NO. 67843

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

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

V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

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

APPELLEE'S MOTION TO DISMISS FOR WANT OF JURISDICTION

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TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline (the "Commission"), asks the Board, pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure, Rule 42.3 of the Texas Rules of Appellate Procedure, and Rules 1.03 & 4.01 of the Supreme Court of Texas Board of Disciplinary Appeals Internal Procedural Rules, to dismiss Appellant's appeal for want of jurisdiction.

I.

On January 27, 2023, an Evidentiary Panel for State Bar of Texas District 14 entered an Order Granting Motion for Default Judgment against Appellant, Lauren Ashley Harris, in Case No. 20200647, styled *Commission for Lawyer Discipline v. Lauren Ashley Harris*. [Exh. A] [CR 183]. On February 7, 2023, the Evidentiary Panel entered a Default Judgment of Partially Probated Suspension (the "Judgment"). [Exh. B] [CR 195-202].

II.

A notice of appeal from an evidentiary judgment must be filed within thirty (30) days after the date of judgment, unless a *timely* motion for new trial or motion to modify the judgment has been filed. TEX. RULES DISCIPLINARY P. R. 2.23; TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.01(a), (d).[1] If a *timely* motion for new trial or motion to modify the judgment has been filed, the notice of appeal must be filed within ninety (90) days after the date of judgment. *Id.*

Motions for new trial in an evidentiary panel case must comport with the requirements of the applicable Texas Rules of Civil Procedure regarding such motions. TEX. RULES DISCIPLINARY P. R. 2.21. A motion for new trial must be

[1] In this respect, the disciplinary rules vary from the Texas Rules of Appellate Procedure (the "TRAPs"), as **only** a timely motion for new trial or motion to modify the judgment will serve to extend the appellate timetable in attorney disciplinary matters; whereas, where appropriate, a motion to reinstate and/or requests for findings of fact and conclusions of law may operate to extend the timetable under the TRAPs. *Cf.* TEX. R. APP. P. 26.1 with TEX. RULES DISCIPLINARY P.R. 2.23, TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.01(a), (d).

signed by the party or her attorney and shall be filed prior to or within thirty days after the judgment complained of is signed. TEX. R. CIV. P. 320, 329b(a). An electronically filed document transmitted on a Saturday is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday. TEX. R. CIV. P. 21(f)(5)(A); *see also*, TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 1.05(a)(2). Here a *timely* motion for new trial was due on or before **March 9, 2023**. Harris did not file her motion for new trial until **March 13, 2023**.[2] [Exh. C] [CR 311-340].

III.

Because the Default Judgment of Partially Probated Suspension was entered against Harris on February 7, 2023, and her motion for new trial was not timely filed, Harris's notice of appeal was due on or before March 9, 2023. Harris did not file her notice of appeal until May 8, 2023. [Exh. D] [CR 653-656].

IV.

To date, Harris has not provided anything demonstrating she filed her notice of appeal in a timely manner, though it appears she incorrectly believed her motion for new trial *had* been timely filed. [Exh. C] [CR 333]. Further, the record indicates Harris failed to request an extension of time to file either her motion for new trial or her notice of appeal. Where, as here, an appellant fails to timely perfect her appeal,

[2] Harris e-mailed her signed motion for new trial to both BODA and the evidentiary panel clerk on Saturday, March 11, 2023, at 10:19 P.M. [Exh. C] [CR 340]. She had previously e-mailed an *unsigned* copy of the motion on Friday, March 10, 2023, at 8:38 P.M. [CR 280-309].

the appellate court does not acquire jurisdiction over the appeal and must dismiss for lack of jurisdiction. TEX. RULES DISCIPLINARY P. R. 2.23; TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.01(a), (d); *see, e.g.*, *Florance v. State*, 352 S.W.3d 867, 871 & 74-75 (Tex.App. – Dallas 2011, no pet.).

CONCLUSION AND PRAYER

For these reasons, the Commission prays that the Board dismiss this appeal for want of jurisdiction.

RESPECTFULLY SUBMITTED,

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION

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MICHAEL G. GRAHAM
STATE BAR CARD NO. 24113581
ATTORNEY FOR APPELLEE

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Appellee's Motion to Dismiss for Want of Jurisdiction has been served on Appellant, Lauren Ashley Harris, by email to lauren@lahlegal.com on the 7th day of June, 2023.

MICHAEL G. GRAHAM
APPELLATE COUNSEL
STATE BAR OF TEXAS

Exh. A

BEFORE THE DISTRICT 14 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 14-2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, **Petitioner**	§	
V.	§	**CASE NO. 202000647 [North]**
LAUREN ASHLEY HARRIS, **Respondent**	§	

ORDER ON MOTION FOR DEFAULT JUDGMENT

ON THIS DAY CAME ON TO BE HEARD Commission for Lawyer Discipline's Motion for Default Judgment, in the above-entitled and numbered cause. After hearing the evidence submitted, the Evidentiary Panel is of the opinion that the Motion for Default Judgment should be, and is hereby:

_____ **DENIED.**

_X_ **GRANTED** and IT IS ACCORDINGLY ORDERED, ADJUDGED, AND DECREED that the following findings of fact and conclusions of law are deemed as true:

1. Complainant, Lyndon North (North), hired Respondent on or about October 16, 2017, to represent him in a personal injury case. During the course of the representation, Respondent neglected to perform work on the case. Respondent failed to attend a court hearing and failed to comply with a court order regarding discovery. Respondent also failed to respond to North's requests for case information.

2. Respondent, by her conduct in connection with the grievance, has violated Rules 1.01(b)(1) and 1.03(a) of the Texas Disciplinary Rules of Professional Conduct, Article X, Section 9, State Bar Rules, effective January 1, 1990.

SIGNED this 27 day of January, 2023.

William Travis Biggs
Evidentiary Panel Chair

Solo Page

Exh. B

BEFORE THE DISTRICT 14 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 14-2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, **Petitioner**	§	
V.	§	**CASE NO. 202000647 [North]**
LAUREN ASHLEY HARRIS, **Respondent**	§	

DEFAULT JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On January 27, 2023, came to be heard the above styled and numbered cause. Petitioner, Commission for Lawyer Discipline ("Petitioner"), appeared by and through its attorney of record and announced ready. Respondent, **LAUREN ASHLEY HARRIS**, Texas Bar Number **24080932** (Respondent), although duly served with the Evidentiary Petition and notice of this default and sanctions hearing, failed to appear.

Jurisdiction and Venue

The Evidentiary Panel 14-2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 14, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Default

The Evidentiary Panel finds Respondent was properly served with the Evidentiary Petition and that Respondent failed to timely file a responsive pleading to the Evidentiary Petition as required by Rule 2.17(B) of the Texas Rules of Disciplinary Procedure. Accordingly, the Evidentiary Panel finds Respondent in default and further finds that all facts alleged in the Evidentiary Petition are deemed true pursuant to Rule 2.17(C) of the Texas Rules of Disciplinary Procedure.

Professional Misconduct

The Evidentiary Panel, having deemed all facts as alleged in the Evidentiary Petition true, finds Respondent has committed Professional Misconduct as defined by Rule 1.06(CC) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

The Evidentiary Panel, having considered the allegations as deemed true, the pleadings, evidence and argument of counsel, makes the following findings of fact and conclusions of law:

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.

2. Respondent resides in and maintains her principal place of practice in Dallas County, Texas.

3. Complainant, Lyndon North (North), hired Respondent on or about October 16, 2017, to represent him in a personal injury case.

4. In representing North, Respondent neglected the legal matter entrusted to her by failing to perform work on the case.

5. Respondent failed to promptly comply with reasonable requests from North for information about North's personal injury matter.

6. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees associated with this Disciplinary Proceeding in the amount of One Thousand Nine Hundred Dollars ($1,900.00).

7. The Chief Disciplinary Counsel of the State Bar of Texas has incurred direct expenses associated with this Disciplinary Proceeding in the amount of Eight Hundred Dollars ($800.00).

Conclusions of Law

The Evidentiary Panel concludes that, based upon the foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 1.01(b)(1) and 1.03(a).

Sanction

The Evidentiary Panel, having found Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is a Partially Probated Suspension.

Accordingly, it is **ORDERED**, **ADJUDGED** and **DECREED** that Respondent be suspended from the practice of law for a period of twelve (12) months, beginning February 1, 2023 and ending February 1, 2024. Respondent shall be actively suspended from the practice of law for a period of six (6) months beginning February 1, 2023 and ending July 31, 2023. The six (6) months period of probated suspension shall begin on August 1, 2023 and shall end on February 1, 2024.

Terms of Active Suspension

It is further **ORDERED** that during the term of active suspension ordered herein, or that may be imposed upon Respondent by the Board of Disciplinary Appeals as a result of a probation revocation proceeding, Respondent shall be prohibited from practicing law in Texas; holding herself out as an attorney at law; performing any legal services for others; accepting any fee directly or indirectly for legal services; appearing as counsel or in any representative capacity in any proceeding in any Texas or Federal court or before any administrative body; or holding herself out to others or using her name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

It is further **ORDERED** that, or before February 1, 2023, Respondent shall notify each of Respondent's current clients and opposing counsel in writing of this suspension.

In addition to such notification, it is further **ORDERED** Respondent shall return any files, papers, unearned monies and other property belonging to current clients in Respondent's possession to the respective clients or to another attorney at the client's request.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before February 1, 2023, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein. If it is Respondent's assertion that at the time of suspension he possessed no current clients and/or Respondent was not in possession of any files, papers, monies or other property belonging to clients, Respondent shall submit an affidavit attesting that, at the time of suspension, Respondent had no current clients and did not possess any files, papers monies and other property belonging to clients.

It is further **ORDERED** Respondent shall, on or before February 1, 2023, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), on or before February 1, 2023, an affidavit stating Respondent has

notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court. If it is Respondent's assertion that at the time of suspension he was not currently listed as counsel or co-counsel in any matter pending before any justice of the peace, judge, magistrate, administrative judge or officer, or chief justice of any court or tribunal, Respondent shall submit an affidavit attesting to the absence of any such pending matter before any justice of the peace, judge, magistrate, administrative judge or officer, or chief justice.

It is further **ORDERED** that, on or before February 1, 2023, Respondent shall surrender his law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of Texas.

Terms of Probation

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

1. Respondent shall not violate any term of this judgment.

2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(CC) of the Texas Rules of Disciplinary Procedure.

3. Respondent shall not violate any state or federal criminal statutes.

4. Respondent shall keep State Bar of Texas membership department notified of current mailing, residence and business addresses and telephone numbers.

5. Respondent shall comply with Minimum Continuing Legal Education requirements.

6. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.

7. Respondent shall promptly respond to any request for information from the Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.

8. Respondent shall make contact with the Chief Disciplinary Counsel's Offices' Compliance Monitor at 512-427-1334 and Special Programs Coordinator at 512-427-1343, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

Probation Revocation

Upon information that Respondent has violated a term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Rule 2.22 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals ("BODA") and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

BODA shall conduct an evidentiary hearing. At the hearing, BODA shall determine by a preponderance of the evidence whether Respondent has violated any term of this Judgment. If BODA finds grounds for revocation, BODA shall enter an order revoking probation and placing Respondent on active suspension from the date of such revocation order. Respondent shall not be given credit for any term of probation served prior to revocation.

It is further **ORDERED** that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Attorney's Fees and Expenses

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of One Thousand Nine Hundred Dollars ($1,900.00). The payment shall be due and payable on or before August 1, 2023, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Eight Hundred Dollars ($800.00). The payment shall be due and payable on or before August 1, 2023 and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further ORDERED that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(FF) of the Texas Rules of Disciplinary Procedure. Any amount not paid shall accrue interest at the maximum legal rate per annum until paid and the State Bar of Texas shall have all writs and other post-judgment remedies against Respondent in order to collect all unpaid amounts.

It is further **ORDERED** that Respondent shall remain actively suspended from the practice of law as set out above until such time as Respondent has completely paid attorney's fees in the amount of One Thousand Nine Hundred Dollars ($1,900.00) and

direct expenses in the amount of Eight Hundred Dollars ($800.00) to the State Bar of Texas.

Publication

This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 7 day of February, 2023.

EVIDENTIARY PANEL 14-2
DISTRICT NO. 14
STATE BAR OF TEXAS

William Travis Biggs
District 14-2 Presiding Member

Exh. C

BEFORE THE DISTRICT 14 GRIEVANCE COMMITTEE EVIDENTIARY PANEL 14-2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, *Petitioner,*	§	
v.	§	**CASE NO. 202000647 [North]**
LAUREN ASHLEY HARRIS, *Respondent.*	§	

RESPONDENT'S VERIFIED MOTION TO SET ASIDE/VACATE DEFAULT JUDGMENT & FOR NEW TRIAL

TO THE STATE BAR DIST. NO. 1 GRIEVANCE COMMITTEE, EVIDENTIARY PANEL 14-2:

COMES NOW, Respondent, Lauren A. Harris, and pursuant to Rules 2.09(A) and 2.21 of the Texas Rules of Disciplinary Procedure ("TRDP") and Rules 106, 107, 124, 320, 321, and 329(b) of the Texas Rules of Civil Procedure ("TRCP"), files these her Motions seeking relief from the Default Judgment for Partially Probated Suspension entered by this Evidentiary Panel on February 7, 2023 (hereinafter the "Judgment"). Respondent seeks an Order of this Panel which grants this Motion, sets-aside/vacates the entirety of the Judgment and reinstates this matter for new trial on the merits, and in support thereof, Respondent will show as follows:

I.
EXECUTIVE SUMMARIES

A. ***RULES.*** **THIS VERIFIED[1] MOTION TO SET ASIDE/VACATE DEFAULT JUDGMENT & FOR NEW TRIAL IS BROUGHT UNDER RULE 2.21 OF THE TRDP, WHICH DEFERS TO THE TEX. R. CIV. P. FOR SERVICE OF PROCESS UNDER RULES 106 AND 107 (AND TRDP 2.09), VOID JUDGMENT FOR IMPROPER SERVICE UNDER 124, AND TO MODIFY JUDGMENT/FOR NEW TRIAL UNDER 320, 321 AND 329(B). FURTHER, A MOTION TO SET ASIDE A DEFAULT JUDGMENT IS EXAMINED UNDER THE *CRADDOCK* STANDARD, SO LONG AS MADE TIMELY, AS HERE, WITHIN THIRTY-DAYS OF ENTRY OF JUDGMENT, WHILE STILL IN THE PLENARY POWER OF THIS EVIDENTIARY PANEL TO MAKE RULING.**

B. ***PRECEDENT.*** ***THE FACTS HERE ARE ANALOGOUS TO THE BOARD OF DISCIPLINARY APPEALS ("BODA") RULINGS IN SIMS, SHELTON, AND PREVOST WHERE THE EVIDENTIARY PETITION PROCEEDED IN THE FACE OF FAILED SERVICE*: ALL THREE WERE REVERSED AND REMANDED BY THE BODA.**

C. ***FACTUAL SYNOPSIS:***

RESPONDENT WAS ONLY MADE AWARE OF THIS EVIDENTIARY

[1] *(SEE VERIFICATION, SIGNATURE PAGE)*

PANEL/EVIDENTIARY PETITION ACTION UPON RECEIPT OF THE FEBRUARY 7, 2023 EMAIL FROM THE PANEL CHAIR ENCLOSING THE EXECUTED JUDGMENT. RESPONDENT IS AWARE NOW OF ERRORS, BOTH IN SETTINGS FOR MAILING ADDRESSES AND ELECTRONIC MAIL, WHICH CONTRIBUTED TO THE LACK OF NOTICE AND FAILURE OF SERVICE OF PROCESS IN THIS MATTER. RESPONDENT IS MORE THAN DISAPPOINTED IN THESE MISTAKES, ESPECIALLY IN LIGHT OF ALL THE EFFORT PUT FORTH TO COOPERATE WITH THE OFFICE OF THE CHIEF DISCIPLINARY COUNSEL FROM THE TIME THE CONCURRENT GRIEVANCE FILINGS BEGAN WITH (FIRST DISMISSED AS INQUIRY 2015) THE SECOND GRIEVANCE FILING OCTOBER 30, 2019/DISMISSED BY SDP APRIL 1, 2020,[2] THE THIRD GRIEVANCE FILING: JANUARY 2020/NOVEMBER 12, 2020 IVH PANEL RENDERED DISMISSAL ON DECEMBER 8, 2020,[3] AND THIS FOURTH GRIEVANCE FILED JANUARY 14, 2020/COMBINED IVH DATE OF NOVEMBER 12, 2020 WITH THIRD GRIEVANCE, ALL WHICH RESPONDENT APPLIED HERSELF IN RESPONSE AND ATTEMPT TO COOPERATE SINCE BEFORE THIS UNDERLYING GRIEVANCE'S FILING -- THROUGH THE COMPLETION/APPEARANCE BEFORE THE INVESTIGATORY HEARING PANEL -- AND EFFORTS FOR ALL WHICH INCLUDED RESPONDENT'S: COMMUNICATIONS WITH THE INVESTIGATOR FOR THE OFFICE, SUBMISSIONS OF BOTH DETAILED WRITTEN RESPONSE, AND HUNDREDS OF PAGES OF SUPPORTING DOCUMENTS. ULTIMATELY, RESPONDENT WILL SHOW THAT THIS ACTION'S MERE EXISTENCE IS ERROR, BUT FIRST MUST OBTAIN SUCH OPPORTUNITY THROUGH PROCEDURAL DUE PROCESS WITHIN A NEW TRIAL ON THE MERITS.

IN FURTHERANCE THEREOF, RESPONDENT ASSERTS THAT THE DEFAULT MUST BE SET ASIDE AS SEEN IN VERIFIED EVIDENCE WHICH TENDS TO SHOW THE MISTAKES OF RESPONDENT ALONE WOULD NOT HAVE RENDERED JUDGMENT BY DEFAULT, INSTEAD, WHEN VIEWED IN COMBINATION WITH CHOICES WHICH CANNOT SATISFY DUE DILIGENCE IN SERVICE AND -- WHEN TAKEN TOGETHER -- RESULTED IN THE FAILURE TO EFFECTUATE NOTICE TO RESPONDENT OR PROPERLY EXECUTE SERVICE OF PROCESS; BETWEEN THE ACTIONS OF BOTH PARTIES, SERVICE WAS DEFECTIVE, SEEN ON THE FACE OF THE RECORD AND TANTAMOUNT TO MORE THAN GOOD CAUSE TO SET ASIDE THE DEFAULT JUDGMENT AND GRANT RESPONDENT A NEW TRIAL ON THE MERITS.

II.
STANDARDS: SETTING ASIDE A DEFAULT/FOR NEW TRIAL

A. Policy for New Trial & Default: Service, either Proper or Defective

1. A parties' right to file a Motion for New Trial[4] is designed to allow the trial court an opportunity to cure errors in the court's rulings or the jury's findings and to avoid an appeal.[5] "[W]hen a default judgment is attacked by motion for new trial[,]" the parties may introduce

[2] *See* ***HARRIS.008-0010.***

[3] *See* ***HARRIS.0011.***

[4] ***Old Republic Ins. v. Scott, 846 S.W.2d 832, 833 (Tex. 1993).***

[5] ***In re C.O.S., 988 S.W.2d 760, 765 (Tex. 1999); Smith v. Brock, 514 S.W.2d 140, 142 (Tex. App.—Texarkana 1974, no writ).***

evidence such as "affidavits, depositions, testimony, and exhibits" that demonstrate why the default judgment should be set aside.[6] Two different standards are applied when setting aside a default judgment, depending on whether the judgment was:

a) Proper		**b) Defective**
(WITH notice, *secured in accordance with the statutes and rules for issuance, service and return of citation).*	**or**	**(WITHOUT notice,** *not secured in accordance with the statutes and rules for issuance, service, and return of citation.)*

2. **Under either,** the *Craddock*[7] test applies to both no-answer and post-answer default judgments.[8] However, only the proper default cases apply all three elements of *Craddock*, as the defective default cases only need apply element one. The trial court's ruling on a motion for new trial, when based on *Craddock*, is reviewed for abuse of discretion by the appellate Court.[9] "The historical trend in default judgment cases is toward the liberal granting of new trials."[10] Accordingly, when the guidelines established in *Craddock* have been met, it is an abuse of discretion to deny a new trial.[11]

3. **Under a Proper Service Default.** A three-part test for determining whether a court should grant a motion for new trial to set aside a proper default judgment was established in the case of *Craddock v. Sunshine Bus Lines, Inc.* 532:[12] The purpose of *Craddock* is to "alleviate unduly harsh and unjust results . . . when the defaulting party has no other remedy available."[13] It "is based upon equitable principles and 'prevents an injustice to the defendant without working an injustice

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

[7] *Craddock v. Sunshine Bus Lines, Inc., 133 S.W.2d 124, 126 (Tex. [Comm'n Op.] 1939);*

[8] *See LeBlanc v. LeBlanc, 778 S.W.2d 865, 865 (Tex. 1989) (providing that Craddock has "general application to all judgments of default")*

[9] *Dolgencorp of Tex., Inc. v. Lerma, 288 S.W.3d 922, 926 (Tex. 2009); Cliff v. Huggins, 724 S.W.2d 778, 778 (Tex. 1987); Grissom v. Watson, 704 S.W.2d 325, 326 (Tex. 1986).*

[10] *Norton v. Martinez, 935 S.W.2d 898, 901 (Tex. App.—San Antonio 1996, no writ).*

[11] *Dolgencorp, 288 S.W.3d at 926.*

[12] *Craddock v. Sunshine Bus Lines, Inc., 133 S.W.2d 124, 126 (Tex. [Comm'n Op.] 1939); see Holt Atherton Indus. v. Heine, 835 S.W.2d 80, 82 (Tex. 1992) (reaffirming the three-part Craddock test). But see Gen. Elec. Capital Auto Fin. Leasing Servs., Inc. v. Stanfield, 71 S.W.3d 351, 356–57 (Tex. App.—Tyler 2001, pet. denied) (expanding Craddock's three-part test to four parts by separating the mistake or accident element from the conscious indifference element).*

[13] *Carpenter v. Cimarron Hydrocarbons Corp., 98 S.W.3d 682, 686 (Tex. 2002) (citing Craddock, 133 S.W.2d at 126)*

on the plaintiff.'"[14] Under this test, a trial court may set aside a default judgment and order a new trial in any case in which: **(1)** the failure to answer was not intentional or the result of conscious indifference, but rather was due to mistake or accident; **(2)** the movant can set-up a meritorious defense to the underlying suit; and **(3)** the motion is filed at a time when granting a new trial would not result in delay or otherwise injure the plaintiff.[15]

a. ***Craddock Element (1): the failure of the defendant to answer before judgment was not intentional, or the result of conscious indifference, but was due to a mistake or accident.***
   i. A party may establish "good cause" by proving that the party did not act intentionally or with conscious disregard in failing to timely file."[16] Consequently, even a weak excuse will suffice, particularly when the opposing party suffers no prejudice as a result of the delay.[17] A valid excuse does not have to be a good excuse to satisfy this burden.[18] A slight excuse will suffice, particularly when no delay or prejudice shall result.[19] The standard is not one in negligence but "'is one of intentional or conscious indifference—that the defendant knew it was sued but did not care.'"[20] If there is controverting evidence on this issue, the court may judge the witnesses' credibility and determine the weight to be given to the testimony.[21]

b. ***Craddock Element (2) Movant can sets-up a meritorious defense.***[22]
   i. A meritorious defense is one that if proved would cause a different result upon retrial of the case, although not necessarily a totally opposite result.[23]

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[14] *Id. at 685 (quoting Craddock, 133 S.W.2d at 126)*

[15] *. In re R.R., 209 S.W.3d 112 (Tex. 2006); Craddock v. Sunshine Bus Lines, Inc., 134 Tex. 388, 133 S.W.2d 124 (Comm'n App. 1939).*

[16] *Wheeler v. Green, 157 S.W.3d 439, 452 (Tex. 2005); Tommy Gio, Inc. v. Dunlop, 348 S.W.3d 503, 508 (Tex. App.—Dallas 2011, pet. denied); In re Kellogg-Brown & Root, Inc., 45 S.W.3d 772, 775 (Tex. App.—Tyler 2001, no pet.); Steffan v. Steffan, 29 S.W.3d 627, 631 (Tex. App.— Houston [14th Dist.] 2000, pet. denied).*

[17] *See Ramsey v. Criswell, 850 S.W.2d 258, 259 (Tex. App.—Texarkana 1993, no writ) (admitting that, while slight, a party's illness can be a sufficient excuse); N. River Ins. Co. v. Greene, 824 S.W.2d 697, 700–01 (Tex. App.—El Paso 1992, writ denied) (identifying a calendar-diary error as a sufficient cause); Esparza v. Diaz, 802 S.W.2d 772, 776 (Tex. App.—Houston [14th Dist.] 1990, no writ) (emphasizing lack of prejudice to the opposing party in finding good cause). However, while a clerical error may constitute good cause, being busy and overworked does not. Greene, 824 S.W.2d at 700–01.*

[18] *Fid. & Guar. Ins. Co., 186 S.W.3d at 576.*

[19] *Harmon Truck Lines, Inc. v. Steele, 836 S.W.2d 262, 265 (Tex. App.—Texarkana 1992, writ dism'd); Gotcher v. Barnett, 757 S.W.2d 398, 401 (Tex. App.—Houston [14th Dist.] 1988, no writ); cf. Coastal Banc SSB v. Helle, 48 S.W.3d 796, 800–01 (Tex. App.—Corpus Christi 2001, pet. denied) (determining not being advised of the hearing date is a sufficient excuse for failure to appear).*

[20] *Levine v. Shackelford, Melton & McKinley, L.L.P., 248 S.W.3d 166, 168 (Tex. 2008) (per curiam) (quoting Fid. & Guar. Ins. Co., 186 S.W.3d at 575–76); see Strackbein v. Prewitt, 671 S.W.2d 37, 39 (Tex. 1984) (looking to the defendant's knowledge and acts to determine intent); Konkel v. Otwell, 65 S.W.3d 183, 186 (Tex. App.—Eastland 2001, no pet.) (distinguishing an intentional action from a mistake).*

[21] *Harmon Truck Lines, 836 S.W.2d at 265*

[22] *Craddock, 133 S.W.2d at 126; see Ivy v. Carrell, 407 S.W.2d 212, 214 (Tex. 1966) (requiring the defendant to allege facts constituting a defense to the plaintiff's claim that is supported by evidence); Cragin v. Henderson Cty. Oil Dev. Co., 280 S.W. 554, 555–56 (Tex. Comm'n App. 1926, holding approved) (determining allegations of meritorious defense are to be taken as true if properly supported, but that allegations of excuse for failure to appear may be controverted and determined by the trial court).*

[23] *Holliday v. Holliday, 10 S.W. 690, 692 (Tex. 1889).*

c. <u>Craddock Element (3)</u> granting a new trial will not delay or injure the other party.[24]

i. The granting of a new trial in this cause will neither injure Plaintiff nor cause an unreasonable delay in rendering a fair and equitable judgment between the parties.

35. **<u>Under a Defective Default Judgment</u>** A motion for new trial, following a defective service case/default judgment does not have to meet the full *Craddock* requirements, instead, when "the record fails to show a valid issuance and service of citation to the defendant, or a voluntary appearance prior to rendition of the default judgment, the judgment must be reversed" without the defendant having to "excuse his failure to appear, and set up a meritorious defense."[25] When the first element is established with proof that the defaulted party did not receive notice of a trial setting or other dispositive hearing, due process alleviates the burden of proving the second element of the *Craddock* test regarding a meritorious defense.[26] It is likely that the third element regarding prejudice to plaintiff would not have to be proved in the same circumstances for the same due process reasons.[27]

4. **Personal jurisdiction** over a defendant to a suit is **"dependent upon citation issued and served in a manner provided for by law**."[28] **Where a default judgment against a defendant that was never properly served – it cannot stand because jurisdiction is dependent on proper service.**[29] **"**If a default judgment is ***not rendered in compliance with the statutes and rules***[,] . . . the default judgment ***may be set aside by a motion to set aside, a motion for new trial, an appeal, or" a restricted appeal.***[30]

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[24] Craddock, 133 S.W.2d at 126; accord Carpenter, 98 S.W.3d at 685 (outlining the three-part Craddock test); Angelo v. Champion Rest. Equip. Co., 713 S.W.2d 96, 97–98 (Tex. 1986) (expounding upon the delay or injury requirement under the Craddock test).

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

[26] Lopez v. Lopez, 757 S.W.2d 721, 723 (Tex. 1988) (per curiam); see Mathis v. Lockwood, 166 S.W.3d 743, 744 (Tex. 2005) (per curiam) (re-affirming Lopez); Shull v. United Parcel Serv., 4 S.W.3d 46, 52 n.1 (Tex. App.—San Antonio 1999, pet. denied) (explaining when a party shows he had no notice of the trial setting, he does not have to prove a meritorious defense).

[27] Mathis, 166 S.W.3d at 744; Mahand v. Delaney, 60 S.W.3d 371, 375 (Tex. App.—Houston [1st Dist.] 2001, no pet.).

[28] See Wilson v. Dunn, 800 S.W.2d 833, 836 (Tex. 1990)

[29] Id.

*[30] Bagel v. Mason Rd. Bank, N.A., No. B14-91-00548-CV, 1992 WL 43953, at *1 (Tex. App.—Houston [14th Dist.] Feb. 27, 1992, no writ) (not designated for publication); see Jordan v. Jordan, 890 S.W.2d 555, 560 (Tex. App.—Beaumont 1994) (holding that courts may look to the face of the record to determine appellate error), rev'd on other grounds, 907 S.W.2d 471 (Tex. 1995)*

5. In reviewing a default judgment under these remedies**, both the trial and reviewing courts must consider errors of the record .**[31] **"[I]t is imperative . . . that the record affirmatively show a strict compliance with the provided mode of service" for a default judgment to withstand attack.**[32]**"The Supreme Court requires that strict compliance with the rules** for service of citation affirmatively appear in the record in order for a default judgment to withstand direct attack."[33]**Accordingly, the recod must be specifically reviewed as it existed before the trial court when the default judgment was signed or as amended pursuant to Rule 118 of the Texas Rules of Civil Procedure.** [34] ***When service of citation fails to strictly comply with civil procedure rules, it will not support a default judgment.***[35]

6. Respondent will show that the evidence as submitted does not change the record as it existed at the time of the January 27, 2023 hearing, merely provides the events and evidence which was not presented at the hearing, ***but well within the knowledge of the parties and poignantly relevant to the intention of the parties for service of the action.*** The communications with the Office of Chief Disciplinary Counsel and its agents and investigators are all part of this action's **ongoing record**, which began long before the Evidentiary Petition was not provided to Respondent and made the basis in Panel ruling for default; ***yet, crucial to the facts surrounding scienter of the parties in classifying service to be proper or defective.***

7. A defendant against whom a defective default judgment has been taken may urge the error for the first time on appeal**, *unless the nature of the error requires that evidence be***

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[31] *Quaestor Invs., Inc. v. Chiapas, 997 S.W.2d 226, 227 (Tex. 1999); Stubbs v. Stubbs, 685 S.W.2d 643, 644 (Tex. 1985).*

[32] *McKanna v. Edgar, 388 S.W.2d 927, 929 (Tex. 1965); accord Primate Constr., Inc. v. Silver, 884 S.W.2d 151, 152 (Tex. 1994); Wilson, 800 S.W.2d at 836; Uvalde Country Club v. Martin Linen Supply Co., 690 S.W.2d 884, 885 (Tex. 1985); see In re Ramirez, 994 S.W.2d 682, 683 (Tex. App.—San Antonio 1998, orig. proceeding) (concluding that courts must consider sufficiency of process when determining whether to grant a default judgment); Seib v. Bekker, 964 S.W.2d 25, 27–28 (Tex. App.— Tyler 1997, no writ)*

[33] *(citing Primate Constr., 884 S.W.2d at 152))*

[34] *See TEX. R. CIV. P. 118 (authorizing a court to allow an amendment of service of process as long as it would not prejudice the other party); see also Higginbotham v. Gen. Life & Accident Ins. Co., 796 S.W.2d 695, 697 (Tex. 1990) (finding a trial court's order recognizing service as proper was, itself, "tantamount to formal amendment of the return of citation");*

[35] *Laidlaw Waste Sys., Inc. v. Wallace, 944 S.W.2d 72, 73–75 (Tex. App.—Waco 1997, writ denied)*

presented and a finding of fact be made by the trial court.[36] Absent **a need for evidence**, on appeal, the default judgment is reviewed de novo to determine whether it was rendered in compliance with the statutes and rules.[37] Therefore, **Respondent hereby formally requests** from the Panel moving forward, in every ruling, Findings of Fact and Conclusions of Law in each decision/orders/actions or inactions for this case, to include both the current Motions pending before the Panel, as well as memorialization of each Panel's ruling; this request is made in perpetuity of all the Panel's rulings for Respondent, even in any new or modified Judgment rendered upon a new trial or otherwise.

B. ***Sims, Shelton and Prevost Holdings***

8. The Board of Disciplinary Appeals has two cases directly analogous to the instant action, and reflect as follows:

***1) Sims v. Comm'n for Lawyer Discipline*, TX BODA Case No. 34229 (Aug. 16, 2006):**[38]

9. Sims had been through an investigatory hearing (under the pre-2004 Rules); and the Chief Disciplinary Counsel tried to serve her with the proposed evidentiary hearing order and charge by certified mail, return receipt requested.[39] However, the delivery was not restricted to her, and she did not sign the return receipt.[40] When she did not appear at the evidentiary hearing, a default judgment was entered against her.[41] **After she appealed, BODA held that, without her signature on the signed receipt, the evidentiary panel did not acquire jurisdiction over her, and the default judgment was void.**[42] The Commission had urged during the appeal that the lawyer had "notice of the status of the complaint," since she had participated

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[36] *See TEX. R. CIV. P. 324(b)(1) (stating that a motion for new trial is required to complain on appeal about the failure to vacate a default judgment); Bronze & Beautiful, Inc. v. Mahone, 750 S.W.2d 28, 29 (Tex. App.—Texarkana 1988, no writ) (asserting that in a motion for new trial, "a party need not complain about invalid service . . . because it is not a complaint on which evidence must be heard, within the meaning of Rule 324").*

[37] *Furst v. Smith, 176 S.W.3d 864, 868–69 (Tex. App.—Houston [1st Dist.] 2005, no pet.); Coronado v. Norman, 111 S.W.3d 838, 841–42 (Tex. App.—Eastland 2003, pet. denied); see also Bronze & Beautiful, 750 S.W.2d at 29 (requiring strict compliance with the rules for a default judgment to be upheld).*

[38] *See Exhibit "K," HARRIS.0196-0208.*

[39] *Sims v. Comm'n for Lawyer Discipline, Texas Board of Disciplinary Appeals Case No. 34229 (Aug. 16, 2006). See Exhibit "K," HARRIS.0196-0208.*

[40] *Id. See Exhibit "K," HARRIS.0196-0208.*

[41] *Id. See Exhibit "K," HARRIS.0196-0208.*

[42] *Id. See Exhibit "K," HARRIS.0196-0208.*

in the investigatory hearing. ***BODA said that:***

> **even if the record reflected she knew of the charges or the evidentiary hearing, proper service was still required to confer jurisdiction. Without proper service, the lawyer had no obligation to participate.**

As BODA continued, ***due process requires:***

> **when the matter continues to a hearing before the tribunal with authority to impose discipline–either a district court or an evidentiary panel of the grievance committee–the respondent attorney must be served with the pleading through which the tribunal acquires personal jurisdiction over the respondent in a manner affording the respondent a fair opportunity to appear and defend against the charges against her.**[43]

2) *Shelton v. Comm'n for Lawyer Discipline*, TX BODA Case No. 36059 (June 9, 2006):

10. Similarly, Dallas attorney Catherine Shelton was unable to negotiate a sanction with the CDC following an investigatory hearing (which proceeded under the pre–2004 Rules), the CDC sent her a notice of election between an evidentiary panel and district court.[44] When she had made no election after three months, her case was assigned to an evidentiary panel.[45] In spite of the CDC sending notice of the proposed hearing order and charge, of default, and of the date of the evidentiary hearing, **Shelton did not appear for the hearing, and the grievance panel signed a default judgment of disbarment.**[46] ***Shelton sought a new trial on the basis of faulty service of notice, claiming that she no longer lived at the address where service in connection with the evidentiary hearing had been attempted and that the substituted service was flawed.***[47] When the motion was denied, she appealed to BODA, which agreed with her -- in fact -- BODA found fault with the service **beyond her argument**, which was that the affidavit for substituted service failed to state the ***affiant's basis for concluding*** that the address used was the defendant's usual place of abode:

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[43] ***Sims v. Comm'n for Lawyer Discipline, Texas Board of Disciplinary Appeals Case No. 34229 (Aug. 16, 2006). See Exhibit "K," HARRIS.0196-0208.***

[44] ***Shelton v. Comm'n for Lawyer Discipline, Texas Board of Disciplinary Appeals Case No. 36059 (June 9, 2006). See Exhibit "L," HARRIS.0209-0221.***

[45] ***Id.***

[46] ***Id.***

[47] ***Id.***

> **[W]e also find** fundamental defects in the affidavit, in that it fails to state that the facts recited therein are within the affiant's personal knowledge or that the statements contained therein are true and correct. An affidavit must unequivocally state facts upon which perjury can be assigned.[48]

***3) Prevost* v. *Comm'n for Lawyer Discipline*, TX BODA Case No. 29929 (December 1, 2003):**

11. On December 1, 2003, the Board of Disciplinary Appeals reversed and remanded a judgment of public reprimand against Houston attorney Marvin E. Prevost, signed by the evidentiary panel of the State Bar of Texas District 04F Grievance Committee on May 27, 2003, where the BODA found that it was reversible error that the Commission for Lawyer Discipline **failed to notify the complainant of the evidentiary hearing.**[49] The matter was ***remanded to the evidentiary panel*** for a ***hearing on the merits*** and sanction with **proper notice to the parties**.[50]

III.
RELEVANT DISCIPLINARY PROCEDURAL BACKGROUND

A. Three Prior Grievance Dismissals: Two & Three Concurrent with Instant Fourth

12. ***Dismissed as Inquiry 2015:*** Respondent received the First Grievance from the Office of the Chief Disciplinary Counsel in 2015, which was not submitted by a client, nor related to Respondent's practice of the law, and thus, dismissed as an Inquiry.[51]

13. ***Dismissed by Summary Disposition Panel 2020:***[52] The Second Grievance No. 201906965 ("Second Grievance") was:

> filed by Second Grievance former client on October 30, 2019, transmitted to Respondent by the Office of the Chief Disciplinary Counsel on November 15, 2019, and received by Respondent on November 21, 2019.
>
> Many communications, including detailed initial response by limited appearance counsel Ben Julius were exchanged with/submitted to Elena Wolfe, the Investigator from the Office of Chief Disciplinary Counsel. Mr. Julius' original Response, a single-spaced five-page document included supporting Exhibits A-N, was sent to Ms. Wolfe on December 27, 2020. On January 21, 2020, Elena Wolfe

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[48] ***Id.***

[49] ***PREVOST v. v. Comm'n for Lawyer Discipline, Texas Board of Disciplinary Appeals Case No. 29929 (December 1, 2003).***

[50] ***Id.***

[51] ***A Pensacola, FL landlord sought to recover money from Respondent for carpet-damage in the property from her miniature schnauzers.***

[52] *See* ***HARRIS.008-0010.***

transmitted a new list to Respondent of Additional Requests/requirements for responses/more information.

14. **Notably, on January 31, 2020 Respondent provided an update to Elena Wolfe on the responses as requested; this correspondence attached Respondent's residential electric provider account view/the valid residential home address of Respondent, and clearly provided actual notice to the Office of the Chief Disciplinary Counsel that Respondent's home address was not her parents' house in North Dallas –proving in relevant part as follows:**

> Moreover, I see now that you followed-up in the below e-mail on Wednesday January 29, 2019, and you left a voicemail message, but the power has been off at my home-office address since Monday, January 27, 2019, and was only reconnected yesterday afternoon, Thursday, January 30, 2019 in "error" by Hudosn Energy (service screen-shot attached). I went and stayed at my parents' house in North Dallas for the week. I retrieved my mail from my office yesterday afternoon and am now in receipt of the second Complaint filed by Mr. [XXXXX], to which you are also assigned. I will address same with alacrity. I am am only now catching up on all the calls and emails from Tuesday through today and I should have put an "out-of-the-office" email message in place, at minimum.[53]

and provided the place of actual abode within bill: address 17671 Addison Road, #1603 Dallas, Texas 75287, apparent on the bill. Therefore, the Office of the Chief Disciplinary Counsel, if not otherwise aware, was at least on notice as of January 31, 2020 that the Davenport Rd. address was not the home address of Respondent nor the Respondent's normal place of abode.

> On February 3, 2020 by Respondent in the *pro-se* single-spaced seven-page supplemental Response submission made on February 3, 2020 to Ms. Wolfe and enclosed an additional nineteen pages of supporting Exhibits.

15. The Second Grievance and its responses and communications were made with the Office of the Chief Disciplinary Counsel concurrently with the below responses and communications submitted for the Third and Fourth Grievances -- all while Respondent was desperately attempting to maintain an already-overwhelming solo-practitioner active caseload.

16. On April 1, 2020, Respondent received confirmation that the Second Grievance had

[53] *See HARRIS.008-010*

been sent to the Summary Disposition Panel;[54] as Respondent did not receive any additional information related to that Grievance, it was the second dismissal and first Complaint dismissal Respondent obtained through the Office of the Chief Disciplinary Counsel.

17. ***Dismissed by Investigatory Hearing Panel 2020:***[55] The Third Grievance No. 202000486 ("Third Grievance") was filed by Third Grievance former client in January 2020, sent by the Office of the Chief Disciplinary Counsel to Respondent on or about January 30, 2020/received by Respondent thereafter. Again, many communications, including detailed Response and 1st Supplemental Response and several Exhibits binders were exchanged with Elena Wolfe -- which were ongoing concurrently with the multiple communications in the Second and Fourth Grievances.

18. The Third Grievance was set for Investigatory Hearing on the same date as the Fourth Grievance, for the instant action.[56]

> Notably,[57] as the Third Grievance was the first of the hearings that began on November 12, 2020 at 9:30 a.m., and that hearing concluded at approximately 11:30 a.m., which is the time the Fourth Grievance hearing began. However, the emails from the Office of the Chief Disciplinary Counsel's assistant sent to Respondent, purporting to provide the Exhibits for the Third Grievance hearing as required to be transmitted to the other party prior to the hearing, were not sent until the Third Grievance matter was already concluded and the Fourth Grievance hearing had already begun. Of the two emails sent for the Third Grievance Exhibits, at 11:30 a.m. and 11:31 a.m., the first was Recalled by the sender -- Respondent can only assume that it attached Exhibits A-B, where the Exhibits of the 11:31 a.m. email were not recalled and titled C-E; albeit only reviewed by Respondent after both hearings were concluded.
>
> During the November 12, 2020 Investigatory Hearing, the Panel Members prevented the Office of the Chief Disciplinary Counsel from using one of the two Exhibit binders due to the failure to provide same to Respondent prior to the Hearing; which is assumed to be exhibits A-B[58]. When Respondent was asked questions regarding its contents, very quickly the fact it was not made available to Respondent, so as it was not in Respondent's possession nor had a chance to review it, the Panel struck the binder's inclusion in its entirety from the record of the hearing.[59]
>
> Moreover, the Panel struck the line of questioning from the Office of the Chief

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[54] *See* ***HARRIS.008-0010.***

[55] *See* ***HARRIS.0011.***

[56] ***Although Respondent has requested the record of the Respondent's disciplinary history and transcript of hearings, none has been received by Respondent as of this date; therefore, while the contents of the hearings on November 12, 2020 related herein are verified by Affidavit, the transcript itself is not available for Respondent to utilize as Exhibit to this Motion)***

[57] ***See Respondent's File Stamped Motion to Stay Execution Request for Record.***

[58] *See* ***HARRIS.0045-0046.***

[59] *See* ***HARRIS.0045-0046, Email Recalled by Office of Chief Disciplinary Counsel on November 12, 2020, assumed to include the Exhibit binder.***

Disciplinary Counsel aimed at Respondent's TLAP history, which was in no way narrowly tailored in conformity for TLAP Confidentiality.

The hearing concluded when Panel member -- Partner of a firm previously serving as opposing counsel to Respondent in a 2017 case – asked the Office of the Chief Disciplinary Counsel directly "what are we even doing here?"[60]

19. On December 8, 2020, Respondent received the Third Grievance **"Closure Letter to R[espondent]"**[61] from Office of the Chief Disciplinary Counsel which reflected the Investigatory Panel found that there was not sufficient evidence for the Third Grievance action to proceed. This was the third dismissal received by Respondent from the Office of Chief Disciplinary Counsel for the ongoing, simultaneous three Grievance actions to which Respondent made attempt to defend, starting in November 2019, continuing through the Panel Hearing of November 12, 2020, and to date: non-service of the current, instant Fourth Grievance made the basis of this suspension Judgment by default.

B. ***Fourth* Grievance, Made the Basis of this Action**

i. ***Events WITH Notice to Respondent***:

20. The Fourth Grievance No. 202000647 was filed by former client Lyndon Scott North ("North" or "Complainant") on January 14, 2020 ("Fourth Grievance" or "North Grievance").[62] North was represented by counsel when filing the Grievance, Mr. Livingston,[63] but upon Respondent's notice to Livingston in response to demand for malpractice insurer information, upon communication with status: non-insured, North was shortly thereafter without counsel. North's representation status was only made known to Respondent by Investigator Elena Wolfe upon submission of the North Grievance Response materials/packets to her attention, and which initially included the addition of Livingston, copied thereto as counsel of record for North, including the April 6, 2020, single-space, seven pages Response submitted with two Exhibit binders in support;

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[60] *See* ***HARRIS.0011***

[61] *See* ***HARRIS.0011.***

[62] ***See HARRIS.0å222-0258å***

[63] ***See HARRIS.0062-0063.***

one with one-hundred and seventy-nine pages of exhibits covering the claims handling portion of the case and another seventy-nine pages[64] which were provided in support of the Grievance Response/defense[65]. All, provided simultaneously to the communications, responses, and exhibits Respondent attempted to maintain as requested in compliance with the Investigator's additional data inquiries for the other later-dismissed Grievances.

21. As the Second Grievance dismissal was secured on April 1, 2020,[66]North's Response was only made feasible after Respondent tendered the Second Responses and Exhibits for the Third Grievance. But, communication with Ms. Wolfe was attempted by Respondent when all three were pending, even when Respondent struggled to complete same.

22. Where The Second and Third Grievance matters, each had at least two full Responses and each of these with countless supporting exhibits transmitted to the Investigator for both an initial Response/exhibits and then followed with a First supplemental and additional exhibits' – the North matter was missing the second response requested by Mr. Wolfe, and shall be configured pursuant to the second request as contained within Ms. Wolfe's last inquiry on the matter, and Respondent is now aware that multiple exhibit documents relevant to the defense of the undersigned and helpful to a fact-finder for this case and which were not included in the original response; but shall be remedied upon the opportunity to against present this matter before a Panel. Moreover, the IVH hearing transcript or recording has been requested, and shall be added to these materials upon receipt.

23. These ongoing communications with the Investigator with Office of Chief Disciplinary Counsel became untenable while Respondent was desperately attempting to maintain the extreme burdens of work/time/attention necessary to practice law, when attempting to maintain a solo-practice. Although Respondent tried to secure co-counsel or substitute counsel, referral

[64] ***See HARRIS.008-0010.***
[65] ***See HARRIS.0222-0258.***
[66] ***See HARRIS.0008-0010.***

counsel or otherwise, any such efforts were made futile upon the Grievance filings.

24. If not after notice of the Second Grievance -- the Third and Fourth were the death rattle for Respondent in the attempts of to obtain assistance from other attorneys with the caseload; including Mr. Julius, Mr. Curran, Stephen LeBroque, etc. No assistance ever materialized, even after receipt of the dismissal(s) -- just as the recent termination from the position of employment has resulted in Respondent's impugned hope for re-hire -- regardless of a successful outcome herein. These options won't ever be an available to Respondent again, no matter if an action is dismissed, **and no matter if the stated purpose of these proceedings** provided in relevant part, reflecting that one of the main:

> "**purposes of the State Bar grievance system" include the mandate of "[clearing] the name of an attorney who has not committed professional misconduct."**[67]

25. On November 6, 2020, Respondent receive notice of the Zoom setting IVH for both Grievances, Third and Fourth, to be held before the panel 6-3 and begin at 9:30 a.m. on November 12, 2020. Thereafter, on November 12, 2020, Respondent presented for these hearings, and did so from the apartment address held at that time, 892 Union Station Parkway, #8106, Lewisville, Texas 75067.

26. The full below summary is provided for visual aid in assisting any trier of fact to understand the actual involvement Respondent put forth in this action -- how many responses and communications and actions that Respondent was involved in for these Grievances in this process -- which included the two dismissed actions. All three Grievance communications, and the outside influence non-Grievance client (attempting to cause Respondent professional injury by abusing the Grievance system and communicating directly with the Investigator for the State Bar, but never filing a Grievance) and only after seeking out her contact information from the Third Grievance client – and which communications apparently made the way into the Exhibits for the Third Client

[67] *See Section 6.01.01(B); pg. 86; State Bar of Texas Board Policy Manual (As amended January 2023).*

IVH as relevant, but as they were not provided to Respondent prior to the hearing, and partially struck/recalled their review was undertaken only after the IVH concluded. The content and communications which Respondent received are summarized below, and all made after the 2015 First Grievance was dismissed as Inquiry:

a. **October 30, 2019:**
   i. *Second Grievance:* date of original filing,
b. **November 15, 2019:**
   i. *Second Grievance*: transmission date to Respondent of same
c. **November 25, 2019:**
   i. *Second Grievance:* Receipt by Respondent from OCDC
d. **December 27, 2020:**
   i. *Second Grievance* Attorney Ben Julius' transmission of limited notice of appearance on behalf of Respondent, to the attached Initial Response to Second Grievance which included single-spaced five pages of Response itself and Exhibits A-N attached in support.
e. **January, 2020:**
   i. *Third Grievance:* Third Grievance client filed Grievance.
f. **January, 2020:**
   i. *Third Grievance:* Office CDC sent copy to Respondent.
g. **January 14, 2020:**
   i. ***Fourth Grievance*** date North transmitted Grievance to Office CDC, made from fax machine of then-engaged attorney Livingston represented fax transmission from office of attorney Livingston to Office of the Chief Disciplinary Counsel of North Grievance/date of instant Fourth Grievance original filing
h. **January 21, 2020**
   i. *Second Grievance:* Elena Wolfe transmitted Request for additional information to Respondent, which included
i. **January 29, 2020**
   i. *Second Grievance:* Elena Wolfe requesting 2nd Response from Respondent
j. **January 30, 2020:** CDC transmitted
k. **January 31, 2020**
   i. ***Second Grievance:*** Respondent sending notice to Elena Wolfe that her home address was not 17303 Davenport Road, Dallas Texas 75248 and instead, it was the location of her parents' house in North Dallas, which was not regular place of abode; Hudson Energy bill with address of home residence attached.
   ii. *Second Grievance:* Elena Wolfe allowing Respondent time for 2nd Response to February 3, 2020
   iii. *Third Grievance:* Elena Wolfe providing confirmation of Grievance transmission date and informing Respondent of duty to respond 30 days from postmarked January 30, 2020 on matters of new Third Grievance
l. **February 3, 2020**
   i. *Second Grievance:* Respondent submitted Supplemental single-spaced seven-page document with additional Exhibit binder of nineteen pages of supporting documents
m. **February 10, 2020**
   i. Elena Wolfe sending request for another attorney's additional information in error in another matter to Respondent
   ii. Respondent provided notice to Elena Wolfe of receipt in error and confirmation of deletion
   iii. Elena Wolfe sending apology email upon notice of error
   iv. *Second Grievance:* Respondent provided all information from Second Grievance client in response to Elena Wolfe' third additional requests for information no longer in possession

of Respondent and instead requested of the client, who provided same in support of dismissal of his Grievance

n. March 6, 2020

i. *Third Grievance:* Elena Wolfe emails and asked for the Response to the Grievance

ii. *Fourth Grievance:* Elena Wolfe emails and asked for the Response to the Grievance

o. March 9, 2020:

i. *Third Grievance:* Respondent advised Elena Wolfe she would not be able to make a hearing that morning based on the duties for other clients and so the responses would have to wait.

p. March 10, 2020

i. Elena Wolfe provided she was unable to grant an extension and Respondent needed to submit the responses asap

q. March 11, 2020

i. *Third Grievance*: Respondent submitted Response and Exhibit binder to Elena Wolfe for Third Grievance, which included the single spaced, five pages of Response itself and eighty-six pages of supporting Exhibits

r. March 30, 2020

i. *Third Grievance***:** Respondent sent correspondence to Third Grievance client and copied Elena Wolfe

s. April 1, 2020

i. *Second Grievance:* Respondent received the Summary Disposition Panel assignment for the Second Grievance,[68] which was dismissed, apparently, even though Respondent never received any additional communications regarding the Second Grievance.

ii. *Fourth Grievance:* Elena Wolfe asked Respondent about the response.

t. April 6, 2020

i. ***Fourth Grievance:*** Submission was made via e-mail to Elena Wolfe and copied Mr. Livingston on behalf of North including: a seven (7) page single-space Response[69] with two Exhibit Binders: one-hundred and seventy-nine (179) pages in a Claims Handling Exhibit binder,[70] and seventy-nine (79) pages in a Response Exhibit Binder.[71]

ii. ***Fourth Grievance:*** Elena Wolfe providing Notice to Respondent that Mr. Livingston may not representing North any longer.[72]

iii. ***Fourth Grievance:*** Respondent was glad to know Livingston was no longer on the file

iv. ***Fourth Grievance:*** Elena Wolfe notifying Respondent that she asked Livingston and he in fact, no longer represented North so no need to copy him to **communications**

u. **April 7, 2020: *Fourth Grievance*: E**lena Wolfe followed-up from the April 6 submission and had an entirely new set of responses due for the North matter

v. April 8, 2020 *Third Grievance:* Elena Wolfe followed-up with an entirely new set of inquires and Responses due to Elena Wolfe for the third Grievance

w. April 9, 2020

i. *Third Grievance***:** Respondent sent correspondence to Third Grievance client and copied Elena Wolfe based on the requirements/requests of her last email

x. **April 10, 2020**: Another client, contacted Elena Wolfe **outside the Grievance process,** after receiving her direct email from Third Grievance client and attempted to force Respondent to complete actions on his case, when he had failed to make payment, by threatening a Grievance, and involving himself with the Investigator – all which was not only allowed in this process, but encouraged – and while it does not appear that client ever actually filed the contents of Elena Wolfe's emails with that client, shortly thereafter terminated/disengaged, were apparently the entirety of the exhibits for the November 12, 2020 hearing for the Third Grievance client, and not the Respondent's actual conduct with the Third Grievance client, but instead reflecting a destructive pattern of poor choices in clients on behalf of Respondent, and eye-opening policy

[68] *See* ***HARRIS.008-0010.***

[69] ***See HARRIS. 0021-0027, HARRIS.0062; HARRIS.0302-0308.***

[70] ***See HARRIS. 0021-0027, HARRIS.0062; HARRIS.0302-0308.***

[71] ***See HARRIS. 0021-0027, HARRIS.0062; HARRIS.0302-0308.***

[72] ***See HARRIS. 0021-0027, HARRIS.0062; HARRIS.0302-0308.***

issues with the disciplinary system. While the hearing binders were not provided to Respondent prior to the hearing and one was recalled, the one still in Respondent's possession was outrageous. Techniques of Grievance manipulation and communication directly with the State Bar Investigator, wildly inappropriate, yet **allowed and encouraged by this system**. The grievance itself was dismissed, with no just cause nor evidence to continue. These were the same persons for which Respondent was suffering under Grievance response requirements, and all the materials presented were not enough to dismiss prior to the IVH? No, this process is biased and skewed. The continued actions against the Respondent herein without legal justification is another example, where this too should have already been dismissed. **The abuses of the right to utilize the grievance process is clearly not in any way set forth for attorney protection.**

y. April 17, 2020

i. *Third Grievance:* Elena Wolfe asked Respondent where the responses were

ii. *Fourth Grievance:* Elena Wolfe asked Respondent t where the new responses were, and if she had them

z. April 20, 2020

i. *Third Grievance:* Respondent sent Elena Wolfe update email advising the 1st Supplemental Responses to Third matter were next on to-do list

ii. *Third Grievance:* Wolfe responded and advised it did not appear that Respondent didn't care

aa. April 21, 2020

i. *Third Grievance:* Respondent transmitted the 1st Supplemental Response to the requested additional information made April 8, 2020 to Elena Wolfe, which included the 1st Supp. Response, a single-spaced eight page document, and two Exhibit Binders, the first marked 1-4 which was comprised of an additional fifty-three pages of exhibits, and the second, marked 5-12, an additional forty-five pages of supporting exhibits

bb. April 22, 2020: Elena Wolfe responded with an whole new request sheet for information related to the Grievance and advised Respondent needed to submit same as soon s possible

cc. May 1, 2020

i. ***Fourth Grievance:*** On, Respondent received notice that the Grievance was set for Investigatory Hearing.

dd. July 21, 2020

i. *Third Grievance* Respondent received notice that the Investigatory Hearing was set for November 12, 2020.

ii. ***Fourth Grievance:*** Respondent received notice that the Investigatory Hearing was set for November 12, 2020.

ee. November 6, 2020

i. *Third Grievance:* Respondent received the Zoom link and protocols from the Office of the Chief Disciplinary Counsel. Notably, the protocols state that prior to hearing, all Exhibits not previously transmitted were required to be received by the opposing side.

ii. ***Fourth Grievance:*** **The Zoom link email was sent once, and included both matters in one, merely stating that the hearings were to begin at 9:30a.m.**

ff. **November 12, 2020**

i. *Third Grievance:* On November 12, 2020, the Zoom Investigatory Hearing went forward, for both the North/Fourth Grievance made the basis of this action and the Third Grievance. The Third Grievance matter was the first heard, and Respondent did not receive any emails continuing the Exhibits until the North Grievance matter began: where Sophia Henderson sent to the email at 11:30 a.m. which was Recalled, and Respondent can only assume these were Exhibits A-B, and the second Exhibit Binder was sent at 11:31 a.m. for Exhibits C-E, not recalled, but never provided to Respondent prior to the hearing at all.

ii. ***Fourth Grievance:*** The Office of the Chief Disciplinary Counsel emailed Respondent with its Exhibits to be used at the hearing, some of which had never been seen by Respondent prior, and most not received by Respondent at all as they were emailed after the proceedings were underway so Respondent could not view them while under oath and responding to Guerra

gg. December 8, 2020: Third Grievance Closure Letter received, where IVH had not found sufficient evidence to allow the Grievance to continue.

IV.
RECORD OF JANUARY 27, 2023 HEARINGS

27.. ***Events WITHOUT Notice to Respondent***: The instant action resulted in the Judgment entered in default based upon the oral rulings of this Evidentiary Panel made during the hearing held on January 27, 2023, to which Respondent was not present (although the record states that Respondent appeared[73]). Respondent was not served with the Evidentiary Petition in this matter, nor made aware of the necessity of Response, the time for Response, the Motion for Default, Hearing for Default nor imposition of Default until receipt on February 7, 2023 of the email response from the Panel Chair to the Office of the Chief Disciplinary Counsel returning the executed version of the proposed judgment.

27. In order to review the service of process in this matter, Respondent obtained the record of the January 27, 2023 hearings upon tendering payment to Leigh & Associates Court Reporting and Video on February 23, 2023.[74] Upon receipt,[75] the transcripts[76] and exhibits[77] reflect as follows:

a. The hearings include the Petitioner/Office of Chief Disciplinary Counsel's Motion for Default Judgment, Motion to Bifurcate ruling and Sanctions Hearing conducted from for one hour and seven minutes, and of that time, off the record in deliberations,[78] thirty-five minutes elapsed, and from which, the Panel departed upward in sanction from the recommendations of the Office of Chief Disciplinary Counsel without notating any reasons for same in the record. 35 min 47 seconds minutes 1:07-2:14—deliberations on sanction 1:35-2:11, and nine minutes for bifurcation.

b. The Panel Chair sets forth the members of the panel and the hearing report is now received, but does not indicate the individual votes, or if the decision was unanimous of the present members, of which three were attorneys and two were public members, non-attorneys.

c. The seventy-four pages of Exhibits to the Evidentiary Panel hearing reflects that the Evidentiary Petition, Exhibit 1 was filed by the Office of the Chief Disciplinary Counsel and default entered but the Affidavits are fruitless. Herein lies the Default Judgment for Partially Probated Suspension which should be set-aside.

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[73] ***See Exhibit G HARRIS. 0070—0095, and timestamped HARRIS 0175-0195, exhibits HARRIS.0096-0174.***
[74] ***Exhibit HARRIS. 0066—0069.***
[75] ***Id.***
[76] ***See Exhibit G HARRIS. 0070—0095, and timestamped HARRIS 0175-0195, exhibits HARRIS.0096-0174***
[77] ***See exhibits HARRIS.0096-0174***
[78] ***See Timestamped HARRIS 0175-0195,***

d. The Motion[79] to substitute service and the Order[80] for same was based on the three pages of Affidavits, and then is alleged to have been served on March 16, 2022, after sub process granted March 3, 2022.Apparently, the Answer was then due April 11, 2022, although Office admits the only return on signature is not the signature of Response Page 12 lines 14-22 "someone signed not her."

e. As of September 19, 2022 Address Member Role 2701 E. Grauwleyer Rd Irving, states that on Page 10 lines 3-13, the " home address believed to be 17303 davenport," but Respondent's communications, and the cannot survive an review under due diligence cannot support same.

f. Page 11 lines 15-24 return receipt **not received -- conclusory statements, Respondent had everything and Cleary did not want to be Here. Where the Office never called me, faxed me, or communicated anything when I processed payments and received a clear bill of health with the certificate in December 2022.** Page 11-12 25-7 "she had everything before today."

28. The post-mortem receipt of these document is recreated by the record as included hereto, and it starts with the incompetent email filter issue that is a unforgivable error by Respondent, and who will comply with all requirements in so much as this action was not necessary, in one hand based on the part of Respondent, but on the other – the service issue is not one that can be swabbed over with statements like an empty signature block for return receipt indicates that Respondent was served. The continued position in the face of the settled precedent and the law, generally, is unacceptable requiring appeal.

29. Regardless, the mistake herein satisfies Craddock, but and the facts of this case show that the Office knew or should have known that the addresses they purported to state are the abode of Respondent, were actually known with knowledge aforethought – to not be same. The Respondent specifically stated the North Dallas address was not her home, and then gave the address for Respondent's home.[81]

30. Further, the IVH contained a good section about the virtual office choice in payment and that Respondent was never physically located there, and while the hearing transcript has yet to

[79] See HARRIS.0142-0149. page 6 lines 23-25 of the Transcript.
[80] See HARRIS.0137.
[81] ***See Exhibit B HARRIS. 0012—0014.***

be received the Google review (only pulled from a site mirroring the older materials as the undersigned took down the google page itself) the response provided to the 2020 Third Client building issue reflects that the Petitioner's counsel was on notice that the office addresses have never been physical locations.[82]. Further, see the Third Grievance client Reponses included answer to forces building structure/virtual office by appointment only.[83] As the counsel for Petitioner knew information opposite than the conclusory allegation provided, the. Affidavits fail.

31. Therefore, the affidavit contents are defective and so is service, where here the Affidavit still fails, service still fails, and the continued positions of the Office, as seen again in the Response to the Motion to Stay, are not applying the facts, if they had them , to the law. Merely restating the law and then making a conclusion that the law was satisfied without any provision of facts to support the contention is literally the definition of conclusory. Restating the law is not utilizing the information in accordance with the principles of practice, or first year law school courses. The arguments supporting service are without merit unsupported arguments for service of process that never occurred.

32. The Office did not provide any factual basis to prevent the interim practice. When the standard is harm – and none is alleged, then why bring the Response? No basis was presented which can support same, **as no basis is within the actions for support of the default information** can withhold review by any intelligible body, such as the BODA, based on the precedent of *Sims*[84] *and Shelton,*[85] let alone the overwhelming caselaw on default cases/standards of law for the entire state Texas.

33. As the Office communicated with Respondent and provided the Certificate, with no

[82] ***See Exhibit A HARRIS. 0001—0002.***

[83] ***See Exhibit A HARRIS. 006 paragraphs 2-3.***

[84]***Sims v. Comm'n for Lawyer Discipline, Texas Board of Disciplinary Appeals Case No. 34229 (Aug. 16, 2006). See Exhibit "K," HARRIS.0196-0208.***

[85] ***Shelton v. Comm'n for Lawyer Discipline, Texas Board of Disciplinary Appeals Case No. 36059 (June 9, 2006). See Exhibit "L," HARRIS.0209-0221.***

notice of the pending action poised to take that very license, from Respondent where no cell phone call or fax was sent in due diligence here, this default is without justification, and even more so in the continued position regarding service without any signature nor proper argument supporting service. Just like ***Shelton,***

a. the Affidavits in this matter to date, which include the 2021 affidavit purporting to support substitute Service, followed by the two additional allegations of effectuating substitute service, all fail upon the fatal defects i form/in content:

ii. the principal was on actual notice regarding the fact that Respondents was not physically located at the locations to which the agent provides oath is true and correct and within personal knowledge, and in fact, in 2020 Respondent's address was provided, the Petitioner was on notice Respondent was never physically located at the offices paid for as virtual subscription, as made part of the Third Grievance mater.

b. The conclusory statement of abode is non-substantiated, without facts provided that give rise under any not logically offered assessment for of Respondent's regular "place of abode".

iii. The conclusory statement that Respondent could be found, is merely an assumption based on no fact Respondent can find in the text. The agent's rendition of a "hostile" father who advised the server Respondent "wasn't home" is actually in support of the fact Respondent **did not live** at the address, **or otherwise would not be found** at those locations, rather than the opposite, which was utilized to obtain defective process. No information is provided that would lead a logical fact-finder to assume the location was the regular physical location at which Respondent could be found.

1. In fact, if any party sought to effectuate due diligence, the public records for attorney representation before Texas Courts could easily run a search with modern platforms of technology, such as Texas Efile's Search feature, which within one site effectuates due diligence for a search of all Texas Courts for the name or bar number of Respondent, and would have also provided dates of hearing to find Respondent in person -- since picking up the phone and calling Respondent by cell phone, which is still current and always in Petitioner's possession, was an act well within any reasonable boundary for due diligence to perform, but was apparently not an option. Even, where both the cell and fax number for Respondent were posted online, and in the member rolls of Petitioner default exhibits. Any one of these actions, if performed, would have terminated the entirety of the service problems created by mistakes of Respondent and cured the default. Respondent never intended to avoid service.

2. The fact that Respondent was actively litigating the defense of an El Paso case could have been easily ascertained in due diligence for the entire summer of 2021. Respondent was often located in El Paso for repeated appearances/incarcerated client management activities in

that time, and where it appears that the Petitioner employed an out-of-town process server for Dallas failures of process, another out-of-town server in El Paso would have been a far sight more effective, even when that criminal engagement was wildly successful upon the two felony case dismissals, which resolved the matter by end of 2021.

iv. However, most importantly, the actual notice which was provided to Petitioner regarding the addresses, was against the sworn contentions of the Affidavits, and where same was indicated by sworn testimony as true and correct, within the agent's personal knowledge, and for an Order of substitute service is opposite of the intent of the rules. If the principal explicitly knew or should have known the opposite – the locations **were not Respondent's** regular places of abode -- such knowledge was therefore also present and incumbent upon activities and attempts of the agent. As imputed, the service in this case cannot be upheld for principles of equity alone when used as measure to remove Respondent's rights in a no-notice suspension. In fact— Respondent's disclosure to the Investigator, an the contents of each response, where all related to the facts as Respondent is repeatedly made to respond, all refute the statements made in this proceeding regarding same, showing instead that contrary to the proceedings thus far, due process has not occurred, and all of the record, including the Judgment for a default must be set aside.

c. the most pivotal issue under Shelton is the strict review of the contents of the Affidavit(s) support substitute service, and where the original Affidavit which all acts for substitute service are based after the Order granting substitute service, and is meant to justify the outcome of a Default Suspension. The Affidavit content is conclusory with an assumption of domicile based on one sentence of fact, regarding a conversation with the adult Respondent's father, a hostile father at that. But for the rendition that the "hostile" father advised the server Respondent "wasn't home" where no record is provided showing any information that could lead a reasonable person to believe that this address was more likely than not the regular abode where Respondent could be found, **even if actual notice in this case did not fatally refute** the information otherwise, the affidavit's conclusory assertion of Respondent's likely normal place of abode suffice to provide notice is without merit and cannot be sustained, reflecting service here fails for lack of reasonable facts to support the basis of the Order for substitute service no matter actual notice of the falsity of the testimony.

d. Further, as the agent was allowed by the order to effectuate service by leaving the Evidentiary Petition and other documents with anyone over 16 at the location, and where the agent reported contact with the hostile father, who was clearly over 16, no description of the decision for service method is provided, nor signature of the hostile father requested for proof of the encounter.

e. As the contents of the Affidavit are conclusory, and actual notice of facts opposite the sworn testimony was known by the agent/principal at every stage/event offered in testimony, actual notice precludes any further support of the arguments regarding service of this action to date. The failure to serve, when the address was disclosed to be the Respondent's irregular and abnormal place of abode as early as January 2020, renders each affidavits and the contents, as well as any argument made which used

the affidavits defective, against the factual weight of evidence, which included actual notice at best and constructive notice at worst, and evidence which was known or should have been known and instead was used to support an opposite contention s justification for suspension as presented to the Panel in the Hearing transcript of January 27, 2023, must be vacated.

V.
RECITALS

34. Respondent asserts the following legal grounds in support of this **motion** for **new trial**:
[

A. **Motion timely filed in accordance with the Rules.** Respondent presents this motion under Rule 2.21 of the Texas Rules of Disciplinary Rules of Procedure conduct, which requires this Motion comport with Rule 320 and 329b(a) of the Tex. R. Civ. Pro., which directs a new trial to be "granted and judgment set aside" upon a party's signed, written motion, setting forth good cause as here verified within Affidavit,[86] and timely filed within the plenary power of the Panel (*on or before thirty-days from the February 7 2023 date Judgment was entered and prior to plenary power expiration, March 10, 2023 if not counting the day of entry).*[87]

B. **Lack of Notice.** Respondent was not served with Evidentiary Petition made as basis of the Judgment.[88] Therefore, the undersigned was not afforded notice of this action or her duty to file an Answer. As set forth hereinbelow, Respondent will show good cause exists to set aside/vacate the judgment and to grant a new trial, and the failure of Respondent to timely file an Answer was based on lack of notice/defective service similar to *Shelton v. CFLD*, BODA No. 36,059 (March 30, 2006) as set forth below.

35. As in *Shelton* where the substituted service of the panel was not based on strict compliance with Tex. R. Civ. Pr. 106due failure of service – which without notice of suit and opportunity to be heard the Judgment was entered without affording Respondent her due process rights which prevented the Evidentiary Panel from obtaining personal jurisdiction over Respondent, rendering the Default Judgment void. In lieu of public appeal, Respondent seeks to submit to the jurisdiction of the Evidentiary Panel now for a trial on the merits. **If efforts to serve Respondent personally or by certified mail are unsuccessful,** here, no service by/transmitted by facsimile.

C. **Failure to Answer based on mistake/accident and not conscious indifference.**

36. Respondent's lack of response to the petition was not done knowingly, so no

[86] ***See Signature page.***
[87] ***See TRDP 2.21 and Tex. R. Civ. P. 320, 329b(a).***
[88] ***As required by Rules 2.17(A) and 2.09(A) of the TRDP***

indifference could be involved. In fact, the lack of knowledge to the matters which carry the most importance is sickening. As such, the failure in response was not intentional nor conscious, nor indifference. Rather, it was due to mistake or accident on the part of Respondent and problems with her chosen location of mail receipt addressed at length below.[89]

D. <u>Respondent's actual intent can be discerned from:</u>

***<u>1) conduct and participation in disciplinary system up until December 2020</u>*:**

37. Respondent submitted emails and responses and pages of documents and exhibits to the investigator for the CDC in the first, second (both dismissed no misconduct) and this, the third Grievances.

***<u>2) immediate efforts to remedy upon receipt of actual notice</u>*:**

38. Respondent did not receive notice of this action until February 7, 2023, upon receipt of an email response sent from the presiding Panel Chair which attached the executed Judgment. As the email address was not made from an @TexasBar.com address -- the filter which was improperly configured on Respondent's electronic mail account by mistake – this was the first time that any notice of this proceeding was received.

<u>3) willingness to comply.</u>

39. Respondent filed/served the Motion to Stay Execution of the Default Judgment and Request for Record on February 20, 2023, and files the instant motion as soon as practicable thereafter. These filings are made *pro-se*, in an effort to immediately address this action when without the ability to hire counsel.[90] While Respondent re-urges the Judgment's invalidity in order to seek set-aside, the following acts of compliance with the terms of the judgment are still tendered subject to that position in the pendency of the Panel rulings/appeal and concedes to the following in an effort/willingness to

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[89] ***Office of Chief Disciplinary Counsel was in possession of Respondent's cell phone number and fax number, but did not call or fax. See Exhibit "*." The CDC was on actual notice that Respondent's office address location at 405 State Highway 121 Lewisville, TX 75067 was not a physical location where Respondent physically located, nor personally appeared/conducted activity. Grievance dismissed December 8, 2020 had same IVH date as Complainant North herein, and included a large portion of information about that the other Complainant being physically removed from the office address by building security when he showed up to the location demanding to see me, screaming/scene. It was a virtual office and by appointment only.***

[90] ***Respondent spent the time from February 7, 2023 to each date of filing, conducting research in earnest, to attempt to become competent in this process and familiar with the procedures before this Panel and the BODA in order to effectuate a meritorious defense and procedurally proper remedy.***

respect the disciplinary process.

E. Respondent has a meritorious defense to the underlying Grievance

40. The "meritorious defense" element does not actually require a defendant to prove a meritorious defense. Rather, a meritorious defense must simply be "set up."[91] To set up a meritorious defense, the motion for new trial must allege facts that, in law, would constitute a defense to the cause of action asserted by the plaintiff. In addition, the motion must be supported by affidavits or other evidence proving prima facie that the Respondent has such a meritorious defense.[92] Attached to this motion is the verification which attests to the comments, and can provide any and all corroborating, this matter should not have defaulted and the Movant pleads for redress, as the default **Did Not Result From Intentional Conduct or Conscious Indifference.**

41. **Petitioner will not** be prejudiced/delayed/injured by Granting Respondent a New Trial. The granting of a new trial will not prejudice Petitioner is ready, able, and willing to go to trial immediately, and no delay, harm, or prejudice will occur to the other parties as a result of movant's motion.

F. Sanctions here Not Supported by Record/Evidentiary Support, nor the standard for setting The Sanction here is not in accordance with the actual facts

42. As it appears that sanction for a year suspension partially propagated is actually a sanction for what the CDC and the Panel assumed was avoidance of the service. It wasn't.

43. **W**hen a defendant exercises due diligence and through no fault of his or her own is unable to obtain a record of the evidence, a **new trial** may be required to preserve his or her right to appellate review[93]. Therefore, the entire damage award is void.While Respondent does not **yet have**

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[91] ***Ivy v. Carrell, 407 S.W.2d 212 (Tex. 1966).***

[92] ***v***

[93] *Alvarado v. Reif*, 783 S.W.2d 303 (Tex. App. Eastland 1989) (plaintiff obtained "no answer" **default** judgment for damages sustained in car accident, relied on affidavit to support claim of damages, but no record of **default** proceedings was made). According to the court reporter and the court's file, there is no transcript of any proceedings related to the entry of the **default** judgment in this matter. Through no fault of defendant's own, defendant is unable to secure a transcript. Defendant is therefore entitled to a **new trial**.[93] When damages are unliquidated, competent evidence of the "causal nexus" between the event and plaintiffs injury is required.[93] The affidavit of *[name of affiant 1]* establishes only that *[description of reasons in support of claim]*

the IVH record, it has been requested, and upon same shall supplement this motion with the testimony of those hearings for this Panel's review. Respondent instead reserves ultimate **w**ith any of the documents Due process requires, at a minimum, notice and an opportunity to be heard at a meaningful time and in a meaningful manner.[94] Respondent shall show facts are set forth in detail below.

44. Respondent has pled for stay of execution on the suspension judgment by the Motion filing on February 20, 2023, which seeks a stay pending resolution by agreement/outcome of final appeal. Further, Respondent pleads for this Panel to set aside/modify and/or vacate the judgment and grant Respondent t**he** ability to **present** sent her case on the merits, relying on Rule 2.21 to petition this panel for same. **Respondent** seeks relief from the default entered in this action where from the face of the record – **service cannot stand upon the strict review and the matters as discussed herein for striking g Affidavits presented by the agent from process, and therefore this is a defective service case, which good cause and error and mistake have been provided to satisfy the First element of Craddock. As such, to satisfy procedural due process rights, Respondent seeks to have the default set-aside and heard on its merits.**

45. Should Respondent be given the opportunity to present on a new trial, **the full file materials supporting the positions of the undersigned shall be presented for Panel review, and at that time the requested** Investigatory Hearing Panel **held** on November 12, 2020**, is intended as part of the record for review.**

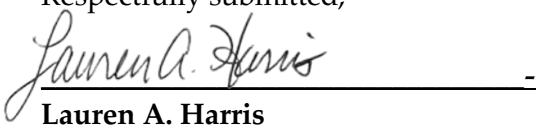
CONCLUSION AND PRAYER

WHEREFORE, movant Lauren A. Harris prays that after hearing the judgment rendered in this cause be set aside and that movant be granted a new trial. For all the reason sated above, this,

[94] *Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976); see Univ. of Tex. Med. Sch. at Houston v. Than, 901 S.W.2d 926, 930 (Tex.1995). An attorney in a disciplinary proceeding is entitled to procedural due process. Weiss v. Comm'n for Lawyer Discipline, 981 S.W.2d 8, 14 (Tex.App.-San Antonio 1998, pet. denied).*

the RESPONDENT'S VERIFIED MOTION TO SET ASIDE/VACATE DEFAULT JUDGMENT & FOR NEW TRIAL prays that the Panel review the content of this motion, find that the Respondent has met the Burden for defective service, find the Affidavit and/or imputed knowledge based on notice by Respondent and failure of due diligence and at the service of process failed herein and grant Respondent's motion in all things, as the . BODA precedent and due process standards are ffar from satisfied in this matter, where well settled law in Texas._providing. That the default judgment of suspension is set aside/vacated and a new trial is granted before this panel on the merits. and precludes the need for an appeal to BODA**.**

Respectfully submitted,



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Pro-se **Respondent**

TEX. CIV. PRAC. & REM. CODE § 132.001

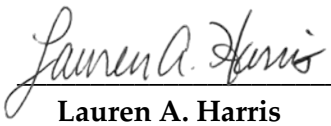
UNSWORN DECLARATION OF LAUREN A. HARRIS

STATE OF TEXAS § § § § **COUNTY OF DALLAS**

My name is Lauren A. Harris, DOB: 08/07/1986, address: 5995 Summerside Dr. #793414, Dallas, Texas 75379. I am at least 18 years of age and of sound mind. I am personally acquainted with the facts as set forth in the foregoing Respondent's Verified Motion to Set-Aside/Vacate Default Judgment and for New Trial. The statements and facts made by the undersigned in the foregoing Motion are true and correct; all assertions are made within my personal knowledge, and/or made in good-faith upon information and belief as to the veracity thereof. The documents attached hereto as Exhibits, *HARRIS.0001-0479* are the electronic original of the file, image, or document, or exact copies of the originals, all which I personally received, sent or obtained.

I swear under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of March, 2023 in the State of Texas, County of Dallas.



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Pro-Se Respondent

\

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Verified Respondent's Motion to Set Aside/Vacate and for New Trial has been sent to the Panel Chair of the District 14 Grievance Committee Evidentiary Panel 14-2 of the State Bar Of Texas, and Petitioner, the Commission for Lawyer Discipline, through its counsel, the Office of the Chief Disciplinary Counsel as well as the Board of Disciplinary Appeals for the Notice of prospective appeal on March 10. 2023, as follows:

VIA E-mail: laurie.guerra@texasbar.com
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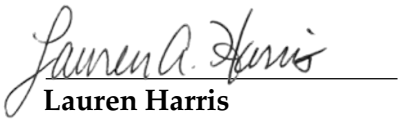
Fax: (512) 427-4130
Email: (filing@txboda.org)

Via E-mail: travis@dentontitle.com
COMMITTEE CHAIR
DISTRICT 14 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 14-2
STATE BAR OF TEXAS

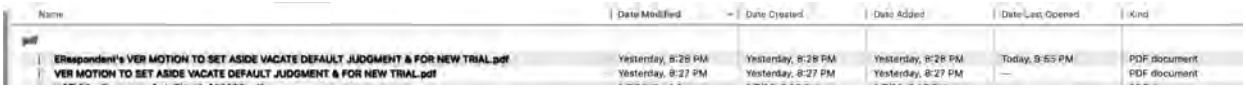


Lauren Harris

From: Lauren Harris
To: travis; Brittany Paynton; Laurie Guerra; filing
Subject: Fwd: CASE NO. 202000647; Respondent"s Verified Motion to Set-Aside/Vacate Default Judgment and for New Trial
Date: Saturday, March 11, 2023 10:19:00 PM
Attachments: 1678593662088001_1250560885.png
1.png
ERespondent"s VER MOTION TO SET ASIDE VACATE DEFAULT JUDGMENT & FOR NEW TRIAL.pdf
[Compare Report] VER MOTION TO SET ASIDE VACATE DEFAULT JUDGMENT & FOR NEW TRIAL.pdf
Importance: High

Panel Chair, Mr. Guerra and BODA,

I just realized that I sent the non-executed version of the Respondent's Verified Motion to Set-Aside/Vacate Default Judgment and for New Trial when submitting to your attention in the email below. Attached hereto is the signed version of the Motion, which is no way changed from the non-executed draft, but for the signature. I have also attached the Adobe PDF Compare Report which confirms the only changes existing between a comparison of the two documents, but for the title, is the addition of signatures. Further, as seen by the screen-shot below of my file manager view, the executed version was edited to include the signature and saved one minute after the non-executed version was saved, and I merely chose the wrong file when affixing the attachment. I opened it this evening at 9:55 p.m. and determined the clerical error. I apologize. Should you require an additional verification or declaration for the date-stamp due to the time of filing, I will submit same.



Name	Date Modified	Date Created	Date Added	Date Last Opened	Kind
pdf					
ERespondent's VER MOTION TO SET ASIDE VACATE DEFAULT JUDGMENT & FOR NEW TRIAL.pdf	Yesterday, 8:28 PM	Yesterday, 8:28 PM	Yesterday, 8:28 PM	Today, 9:55 PM	PDF document
VER MOTION TO SET ASIDE VACATE DEFAULT JUDGMENT & FOR NEW TRIAL.pdf	Yesterday, 8:27 PM	Yesterday, 8:27 PM	Yesterday, 8:27 PM	—	PDF document

Sincerely,

Lauren A. Harris

========== Forwarded message ==========
From: Lauren Harris <lauren@lahlegal.com>
To: "travis"<travis@dentontitle.com>, "brittany paynton"<brittany.paynton@texasbar.com>, "laurieguerra"<laurie.guerra@texasbar.com>
Cc: "filing"<filing@txboda.org>
Date: Fri, 10 Mar 2023 20:37:51 -0600
Subject: CASE NO. 202000647; Respondent's Verified Motion to Set-Aside/Vacate Default Judgment and for New Trial
========== Forwarded message ==========

Panel Chair, Ms. Guerra and TX BODA,

Please find attached the Respondent's Verified Motion to Set-Aside Default Judgment and for New Trial, along with an Exhibit binder containing 479 pages, *HARRIS.0001-0479*, directed to the Panel for review, and sent in prospective appeal as copy to the BODA. Thank you, please let me know if you have issues accessing the attachments, as the file size of the Exhibit Binder is large.

Sincerely,

Lauren A. Harris

HARRIS.0001-0219 2023.03.10 HARRIS.pdf

Exh. D

BEFORE THE BOARD OF DISCIPLINARY APPEALS
Appointed by the
STATE BAR OF TEXAS

FILED
5/8/23
THE BOARD *of* DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

LAUREN ASHLEY HARRIS,,	§	
Appellant,	§	
	§	
v.	§	**CASE NO.** 67843
	§	
COMMISSION FOR LAWYER DISCIPLINE	§	
	§	
Appellee.	§	

NOTICE OF APPEAL

COMES NOW, Lauren A. Harris bar no. 24080932, hereinafter Respondent/Appellant, and pursuant to Texas Rule of Disciplinary Procedure 2.24 and Board Rule 4.01, files this her Notice of Appeal seeking appeal from the Default Judgment of Partially Probated Suspension entered in default by Committee 14, Evidentiary Panel 14-2 of the State Bar of Texas in Cause No. 202000647 on February 7, 2023, and the denial of all post-judgment motions.

Respondent/Appellant would request a complete copy of the Evidentiary Panel Clerks record of this action, and pleadings and filings propounded or responded to by either Respondent or the Commission for Lawyers Discipline, including all records pursuant Internal Rules for the Board of Disciplinary Procedures, Rule 4.02(c)(1).

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).

Respectfully submitted,

/s/ Lauren A. Harris
Lauren A. Harris
(Former) TX Bar No. 24080932
5995 Summerside Dr. #793414
Dallas, Texas 75379
Tel.: 469-359-7093,
Cell: 469-386-7426
Fax: 469-533-3953
E-mail: *Lauren@LAHLegal.com*
***Pro-se* Respondent**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Notice of Appeal has been sent to Petitioner, the Commission for Lawyer Discipline, through its counsel, the Office of the Chief Disciplinary Counsel as well as the Board of Disciplinary Appeals and Court Reporter Amanda Leigh on May 8, 2023, as follows:

VIA E-mail: laurie.guerra@texasbar.com
Laurie Guerra
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
The Princeton
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254
Brittany.Paynton@TEXASBAR.COM

amandaleighcsr@gmail.com

VIA E-mail: filing@txboda.org
BODA
P.O. Box 12426,
Austin TX 78711
Fax: (512) 427-4130
Email: (filing@txboda.org)

/s/ *Lauren A. Harris*
Lauren Harris

From:	Laurie Guerra
To:	Cassidy Orozco
Subject:	FW: BODA # 67843 Harris
Date:	Wednesday, May 24, 2023 10:55:30 AM
Attachments:	image001.png Harris 67843 Notice of Appeal.pdf

From: TXBODA Filing <filing@txboda.org>
Sent: Tuesday, May 9, 2023 12:54 PM
To: lauren@lahlegal.com; Michael Graham <Michael.Graham@TEXASBAR.COM>
Cc: Amanda J. Leigh, CSR <amandaleighcsr@gmail.com>; Laurie Guerra <Laurie.Guerra@TEXASBAR.COM>; Lauren Baisdon <Lauren.Baisdon@TEXASBAR.COM>; Jenny Hodgkins <Jenny.Hodgkins@TEXASBAR.COM>; Matthew Greer <Matthew.Greer@TEXASBAR.COM>
Subject: BODA # 67843 Harris

File stamped copy is attached. Was a Motion for New Trial filed?

Thank you,

Jackie Truitt
Executive Assistant
Board of Disciplinary Appeals
Appointed by the Supreme Court of Texas
512-427-1578
PO Box 12426
Austin, TX 78711
www.txboda.org

From: Lauren Harris <lauren@lahlegal.com>
Sent: Monday, May 8, 2023 3:58 PM
To: TXBODA Filing <filing@txboda.org>
Cc: Amanda J. Leigh, CSR <amandaleighcsr@gmail.com>; Laurie Guerra <Laurie.Guerra@TEXASBAR.COM>
Subject: Notice of Appeal
Importance: High

BODA,

Please find the Notice of Appeal for Cause 202000647 attached hereto.

Sincerely,

Lauren A. Harris