appropriate when Respondent engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by Respondent's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

E. Lack of Candor

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases where the lawyer engages in dishonesty, fraud, deceit, or misrepresentation directed toward a client:

1. Disbarment is generally appropriate when Respondent knowingly deceives a client with the intent to benefit Respondent or another, and causes serious injury or potential serious injury to a client.
2. Suspension is generally appropriate when Respondent knowingly deceives a client, and causes injury or potential injury to the client.
3. Public reprimand is generally appropriate when Respondent is negligent in determining the accuracy or completeness of information provided to a client, and causes injury or potential injury to the client.
4. Private reprimand is generally appropriate when Respondent engages in an isolated instance of negligence in determining the accuracy or completeness of information provided to a client, and causes little or no actual or potential injury to the client.

15.05. VIOLATIONS OF DUTIES OWED TO THE LEGAL SYSTEM

A. False Statements, Fraud, and Misrepresentation

Absent aggravating or mitigating circumstances, and upon application of the actors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving conduct that impedes the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court or another:

1. Disbarment is generally appropriate when Respondent, with the intent to deceive the court or another, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
2. Suspension is generally appropriate when Respondent knows that false statements or documents are being submitted to the court or another or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party, or causes an adverse or potentially adverse effect on the legal proceeding.
3. Public reprimand is generally appropriate when Respondent is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party, or causes an adverse or potentially adverse effect on the legal proceeding.
4. Private reprimand is generally appropriate when Respondent engages in an isolated instance of negligence in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

B. Abuse of the Legal Process

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving failure to bring a meritorious claim, failure to minimize the burdens and delays of litigation, lack of fairness in adjudicatory proceedings, improper extrajudicial statements, improper means involving third persons, or improper discriminatory activities:

1. Disbarment is generally appropriate when Respondent knowingly engages in an abuse of the legal process with the intent to obtain a benefit for Respondent or another, and causes serious injury or potentially serious injury to a client or other party or causes serious or potentially serious interference with a legal proceeding.

2. Suspension is generally appropriate when Respondent knows that he or she is abusing the legal process, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
3. Public reprimand is generally appropriate when Respondent negligently engages in conduct involving an abuse of the legal process, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
4. Private reprimand is generally appropriate when Respondent engages in an isolated instance of negligence that involves an abuse of the legal process, and causes little or no actual or potential injury to a client or other party, or causes little or no actual or potential interference with a legal proceeding.

C. Improper Communications with Individuals in the Legal System

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following Sanctions are generally appropriate in cases involving attempts to influence a judge, juror, prospective juror or other official by means prohibited by law or rules of practice or procedure, or improper communications with one represented by counsel or unrepresented individuals:

1. Disbarment is generally appropriate when Respondent:
 - a) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
 - b) makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
 - c) improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding, and causes significant or potentially significant interference with the outcome of the legal proceeding.
2. Suspension is generally appropriate when Respondent engages in communication with an individual in the legal system when Respondent knows or should know that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.
3. Public reprimand is generally appropriate when Respondent is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.

4. Private reprimand is generally appropriate when Respondent engages in an isolated instance of negligence in improperly communicating with an individual in the legal system, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with the outcome of the legal proceeding.

15.06. VIOLATIONS OF DUTIES OWED TO THE PUBLIC

A. Failure to Maintain Personal Integrity

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following Sanctions are generally appropriate in cases involving (1) barratry or the commission of any other criminal act that reflects adversely on Respondent's honesty, trustworthiness, or fitness as a lawyer in other respects; or (2) the failure to maintain personal integrity in other respects, including stating or implying an ability to influence improperly a government agency or official or by improperly assisting a judge or judicial official in conduct that violates rules of judicial conduct or other law:

1. Disbarment is generally appropriate when:
 - a) Respondent engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
 - b) Respondent knowingly engages in any other conduct involving the failure to maintain personal integrity and causes serious injury of potential injury to others or the legal system.
2. Suspension is generally appropriate when:
 - a) Respondent knowingly engages in criminal conduct that does not contain the elements listed in Guideline 15.06(A)(1) and that seriously adversely reflects on Respondent's fitness to practice law; or
 - b) knowingly engages in conducting involving the failure to maintain personal integrity and causes injury or potential injury to others or the legal system.
3. Public reprimand is generally appropriate when Respondent negligently engages in any other conduct involving the failure to maintain personal integrity and causes injury or potential injury to others or the legal system.
4. Private reprimand is generally appropriate when Respondent negligently engages in any other conduct involving the failure to maintain personal integrity and causes little or no actual or potential injury to others or the legal system.

B. Failure to Maintain the Public Trust

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving public officials who engage in conduct that impedes the administration of justice:

1. Disbarment is generally appropriate when Respondent in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process.
2. Suspension is generally appropriate when Respondent in an official or governmental position knowingly fails to follow applicable procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.
3. Public reprimand is generally appropriate when Respondent in an official or governmental position negligently fails to follow applicable procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.
4. Private reprimand is generally appropriate when Respondent in an official or governmental position engages in an isolated instance of negligence in not following applicable procedures or rules, and causes little or no actual or potential injury to a party or to the integrity of the legal process.

15.07. VIOLATIONS OF OTHER DUTIES AS A PROFESSIONAL

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services; improper solicitation of professional employment from a prospective client; unconscionable, illegal, or improper fees; unauthorized practice of law; improper withdrawal from representation; failure to supervise; improper restrictions on the right to practice; appointments by a tribunal; failure to report professional misconduct; failure to respond to a disciplinary agency; improper conduct involving bar admission or reinstatement proceedings; statements regarding judicial and legal officials or a lawyer as a judicial candidate; or improper conduct in the role as advisor or evaluator.

1. Disbarment is generally appropriate when Respondent knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for Respondent or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
2. Suspension is generally appropriate when Respondent knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

3. Public reprimand is generally appropriate when Respondent negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
4. Private reprimand is generally appropriate when Respondent engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

15.08. PRIOR DISCIPLINE ORDERS

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving prior discipline.

1. Disbarment is generally appropriate when Respondent:
 - a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
 - b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
2. Suspension is generally appropriate when Respondent has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
3. Public reprimand is generally appropriate when Respondent:
 - a) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
 - b) has received a private reprimand for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
4. A private reprimand is generally not an appropriate sanction when Respondent violates the terms of a prior disciplinary order or when Respondent has engaged in the same or similar misconduct in the past.

15.09. AGGRAVATION AND MITIGATION

A. Generally

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.

B. Aggravation

1. Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.
2. Factors which may be considered in aggravation.

Aggravating factors include:

- a) prior disciplinary record, including private reprimands;
- b) dishonest or selfish motive;
- c) pattern of misconduct;
- d) multiple violations
- e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority or uncooperative conduct during proceedings;
- f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- g) refusal to acknowledge wrongful nature of conduct;
- h) vulnerability of victim;
- i) substantial experience in the practice of law;
- j) indifference to making restitution;
- k) illegal conduct, including that involving the use of controlled substances;
- l) unsuccessful participation in the Grievance Referral Program.

C. Mitigation

1. Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.
2. Factors which may be considered in mitigation.

Mitigating factors include:

- a) absence of a prior disciplinary record;
- b) absence of a dishonest or selfish motive;
- c) personal or emotional problems;
- d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- e) full and free disclosure to disciplinary authority or cooperative conduct during proceedings;

- f) inexperience in the practice of law;
- g) character or reputation;
- h) physical disability suffered by Respondent at the time of the misconduct that caused or contributed to the misconduct;
- i) mental disability or chemical dependency including alcoholism or drug abuse when:
 - 1) there is medical evidence that the Respondent is affected by a chemical dependency or mental disability;
 - 2) the chemical dependency or mental disability caused the misconduct;
 - 3) Respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
 - 4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;
- j) delay in disciplinary proceedings;
- k) imposition of other penalties or sanctions;
- l) remorse;
- m) remoteness of prior sanctions.

D. Factors which are neither aggravating nor mitigating.

The following factors should not be considered as either aggravating or mitigating:

- a) forced or compelled restitution;
- b) agreeing to the client's demand for certain improper behavior or result;
- c) withdrawal of complaint against the Respondent;
- d) complainant's recommendation as to sanctions;
- e) failure of injured client to complain.

**APPENDIX A TO THE TEXAS RULES OF DISCIPLINARY
(For Use With Sanction Guidelines)**

PROCEDURE Competent and Diligent Representation 1.01	Guideline 15.04A
Scope and Objectives of Representation 1.02 (a)(b) 1.02 (c)(d)(e)(f) 1.02 (g)	Guideline 15.04A Guideline 15.05A Guideline 15.07
Communication 1.03	Guideline 15.04A
Fees 1.04	Guideline 15.07; 15.04E
Confidentiality of Information 1.05	Guideline 15.04C
Conflict of Interest: General Rule 1.06	Guideline 15.04D
Conflict of Interest: Intermediary 1.07	Guideline 15.04D
Conflict of Interest: Prohibited Transactions 1.08	Guideline 15.04D
Conflict of Interest: Former Client 1.09	Guideline 15.04D; 15.04C
Successive Government and Private Employment 1.10	Guideline 15.04D
Adjudicatory Official or Law Clerk 1.11	Guideline 15.04D
Organization as a Client 1.12	Guideline 15.04D
Conflicts: Public Interest Activities 1.13	Guideline 15.04D
Safekeeping Property 1.14	Guideline 15.04B
Declining or Termination Representation 1.15 1.15(d)	Guideline 15.07 Guideline 15.04B
Advisor 2.01	Guideline 15.07
Evaluation for Use by Third Person 2.02	Guideline 15.07

Meritorious Claims and Contentions 3.01	Guideline 15.05B
Minimizing the Burdens and Delays of Litigation 3.02	Guideline 15.05B
Candor Toward the Tribunal 3.03	Guideline 15.05A
Fairness in the Adjudicatory Proceedings 3.04	Guideline 15.05B; 15.05A
Maintaining Impartiality of Tribunal 3.05	Guideline 15.05C
Maintaining Integrity of Jury System 3.06	Guideline 15.05C
Trial Publicity 3.07	Guideline 15.05B
Lawyer as Witness 3.08	Guideline 15.04D
Special Responsibilities of a Prosecutor 3.09	Guideline 15.05B; 15.06B
Advocate in Nonadjudicative Proceedings 3.10	Guideline 15.05B; 15.05C
Truthfulness in Statement to Others 4.01	Guideline 15.05A
Communication with One Represented by Counsel 4.02	Guideline 15.05C
Dealing with Unrepresented Person 4.03	Guideline 15.05C
Respect for Rights of Third Persons 4.04	Guideline 15.05B
Responsibilities of a Partner or Supervisory Lawyer 5.01	Guideline 15.07
Responsibilities of a Supervised Lawyer 5.02	Guideline 15.07
Responsibilities Regarding Nonlawyer Assistants 5.03	Guideline 15.07
Professional Independence of a Lawyer 5.04	Guideline 15.07; 15.04D
Unauthorized Practice of Law 5.05	Guideline 15.07
Restrictions on Right to Practice 5.06	Guideline 15.07

Prohibited Discriminatory Activities 5.08	Guideline 15.05B
Accepting Appointments by a Tribunal 6.01	Guideline 15.07
Firm Names and Letterhead 7.01	Guideline 15.07
Communications Concerning a Lawyer's Services 7.02	Guideline 15.07
Prohibited Solicitations and Payments 7.03	Guideline 15.07
Advertisements in the Public Media 7.04	Guideline 15.07
Prohibited Written, Electronic, or Digital Solicitation 7.05	Guideline 15.07
Prohibited Employment 7.06	Guideline 15.07
Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations 7.07	Guideline 15.07
Bar Admission, Reinstatement, and Disciplinary Matters 8.01	Guideline 15.07
Judicial and Legal Officials 8.02	Guideline 15.07
Reporting Professional Misconduct 8.03	Guideline 15.07
Misconduct 8.04 8.04(a)(2)(5)(6)(9) 8.04(a)(3) 8.04(a)(4) 8.04(a)(7)(10)(11) 8.04(a)(8)(12)	Guideline 15.04 – 15.08 15.06A 15.04E; 15.05A 15.05A 15.08 15.07
Jurisdiction 8.05	Guideline: None
Severability 9.01	Guideline: None

GRIEVANCE REFERRAL PROGRAM

16.01. **GRIEVANCE REFERRAL PROGRAM.** The Grievance Referral Program is established as a diversion program designed to address professionalism issues in minor misconduct cases and component of the attorney discipline system.

16.02. **ELIGIBILITY.** The following criteria are to be considered for participation in the program:

- A. Respondent has not been disciplined within the prior three years.
- B. Respondent has not been disciplined for similar conduct within the prior five years.
- C. Misconduct does not involve misappropriation of funds or breach of fiduciary duties.
- D. Misconduct does not involve dishonesty, fraud, or misrepresentation.
- E. Misconduct did not result in substantial harm or prejudice to client or complainant.
- F. Respondent maintained cooperative attitude toward the proceedings.
- G. Participation is likely to benefit the Respondent and further the goal of protection of the public.
- H. Misconduct does not constitute a crime that would subject the Respondent to compulsory discipline under Part VIII of these Rules.

SAMPLE TERMS AND CONDITIONS OF PROBATION

ADDITIONAL CLE

In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete _____ additional hours of continuing legal education in the area of Ethics / Law Practice Management / (specific substantive area of law). These additional hours of CLE are to be completed between (specific date), 201_ and (specific date), 201_. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course to the State Bar of Texas, via USPS: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701.

Respondent shall make contact with the Office of Chief Disciplinary Counsel's Compliance Monitor at 877.953.5535, ext. 1334, and Special Programs Coordinator at 877.953.5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

TRUST ACCOUNT REPORTING AND MONITORING

(Includes CPA Review)

Not later than sixty (60) days after entry of the judgment, Respondent shall engage the services of an independent Certified Public Accountant (the CPA), approved by the State Bar of Texas, to assist Respondent in implementing an accounting method to properly maintain trust account records, and to properly balance any and all of Respondent's trust accounts. Respondent shall insure that written confirmation of the implementation of such accounting method is provided directly by the CPA to the State Bar of Texas not later than ninety (90) days after entry of the judgment. Respondent shall take all necessary action, including the execution of a valid release of information, to allow and direct the CPA to provide such confirmation.

Additionally, not later than sixty (60) days after entry of the judgment, Respondent shall have a review of any and all of Respondent's trust accounts completed by the CPA. Not later than 30 days after completion of the review, Respondent shall insure that a report summarizing the results of the review, and specifically noting any irregularities in Respondent's handling of trust account funds, is provided by the CPA directly to the State Bar of Texas. Thereafter, reviews shall be completed every six (6) months, with reports provided by the CPA directly to the State Bar of Texas within thirty (30) days of the completion of each review. Respondent shall take all necessary action, including the execution of a valid release of information, to allow and direct the CPA to provide such reports.

Respondent shall be responsible for all costs and expenses incurred in completing these terms and shall pay all reasonable costs and expenses to the CPA in the manner determined by the CPA.

Respondent shall make contact with the Office of Chief Disciplinary Counsel's Compliance Monitor at 877.953.5535, ext. 1334, and Special Programs Coordinator at 877.953.5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

All reports and verifications of compliance with the above shall be sent to the State Bar of Texas via USPS to: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701, or via FAX to: 512-427-4167.

(Reporting Only--No CPA Review)

For three years, Respondent shall provide a quarterly report to the State Bar of Texas for each trust account that he maintains as part of his law license. The first report shall be filed by _____, 201__ and cover the three months from _____, 201__ through _____, 201__. Additional reports shall be filed every three months after _____, 201__, with each report covering the three-month period ending on the last day of the previous month. The last report shall be filed by _____, 201__. Each report shall include the records regarding Respondent's trust accounts for the applicable three-month period, including the checkbooks, canceled checks, check stubs, check registers, bank statements, vouchers, deposit slips, ledgers, journals, closing statements, accountings, and other statements of receipts and disbursements rendered to clients or other parties with regard to client trust funds, or other similar records clearly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client. The records regarding each trust account shall be grouped together.

Respondent shall make contact with the Office of Chief Disciplinary Counsel's Compliance Monitor at 877.953.5535, ext. 1334, and Special Programs Coordinator at 877.953.5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

All reports and verifications of compliance with the above shall be sent to the State Bar of Texas via USPS to: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 787112487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701, or via FAX to: 512-427-4167.

MENTAL HEALTH/EMOTIONAL ILLNESS

It is ORDERED that during all periods of suspension, Respondent shall be under the following terms and conditions:

1. Respondent shall make contact with the Office of Chief Disciplinary Counsel's Compliance Monitor at 877.953.5535, ext. 1334, and Special Programs Coordinator at 877.953.5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

2. Respondent shall make contact with the Texas Lawyers' Assistance Program (TLAP) at its hotline number, 800-343-8527, not later than seven (7) days after receipt of a copy of this judgment to inquire as to services and referrals offered by that program to aid in Respondent's rehabilitation. Respondent shall additionally send verification of contact with TLAP to the State Bar of Texas within fifteen (15) days such contact.

3. Respondent shall submit to supervision for a period of _____ months by a rehabilitation monitor acceptable to the State Bar of Texas and selected by the monitoring program of the Texas Lawyers' Assistance Program. The monitor shall supervise Respondent's compliance with the requirements of the rehabilitation conditions and is under a duty to immediately report to the Chief Disciplinary Counsel's Office any noncompliance on the part of Respondent. The monitor shall report the status of Respondent's compliance with these conditions on a monthly basis, with the report due by the 5th day of each month for the duration of the monitoring period.

4. Respondent shall meet with the monitor a minimum of two times per month. The initial meeting shall be held not later than ten (10) days after Respondent receives written notification from the State Bar of Texas of the name and phone number of Respondent's assigned monitor. Such meetings shall be in person at a place and time determined by the monitor. Exceptions must be approved in advance by the monitor and noted on the monthly report.

5. Within ten (10) days of Respondent's receipt of a copy of this judgment, Respondent shall schedule a full psychological assessment to be conducted by a mental health professional licensed in Texas as a psychiatrist, a psychologist, a master's level social worker (LCSW), or a licensed professional counselor (LPC). Respondent shall complete the assessment at the earliest practicable date, but in no event later than sixty (60) days after receipt of a copy of this judgment. Although the details of information disclosed during the assessment shall remain confidential, the conclusions, diagnosis and treatment plan recommendations of the mental health professional shall be reported to the State Bar of Texas within ten (10) days of the completion of the assessment. Respondent shall take all necessary action, including the execution of a valid release of information, to allow and direct the mental health professional to report such results and recommendations.

6. If recommended as part of the above assessment, Respondent shall remain under the care of one or more mental health professionals at the frequency recommended by the treatment plan for the duration of the supervision period or until released in writing by the treatment provider. Each treating mental health professional shall provide written quarterly reports to the State Bar of Texas verifying Respondent's attendance at the sessions and good faith participation in the treatment plan. The initial report(s) shall be due ninety (90) days after completion of the assessment, with subsequent reports due quarterly thereafter. Respondent shall take all necessary action, including the execution of a valid release of information, to permit any treating mental health professional to provide written or oral reports for the duration of the supervision period.

7. Respondent shall be responsible for all costs and expenses incurred, directly or indirectly, by compliance with these terms and shall pay all such costs and expenses as required by the provider, but in no event later than the final day of the supervision period.

8. Any and all reports and evaluations required by these terms of probation shall be sent to the State Bar of Texas, via USPS: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701.

SUBSTANCE ABUSE OR DEPENDENCY

It is ORDERED that during all periods of suspension, Respondent shall be under the following terms and conditions:

1. Respondent shall remain abstinent from all alcohol and other mind-altering substances, except when such are prescribed by a treating physician or psychiatrist and taken in accordance with such prescription. Respondent shall provide copies of such prescriptions if requested to do so by the monitor referred to below or by the Office of Chief Disciplinary Counsel's Special Programs Coordinator.

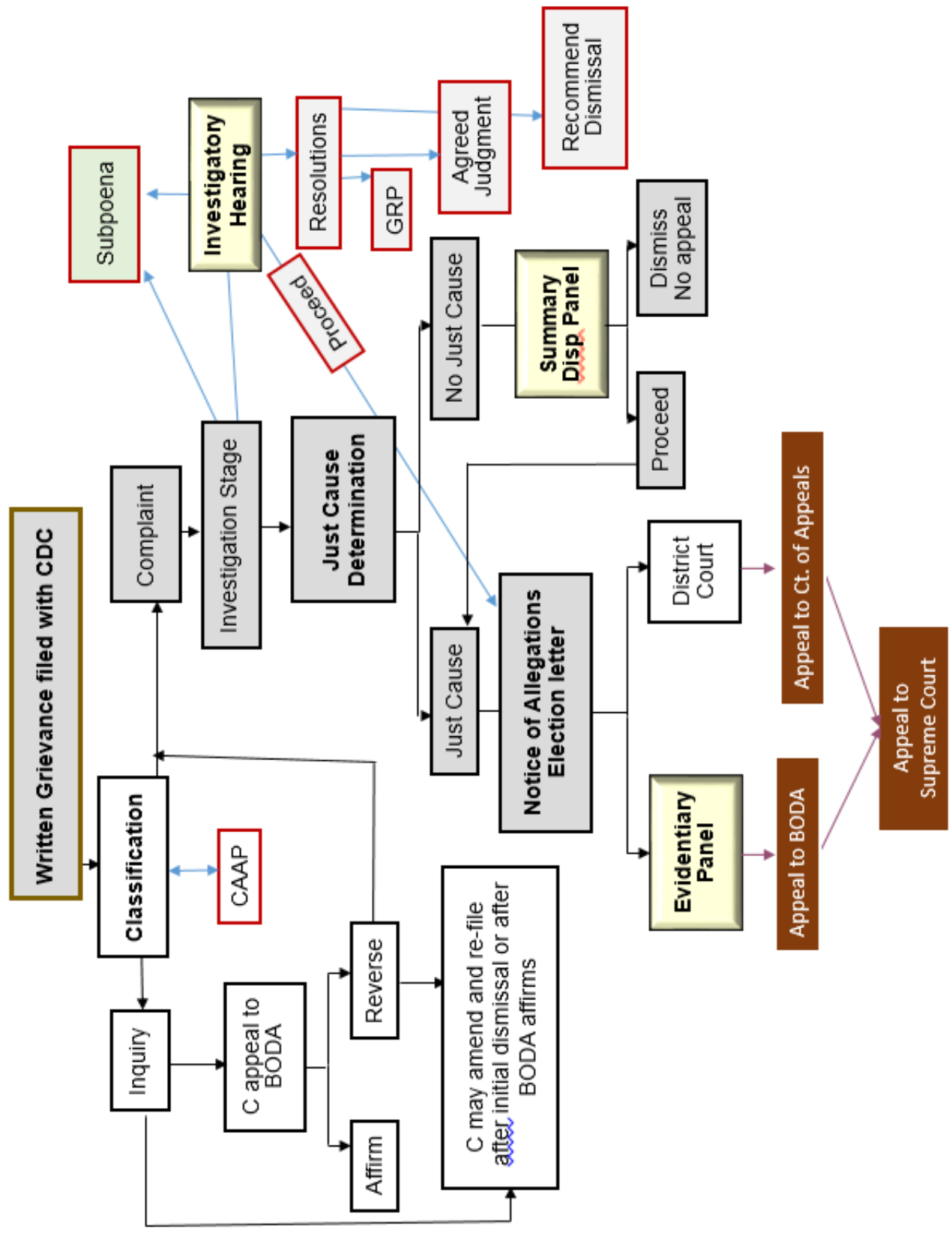
2. Respondent shall make contact with the Texas Lawyers' Assistance Program (TLAP) at its hotline number, 800-343-8527, not later than ten (10) days after receipt of a copy of this judgment to inquire as to services and referrals offered by that program to aid in Respondent's rehabilitation. Respondent shall additionally send verification of contact with TLAP to the Chief Disciplinary Counsel's Office within fifteen (15) days of such contact.

3. Respondent shall submit to supervision for a period of ____ months by a rehabilitation monitor acceptable to the State Bar of Texas and selected by the Texas Lawyers' Assistance Program. The monitor shall supervise Respondent's compliance with the requirements of these rehabilitation conditions and is under a duty to immediately report any noncompliance on the part of Respondent to the Chief Disciplinary Counsel's Office. The monitor shall report the status of Respondent's compliance on a monthly basis, with the report due by the 5th day of each month for the duration of the monitoring period.

4. Respondent shall make initial contact with the rehabilitation monitor not later than seven (7) days after Respondent receives written notification from the State Bar of Texas of the name and phone number of the assigned monitor. Respondent shall meet in person with the monitor twice per month for the duration of the suspension period. Such meetings shall be in person at such place and time as determined by the monitor. Exceptions must be approved in advance by the monitor and noted on the monthly report.

5. Respondent shall submit to random drug screens in accordance with the drug screen protocol of the Texas Lawyers' Assistance Program or at the request of the monitor or at the request of the Office of Chief Disciplinary Counsel's Special Programs Coordinator. On the required days for testing Respondent shall complete all steps of the protocol by the lab's normal close of business day.

6. For the first ninety (90) days after receipt of a copy of this judgment, Respondent shall attend at least one Alcoholics Anonymous or other appropriate 12-Step recovery program meeting per day. Any exception to this condition must be approved in writing by the monitor.
7. For the remaining duration of the suspension period, Respondent shall attend at least three Alcoholics Anonymous or other appropriate 12-Step recovery program meetings per week. Any exception to this condition must be approved in writing by the monitor.
8. For the duration of the suspension, Respondent shall also attend a Lawyers Concerned for Lawyers support group meeting if such a group meets within thirty miles of Respondent's home or work, and shall document this attendance on the log referred to below.
9. Respondent shall document his/her recovery program meeting attendance with an attendance log prescribed by the Chief Disciplinary Counsel's Office. Respondent shall deliver this recovery program attendance log to the monitor at each of their meetings for attachment to the monitor's monthly report.
10. Any and all reports and evaluations required by these rehabilitative terms of probation shall be sent to the Chief Disciplinary Counsel's Office, via USPS: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701.



APPENDIX 2



APPENDIX B

Procedural Guide



Evidentiary Panel Proceedings



Investigatory Hearing Panel Proceedings

Office of the Chief Disciplinary Counsel
State Bar of Texas, May 2020

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PROCESSING A GRIEVANCE

GRIEVANCE FILED WITH CHIEF DISCIPLINARY COUNSEL. All disciplinary actions and proceedings begin with the filing of a Grievance with the Chief Disciplinary Counsel's office ("CDC"). There is no privity required between the complaining party and Respondent attorney. Grievances can be filed against any lawyer licensed in the State of Texas by any person or entity. The Chief Disciplinary Counsel may also initiate a Grievance. (Tex. R. Disciplinary P. ("TRDP") 1.06(R))

CLASSIFICATION. Upon receipt of the Grievance, **CDC *within 30 days* examines the Grievance to determine whether it constitutes an Inquiry or a Complaint.** If the Grievance does not, even if true, describe conduct that would constitute professional misconduct, it is classified as an *Inquiry* and dismissed with notice to Complainant and Respondent. If the Grievance states an allegation of professional misconduct, it is classified as a *Complaint* and notice of the Complaint, along with a photocopy of the Complaint, is served on Respondent informing him or her of the **duty to respond within 30 days from receipt of the notice.** (TRDP 2.10)

INVESTIGATION AND DETERMINATION OF JUST CAUSE. Within 60 days from Respondent's response deadline, CDC must conclude its investigation and determine whether there is Just Cause to proceed. *Just Cause* is defined as "such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed, or suffers from a Disability that requires either suspension as an attorney licensed to practice law in the State of Texas or probation." (TRDP 1.06(Z))

INVESTIGATORY SUBPOENA. During the investigation of a Complaint filed on or after June 1, 2018, CDC, with the Committee Chair's approval, may issue a subpoena that relates directly to a specific allegation of attorney misconduct for the production of documents, electronically stored information, or tangible things or to compel the attendance of a witness, including Respondent, at an investigatory hearing. (TRDP 2.12(B)) A subpoena must notify the recipient of the time, date and place of appearance or production and must contain a description of materials to be produced. The types of documents that may be subpoenaed include bank records, communication records (jail logs, telephone records, correspondence, etc.) settlement fund distribution documents and court or agency records.

Respondents or persons commanded to appear or make production can contest the materiality of the production or testimony sought by presenting all objections to the chairman of the Investigatory Panel, if an Investigatory Hearing has been set, or to the Committee Chair, if an Investigatory Hearing has not been set. (TRDP 2.12(D)) If an agreement is not reached, the Panel or Committee Chair will conduct a hearing and make his/her ruling on the materiality of the requested production or testimony.

SUMMARY DISPOSITION PANEL. If no Just Cause is found, CDC will present the Complaint to a Summary Disposition Panel of the Grievance Committee without the presence of the Complainant, Respondent, or witnesses. The Summary Disposition Panel will consider the documents, evidence, and CDC's report and recommendation and determine whether the Complaint should be dismissed or, if the panel disagrees with CDC's no-Just-Cause finding, should proceed. A tie vote results in dismissal. (TRDP 2.07). There is no appeal from this decision. (TRDP 2.13)

INVESTIGATORY HEARING. For all grievances filed on or after June 1, 2018, CDC may set a Complaint for a non-adversarial Investigatory Hearing before a local Grievance Committee Panel. Venue for an Investigatory Hearing will be in the county where the alleged Professional Misconduct occurred, in whole or in part. (TRDP 2.11(A)) Based on the Investigatory Panel's recommendations, the Complaint may be dismissed or, if the panel finds Just Cause, the parties may enter into an agreed judgment or proceed to litigation.

NOTIFICATION OF COMPLAINT AND ELECTION. If the CDC or an Investigatory Panel finds Just Cause (and a negotiated settlement is not entered into) or the Summary Disposition Panel votes to proceed, the CDC will notify Respondent in writing of the Just Cause decision. Respondent will also be notified of the acts and/or omissions of alleged Professional Misconduct, the rules allegedly violated, and election options. Within 20 days from the receipt of the notice of allegations, Respondent must elect to have the Complaint heard in district court or by an Evidentiary Panel. A failure to timely elect will result in the Complaint proceeding before an Evidentiary Panel. (TRDP 2.13; 2.14(A); 2.14(D); 2.15)

See Flow Chart — Processing a Grievance, Appendix A

GENERAL RULES GOVERNING INVESTIGATORY HEARINGS & EVIDENTIARY PANEL PROCEEDINGS

INVESTIGATORY HEARING PANEL AND EVIDENTIARY PANEL COMPOSITION. Grievance Committees act through panels to conduct investigatory and evidentiary hearings. Panels must be composed of two attorney members for each public member. Most panels in the state are 6-member panels, each composed of 4 attorneys and 2 public members. (TRDP 2.07)

APPOINTMENT OF EVIDENTIARY PANEL. Within 15 days of receipt of Respondent's election or the day following the election deadline, the Grievance Committee Chair appoints an Evidentiary Panel to hear the Complaint. The Evidentiary Panel may not include any person who served on Summary Disposition Panel or on Investigatory Panel and must have a ratio of two attorney members for every public member. (TRDP 2.17) No member may be appointed to an Evidentiary Panel pertaining to the same disciplinary matter that the member considered at either an investigatory hearing or a summary disposition hearing. (TRDP 2.07).

SETTING BEFORE AN INVESTIGATORY HEARING PANEL. When the CDC determines that a case will proceed to an Investigatory Hearing, CDC shall set the matter before a Grievance Committee Panel on a date sufficient to give Respondent at least 45 days' notice of the hearing. No later than twenty days before a scheduled hearing, CDC will make available to the Panel materials relevant to the hearing ("hearing packet").

QUORUM REQUIRED. In order for an Evidentiary Panel or an Investigatory Hearing Panel to conduct business, a quorum of the members of the panel must be present. A quorum consists of a majority of the membership of the panel and must include at least one public member for every two attorney members present.¹ On a 3-member panel, a quorum may consist of two members as long as one of the members is a public member. (TRDP 2.07). Once a hearing begins, a quorum must be maintained at all times.

¹ *Boma O. Allison v. Commission for Lawyer Discipline*, BODA No. 41135 (June 20, 2008), *aff'd*, 288 S.W.2d 413, (Tex. 2009).

GENERAL RULES GOVERNING PANEL PROCEEDINGS (CONT.)

RECUSAL AND DISQUALIFICATION. A member is disqualified or is subject to recusal as a panel member for an evidentiary hearing if a district court judge would, under similar circumstances, be disqualified or recused. If a member is disqualified or recused, another member shall be appointed by the Grievance Committee Chair. (TRDP 2.06)

Grounds for recusal and disqualification are governed by the Texas Constitution, Art. 5, §11 and Texas Rule of Civil Procedure 18b.

Disqualification: Generally, the grounds for disqualification are: 1) a panel member or associate served as a lawyer in the same (underlying) matter; 2) a panel member has an interest in the subject matter in controversy (typically a financial interest, but can include a direct personal interest in the result of the case); 3) a panel member is related to the Complainant or Respondent.

Note: Disqualification is mandatory and cannot be waived. Any judgment entered by a panel that includes a disqualified member renders the judgment void.

Recusal: Generally, grounds for recusal include: 1) impartiality might reasonably be questioned; 2) bias or prejudice; 3) a panel member has personal knowledge of a disputed fact; or 4) a panel member's spouse or relative is a material witness or acting as an attorney in the case.

Note: Recusal is discretionary and can be waived.

Any alleged ground for recusal of a panel member is conclusively waived if not brought to the attention of the panel within 10 days after receipt of notification of the names and addresses of members of the panel; however, grounds for recusal not reasonably discoverable within the ten-day period may be asserted within ten days after they were discovered or, in the exercise of reasonable diligence, should have been discovered. (TRDP 2.06)

Note: A motion to recuse or for disqualification will be determined by the Chair of the Grievance Committee. The motion will be forwarded to the Chair upon filing and the Chair will conduct a hearing upon request. If the motion is granted, the Chair will appoint a substitute member to the applicable evidentiary panel.

Note: If a panel member is subsequently substituted, Respondent is notified and will have 10 days from receipt of notification to object to the substituted member.

VENUE. Evidentiary Panel proceeding shall be conducted by a panel for the county where Respondent's principal place of practice is maintained; or if Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent's residence; or if Respondent maintains neither a residence nor a principal place of practice in Texas, then in

the county where the professional misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas. (TRDP 2.11(C)) Proceedings of an Investigatory Panel shall be conducted by a panel for the county where the alleged Professional Misconduct occurred, in whole or in part. If the alleged misconduct occurred wholly outside the State of Texas, proceedings shall be conducted by a panel for the county of Respondent's residence and, if Respondent has no residence in Texas, by a panel for Travis County, Texas. (TRDP 2.11(A))

Note: An objection to venue is determined by majority vote of the Evidentiary Panel.

PARTIES. The parties to an Evidentiary Panel proceeding are the Commission for Lawyer Discipline (represented by the Chief Disciplinary Counsel) and the Respondent. (TRDP 2.17(A)(1-2)) Complainant is a potential witness but is not a party. (TRDP 1.06)

BURDEN OF PROOF. In an Evidentiary Hearing, the Commission for Lawyer Discipline has the burden to prove its material allegations by a preponderance of the evidence. (TRDP 2.17(M))

Note: "Preponderance of the evidence" means the greater weight and degree of the credible evidence and is the level of proof required to prevail in most civil cases. It has been described as "The judge must be persuaded that the facts are more probably one way (the plaintiff's way) than another (the defendant's)."

JUST CAUSE FINDING. An Investigatory Panel or CDC may find Just Cause upon a reasonable inquiry a reasonably intelligent and prudent person would be induced to believe that an attorney either committed an act or acts of Professional Misconduct requiring that a Sanction be imposed. (TRDP 1.06(Z))

RECORD OF HEARINGS. All Evidentiary Panel proceedings are recorded by a court reporter. (TRDP 2.17(N)) It is the policy of CDC to make a record of Investigatory Hearings by audio/visual taping.

Note: The administrative support staff of the Office of the Chief Disciplinary Counsel will arrange for the presence of a court reporter or audio/visual recording at hearings.

CONFIDENTIALITY. Investigatory and Evidentiary Panel proceedings are confidential. Only if Respondent has waived confidentiality, or the proceeding is based upon a conviction for a serious crime, may the pendency, subject matter, and status of an Evidentiary Panel proceeding be disclosed by the Chief Disciplinary Counsel.

Any record of an Investigatory Hearing is strictly confidential and may be released only for use in a disciplinary matter. (TRDP 2.12(F))

The deliberations of an Evidentiary or Investigatory Panel are strictly confidential and not subject to discovery. No person is competent to testify as to such deliberations and voting. (TRDP 2.16(B)).

If the Evidentiary or Investigatory Panel finds that Professional Misconduct has occurred and imposes any sanction other than a private reprimand, the final judgment is a public record from the date the judgment is signed. (TRDP 2.16(A)(2); (A)(3)(a)). Once all appeals, if any, have been exhausted and the judgment is final, the Office of the Chief Disciplinary Counsel shall, upon request, disclose all documents, statements, and other information relating to the Disciplinary Proceeding that came to the attention of the Evidentiary Panel during the Disciplinary Proceeding. (TRDP 2.16(A)(3)(b)).

Note: The Office of the Chief Disciplinary Counsel will not publicly comment on any case pending before an Evidentiary Panel. A panel member who receives a request for information concerning a pending or closed matter should refer the matter to the Office of the Chief Disciplinary Counsel.

EVIDENTIARY PANEL PROCEEDINGS

EVIDENTIARY PANEL AS A TRIBUNAL. The Evidentiary Panel sits as the tribunal deciding all questions of fact and law and all matters related to the imposition of sanctions in cases assigned to that panel. As the tribunal, all members of the Evidentiary Panel should refrain from discussing pending disciplinary matters except in the presence of all members constituting the quorum deciding the case and only in the due course of their panel duties; e.g., deliberations. Panel members should refrain from conducting their own investigation or considering any evidence not offered and admitted during a hearing.

Panel members should not engage in *ex parte* communications with the parties or witnesses to a proceeding, including CDC attorneys or staff, Respondent or Respondent's counsel, or Complainant. Discussions related to a pending matter should only occur in the presence of representatives from both parties.

In addition, State Bar Board Policy prohibits grievance committee members from engaging in the following actions while serving on the Committee:

- giving opinions on ethical or unauthorized practice of law matters while serving on the committee, other than through the member's role on the committee;
- representing any complainant or respondent in any disciplinary matter pending or filed during the member's term of service on a grievance committee;
- testifying in any capacity in connection with any disciplinary matter pending or filed during the member's term of service on the grievance committee; or
- counseling any complainant or respondent or any attorney representing any complainant or respondent in any disciplinary matter pending or filed during the member's term of service on the grievance committee.

(State Bar of Texas Board of Director's Policy Manual, § 6.04.10 – June 20, 2018)

EVIDENTIARY COURT FILE. The Evidentiary Panel's official file is maintained by the Office of Chief Disciplinary Counsel pursuant to the confidentiality requirements of TRDP 2.16. All pleadings, motions, orders, and other matters related to the Evidentiary Proceeding are filed with the Office of Chief Disciplinary Counsel.

EVIDENTIARY PANEL DECISIONS. Generally, all decisions in an Evidentiary Panel Proceeding must be made by a majority vote of a quorum of the panel (*i.e.*, motion for new trial; motion to stay judgment; final decision). Any tie vote is a vote in favor of the position of Respondent. (TRDP 2.07)

AUTHORITY OF PANEL CHAIR. The Panel Chair may rule alone in matters involving discovery (modification of discovery limitations, discovery dispute resolution, and issuing subpoenas

[See TRDP 2.17(F – H)), and rulings related to the admission or exclusion of evidence during a hearing. (TRDP 2.17(L))

In an Evidentiary Panel proceeding, the presiding Panel Chair has the authority, consistent with the Texas Rules of Disciplinary Procedure, to:

- (A) Administer oaths and affirmations;
- (B) Make rulings upon motions and other requests;
- (C) Rule upon offers of proof, receive relevant evidence, and examine witnesses;
- (D) Regulate the course of the hearing and ensure that all members have taken the required oath;
- (E) Hold or provide for the holding of conferences to settle or simplify the issues;
- (F) Receive and consider oral or written arguments on facts or law;
- (G) Adopt procedures consistent with the Texas Rules of Disciplinary Procedure and modify them from time to time as occasion requires for the orderly disposition of proceedings; and
- (H) Perform acts and take measures, consistent with the Texas Rules of Disciplinary Procedure, as necessary to promote the efficient and timely conduct of the hearing.

State Bar of Texas Board of Directors Policy Manual, § 6.04.09 – June 20, 2018

The Panel Chair, without a majority vote of the Panel, may also sign agreed judgments, agreed or unopposed continuances, set hearings, order the parties to alternative dispute resolution, and attend to other non-dispositive matters.

HEARINGS. Telephonic hearings may be conducted with the agreement of the parties or upon order of the Panel Chair on some issues that do not require the taking of evidence (*i.e.* discovery requests, motions for continuance, etc.).

EVIDENTIARY PETITION FILED. The Evidentiary Petition should be filed with the Evidentiary Panel within 60 days from receipt of Respondent's election or the election deadline and must contain the following:

- a. notice that the action is brought by the Commission for Lawyer Discipline;
- b. the name of Respondent and the fact that he or she is an attorney licensed to practice law in the State of Texas;
- c. venue facts;
- d. factual allegations of professional misconduct (fair notice);
- e. list of disciplinary rules allegedly violated;
- f. demand for judgment; and
- g. any other matter that is required or may be permitted by law or the Texas Rules of Disciplinary Procedure. (TRDP 2.17(A))

SERVICE OF THE EVIDENTIARY PETITION. Service of the petition must be in accordance with Rule 2.09 which provides for service by certified mail, return receipt requested, at the address provided by Respondent as shown on the membership rolls maintained by the Clerk of the Supreme Court at the time of receipt of the Grievance by the CDC or by any other means of service permitted by the Texas Rules of Civil Procedure. (TRDP 2.17(A)).

SUBSTITUTED SERVICE. If efforts to serve Respondent personally or by certified mail are unsuccessful, the Commission may seek an order from the Panel authorizing substituted service. Substituted service must strictly comply with Texas Rule of Civil Procedure 106.

Rule 106 requires that the motion for substituted service be supported by an affidavit stating the location of Respondent's usual place of business or usual place of abode or other place where Respondent can probably be found. The affidavit must also state specifically the facts showing that service has been attempted under either Texas Rule of Civil Procedure 106(a)(1)(*personal service*) or Texas Rule of Civil Procedure 106(a)(2)(*certified mail*) at the location named in the affidavit, but has not been successful. *See Shelton v. CFLD*, BODA No. 36,059 (March 30, 2006)(p. 25).

RESPONDENT'S ANSWER. Respondent is required to file a responsive pleading specifically admitting or denying each allegation of Professional Misconduct. The answer must be filed no later than 5:00 p.m. on the first Monday following the expiration of 20 days after service. (TRDP 2.17(B)).

DISCOVERY.

- ❖ REQUEST FOR DISCLOSURE. No later than 30 days prior to the first setting of the Evidentiary Hearing, each party may obtain disclosure of:
 - correct names of the parties;
 - factual basis of the claims or defenses;
 - name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of the person's connection to the case;
 - identification of experts and description of the expert's opinions; and
 - witness statements (TRDP 2.17(D))

In addition to the Request for Disclosure, other limited discovery is afforded the parties in all cases and must be conducted between the time the petition is filed and 30 days before the Evidentiary Hearing date. The discovery limitations may be modified by agreement or by the Evidentiary Panel Chair upon a showing of reasonable need.

- ❖ DEPOSITIONS. No more than 6 hours total per party to examine and cross-examine all witnesses. (TRDP 2.17(E)(2))
- ❖ INTERROGATORIES. No more than 25 written interrogatories. (Each subpart counts as a full interrogatory; interrogatories asking for identification or authentication of documents not counted) (TRDP 2.17(E)(3))
- ❖ REQUESTS FOR PRODUCTION. No limits. (TRDP 2.17(E)(4))
- ❖ REQUESTS FOR ADMISSIONS. No limits. (TRDP 2.17(E)(5))
- ❖ SUBPOENA POWER. Each party may compel the attendance of a witness or the production of documents by subpoena. The requesting party must submit a written subpoena in proper form to the Panel Chair for issuance, and the requesting party is responsible for service. The Panel Chair decides any disputes regarding the materiality of testimony or production sought by a subpoena. Enforcement of subpoenas is through the district court. (2.17 (H – I)).

EVIDENTIARY HEARING.

- ❖ SETTING. Evidentiary Panel proceedings are set for hearing within 180 days after the date the answer is filed, except for good cause shown. In addition, there is a minimum 45-day notice of hearing requirement unless waived by the parties. (2.17(O)).
- ❖ EVIDENCE. The Evidentiary Panel sits as an adjudicatory body with the Panel Chair serving as the “presiding judge” by calling the case, asking for argument, and making rulings on objections and the admission or exclusion of evidence. The Commission, as the party with

the burden of proof, is given the opportunity to make an opening statement and then will proceed with its case-in-chief in much the same manner as a district court case:

- Panel Chair's opening remarks (See p. 37, 38).
- Commission's Opening Statement (optional)
- Respondent's Opening Statement (optional and/or may reserve until opening of Respondent's case)

Note: After opening statements, either party may request that the "rule be invoked." This generally means that no witness can be present while other witnesses testify. If the request is made, the Panel Chair should identify all potential witnesses and ask that they leave the hearing room until called to testify. A party can request that a witness be exempted from "the rule." The party then has the burden of proving that the witness's presence is essential to the presentation of the case.

- Commission presents Case-in-Chief (Respondent has right of cross-examination; panel members allowed to question any witness)
- Commission rests
- Respondent presents defense (Commission has right of cross-examination; panel members allowed to question any witness)
- Respondent rests
- Rebuttal by Commission
- Commission's Closing Statement
- Respondent's Closing Statement
- Commission's Rebuttal
- Panel deliberations (private)
- Decision announced on record

◆ Evidentiary panel members may question any witness. (TRDP 2.17(L)).

◆ Respondent may have counsel present during the hearing and is allowed to participate fully in the presentation of evidence and questioning of witnesses. (TRDP 2.17(L)).

◆ Complainant may have counsel present, but may not present evidence, question witnesses, or present argument to the Panel. (TRDP 2.17(J)(L)).

❖ 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." (TRDP 2.17(L)). "[N]o ruling upon the evidence shall be a basis for reversal solely because it fails to strictly comply with the Texas Rules of Evidence." (TRDP 2.17(L)).

ALTERNATIVE DISPUTE RESOLUTION. Upon motion or otherwise, the Evidentiary Panel Chair may order the Commission and Respondent to participate in mandatory alternative dispute resolution as provided by Chapter 154 of the Civil Practice and Remedies Code or as otherwise provided by law when deemed appropriate. (TRDP 2.17(K))

DECISION. After conducting the Evidentiary Hearing, the Evidentiary Panel must issue judgment within 30 days. The Evidentiary Panel may:

- find Professional Misconduct and impose sanctions;
- find no Professional Misconduct and dismiss the case; or
- find that Respondent suffers from a disability and forward the finding to the Board of Disciplinary Appeals. (TRDP 2.17(P))

Note: If the panel finds Professional Misconduct, the judgment must include findings of fact, conclusions of law, and the sanction to be imposed. See "Imposition of Sanctions" below.

Typically, after deliberating in private, the Panel Chair will announce the decision on the record. The Panel Chair will be provided a Hearing Report to complete which includes the panel's findings of misconduct and sanction imposed. (See p. 39).

If misconduct is found, the judgment will be drafted by the Commission's lawyer and sent to the panel with a copy to Respondent. The Panel Chair signs the judgment.

If the panel finds no Professional Misconduct, the Commission's lawyer will draft a judgment of dismissal which is sent to the panel with a copy to Respondent. The Panel Chair signs the judgment of dismissal.

DEFAULT. If Respondent fails to answer timely, the Commission will seek a default. The Commission will file a motion for default, and the matter will be set for a default hearing. (TRDP 2.17(C)).

Upon a showing of default, all facts alleged in the Evidentiary Petition are taken as true and Professional Misconduct found. A sanctions hearing is held to determine the appropriate sanction. This hearing can be held immediately or at a later date. (TRDP 2.17(C)).

IMPOSITION OF SANCTIONS

Every disciplinary Complaint is different and there are many factors that go into the imposition of the appropriate sanction. While the new guidelines are important and are designed to promote consistency across the state, there is nothing in the guidelines that limits the authority of the Evidentiary Panel.

BIFURCATED HEARING. The Evidentiary Panel may, in its discretion, conduct a separate hearing on sanctions after Professional Misconduct is found. (TRDP 2.18).

In determining the appropriate sanctions, the Evidentiary Panel shall consider either the factors contained in Rule 2.18 of the 2015 TRDP for cases filed before June 1, 2018, or the guidelines contained in Section 15 of the 2018 TRDP for cases filed on or after June 1, 2018.

Note: A respondent's disability may not be considered in mitigation, unless Respondent demonstrates that he or she is successfully pursuing in good faith a program of recovery or appropriate course of treatment.

(Old TRDP 2.18 and New TRDP 15.09(C)(2)(h))

AVAILABLE SANCTIONS. The panel may consider the following sanctions:

- Private Reprimand
- Public Reprimand
- Probated Suspension (Respondent may practice law with conditions)
- Partially-probated Suspension (combination of active and probated suspension)
- Suspension for a term certain (Respondent may not practice law during active term)
- Disbarment (loss of license to practice law)

RESTRICTIONS ON IMPOSITION OF CERTAIN SANCTIONS.

There are restrictions on the imposition of some sanctions. The restrictions vary depending on whether the Grievance was filed before or after June 1, 2018. Restrictions are listed in the Appendix along with the 2.18 Factors (p. 47) and the Sanction Guidelines (p. 49).

ADDITIONAL SANCTIONS. The term “Sanction” may include:

- Restitution to client(s) or to the Client Security Fund
- Reasonable attorneys’ fees and all direct expenses associated with the proceedings. (TRDP 1.06(FF)(a)(b))

Note: *In all cases in which the evidence establishes that Respondent’s misconduct involved the misappropriation of funds and Respondent is disbarred or suspended, the panel’s judgment must require Respondent to make restitution during the period of suspension, or before any consideration of reinstatement from disbarment. The judgment must further provide that the suspension remain in effect until evidence of satisfactory restitution is made by Respondent and verified by the Chief Disciplinary Counsel. (TRDP 2.19).*

Note: There is no provision for the imposition of a fine. Restitution does not include damages to Complainant or disgorgement of the attorney’s fee.

See *Cafiero v. Commission for Lawyer Discipline*, BODA No. 37811 (May 10, 2007). (p. 23)

TERMS AND CONDITIONS OF PROBATION.

(FULLY OR PARTIALLY PROBATED SUSPENSION JUDGMENTS)

A judgment of suspension that is fully or partially probated will include “terms of probation.” Respondent is required to comply with these terms during the period of probation. Terms of probation must be reasonable and appropriate under the circumstances. Judgments of fully or partially-probated suspension will generally include the following standard terms:

- Respondent shall not engage in Professional Misconduct
- Respondent shall not violate any state or federal criminal statutes
- Respondent shall keep State Bar of Texas membership notified of Respondent’s current address and telephone number
- Respondent shall comply with Minimum Continuing Legal Education requirements
- Respondent shall comply with Interest on Lawyer Trust Account (IOLTA) requirements
- Respondent shall respond to any request for information from the Grievance Committee or the Chief Disciplinary Counsel

The judgment may also include the following terms of probation if the evidence supports inclusion:

- Additional hours of Continuing Legal Education (CLE) courses
- Rehabilitative Monitor

- Psychological Assessment and Compliance (Quarterly) Reports
- Law Practice Monitors
- Random Drug Screens
- Trust Account Reporting
- Trust Account Audit

See Sample Terms and Conditions of Probation, p. 64-68.

Note: *Restitution and attorneys' fees are typically incorporated into terms of probation with inclusion of due dates. See Sample Hearing Report, p. 39.*

POST JUDGMENT MOTIONS. 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. (TRCP 2.21)

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. (TRCP 329b(e)).
- ◆ **Motion to Set Aside Default.** To receive a new hearing after a default judgment, Respondent must establish three elements set forth in *Craddock v. Sunshine Bus Lines*, 134 Tex. 388, 133 S.W.2d 124 (1939) 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. *Molina v. Commission for Lawyer Discipline*, BODA No. 35426 (November 4, 2005)(p.25).
- ◆ **Motion to Stay Judgment.** A judgment of disbarment cannot be superseded or stayed. A respondent may, within 30 days from entry of judgment, request a stay of a judgment of suspension. A hearing must be held on such motion. Respondent carries the burden of proving by a preponderance of the evidence that Respondent's continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public. The panel may condition its stay upon reasonable terms. (TRDP 2.24).

APPEALS

The Commission or Respondent may perfect an appeal to the Board of Disciplinary Appeals (BODA) by filing a notice of appeal within 30 days from judgment or within 90 days after judgment if any party timely files a motion for new trial or a motion to modify the judgment.

All appeals are determined under the standard of substantial evidence. Appeals from a BODA decision are to the Supreme Court of Texas under the substantial evidence standard. (TRDP 2.23)

BOARD OF DISCIPLINARY APPEALS DECISIONS.

In considering an appeal, BODA may:

- Affirm in whole or in part the decision of the Evidentiary Panel;
- Modify the panel's finding(s) and affirm the finding(s) as modified;
- Reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered; or
- Reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:
 - the panel that entered the finding(s); or,
 - a statewide grievance committee panel appointed by BODA and composed of members selected from a state bar district other than the district from which the appeal was taken. (TRDP 2.25).

Note: *The "remand" of a case means that the matter is returned to the panel for further consideration. BODA can remand a case in whole (a new hearing for a determination of Professional Misconduct and any Sanction) or in part (a new hearing on Sanctions). Panel members will be notified of the remand of a cause and of any subsequent hearing dates.*

Note: *While on appeal, the parties may settle the case. In such an event, BODA grants a joint motion and enters an order remanding the case for entry of the agreed judgment and the panel is directed to enter the agreed judgment.*

OPINIONS. BODA may render judgment with or without opinion. BODA has issued several written opinions in connection with appeals from evidentiary judgments. The opinions are available on BODA's website at www.txboda.org.

INVESTIGATORY HEARING PROCEEDINGS

Effective September 1, 2017, as a result of the Sunset Review process the Texas Legislature revised the State Bar Act. The primary changes to the Texas Rules of Disciplinary Procedure related to local Grievance Committees include:

- Subpoena authority during the investigation of a Complaint;
- Investigatory Hearings before local Grievance Committee Panels to resolve grievances earlier in the process short of formal litigation; and
- Adopted Sanction Guidelines to replace the Sanction Factors in Rule 2.18.

NATURE OF THE INVESTIGATORY HEARING. The Investigatory Hearing is a component of the investigation and is a non-adversarial proceeding.

DECISION TO HOLD INVESTIGATORY HEARING. CDC has discretion to determine which Complaints go to an Investigatory Hearing. It is the intention of CDC that most Complaints will go to an Investigatory Hearing unless the matters involved are too complex or have too many witnesses to handle in an informal setting or there is no chance that the Complaint will be resolved by agreement. (TRDP 2.12(F))

SETTING AND NOTICE. CDC will set an Investigatory Hearing on a Panel's docket for the earliest date available. While the procedural rules do not specify a required notice period, the policy of CDC is to follow the notice requirement in the Texas Rules of Civil Procedure and provide Respondent a 45 day notice of an Investigatory Hearing.

HEARING LOCATION. Investigatory Hearings will be conducted in a neutral location to preserve confidentiality.

HEARING PACKETS. No less than 20 days before the Investigatory Hearing, CDC will make available to the Panel members materials relevant to the hearing. The Hearing Packet will contain:

- The grievance;
- Respondent's formal response to the grievance;
- Supplemental information from Respondent and/or Complainant
- Investigator's Report, which will contain:
 - A summary of the allegations of misconduct;
 - A summary of Respondent's defenses;
 - An analysis of the facts and law;
 - Recommendation on disciplinary rules that may have been violated; and
 - May recommended a range of sanctions appropriate pursuant to the sanction guidelines;
- Documents and witness statements obtained during the investigation.

INVESTIGATORY HEARING. A CDC lawyer or investigator will attend all hearings. Respondent, Respondent's Counsel, Complainant and other witnesses may attend hearings. The Investigatory Panel Chair will administer oaths to all witnesses and will set forth procedures

for eliciting evidence, including witness testimony. Witness examination may be conducted by the Panel Chair and Panel members, CDC, and Respondent or Respondent's Counsel. (TRDP 2.12(F))

The Panel Chair has the sole discretion to determine what evidence will be presented and should limit the evidence to what is necessary for the Panel to make its misconduct and sanction decisions. If the Complainant requests to ask a question of any witness, the Panel Chair will determine whether the question is relevant and, if appropriate, the Panel Chair will ask the witness the question requested by Complainant or his/her attorney. The Complainant does not have a right to directly question a witness.

SUBPOENA AUTHORITY. The Panel Chair may issue subpoenas for documents or other tangible things and to compel the attendance of a witness at an Investigatory Hearing. See additional information on subpoenas on page 4.

TELEPHONIC PARTICIPATION. While the rules permit a party or Panel member to participate by telephone, in-person participation is the most effective method to question witnesses, review documents and judge the credibility and veracity of witnesses. Telephone participation should only be used for a witness who cannot travel to the hearing or to fulfill the quorum requirements of the Panel. (TRDP 2.12(F))

DELIBERATIONS. Upon completion of the hearing, the Investigatory Panel will dismiss Respondent and his/her attorney and witnesses, and deliberate. CDC's lawyer and/or investigator will remain for the deliberations. After deliberations, the Investigatory Panel will complete a hearing report. See Sample Investigatory Hearing Report (p. 45).

DECISIONS. If the Investigatory Panel believes the evidence supports a finding of Professional Misconduct, the Panel will recommend what rules they believe were violated and recommend an appropriate sanction range. The Panel will consider the **Sanction Guidelines** when determining an appropriate sanction range (p. 49). The range of sanctions available to the Investigatory Panel are from a referral to the Grievance Referral Program to disbarment. If the Investigatory Panel does not believe Respondent committed Professional Misconduct, the Panel will recommend that CDC dismiss the Complaint. (TRDP 2.12(G))

AGREED JUDGMENT. Based on the Investigatory Panel's recommendations, CDC will attempt to negotiate an agreed judgment with Respondent. If an agreement is reached, the agreed judgment will be presented to the Investigatory Panel Chair for his/her signature. (TRDP 2.12(G))

NO AGREED JUDGMENT. If the Complaint does not result in an agreed judgment, the matter will proceed to formal litigation before an Evidentiary Panel or district court. No Panel member who participated in the Investigatory Hearing is permitted to be on an Evidentiary Panel hearing the same matter. (TRDP 2.07)

**DEFINED TERMS APPLICABLE TO EVIDENTIARY AND INVESTIGATORY PROCEEDINGS
(TRDP 1.06)**

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.

CHIEF DISCIPLINARY COUNSEL – means the person serving as Chief Disciplinary Counsel (“CDC”) and any and all of his or her assistants. CDC attorneys will represent the Commission for Lawyer Discipline in all Evidentiary proceedings.

COMPLAINANT – means the person, firm, corporation, or other entity, including CDC, initiating a Complaint or Inquiry. A Complainant may be a witness during the Evidentiary proceeding but is not a party to the proceedings and cannot question witnesses, file motions, appeal rulings or take any other actions typical of a party to the proceeding.

RESPONDENT – means any attorney who is the subject of a Grievance, Complaint, Disciplinary Proceeding, or Disciplinary Action.

COMPLAINT – means those written matters received by the Office of the Chief Disciplinary Counsel that, either on the face thereof or upon screening or preliminary investigation, allege Professional Misconduct or attorney Disability, or both, cognizable under these rules or the Texas Disciplinary Rules of Professional Conduct.

DISABILITY – means any physical, mental, or emotional condition that, with or without a substantive rule violation, results in the attorney’s inability to practice law, provide client services, complete contracts of employment, or otherwise carry out his or her professional responsibilities to clients, courts, the profession, or the public.

DISCIPLINARY PROCEEDINGS – includes 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.

EVIDENTIARY HEARING – means an adjudicatory proceeding before a panel of a Grievance Committee.

EVIDENTIARY PANEL – means a panel of the District Grievance Committee performing an adjudicatory function other than that of a Summary Disposition Panel with regard to a Disciplinary Proceeding pending before the District Grievance Committee of which the Evidentiary Panel is a subcommittee.

INVESTIGATORY HEARING – A non-adversarial proceeding before a panel of a Grievance Committee.

INVESTIGATORY PANEL – means a panel of the Committee that conducts a non-adversarial proceeding during the investigation of the Complaint by the Chief Disciplinary Counsel.

Just Cause – means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed, or suffers from a Disability that requires either suspension as an attorney licensed to practice law in the State of Texas or probation.

PROFESSIONAL MISCONDUCT – includes:

1. Acts or omissions by an attorney, individually or in concert with another person or persons, that violate one or more of the Texas Disciplinary Rules of Professional Conduct.
2. Attorney conduct that occurs in another state or in the District of Columbia and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.
3. Violation of any disciplinary or disability order or judgment.
4. Engaging in conduct that constitutes barratry as defined by the laws of this state.
5. Failure to comply with Rule 13.01 of these rules relating to notification of an attorney's cessation of practice.
6. Engaging in the practice of law either during a period of suspension or when on inactive status.
7. Conviction of a Serious Crime, or being placed on probation for a Serious Crime with or without an adjudication of guilt.
8. Conviction of an Intentional Crime, or being placed on probation for an Intentional Crime with or without an adjudication of guilt.

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, which probation may be concurrent with the period of suspension, upon such reasonable terms as are appropriate under the circumstances.

- 6. Interim suspension.
- 7. Public reprimand.
- 8. Private reprimand.

The term “Sanction” may include the following additional ancillary requirements:

- a) Restitution (which may include repayment to the Client Security Fund of the State Bar or any payments made by reason of Respondent’s Professional Misconduct); and
- b) Payment of Reasonable Attorneys’ Fees and all direct expenses associated with the proceedings.

(Date)

DOCUMENTS COMMONLY FILED IN CONTESTED EVIDENTIARY CASES

JUST CAUSE/ELECTION LETTER TO RESPONDENT

RESPONDENT'S ELECTION TO EVIDENTIARY

PANEL ASSIGNMENT REQUEST

EVIDENTIARY PANEL APPOINTMENT

TRANSMITTAL OF EVIDENTIARY PANEL APPOINTMENT TO RESPONDENT

EVIDENTIARY PETITION [& REQUEST FOR DISCLOSURE]

TRANSMITTAL OF EVIDENTIARY PETITION [& REQUEST FOR DISCLOSURE] TO RESPONDENT

RESPONDENT'S ANSWER

TRANSMITTAL OF HEARING NOTICE TO PANEL

TRANSMITTAL OF HEARING NOTICE TO RESPONDENT

BUSINESS RECORDS AFFIDAVIT

NOTICE OF FILING OF BUSINESS RECORDS AFFIDAVIT

MOTION FOR CONTINUANCE

ORDER ON MOTION FOR CONTINUANCE

TRANSMITTAL OF ORDER TO RESPONDENT

EVIDENTIARY HEARING REPORT

TRANSMITTAL OF FINAL JUDGMENT TO CHAIR FOR SIGNATURE

FINAL JUDGMENT

TRANSMITTAL OF FINAL JUDGMENT TO RESPONDENT

RESPONDENT'S MOTION FOR NEW TRIAL OR OTHER POST-JUDGMENT MOTION

PETITIONER'S RESPONSE TO RESPONDENT'S MOTION

ORDER ON RESPONDENT'S MOTION

TRANSMITTAL OF ORDER TO RESPONDENT

NOTICE OF APPEAL

DOCUMENTS COMMONLY FILED IN DEFAULT EVIDENTIARY CASES

JUST CAUSE/ELECTION LETTER TO RESPONDENT

RESPONDENT'S ELECTION TO EVIDENTIARY

PANEL ASSIGNMENT REQUEST

EVIDENTIARY PANEL APPOINTMENT

TRANSMITTAL OF EVIDENTIARY PANEL APPOINTMENT TO RESPONDENT

EVIDENTIARY PETITION [& REQUEST FOR DISCLOSURE]

TRANSMITTAL OF EVIDENTIARY PETITION [& REQUEST FOR DISCLOSURE] TO RESPONDENT

MOTION FOR DEFAULT

NON-MILITARY AFFIDAVIT

CERTIFICATE OF LAST KNOWN ADDRESS

TRANSMITTAL OF MOTION AND HEARING NOTICE TO PANEL

TRANSMITTAL OF MOTION AND HEARING NOTICE TO RESPONDENT

BUSINESS RECORDS AFFIDAVIT

NOTICE OF FILING OF BUSINESS RECORDS AFFIDAVIT

ORDER ON MOTION FOR DEFAULT

EVIDENTIARY HEARING REPORT

TRANSMITTAL OF FINAL JUDGMENT TO CHAIR FOR SIGNATURE

FINAL JUDGMENT

TRANSMITTAL OF FINAL JUDGMENT TO RESPONDENT

RESPONDENT'S MOTION FOR NEW TRIAL OR OTHER POST-JUDGMENT MOTION

PETITIONER'S RESPONSE TO RESPONDENT'S MOTION

ORDER ON RESPONDENT'S MOTION

TRANSMITTAL OF ORDER TO RESPONDENT

NOTICE OF APPEAL

**2.18 FACTORS FOR IMPOSING SANCTIONS IN EVIDENTIARY PROCEEDINGS
(FOR CASES FILED PRIOR TO JUNE 1, 2018)**

In determining the appropriate sanctions, the Evidentiary Panel shall consider:

- A. The nature and degree of the Professional Misconduct for which Respondent is being sanctioned;
- B. The seriousness of and circumstances surrounding the Professional Misconduct;
- C. The loss or damage to clients;
- D. The damage to the profession;
- E. The assurance that those who seek legal services in the future will be insulated from the type of Professional Misconduct found;
- F. The profit to the attorney;
- G. The avoidance of repetition;
- H. The deterrent effect on others;
- I. The maintenance of respect for the legal profession; and
- J. The conduct of Respondent during the course of the Disciplinary Proceeding.

In addition, the Respondent's disciplinary record, including any private reprimands, is admissible on the appropriate Sanction to impose. Respondent's disability may not be considered in mitigation, *unless* Respondent demonstrates that he or she is successfully pursuing in good faith a program of recovery or appropriate course of treatment.

RESTRICTIONS ON IMPOSITION OF CERTAIN SANCTIONS

- ❖ A Private Reprimand is not available if:
 - A Private Reprimand has been imposed upon Respondent within the preceding five-year period for a violation of the same Disciplinary Rule; or
 - Respondent has previously received two (2) or more Private Reprimands, whether or not for violations of the same Disciplinary Rule, within the preceding ten (10) years; or
 - The misconduct includes theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or
 - The misconduct has resulted in a substantial injury to the client, the public, the legal system, or the profession; or
 - There is a likelihood of future misconduct by Respondent; or
 - The misconduct was an intentional violation of the ethics rules.

(Commission for Lawyer Discipline Internal Operating Rule 13; approved by Order of the Supreme Court).

❖ A Public Reprimand is not available if:

- A Public Reprimand has been imposed upon Respondent within the preceding five-year period for a violation of the same Disciplinary Rule, or
- Respondent has previously received two or more Public Reprimands whether or not for violations of the same Disciplinary Rule within the preceding five-year period.

(Old TRDP 15.11)

❖ A Fully Probated Suspension is not available if:

- A Public Reprimand or Fully Probated Suspension has been imposed upon Respondent within the preceding five-year period for a violation of the same Disciplinary Rule; or
- Respondent has previously received two or more Fully Probated Suspensions whether or not for violations of the same Disciplinary Rule within the preceding five-year period; or
- Respondent has previously received two or more sanctions of Public Reprimand or greater imposed for conflict of interest, theft, misapplications of fiduciary property, or the failure to return, after demand, a clearly unearned fee.

(Old TRDP 15.11)

❖ Suspension for Term Certain (Active Suspension):

- There are no limitations on the application of Active Suspensions.

GUIDELINES FOR IMPOSING SANCTIONS (For cases filed on or after June 1, 2018)

These guidelines for Imposing Sanctions were adopted pursuant to a Legislative mandate as a means of promoting more consistency across the state. The new sanction guidelines follow the basic structure of the American Bar Association Standards for Imposing Sanctions. The guidelines are divided up into general areas of misconduct and take into consideration general factors contained in TRDP 15.02 below.

Every disciplinary Complaint is different and there are many factors that go into the imposition of the appropriate sanction. While the new guidelines are important and are designed to promote consistency across the state, there is nothing in the guidelines that limits the authority of a Grievance Committee to make a finding or issue a decision. However, a private reprimand shall not be imposed if:

- A. A private reprimand has been imposed upon Respondent within the preceding five (5) year period for a violation of the same disciplinary rule; or
- B. Respondent has previously received two (2) or more private reprimands, whether or not for violations of the same disciplinary rule, within the preceding ten (10) years; or
- C. The misconduct includes theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or
- D. The misconduct has resulted in substantial injury to the client, the public, the legal system or the profession; or
- E. There is likelihood of future misconduct by Respondent; or
- F. Respondent's misconduct was an intentional violation of the Texas Disciplinary Rules of Professional Conduct; or
- G. The misconduct involves the failure of a prosecutor to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense.

(Commission for Lawyer Discipline Internal Operating Rule 13; approved by Order of the Supreme Court)

15.02. GENERAL FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS

In imposing a sanction after a finding of Professional Misconduct, the Evidentiary Panel should consider the following factors:

- 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.

15.04. VIOLATIONS OF DUTIES OWED TO CLIENTS

A. Lack of Diligence

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving neglect, frequent failure to carry out completely the obligations owed to a client, failure to communicate, failure to provide competent representation, or failure to abide by client decisions:

1. Disbarment is generally appropriate when:

- a) Respondent abandons the practice and causes serious or potentially serious injury to a client; or
- b) Respondent knowingly fails to perform services for a client, fails to adequately communicate with a client, fails to provide competent representation, or fails to abide by client decisions and causes serious or potentially serious injury to a client; or
- c) Respondent engages in a pattern of neglect with respect to client matters, inadequate client communications, lack of competent representation, or failure to abide by client decisions and causes serious or potentially serious injury to a client.

2. Suspension is generally appropriate when:

- a) Respondent knowingly fails to perform services for a client, fails to adequately communicate with a client, fails to provide competent representation, or fails to abide by client decisions and causes injury or potential injury to a client, or
- b) Respondent engages in a pattern of neglect with respect to client matters, inadequate client communications, lack of competent representation, or failure to abide by client decisions and causes injury or potential injury to a client.

3. Public reprimand is generally appropriate when Respondent does not act with reasonable diligence in representing a client, communicating with a client, providing competent representation, or abiding by client decisions and causes injury or potential injury to a client.

4. Private reprimand is generally appropriate when Respondent does not act with reasonable diligence in representing a client, communicating with a client, providing competent representation or abiding by client decisions and causes little or no actual or potential injury to a client.

B. Failure to Preserve the Client's Property

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving the failure to preserve client property, including the failure to surrender papers and property or to refund any advance payment of fee that has not been earned on the termination of representation:

1. Disbarment is generally appropriate when Respondent knowingly converts client property and causes injury or potential injury to a client.
2. Suspension is generally appropriate when Respondent knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
3. Public reprimand is generally appropriate when Respondent is negligent in dealing with client property and causes injury or potential injury to a client.
4. Private reprimand is generally appropriate when Respondent is negligent in dealing with client property and causes little or no actual or potential injury to a client.

C. Failure to Preserve the Client's Confidences

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving improper disclosure of information relating to the representation of a client:

1. Disbarment is generally appropriate when Respondent, with the intent to benefit the Respondent or another, knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
2. Suspension is generally appropriate when Respondent knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
3. Public reprimand is generally appropriate when Respondent negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
4. Private reprimand is generally appropriate when Respondent negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes little or no actual or potential injury to a client.

D. Failure to Avoid Conflicts of Interest

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving conflicts of interest:

1. Disbarment is generally appropriate when a Respondent, without the informed consent of client(s):

- a) engages in representation of a client knowing that the Respondent's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
 - b) simultaneously represents clients that Respondent knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
 - c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit Respondent or another, and causes serious or potentially serious injury to a client.
2. Suspension is generally appropriate when Respondent knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.
 3. Public reprimand is generally appropriate when Respondent is negligent in determining whether the representation of a client may be materially affected by Respondent's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.
 4. Private reprimand is generally appropriate when Respondent engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by Respondent's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

E. Lack of Candor

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases where the lawyer engages in dishonesty, fraud, deceit, or misrepresentation directed toward a client:

1. Disbarment is generally appropriate when Respondent knowingly deceives a client with the intent to benefit Respondent or another, and causes serious injury or potential serious injury to a client.
2. Suspension is generally appropriate when Respondent knowingly deceives a client, and causes injury or potential injury to the client.
3. Public reprimand is generally appropriate when Respondent is negligent in determining the accuracy or completeness of information provided to a client, and causes injury or potential injury to the client.
4. Private reprimand is generally appropriate when Respondent engages in an isolated instance of negligence in determining the accuracy or completeness of information provided to a client, and causes little or no actual or potential injury to the client.

15.05. VIOLATIONS OF DUTIES OWED TO THE LEGAL SYSTEM

A. False Statements, Fraud, and Misrepresentation

Absent aggravating or mitigating circumstances, and upon application of the actors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving conduct that impedes the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court or another:

1. Disbarment is generally appropriate when Respondent, with the intent to deceive the court or another, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
2. Suspension is generally appropriate when Respondent knows that false statements or documents are being submitted to the court or another or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party, or causes an adverse or potentially adverse effect on the legal proceeding.
3. Public reprimand is generally appropriate when Respondent is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party, or causes an adverse or potentially adverse effect on the legal proceeding.
4. Private reprimand is generally appropriate when Respondent engages in an isolated instance of negligence in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

B. Abuse of the Legal Process

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving failure to bring a meritorious claim, failure to minimize the burdens and delays of litigation, lack of fairness in adjudicatory proceedings, improper extrajudicial statements, improper means involving third persons, or improper discriminatory activities:

1. Disbarment is generally appropriate when Respondent knowingly engages in an abuse of the legal process with the intent to obtain a benefit for Respondent or another, and causes serious injury or potentially serious injury to a client or other party or causes serious or potentially serious interference with a legal proceeding.

2. Suspension is generally appropriate when Respondent knows that he or she is abusing the legal process, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
3. Public reprimand is generally appropriate when Respondent negligently engages in conduct involving an abuse of the legal process, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
4. Private reprimand is generally appropriate when Respondent engages in an isolated instance of negligence that involves an abuse of the legal process, and causes little or no actual or potential injury to a client or other party, or causes little or no actual or potential interference with a legal proceeding.

C. Improper Communications with Individuals in the Legal System

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following Sanctions are generally appropriate in cases involving attempts to influence a judge, juror, prospective juror or other official by means prohibited by law or rules of practice or procedure, or improper communications with one represented by counsel or unrepresented individuals:

1. Disbarment is generally appropriate when Respondent:
 - a) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
 - b) makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
 - c) improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding, and causes significant or potentially significant interference with the outcome of the legal proceeding.
2. Suspension is generally appropriate when Respondent engages in communication with an individual in the legal system when Respondent knows or should know that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.
3. Public reprimand is generally appropriate when Respondent is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.

4. Private reprimand is generally appropriate when Respondent engages in an isolated instance of negligence in improperly communicating with an individual in the legal system, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with the outcome of the legal proceeding.

15.06. VIOLATIONS OF DUTIES OWED TO THE PUBLIC

A. Failure to Maintain Personal Integrity

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following Sanctions are generally appropriate in cases involving (1) barratry or the commission of any other criminal act that reflects adversely on Respondent's honesty, trustworthiness, or fitness as a lawyer in other respects; or (2) the failure to maintain personal integrity in other respects, including stating or implying an ability to influence improperly a government agency or official or by improperly assisting a judge or judicial official in conduct that violates rules of judicial conduct or other law:

1. Disbarment is generally appropriate when:
 - a) Respondent engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
 - b) Respondent knowingly engages in any other conduct involving the failure to maintain personal integrity and causes serious injury of potential injury to others or the legal system.
2. Suspension is generally appropriate when:
 - a) Respondent knowingly engages in criminal conduct that does not contain the elements listed in Guideline 15.06(A)(1) and that seriously adversely reflects on Respondent's fitness to practice law; or
 - b) knowingly engages in conducting involving the failure to maintain personal integrity and causes injury or potential injury to others or the legal system.
3. Public reprimand is generally appropriate when Respondent negligently engages in any other conduct involving the failure to maintain personal integrity and causes injury or potential injury to others or the legal system.
4. Private reprimand is generally appropriate when Respondent negligently engages in any other conduct involving the failure to maintain personal integrity and causes little or no actual or potential injury to others or the legal system.

B. Failure to Maintain the Public Trust

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving public officials who engage in conduct that impedes the administration of justice:

1. Disbarment is generally appropriate when Respondent in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process.
2. Suspension is generally appropriate when Respondent in an official or governmental position knowingly fails to follow applicable procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.
3. Public reprimand is generally appropriate when Respondent in an official or governmental position negligently fails to follow applicable procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.
4. Private reprimand is generally appropriate when Respondent in an official or governmental position engages in an isolated instance of negligence in not following applicable procedures or rules, and causes little or no actual or potential injury to a party or to the integrity of the legal process.

15.07. VIOLATIONS OF OTHER DUTIES AS A PROFESSIONAL

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services; improper solicitation of professional employment from a prospective client; unconscionable, illegal, or improper fees; unauthorized practice of law; improper withdrawal from representation; failure to supervise; improper restrictions on the right to practice; appointments by a tribunal; failure to report professional misconduct; failure to respond to a disciplinary agency; improper conduct involving bar admission or reinstatement proceedings; statements regarding judicial and legal officials or a lawyer as a judicial candidate; or improper conduct in the role as advisor or evaluator.

1. Disbarment is generally appropriate when Respondent knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for Respondent or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
2. Suspension is generally appropriate when Respondent knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

3. Public reprimand is generally appropriate when Respondent negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
4. Private reprimand is generally appropriate when Respondent engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

15.08. PRIOR DISCIPLINE ORDERS

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving prior discipline.

1. Disbarment is generally appropriate when Respondent:
 - a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
 - b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
2. Suspension is generally appropriate when Respondent has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
3. Public reprimand is generally appropriate when Respondent:
 - a) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
 - b) has received a private reprimand for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
4. A private reprimand is generally not an appropriate sanction when Respondent violates the terms of a prior disciplinary order or when Respondent has engaged in the same or similar misconduct in the past.

15.09. AGGRAVATION AND MITIGATION

A. Generally

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.

B. Aggravation

1. Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.
2. Factors which may be considered in aggravation.

Aggravating factors include:

- a) prior disciplinary record, including private reprimands;
- b) dishonest or selfish motive;
- c) pattern of misconduct;
- d) multiple violations
- e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority or uncooperative conduct during proceedings;
- f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- g) refusal to acknowledge wrongful nature of conduct;
- h) vulnerability of victim;
- i) substantial experience in the practice of law;
- j) indifference to making restitution;
- k) illegal conduct, including that involving the use of controlled substances;
- l) unsuccessful participation in the Grievance Referral Program.

C. Mitigation

1. Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.
2. Factors which may be considered in mitigation.

Mitigating factors include:

- a) absence of a prior disciplinary record;
- b) absence of a dishonest or selfish motive;
- c) personal or emotional problems;
- d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- e) full and free disclosure to disciplinary authority or cooperative conduct during proceedings;

- f) inexperience in the practice of law;
- g) character or reputation;
- h) physical disability suffered by Respondent at the time of the misconduct that caused or contributed to the misconduct;
- i) mental disability or chemical dependency including alcoholism or drug abuse when:
 - 1) there is medical evidence that the Respondent is affected by a chemical dependency or mental disability;
 - 2) the chemical dependency or mental disability caused the misconduct;
 - 3) Respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
 - 4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;
- j) delay in disciplinary proceedings;
- k) imposition of other penalties or sanctions;
- l) remorse;
- m) remoteness of prior sanctions.

D. Factors which are neither aggravating nor mitigating.

The following factors should not be considered as either aggravating or mitigating:

- a) forced or compelled restitution;
- b) agreeing to the client's demand for certain improper behavior or result;
- c) withdrawal of complaint against the Respondent;
- d) complainant's recommendation as to sanctions;
- e) failure of injured client to complain.

**APPENDIX A TO THE TEXAS RULES OF DISCIPLINARY
(For Use With Sanction Guidelines)**

PROCEDURE Competent and Diligent Representation 1.01	Guideline 15.04A
Scope and Objectives of Representation 1.02 (a)(b) 1.02 (c)(d)(e)(f) 1.02 (g)	Guideline 15.04A Guideline 15.05A Guideline 15.07
Communication 1.03	Guideline 15.04A
Fees 1.04	Guideline 15.07; 15.04E
Confidentiality of Information 1.05	Guideline 15.04C
Conflict of Interest: General Rule 1.06	Guideline 15.04D
Conflict of Interest: Intermediary 1.07	Guideline 15.04D
Conflict of Interest: Prohibited Transactions 1.08	Guideline 15.04D
Conflict of Interest: Former Client 1.09	Guideline 15.04D; 15.04C
Successive Government and Private Employment 1.10	Guideline 15.04D
Adjudicatory Official or Law Clerk 1.11	Guideline 15.04D
Organization as a Client 1.12	Guideline 15.04D
Conflicts: Public Interest Activities 1.13	Guideline 15.04D
Safekeeping Property 1.14	Guideline 15.04B
Declining or Termination Representation 1.15 1.15(d)	Guideline 15.07 Guideline 15.04B
Advisor 2.01	Guideline 15.07
Evaluation for Use by Third Person 2.02	Guideline 15.07

Meritorious Claims and Contentions 3.01	Guideline 15.05B
Minimizing the Burdens and Delays of Litigation 3.02	Guideline 15.05B
Candor Toward the Tribunal 3.03	Guideline 15.05A
Fairness in the Adjudicatory Proceedings 3.04	Guideline 15.05B; 15.05A
Maintaining Impartiality of Tribunal 3.05	Guideline 15.05C
Maintaining Integrity of Jury System 3.06	Guideline 15.05C
Trial Publicity 3.07	Guideline 15.05B
Lawyer as Witness 3.08	Guideline 15.04D
Special Responsibilities of a Prosecutor 3.09	Guideline 15.05B; 15.06B
Advocate in Nonadjudicative Proceedings 3.10	Guideline 15.05B; 15.05C
Truthfulness in Statement to Others 4.01	Guideline 15.05A
Communication with One Represented by Counsel 4.02	Guideline 15.05C
Dealing with Unrepresented Person 4.03	Guideline 15.05C
Respect for Rights of Third Persons 4.04	Guideline 15.05B
Responsibilities of a Partner or Supervisory Lawyer 5.01	Guideline 15.07
Responsibilities of a Supervised Lawyer 5.02	Guideline 15.07
Responsibilities Regarding Nonlawyer Assistants 5.03	Guideline 15.07
Professional Independence of a Lawyer 5.04	Guideline 15.07; 15.04D
Unauthorized Practice of Law 5.05	Guideline 15.07
Restrictions on Right to Practice 5.06	Guideline 15.07

Prohibited Discriminatory Activities 5.08	Guideline 15.05B
Accepting Appointments by a Tribunal 6.01	Guideline 15.07
Firm Names and Letterhead 7.01	Guideline 15.07
Communications Concerning a Lawyer's Services 7.02	Guideline 15.07
Prohibited Solicitations and Payments 7.03	Guideline 15.07
Advertisements in the Public Media 7.04	Guideline 15.07
Prohibited Written, Electronic, or Digital Solicitation 7.05	Guideline 15.07
Prohibited Employment 7.06	Guideline 15.07
Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations 7.07	Guideline 15.07
Bar Admission, Reinstatement, and Disciplinary Matters 8.01	Guideline 15.07
Judicial and Legal Officials 8.02	Guideline 15.07
Reporting Professional Misconduct 8.03	Guideline 15.07
Misconduct 8.04 8.04(a)(2)(5)(6)(9) 8.04(a)(3) 8.04(a)(4) 8.04(a)(7)(10)(11) 8.04(a)(8)(12)	Guideline 15.04 – 15.08 15.06A 15.04E; 15.05A 15.05A 15.08 15.07
Jurisdiction 8.05	Guideline: None
Severability 9.01	Guideline: None

GRIEVANCE REFERRAL PROGRAM

16.01. **GRIEVANCE REFERRAL PROGRAM.** The Grievance Referral Program is established as a diversion program designed to address professionalism issues in minor misconduct cases and component of the attorney discipline system.

16.02. **ELIGIBILITY.** The following criteria are to be considered for participation in the program:

- A. Respondent has not been disciplined within the prior three years.
- B. Respondent has not been disciplined for similar conduct within the prior five years.
- C. Misconduct does not involve misappropriation of funds or breach of fiduciary duties.
- D. Misconduct does not involve dishonesty, fraud, or misrepresentation.
- E. Misconduct did not result in substantial harm or prejudice to client or complainant.
- F. Respondent maintained cooperative attitude toward the proceedings.
- G. Participation is likely to benefit the Respondent and further the goal of protection of the public.
- H. Misconduct does not constitute a crime that would subject the Respondent to compulsory discipline under Part VIII of these Rules.

SAMPLE TERMS AND CONDITIONS OF PROBATION

ADDITIONAL CLE

In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete _____ additional hours of continuing legal education in the area of Ethics / Law Practice Management / (specific substantive area of law). These additional hours of CLE are to be completed between (specific date), 201_ and (specific date), 201_. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course to the State Bar of Texas, via USPS: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701.

Respondent shall make contact with the Office of Chief Disciplinary Counsel's Compliance Monitor at 877.953.5535, ext. 1334, and Special Programs Coordinator at 877.953.5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

TRUST ACCOUNT REPORTING AND MONITORING

(Includes CPA Review)

Not later than sixty (60) days after entry of the judgment, Respondent shall engage the services of an independent Certified Public Accountant (the CPA), approved by the State Bar of Texas, to assist Respondent in implementing an accounting method to properly maintain trust account records, and to properly balance any and all of Respondent's trust accounts. Respondent shall insure that written confirmation of the implementation of such accounting method is provided directly by the CPA to the State Bar of Texas not later than ninety (90) days after entry of the judgment. Respondent shall take all necessary action, including the execution of a valid release of information, to allow and direct the CPA to provide such confirmation.

Additionally, not later than sixty (60) days after entry of the judgment, Respondent shall have a review of any and all of Respondent's trust accounts completed by the CPA. Not later than 30 days after completion of the review, Respondent shall insure that a report summarizing the results of the review, and specifically noting any irregularities in Respondent's handling of trust account funds, is provided by the CPA directly to the State Bar of Texas. Thereafter, reviews shall be completed every six (6) months, with reports provided by the CPA directly to the State Bar of Texas within thirty (30) days of the completion of each review. Respondent shall take all necessary action, including the execution of a valid release of information, to allow and direct the CPA to provide such reports.

Respondent shall be responsible for all costs and expenses incurred in completing these terms and shall pay all reasonable costs and expenses to the CPA in the manner determined by the CPA.

Respondent shall make contact with the Office of the Chief Disciplinary Counsel's Compliance Monitor at 877.953.5535, ext. 1334, and Special Programs Coordinator at 877.953.5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

All reports and verifications of compliance with the above shall be sent to the State Bar of Texas via USPS to: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711- 2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701, or via FAX to: 512-427-4167.

(Reporting Only--No CPA Review)

For three years, Respondent shall provide a quarterly report to the State Bar of Texas for each trust account that he maintains as part of his law license. The first report shall be filed by _____, 201__ and cover the three months from _____, 201__ through _____, 201__. Additional reports shall be filed every three months after _____, 201_, with each report covering the three-month period ending on the last day of the previous month. The last report shall be filed by _____, 201_. Each report shall include the records regarding Respondent's trust accounts for the applicable three-month period, including the checkbooks, canceled checks, check stubs, check registers, bank statements, vouchers, deposit slips, ledgers, journals, closing statements, accountings, and other statements of receipts and disbursements rendered to clients or other parties with regard to client trust funds, or other similar records clearly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client. The records regarding each trust account shall be grouped together.

Respondent shall make contact with the Office of the Chief Disciplinary Counsel's Compliance Monitor at 877.953.5535, ext. 1334, and Special Programs Coordinator at 877.953.5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

All reports and verifications of compliance with the above shall be sent to the State Bar of Texas via USPS to: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 787112487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701, or via FAX to: 512-427-4167.

MENTAL HEALTH/EMOTIONAL ILLNESS

It is ORDERED that during all periods of suspension, Respondent shall be under the following terms and conditions:

1. Respondent shall make contact with the Office of the Chief Disciplinary Counsel's Compliance Monitor at 877.953.5535, ext. 1334, and Special Programs Coordinator at 877.953.5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

2. Respondent shall make contact with the Texas Lawyers' Assistance Program (TLAP) at its hotline number, 800-343-8527, not later than seven (7) days after receipt of a copy of this judgment to inquire as to services and referrals offered by that program to aid in Respondent's rehabilitation. Respondent shall additionally send verification of contact with TLAP to the State Bar of Texas within fifteen (15) days such contact.
3. Respondent shall submit to supervision for a period of _____ months by a rehabilitation monitor acceptable to the State Bar of Texas and selected by the monitoring program of the Texas Lawyers' Assistance Program. The monitor shall supervise Respondent's compliance with the requirements of the rehabilitation conditions and is under a duty to immediately report to the Chief Disciplinary Counsel's Office any noncompliance on the part of Respondent. The monitor shall report the status of Respondent's compliance with these conditions on a monthly basis, with the report due by the 5th day of each month for the duration of the monitoring period.
4. Respondent shall meet with the monitor a minimum of two times per month. The initial meeting shall be held not later than ten (10) days after Respondent receives written notification from the State Bar of Texas of the name and phone number of Respondent's assigned monitor. Such meetings shall be in person at a place and time determined by the monitor. Exceptions must be approved in advance by the monitor and noted on the monthly report.
5. Within ten (10) days of Respondent's receipt of a copy of this judgment, Respondent shall schedule a full psychological assessment to be conducted by a mental health professional licensed in Texas as a psychiatrist, a psychologist, a master's level social worker (LCSW), or a licensed professional counselor (LPC). Respondent shall complete the assessment at the earliest practicable date, but in no event later than sixty (60) days after receipt of a copy of this judgment. Although the details of information disclosed during the assessment shall remain confidential, the conclusions, diagnosis and treatment plan recommendations of the mental health professional shall be reported to the State Bar of Texas within ten (10) days of the completion of the assessment. Respondent shall take all necessary action, including the execution of a valid release of information, to allow and direct the mental health professional to report such results and recommendations.
6. If recommended as part of the above assessment, Respondent shall remain under the care of one or more mental health professionals at the frequency recommended by the treatment plan for the duration of the supervision period or until released in writing by the treatment provider. Each treating mental health professional shall provide written quarterly reports to the State Bar of Texas verifying Respondent's attendance at the sessions and good faith participation in the treatment plan. The initial report(s) shall be due ninety (90) days after completion of the assessment, with subsequent reports due quarterly thereafter. Respondent shall take all necessary action, including the execution of a valid release of information, to permit any treating mental health professional to provide written or oral reports for the duration of the supervision period.
7. Respondent shall be responsible for all costs and expenses incurred, directly or indirectly, by compliance with these terms and shall pay all such costs and expenses as required by the provider, but in no event later than the final day of the supervision period.

8. Any and all reports and evaluations required by these terms of probation shall be sent to the State Bar of Texas, via USPS: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701.

SUBSTANCE ABUSE OR DEPENDENCY

It is ORDERED that during all periods of suspension, Respondent shall be under the following terms and conditions:

1. Respondent shall remain abstinent from all alcohol and other mind-altering substances, except when such are prescribed by a treating physician or psychiatrist and taken in accordance with such prescription. Respondent shall provide copies of such prescriptions if requested to do so by the monitor referred to below or by the Office of Chief Disciplinary Counsel's Special Programs Coordinator.
2. Respondent shall make contact with the Texas Lawyers' Assistance Program (TLAP) at its hotline number, 800-343-8527, not later than ten (10) days after receipt of a copy of this judgment to inquire as to services and referrals offered by that program to aid in Respondent's rehabilitation. Respondent shall additionally send verification of contact with TLAP to the Chief Disciplinary Counsel's Office within fifteen (15) days of such contact.
3. Respondent shall submit to supervision for a period of_ months by a rehabilitation monitor acceptable to the State Bar of Texas and selected by the Texas Lawyers' Assistance Program. The monitor shall supervise Respondent's compliance with the requirements of these rehabilitation conditions and is under a duty to immediately report any noncompliance on the part of Respondent to the Chief Disciplinary Counsel's Office. The monitor shall report the status of Respondent's compliance on a monthly basis, with the report due by the 5th day of each month for the duration of the monitoring period.
4. Respondent shall make initial contact with the rehabilitation monitor not later than seven (7) days after Respondent receives written notification from the State Bar of Texas of the name and phone number of the assigned monitor. Respondent shall meet in person with the monitor twice per month for the duration of the suspension period. Such meetings shall be in person at such place and time as determined by the monitor. Exceptions must be approved in advance by the monitor and noted on the monthly report.
5. Respondent shall submit to random drug screens in accordance with the drug screen protocol of the Texas Lawyers' Assistance Program or at the request of the monitor or at the request of the Office of Chief Disciplinary Counsel's Special Programs Coordinator. On the required days for testing Respondent shall complete all steps of the protocol by the lab's normal close of business day.

6. For the first ninety (90) days after receipt of a copy of this judgment, Respondent shall attend at least one Alcoholics Anonymous or other appropriate 12-Step recovery program meeting per day. Any exception to this condition must be approved in writing by the monitor.
7. For the remaining duration of the suspension period, Respondent shall attend at least three Alcoholics Anonymous or other appropriate 12-Step recovery program meetings per week. Any exception to this condition must be approved in writing by the monitor.
8. For the duration of the suspension, Respondent shall also attend a Lawyers Concerned for Lawyers support group meeting if such a group meets within thirty miles of Respondent's home or work, and shall document this attendance on the log referred to below.
9. Respondent shall document his/her recovery program meeting attendance with an attendance log prescribed by the Chief Disciplinary Counsel's Office. Respondent shall deliver this recovery program attendance log to the monitor at each of their meetings for attachment to the monitor's monthly report.
10. Any and all reports and evaluations required by these rehabilitative terms of probation shall be sent to the Chief Disciplinary Counsel's Office, via USPS: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701.

APPENDIX 3

Lauren Ashley Harris
9330 Lyndon B Johnson Fwy Ste 900
Dallas, Texas 75243-3443

CONFIDENTIAL

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

April 1, 2020

Lauren Ashley Harris
9330 Lyndon B Johnson Fwy Ste 900
Dallas, Texas 75243-3443

Re: 201906965 - [REDACTED] - Lauren Ashley Harris

Dear Ms. Harris:

You are hereby notified that the referenced Complaint has been placed on a Summary Disposition Panel docket. A list of the members assigned to the Panel is attached to this notice.

The Rules of Disciplinary Procedure provide that, at the summary disposition proceeding, the Chief Disciplinary Counsel will present the Complaint without the presence of the Complainant or the Respondent. The Summary Disposition Panel will review the evidence and determine whether the Complaint should be dismissed or should proceed. You will be notified of the results by letter.

In the event that the Panel determines that the Complaint should proceed, please be advised that the fact that a Complaint was placed on a Summary Disposition Panel docket and not dismissed is wholly inadmissible for any purpose in any subsequent Disciplinary Action or Disciplinary Proceeding.

Sincerely,

Laurie Guerra
Assistant Disciplinary Counsel

LLG/bl

Enclosure: Panel Members

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

**DISTRICT 6 PANEL 1 SUMMARY DISPOSITION PANEL APPOINTMENT FOR:
201906965**

Dorian Wallace [REDACTED] - Lauren Ashley Harris

District 6 Panel 1

Mr. Thomas B. Cowart

2655 Villa Creek, Suite 204, Dallas, TX 75234

Ms. Monica Lira Bravo

4144 N Central Expy Ste 370, Dallas, TX 75204-3157

Mr. Gregory W. Sampson

1601 Elm St Ste 4600, Dallas, TX 75201-7212

Ms. Rebecca Ann Gregory

3624 Lovers Ln, Dallas, TX 75225-7423

Ms. Dianne M. Howells*

PO Box 740188, Dallas, TX 75374

Mr. Mitchell "Mike" Carter*

1412 Main Street #2400, Dallas, TX 75202

***Denotes Public Member**

APPENDIX 4

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

December 8, 2020

Ms. Lauren Ashley Harris
405 State Highway 121 Byp Ste A250
Lewisville, TX 75067-4183

**Re: Case No. 202000486 – [REDACTED] v. Lauren Ashley Harris; Before
the 6-3 Investigatory Panel of the State Bar District No. 6 All Regions Grievance
Committee**

Dear Ms. Harris:

Thank you for your participation in the Grievance Committee's investigatory hearing.

The 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.

Thank you for your attention to this matter. If you have any questions or need additional information, please contact the undersigned at your earliest convenience.

Sincerely,



Laurie Guerra
Assistant Disciplinary Counsel

LLG/bl

APPENDIX 5

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

VIA E-MAIL: lauren@lahlegal.com

November 20, 2020

Lauren Ashley Harris
405 State Highway 121 Byp, Ste. A250
Lewisville, Texas 75067-4186

Re: Case No. 202000647; Lyndon North – Lauren Ashley Harris

Dear Ms. Harris,

Thank you for your participation in the Grievance Committee's investigatory hearing.

Based on the evidence, the Panel believes there is credible evidence to support a finding of Professional Misconduct for a violation of Rules 1.01(b)(1) and 1.03(a) of the Texas Disciplinary Rules of Professional Conduct. The Panel recommends the following sanction:

- Grievance Referral Program;
- Six (6) hours of Continuing Legal Education in Law Office Management (in addition to the required minimum fifteen hours of continuing legal education) within two months of the signed judgment; and
- payment of \$500 in attorney's fees to the State Bar of Texas to be paid with a money order or cashier's check.

Please contact me to discuss this matter no later than **December 7, 2020**. My email address is laurie.guerra@texasbar.com. If an agreed resolution cannot be reached at this investigatory stage, the Chief Disciplinary Counsel's office will initiate formal proceedings before the District Court or an Evidentiary Panel.

Sincerely,

Laurie Guerra
Assistant Disciplinary Counsel

LG/cmr

APPENDIX 6

ZOOM INVITE: Nov 12 State Bar hearings

SO

Sophia.Henderson@Texasbar.com

Fri, 06 Nov 2020 3:45:11 PM -0600 •

To "lauren@lahlegal.com" <lauren@lahlegal.com>

Cc "Laurie Guerra" <Laurie.Guerra@TEXASBAR.COM>, "Elena Wolfe" <Elena.Wolfe@TEXASBAR.COM>

1 Attachment

Zoom Protocol Guidelines....pdf

43.2 KB



Please read the attached guidelines before joining the meeting

Re: Case No. 202000486; Macfarland-Harris

Re: Case No. 202000647; North-Harris

Greetings Ms. Harris,

The State Bar of Texas is inviting you to a Zoom Video meeting.

Meeting Date/Time: THURSDAY, NOVEMBER 12, 2020, at 09:30 AM Central Time (US and Canada)

Join Meeting

Meeting URL: <https://texasbar.zoom.us/j/96814762633?pwd=dGw2NTdwMnNDNi83VUtYdIVtZjRvZz09>

Meeting ID: 968 1476 2633

Password: 324290

Telephone Audio or Audio-Only

Dial: US: +1 346 248 7799 or +1 669 900 6833 or +1 253 215 8782 or +1
646 558 8656 or +1 301 715 8592 or +1 312 626 6799 or 888 788 0099
(Toll Free) or 877 853 5247 (Toll Free)

Meeting ID: 968 1476 2633

Phone one-tap: US: +13462487799,,96814762633# or +16699006833,,96814762633#

Password: 324290

[International numbers](#)

About the Videoconference:

You may join the video conference from your computer even if you do not have a webcam. To be heard in the conference, you must either have a microphone and choose computer audio, or you must call the designated audio conference bridge.

Quick Tips:

- Mute your microphone/webcam at any time using the buttons in the lower left.
- Choose "Gallery View" from the upper right for a grid view of all the participants.
- Toggle between "full screen" mode and "window" mode in the upper right.
- If your webcam faces a window or bright light, you may be difficult to see.
- To make one participant's video window the largest, click the "... " in the upper right of their window and choose "pin video"

SO Sophia.Henderson@Texasbar.com

Thu, 12 Nov 2020 11:31:00 AM -0600 •

To "lauren@lahlegal.com" <lauren@lahlegal.com>

Cc "Laurie Guerra" <Laurie.Guerra@TEXASBAR.COM>, "Elena Wolfe" <Elena.Wolfe@TEXASBAR.COM>, "Cassidy Revelo" <Cassidy.Revelo@TEXASBAR.COM>

Tags

1 Attachment

202000486_Harris_heari... .pdf
9.5 MB

Please see attached.

Thank you,
Sophia

Sophia Henderson
Legal Assistant

State Bar of Texas
Office of the Chief Disciplinary Counsel

Please visit the State Bar of Texas' coronavirus information page at [texasbar.com/coronavirus](https://www.texasbar.com/coronavirus) for timely resources and updates on bar-related events.

The Princeton
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254
Direct: 972.383.2929
Facsimile: 972.383.2935
E-Mail: sophia.henderson@texasbar.com

THE INFORMATION CONTAINED IN THIS MESSAGE IS CONFIDENTIAL AND INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THE MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE.

Recall: Case No. 202000486; Macfarland-Harris hearing packet

SO Sophia.Henderson@Texasbar.com

Thu, 12 Nov 2020 11:30:49 AM -0600 •

To "lauren@lahlegal.com" <lauren@lahlegal.com>

Cc "Laurie Guerra" <Laurie.Guerra@TEXASBAR.COM>, "Elena Wolfe" <Elena.Wolfe@TEXASBAR.COM>

Tags

Sophia Henderson would like to recall the message, "Case No. 202000486; Macfarland-Harris hearing packet".

APPENDIX 7

ZOOM INVITE: Nov 12 State Bar hearings

SO

Sophia.Henderson@Texasbar.com

Fri, 06 Nov 2020 3:45:11 PM -0600 •

To "lauren@lahlegal.com" <lauren@lahlegal.com>

Cc "Laurie Guerra" <Laurie.Guerra@TEXASBAR.COM>, "Elena Wolfe" <Elena.Wolfe@TEXASBAR.COM>

1 Attachment

Zoom Protocol Guidelines....pdf

43.2 KB



Please read the attached guidelines before joining the meeting

Re: Case No. 202000486; Macfarland-Harris

Re: Case No. 202000647; North-Harris

Greetings Ms. Harris,

The State Bar of Texas is inviting you to a Zoom Video meeting.

Meeting Date/Time: THURSDAY, NOVEMBER 12, 2020, at 09:30 AM Central Time (US and Canada)

Join Meeting

Meeting URL: <https://texasbar.zoom.us/j/96814762633?pwd=dGw2NTdwMnNDNi83VUtYdIVtZjRvZz09>

Meeting ID: 968 1476 2633

Password: 324290

Telephone Audio or Audio-Only

Dial: US: +1 346 248 7799 or +1 669 900 6833 or +1 253 215 8782 or +1
646 558 8656 or +1 301 715 8592 or +1 312 626 6799 or 888 788 0099
(Toll Free) or 877 853 5247 (Toll Free)

Meeting ID: 968 1476 2633

Phone one-tap: US: +13462487799,,96814762633# or +16699006833,,96814762633#

Password: 324290

[International numbers](#)

About the Videoconference:

You may join the video conference from your computer even if you do not have a webcam. To be heard in the conference, you must either have a microphone and choose computer audio, or you must call the designated audio conference bridge.

Quick Tips:

- Mute your microphone/webcam at any time using the buttons in the lower left.
- Choose "Gallery View" from the upper right for a grid view of all the participants.
- Toggle between "full screen" mode and "window" mode in the upper right.
- If your webcam faces a window or bright light, you may be difficult to see.
- To make one participant's video window the largest, click the "... " in the upper right of their window and choose "pin video"

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

IMPORTANT INFORMATION FOR PANEL INVESTIGATORY HEARINGS **TAKING PLACE VIA ZOOM**

The parties must consult all applicable Texas Rules of Disciplinary Procedure. Proceedings before an Investigatory Panel are described in Rule 2.12 of the Texas Rules of Disciplinary Procedure and are intended to be non-adversarial.

DECORUM

A virtual hearing is a disciplinary proceeding and therefore an extension of the disciplinary process; appropriate conduct, attire, and camera background are required. The Panel may set procedures for the proceeding as if they were present in the physical location.

Remote participants must use a private and quiet room that will be free of interruptions. Appearing for the hearing via Zoom while outdoors, in-vehicle, or occupying a public place is not permitted. Remote participants must place their mobile devices on a solid surface with the camera at eye level. Do not hand-hold mobile devices and do not lay phones or tablets flat on a desk or tabletop.

TECHNOLOGY

The parties shall ensure that all necessary equipment and software are in proper working order prior to the time of the scheduled hearing and that their bandwidth is adequate for video conferencing. Remote participants should use a good LAN, WiFi, or substantial LTE Mobile connection to ensure a quality call. (Note: The Office of the Chief Disciplinary Counsel provides a toll-free number for participants to use in order to avoid cellular carrier charges. If a participant opts not to use the toll-free number and incurs cellular carrier charges as a result, those charges are the responsibility of the remote participant.) The parties are responsible for their own technology and should take time before the hearing to become familiar with Zoom's controls and test their device's microphone and speaker controls. Directions for testing your device and networking prior to the proceeding can be found here: <https://support.zoom.us/hc/en-us/articles/201362313-How-Do-I-Test-My-Video->. If you are having technical issues with your equipment you should review Zoom training and support materials here: <https://support.zoom.us/hc/en-us>. The Zoom hearing notice will also provide a telephone number for audio only.

TECHNICAL PROBLEMS INTERRUPTING HEARING

If the Investigatory Panel conducting a virtual proceeding determines at any time that the audio or video connection is so poor as to interfere with the fair administration of justice, the hearing shall be postponed until such time as a better connection can be obtained or the matter can be set for an in-person proceeding. However, it shall be the responsibility of a party or counsel for a party to promptly inform the Host if there has been a disruption at their end of the communication that substantially interferes with his or her ability to see or hear what is occurring during the video conference. An objection to the quality of an audio conference or a video conference should be made at the time the connection is substantially impaired but must be made to the panel on the record before the virtual investigatory hearing has concluded. Any objection to the quality of the audio conference or video conference made thereafter, will be deemed untimely.

HEARING

Refer to the email notice of hearing for the applicable information regarding connection options for the virtual investigatory hearing. Join the hearing no later than **ten minutes** before the scheduled start time. Please configure your name to display appropriately. You will initially be placed in a Waiting Room and will be unable to communicate with anyone. When the Investigatory Panel is prepared to start the hearing, you will be removed from the Waiting Room and brought into the virtual investigatory hearing. Once it has been determined by the Investigatory Panel that all necessary individuals are present and able to see and hear what is transpiring at the proceeding, the hearing shall progress as though the parties were physically present. The Office of the Chief Disciplinary Counsel will record the hearing. **All other recordings are prohibited.**

CONFIDENTIAL COMMUNICATION

If Respondent and their counsel need to confer confidentially, the party shall request from the Panel a specific number of minutes. The Panel will instruct the Host to begin a breakout room session for a period at the discretion of the Panel. Respondent and their counsel will be moved into a separate room that is both private and unrecorded. At the end of the time, the Host will begin the closing of the breakout room session and the parties will be afforded 60 seconds to wrap up any conversation.

WITNESSES

Respondent shall notify the Office of the Chief Disciplinary Counsel **two days prior** to the hearing the name of any witnesses who will testify in order for the Host to identify who will have access to the meeting and who will remain in the Waiting Room until testimony is needed. If the identity of a witness is unknown to Respondent two days prior to the hearing, the identity shall be provided to the Office of the Chief Disciplinary Counsel as soon as it is determined the witness may testify. Preparing a witness for appearing at the virtual hearing is the responsibility of the party calling the witness

EXHIBITS

In order to ensure the Investigatory Panel has received a copy of all exhibits to be used at the investigatory hearing, Respondent shall, prior to the commencement of the investigatory hearing, electronically deliver to the Office of Chief Disciplinary Counsel any exhibits that have not been previously provided. The use of the term “exhibits” does not require the parties to authenticate and prove admissibility as required under the Texas Rules of Evidence.

OTHER TIPS

- Dress in a soft solid color. If a tie is worn, use a solid tie rather than one with a pattern.
- When speaking, remember to look directly at the webcam, not at the screen.
- Position the camera at your eye level or slightly above eye level.
- Be mindful of what is behind you; choose a solid neutral wall if possible.
- Check the lighting. Light from a window behind you might blind the camera, making the image look dark. Light above you in the center of a room might also cast shadows. Ideally, position a lamp, or sit facing a window, where light is directly on your face. Also be aware that your monitor casts light that can make you look blue.
- Participants should speak one at a time and pause prior to speaking in case there is any audio/video lag.
- You are encouraged to mute yourself when not speaking in order to avoid any potential background noise.

IVH - Harris/North 20200647

LA Laurie.Guerra@TEXASBAR.COM

Thu, 12 Nov 2020 10:06:08 AM -0600 •

To "lauren@lahlegal.com" <lauren@lahlegal.com>

Tags

1 Attachment

202000647_Harris (R's c... .pdf
31.6 MB

Ms. Harris,

Attached are exhibits for this morning's hearing.

Sincerely,

Laurie Guerra
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
14651 Dallas Parkway, Suite 925
Dallas, TX 75254
972-383-2900- Office
972-383-2935-Fax
laurie.guerra@texasbar.com

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

Please visit the State Bar of Texas' coronavirus information page at texasbar.com/coronavirus for timely resources and updates on bar-related events.

HARRIS.0038

APPENDIX 8

Requested Replacement Bar Card



Me <lauren@lahlegal.com>

Fri, 13 Nov 2020 11:33:51 AM -0600 •

To "memmail" <memmail@texasbar.com>

1 Attachment

Bar Card Rplct.pdf
179.1 KB

Hello,

I seek to obtain a replacement bar card, please find the completed payment form attached; if it could be sent to my home mailing address, that is preferred: 892 Union Station Parkway, Apt 8106 Lewisville, Texas 75057. Thank you!

Sincerely,

Lauren A. Harris



THE LAW OFFICES OF
LAUREN A. HARRIS

Tel: 469-818-3079

Fax: 469-533-8780

9330 LBJ Freeway, Suite 900

Dallas, Texas 75243

www.LAHLegal.com

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HARRIS.0559



STATE BAR OF TEXAS

Membership Department



REPLACEMENT BAR CARD ORDER FORM

Date: 11/13/2020

I, Lauren Harris, Bar Card #: 24080932,

request a replacement bar card to be mailed to me at my preferred State Bar mailing address.

To review or change your preferred mailing address, please log onto your Bar Page at [texasbar.com](https://www.texasbar.com), using your bar number and password, and click Edit Contact Info.

I hereby authorize the Membership Department to charge \$15.00 to my:

MasterCard

Visa

Discover

American Express

Credit Card Number: 4358367130906210 Exp date: 09 / 23

Signature: Lauren A. Harris

Please email this form to memmail@texasbar.com or fax it to 512-427-4424.

Please allow up to 10 days for processing of your request.

If you have any questions, contact the Membership Department at 800-204-2222, ext. 1383 or 512-427-1383; or by email at memmail@texasbar.com.

Thank you!

State Bar of Texas Membership Department P.O. Box 12487 Austin, Texas 78711
(800) 204 2222 x1383 | (512) 427-1383 | memmail@texasbar.com

HARRIS.0561

APPENDIX 9

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

December 12, 2022

Re: Ms. Lauren Ashley Harris, State Bar Number 24080932

To Whom It May Concern:

This is to certify that Ms. Lauren Ashley Harris was licensed to practice law in Texas on May 04, 2012, and is an active member in good standing with the State Bar of Texas. "Good standing" means that the attorney is current on payment of Bar dues; has met Minimum Continuing Legal Education requirements; and is not presently under either administrative or disciplinary suspension from the practice of law.

This certification expires 30 days from the date, unless sooner revoked or rendered invalid by operation of rule or law.

Sincerely,

A handwritten signature in black ink, appearing to read "Seana Willing". The signature is fluid and cursive.

Seana Willing
Chief Disciplinary Counsel
SW/web



State Bar of Texas Certificate of Good Standing request

NO

noreply@texasbar.com

Mon, 12 Dec 2022 5:55:25 PM -0600 •

To "lauren" <lauren@lahlegal.com>

Reply-... "certificatescdc" <certificatescdc@texasbar.com>

1 Attachment

TexasbarCert.pdf

148.2 KB

Pursuant to your request, attached is the copy of the requested State Bar of Texas Certificate of Good Standing for Lauren Harris. Please let us know if you have any questions.

Thank you.

Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487 | Austin, Texas 78711
512-427-1350
Email: certificatescdc@texasbar.com

HARRIS.0042

State Bar of Texas: Payment Confirmation

NO noreply@texasbar.com
Mon, 12 Dec 2022 5:54:11 PM -0600 •
To "info" <info@lahlegal.com>

Thank you for your online payment to The State Bar of Texas!

NOTE: This page represents a confirmation that your payment information has been submitted and received by the State Bar of Texas. If your payment is not reflected on your credit card statement, your fees are not approved for collection and not considered paid. If this occurs, please contact the Membership Department at 1-800-204-2222, ext. 1383 immediately.

This email contains important details about your online payment number 11012860. To help us serve you better, please refer to this number, your Bar Card number (if applicable), and your email address should you contact us with questions about your order.

Payments for the following items were received at 5:53 PM (12/12/2022) today.

Item Description	Price
State Bar Certificate	\$25.00
Total:	\$25.00

Thank you for using MyBarPage on Texasbar.com to manage your member account.

HARRIS.0043



THE STATE BAR OF TEXAS

(1414 Colorado Street * Austin, TX 78701 * Phone: 800-204-2222 * Website:
<http://www.texasbar.com>)

NOTE: This page represents a confirmation that your payment information has been submitted and received by the State Bar of Texas. If your payment is not reflected on your bank statement, your fees are not approved for collection and not considered paid. If this occurs, please contact the Membership Department at 1-800-204-2222, ext. 1383 immediately.

Order Acknowledgement for Purchase No.11012860 Please print this document for your records.		
Order Placed at 12/12/2022 By Lauren Harris		
Qty. Product	Price	Total
1 State Bar Certificate SKU:SB_CERT	\$25.00	\$25.00
	Subtotal:	\$25.00
	Total:	\$25.00
Payment Information		
Payment Type: Visa Card/Check Number: 40..1964 (Partial Number displayed for your protection)		

[Return to MyBarPage](#)

HARRIS.0044

APPENDIX 10

LEIGH AND ASSOCIATES - Transaction Receipt for \$415.00



DoNotReply@billing-notification.com

Thu, 23 Feb 2023 4:03:12 PM -0600

To "lauren" <lauren@lahlegal.com>

LEIGH AND ASSOCIATES
911 W LOOP 281 STE. 211
LONGVIEW, TX 75604
TEL: (877) 790-3376

Term ID: 001

Sale - Approved

Date	<u>02/23/23</u>	Time 17:02:24
Method of Payment	Visa	
Entry Method	Manual	
Account #	XXXXXXXXXXXX8	
Order ID	202000647	
Order Description:	Hearing Transcript No. 202000647, CFLD v. Harris, 1/27/23 (Expedited)	
Approval Code	085559	
Amount	\$415.00	

THANK YOU FOR YOUR BUSINESS!

Customer Copy

E-TRANSCRIPT/PDF/ASCII/EXHIBITS: Transcript of Proceedings, 1/27/2023, CFLD v. Harris, Case No. 202000647 [North]

AM amandaleighcsr@gmail.com
Fri, 24 Feb 2023 1:01:01 PM -0600
To "lauren" <lauren@lahlegal.com>

11 Attachments



ASCII - TRANSCRIPT OF... .txt
25.2 KB

L HARRIS EX P-5.pdf
202.6 KB

L HARRIS EX P-2.pdf
98.6 KB

L HARRIS EX P-3.pdf
292.0 KB

L HARRIS EX P-1.pdf
718.9 KB

L HARRIS EX P-4.pdf
1.2 MB

L HARRIS EX P-6.pdf
354.2 KB

L HARRIS EXS P-1 - P-6.pdf
2.8 MB

E-TRANSCRIPT - TRANS... .ptx
37.4 KB

PDF CONDENSED - TRA... .pdf
173.1 KB

PDF FULL-SIZED - TRAN... .pdf
188.2 KB

COMMISSION FOR LAWYER DISCIPLINE, CASE NO. 202000647 [NORTH]

Attached please find the requested TRANSCRIPT OF PROCEEDINGS of the proceedings held on January 27, 2023, in the above-referenced matter, with accompanying exhibits.

To access the E-Transcript file, you will need the RealLegal viewer. If you have not downloaded the RealLegal viewer on your target computer, please download at <http://info.legalsolutions.thomsonreuters.com/software/ebundle/viewer/default.as>.

Thank you!

--

Amanda J. Leigh, CSR, CLR, CCVS
Leigh & Associates Court Reporting and Video

www.leighreporting.com
scheduling@leighreporting.com

Toll-Free: (877) 790-3376

Toll-Free Fax: (877) 790-3377

HARRIS.0068

911 West Loop 281, Suite 211
Longview, Texas 75604
Telephone: (903) 295-2955
Facsimile: (214) 279-5900

109 West Tyler Street
Gilmer, Texas 75644
Telephone: (903) 680-3376
Facsimile: (214) 279-5900

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APPENDIX 11

Public Information Act Request :: R001880-022323

TS TEXASBAR Support <texasbar@govqa.us>

Thu, 23 Feb 2023 8:20:54 PM -0600

To "service@lahlegal.com" <service@lahlegal.com>



Dear Lauren Harris:

Thank you for your interest in public records of State Bar of Texas. Your request has been received and is being processed in accordance with Chapter 552 of Texas Government Code, the Public Information Act. Your request was received in this office on **2/23/2023** and given the reference number **R001880-022323** for tracking purposes.

Records Requested: *"As I am unable to make this request through mybarpage I hereby tender the attached form and request all records held by the Office of the Chief Disciplinary Counsel of the State Bar of Texas pertaining to me. This request includes both public and confidential records, including dismissed and pending grievances and/or complaints and documents pertaining to confidential sanctions."*

Your request will be forwarded to the relevant State Bar of Texas department(s) to locate the information you seek and to determine the volume and any costs associated with satisfying your request. You will be contacted about the availability and/or provided with copies of the records in question. PLEASE NOTE: The Chapter 552 of Texas Government Code, the Public Information Act does not require a governmental body to create new information, to do legal research, or to answer questions.

You can monitor the progress of your request at the link below and you'll receive an email when your request has been completed. For information about the public information process, and what to expect, please visit <https://www.texasbar.com/publicinformation>.

Again, thank you for using the [Public Records Center](#).

State Bar of Texas

To monitor the progress or update this request please log into the [Public Records Center](#)



HARRIS.0627

State of TEXAS

County of DALLAS

**State Bar of Texas
Tex. Civ. Prac. & Rem. Code § 132.001
Declaration, Authorization and Release**

I, LAUREN ASHLEY HARRIS, date of birth: 08/07/1986,

State Bar Card Number: 24080932, address: 5995 Summerside Dr.

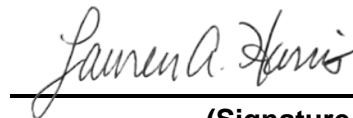
#793414 Dallas, TX 75379 hereby request all records held by the Office of the Chief

Disciplinary Counsel of the State Bar of Texas pertaining to me.

This request includes both public and confidential records, including dismissed and pending grievances and/or complaints and documents pertaining to confidential sanctions. I hereby waive any confidentiality in return for the right to obtain these records.

I hereby release, discharge and exonerate the State Bar of Texas, its agents or representatives and any persons so furnishing information from any and all liability of every nature and kind arising out of the furnishing of these records.

I swear under penalty of perjury that the facts stated in this document are true and correct.



(Signature of Requestor)

Executed in the County of Dallas, State of Texas on 23 day of February A.D., 2023 .

HARRIS.0628

[Records Center] Public Information Request :: R001880-022323

TS TEXASBAR Support <texasbar@govqa.us>

Wed, 01 Mar 2023 10:22:33 AM -0600 •

To "service@lahlegal.com" <service@lahlegal.com>

--- Please respond above this line ---



Ms. Harris:

Confidential disciplinary matters are not subject to the Texas Public Information Act. If you are seeking your disciplinary history, please contact cdcinfo@texasbar.com or call your regional office:

https://www.texasbar.com/AM/Template.cfm?Section=Grievance_and_Ethics_Information1&Template=/CM/HTMLDisplay.cfm&ContentID=23824

To monitor the progress or update this request please log into the [Public Records Center](#)



HARRIS.0641

APPENDIX 12

Fwd: [Records Center] Public Information Request :: R001880-022323



Me <lauren@lahlegal.com>

Thu, 09 Mar 2023 5:02:36 PM -0600 •

To "cdcinfo" <cdcinfo@texasbar.com>

1 Attachment

SBOT Release and Req.pdf
163.9 KB

Office of the Chief Disciplinary Counsel,

My bar number was 24080932. I am currently suspended upon a February 7, 2023 entry of Default Judgment, and so I am unable to make a request through the mybarpage for a full copy of my disciplinary file.

I was unaware it was not an acceptable alternative to request same through the State Bar PIA Center portal, but received the below denial from the PIA Center after same. Below, I was directed to instead make the request to this email address.

I have attached the release that comports with the mybarpage entries for this same request/function.

While I seek all documents/materials from my disciplinary file, including all communications with complaintants, witnesses/counsel for complaintants, I specifically seek to request the verbal or stenographic recordings of the November 12, 2020 IVH hearings held on two separate matters.

Please let me know if I need to do anything further or remit a fee, or otherwise complete any additional steps to assist in the request. My cel is 469-386-7426.

Thank you,

Sincerely,

Lauren A. Harris

===== Forwarded message =====

From: TEXASBAR Support <texasbar@govqa.us>

To: "service@lahlegal.com" <service@lahlegal.com>

Date: Wed, 01 Mar 2023 10:22:31 -0600

HARRIS.0642

Automatic reply: [Records Center] Public Information Request :: R001880-022323

CD CDCInfo <CDCInfo@TEXASBAR.COM>

Thu, 09 Mar 2023 5:03:04 PM -0600 •

To "Lauren Harris" <lauren@lahlegal.com>

Tags

Thank you for contacting the Office of the Chief Disciplinary Counsel. **Please do not reply to this email.** You will receive a response to your email as soon as possible. If you have filed a grievance and wish to provide additional information please fax the information to our fax line at (512) 427-4169 or mail the information to our address at Office of Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711.

HARRIS.0643

APPENDIX 13

Case no. 202000647; Respondent's Verified Requests to the Panel; Respondent's Verified Notice of Supplemental Facts; and HARRIS.0480-0665



Me <lauren@lahlegal.com>

Fri, 24 Mar 2023 9:37:13 AM -0500 •

To "travis" <travis@dentontitle.com>, "Laurie Guerra" <Laurie.Guerra@TEXASBAR.COM>

Cc "filing" <filing@txboda.org>, "brittany paynton" <brittany.paynton@texasbar.com>

Tags GRIEVANCES

📎 **1 Attachment(s)** • [Download as Zip](#)



Respondent's Reply --Petio... .pdf

265.5 KB • 🔗

Panel Chair, Ms. Paynton, Ms. Guerra, and the BODA *by copy for appeal,*

Attached please find the Respondent's Reply to the Petitioner's Response to *Respondent's Motion to Stay Execution of Judgment Pending Panel Rulings/Final Disposition on Appeal and Request for Record.*

Please be advised that where formally, a hearing was never requested by the undersigned, Respondent hereby provides notice of cancellation of oral argument, submitting all materials before the Panel as transmitted, for ruling by submission.

Upon reviewing the Responses of Petitioner to both the post-judgment motions filed by Respondent, it is clear BODA appeal is necessary.

After filing the soon finished Reply to Petitioner's Response to *Respondent's Motion to Set-Aside/Vacate and for New Trial*, and

any other matters necessary to preserve issues for appeal, and/or until the Panel issues its rulings or same are denied by operation of law, Respondent will file the Notice of appeal perfected to the BODA.

Sincerely,

Lauren A. Harris

Re: Case no. 202000647; Respondent's Verified Requests to the Panel; Respondent's Verified Notice of Supplemental Facts; and HARRIS.0480-0665



Me <lauren@lahlegal.com>

Fri, 24 Mar 2023 11:29:08 AM -0500 •

To "brittany paynton" <brittany.paynton@texasbar.com>

Cc "travis" <travis@dentontitle.com>, "Laurie Guerra" <Laurie.Guerra@TEXASBAR.COM>

Tags

Ms. Paynton,

Apologies to send so many successive emails.

Can you please confirm receipt of this morning's cancellation notice of the 1:00 p.m. hearing, sent from my end?

(I do not want there to be any confusion as to where I am needed/expected to appear in this matter, or before the Evidentiary Panel.)

If your office is seeking to go forward with the setting, please advise.

Sincerely,

Lauren A. Harris

RE: Case no. 202000647; Respondent's Verified Requests to the Panel; Respondent's Verified Notice of Supplemental Facts; and HARRIS.0480-0665

LG Laurie Guerra <Laurie.Guerra@TEXASBAR.COM>

Fri, 24 Mar 2023 11:57:41 AM -0500 •

To "lauren@lahlegal.com" <lauren@lahlegal.com>, "Brittany Paynton" <Brittany.Paynton@TEXASBAR.COM>

Cc "travis" <travis@dentontitle.com>

Tags GRIEVANCES

Ms. Harris,

My office intends to move forward with the hearing as scheduled.

Sincerely,

Laurie Guerra
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
14651 Dallas Parkway, Suite 925
Dallas, TX 75254
972-383-2900- Office
972-383-2935-Fax
laurie.guerra@texasbar.com

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