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

NO. 67843

BEFORE THE BOARD OF DISCIPLINARY APPEALS

APPOINTED BY
THE SUPREME COURT OF TEXAS

LAUREN ASHLEY HARRIS

STATE BAR OF TEXAS NO. 24080932,

APPELLANT,

v.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE.

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

**APPELLANT'S MOTION FOR A COMPLETE & ACCURATE
CLERK'S RECORD: CORRECTIONS & SUPPLEMENT**

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**APPELLANT’S MOTION FOR A COMPLETE & ACCURATE
CLERK’S RECORD: CORRECTIONS & SUPPLEMENT
& REQUEST FOR EXTENSION OF TIME TO FILE APPELLANT’S BRIEF**

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

COMES NOW, APPELLANT, LAUREN ASHLEY HARRIS, and files this her Motion for a Complete and Accurate Clerk’s Record: Corrections and Supplement, and Request for Extension of Time to File Appellant’s Brief. Appellant seeks an Order from the Board of Disciplinary Appeals (“BODA”) directing the Clerk of the

Evidentiary Panel to correct, supplement, certify, and transmit the complete and accurate Clerk's Record to BODA, including items missing from the record that are material to the record of this appeal.¹

Appellant's requested relief is brought pursuant to the Texas Rules of Appellate Procedure ("TRAP") Rules: 34.5(c)(1), (d),² 34.6,³ 44.3⁴ 44.4,⁵ and Appendix C to the TRAP, Rule 1;⁶ further, BODA Internal Procedure Rules: ("IPR") 1.09,⁷ 4.02(c)(1),⁸ 4.02(e),⁹ 4.02(d),¹⁰ Rule 4.02(h), *Inaccuracies or Defects*,¹¹ and specifically IPR Rule 4.03(d):

[i]f anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.¹²

¹ Appellant filed *Appellant's Motion to Correct and Supplement the Reporter's Record* on July 31, 2023 as the Reporter's Record is also deficient in this action.

² See Tex. R. App. P. 34.5(c)(1)] (the Appellate record may be supplemented at any time; the distinction is eliminated from former rules between supplementation requests made before submission and those made after submission; see also Tex. R. App. P. 34.5(d), *Defects or Inaccuracies*).

³ See Tex. R. App. P. 34.6 (if relevant item has been omitted from clerk's record or reporter's record, either trial court, appellate court, or any party by letter, may direct clerk or reporter to prepare, certify, and file supplement containing omitted item in appellate court).

⁴ See Tex. R. App. P. 44.3: an appellate court **must not ...dismiss an appeal** for formal defects or irregularities in appellate procedure without allowing a reasonable time to correct or amend the defects or irregularities.

⁵ See Tex. R. App. P. 44.4, an appellate court **must not dismiss an appeal** if a trial court's acts or refusals to act have prevented the proper presentation of the case before the appellate court; if the trial court's actions or inactions can be remediated, **then the court of appeals must direct** the trial court to correct the error. **The court of appeals will then proceed as if the erroneous action or failure to act had not occurred.**

⁶ See Tex. R. App. P. FIVE app C., Rule 1, Clerk's Record.

⁷ See TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 1.09(a)(1), *Pretrial Procedures, Motions, Generally*.

⁸ See TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.02(c)(1), *Responsibility on Appeal for Filing Clerk's Record*.

⁹ See TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.02(e), *Electronic Filing of the Clerk's Record*.

¹⁰ See TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.02(d), *Preparation of Clerk's Record*.

¹¹ See TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.02(h), *Inaccuracies or Defects*.

¹² See **TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.03(d) Supplemental Record**. See also *Gallagher v. Fire Ins. Exchange*, 950 S.W.2d 370, 371 (Tex. 1997) (*holding that supplementation is available whether the party omitted items from the record by mistake or on purpose*).

In August 2023, when BODA abated this matter and remanded with instructions that the Evidentiary Panel conduct a hearing on Appellant's bills of exceptions, it also ordered the Evidentiary Clerk to file a supplemental clerk's record. But the list of items below includes many that are still missing, although necessary for Appellant to support her position. Once the record is complete, Appellant will then be able to complete her Appellant's Brief.

Appellant respectfully asks that the Board to then reset the briefing schedule consistent with Tex. R. App. P. 38.6 once the record is complete.

Moreover, Appellant seeks a ruling on her Motion to Correct and Supplement the Reporter's Record.

Appellant adopts and incorporates by reference as if fully set forth herein portions of Appellant's Motion to Correct and Supplement the Reporter's Record filed on July 31, 2023, especially pages 3 - 5 of 34. (See Rule 58, permitting adoption by reference).

A. Presumptions from an Incomplete Record

In the absence of a clerk's record, there can be no appeal. *See W. Credit Co. v. Olshan Enters., Inc.*, 714 S.W.2d 137, 138 (Tex. App.—Houston [1st Dist.] 1986, no writ) (dismissing an appeal for failing to file a transcript or what is now referred to as the clerk's record).

Without a complete reporter's record or a complete clerk's record, the appellate court will presume that the omitted evidence supports the trial court's judgment. *Simon v. York Crane & Rigging Co.*, 739 S.W.2d 793, 795 (Tex. 1987); *Murray v. Devco, Ltd.*, 731 S.W.2d 555, 557 (Tex. 1987).

When an appellant fails to bring forward a complete record on appeal, it is presumed that the omitted portions are relevant to the disposition of the appeal. *Enter. Leasing Co. of Hous. v. Barrios*, 156 S.W.3d 547, 549–50 (Tex. 2004) (per curiam); *Guthrie v. Nat'l Homes Corp.*, 394 S.W.2d 494, 495 (Tex. 1965).

This precludes the reviewing court from finding reversible error *See* TEX. R. APP. P. 44.1(a)(1)–(2) (stating reversible error is precluded unless the court of appeals “concludes that the error complained of: (1) probably caused the rendition of an improper judgment; or (2) probably prevented the appellant from properly presenting the case to the court of appeals”) because “[a] reviewing court must examine the entire record . . . to determine whether an error was reasonably calculated to cause[,] and probably did cause[,] the rendition of an improper judgment.” *Christiansen v. Prezelski*, 782 S.W.2d

An incomplete reporter's record prevents the reviewing court from determining whether a particular ruling by the trial court is reversible error in the context of the entire case. *Christiansen v. Prezelski*, 782 S.W.2d

Commented [1]: also the formatting of these paragraphs is weird. I think they should be indented and look more "normal" but I'm leaving that alone and just focusing on content in case there is a reason that some of it looks this way.

When there is no reporter's record, appellate court review is generally limited to complaints involving errors of law, erroneous pleadings or rulings, erroneous charges, irreconcilable conflicts of jury findings, summary judgments, and fundamental error. *Protechnics Int'l, Inc. v. Tru-Tag Sys., Inc.*, 843 S.W.2d 734, 735 (Tex. App.—Houston [14th Dist.] 1992, no writ); *Collins v. Williamson Printing Corp.*, 746 S.W.2d 489, 491 (Tex. App.— Dallas 1988, no writ); *See Bexar Cty. Criminal Dist. Attorney's Office v. Mayo*, 773 S.W.2d 642, 643 (Tex. App.—San Antonio 1989, no writ) (declaring conclusions of law will not bind the appellate court if erroneous).

The reviewing court cannot review the legal or factual sufficiency of the evidence in the absence of a complete record. *Englander Co. v. Kennedy*, 428 S.W.2d 806, 807 (Tex. 1968) (per curiam); *Andrews v. Sullivan*, 76 S.W.3d 702, 705 (Tex. App.—Corpus Christi 2002, no pet.).

When the appellant, through no fault of his own, is unable to obtain a reporter's record, the appellate court may reverse the judgment. *See Smith v. Smith*, 544 S.W.2d 121, 123 (Tex. 1976) (granting a new trial to the petitioner based on his "inability to procure a statement of facts" or reporter's record). The burden is on the appellant to see that a sufficient record is presented to show error requiring reversal. Tex.R.App.P. 50(d); *Escontriadass v. Apodaca*, 629 S.W.2d 697, 699 (Tex.1982).

There is an exception to the general rule requiring a complete reporter's record on appeal. *See* TEX. R. APP. P. 34.6(c) (allowing an appellant to bring a partial reporter's record if the appellant includes a statement of which points will be relied upon on appeal).

Under Texas Rule of Appellate Procedure 34.6(c), an appellant may bring forward a partial reporter's record if the appellant includes in the request for a partial reporter's record a statement of the issues or points of error to be relied upon on appeal. *See* TEX. R. APP. P. 34.6(c) (allowing an appellant to bring a partial reporter's record if the appellant includes a statement of which points will be relied upon on appeal).

When an appellant complies with this rule, including setting forth the statement of issues to be presented on appeal, *Id.*; *Furr's Supermarkets, Inc. v. Bethune*, 53 S.W.3d 375, 377 (Tex. 2001); *Gardner v. Baker & Botts*, 6 S.W.3d 295, 297 (Tex. App.—Houston [1st Dist.] 1999, pet. denied). *See* generally *id.* at 296 n.1 (comparing current Texas Rule of Appellate Procedure 34.6(c)(1) with its precursor, Texas Rule of Appellate Procedure 53(d), which according to the reviewing court, "contains . . . identical language" regarding requests for a partial reporter's record).

A presumption on appeal exists that nothing omitted from the record is relevant to any of the specified points or to the disposition of the case on appeal.

Bethune, 53 S.W.3d at 377; *Producer's Constr. Co. v. Muegge*, 669 S.W.2d 717, 718 (Tex. 1984) (per curiam).

However, the failure of the appellant to comply with Rule 34.6(c) will cause the reviewing court to presume that the omitted evidence supports the trial court's judgment. *Christiansen v. Prezelski*, 782 S.W.2d 842, 843 (Tex. 1990) (per curiam); *Sandoval v. Comm'n for Lawyer Discipline*, 25 S.W.3d 720, 722 (Tex. App.—Houston [14th Dist.] 2000, pet. denied); *Kwik Wash Laundries, Inc. v. McIntyre*, 840 S.W.2d 739, 742 (Tex. App.—Austin 1992, no writ).

In *Morales v. State*, 32 S.W.3d 862, 867 (Tex. Crim. App. 2000), the Court discussed at length the proper harm analysis under Rule 44.2(b) when a piece of evidence is erroneously excluded.

The Court stated that an "appellate court should consider everything in the record, including any testimony or physical evidence admitted for the jury's consideration, the nature of the evidence supporting the verdict, the character of the alleged error and how it might be considered in connection with other evidence in the case."

The Court further stated that "when the claimed error is the exclusion of a relevant piece of evidence . . . conducting a meaningful harm analysis would necessarily require consideration of all evidence which was admitted at trial. In

short, the lower court should examine the record as a whole when conducting a harm analysis."

B. Dual Role

"The Supreme Court and the Legislature carefully structured the requirements for grievance committee and panel composition [in the TRDP] to create accountability and openness in the disciplinary process and thereby uphold the integrity of the system. Only strict adherence to the requirements which the Commission concedes are mandatory will protect public confidence in the decisions of the evidentiary panels. Meeting this requirement is not burdensome to the Commission or the Office of the Chief Disciplinary counsel.) *Schaefer v. Comm'n for Lawyer Discipline*, BODA No 44292, at (Oct. 18, 2010).

RULE 59. EXHIBITS AND PLEADING Notes, accounts, bonds, mortgages, records, and all other written instruments, constituting, in whole or in part, the claim sued on, or the matter set up in defense, may be made a part of the pleadings by copies thereof, or the originals, being attached or filed and referred to as such, or by copying the same in the body of the pleading in aid and explanation of the allegations in the petition or answer made in reference to said instruments and shall be deemed a part thereof for all purposes. Such pleadings shall not be deemed defective because of the lack of any allegations which can be supplied

from said exhibit. No other instrument of writing shall be made an exhibit in the pleading.

RULE 74. FILING WITH THE COURT DEFINED The filing of pleadings, other papers and exhibits as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and time and forthwith transmit them to the office of the clerk.

RULE 75b. FILED EXHIBITS: WITHDRAWAL All filed exhibits admitted in evidence or tendered on bill of exception shall, until returned or otherwise disposed of as authorized by Rule 14b, remain at all times in the clerk's office or in the court or in the custody of the clerk.

RULE 75a. FILING EXHIBITS: COURT REPORTER TO FILE WITH CLERK The court reporter or stenographer shall file with the clerk of the court all exhibits which were admitted in evidence or tendered on bill of exception during the course of any hearing, proceeding, or trial.

RULE 76. MAY INSPECT PAPERS Each attorney at law practicing in any court shall be allowed at all reasonable times to inspect the papers and records relating to any suit or other matter in which he may be interested.

RULE 77. LOST RECORDS AND PAPERS When any papers or records are lost or destroyed during the pendency of a suit, the parties may, with the approval

of the judge, agree in writing on a brief statement of the matters contained therein; or either party may supply such lost records or papers as follows: a. After three days' notice to the adverse party or his attorney, make written sworn motion before the court stating the loss or destruction of such record or papers, accompanied by certified copies of the originals if obtainable, or by substantial copies thereof. b. If, upon hearing, the court be satisfied that they are substantial copies of the original, an order shall be made substituting such copies or brief statement for the originals. c. Such substituted copies or brief statement shall be filed with the clerk, constitute a part of the cause, and have the force and effect of the originals.

BODA observed that “the [evidentiary panel] chair introduced only the members present on the record and did not name the absent members of the panel,” thus creating uncertainty as to whether the evidentiary panel lacked a necessary public member. *Id.*

The Grievance Committee should timely advise respondent attorneys of the composition of the evidentiary panel from which the quorum was drawn to hear the case. But generally speaking, reasonable diligence by the attorney requires more than occurred here. Faced with an incomplete evidentiary panel, the respondent attorney must inquire as to panel composition and object if the composition requirements are not satisfied. Should an attorney fail to appear at an

evidentiary hearing, she makes her task more difficult and should obtain the hearing report and preserve error through a timely post-judgment motion. *See* Tex.

R. Disciplinary P. 2.22.

C. Appeals from Evidentiary Panel Hearings

Rule 4.02. Record on Appeal

(c) Responsibility for Filing Record.

(1) Clerk's Record.

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any post submission pleadings and briefs, and the notice of appeal.

Rule 4.01. Perfecting Appeal

(a) Appellate Timetable. The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule [TRDP] 2.21 [2.20].

(b) Notification of the Evidentiary Judgment. The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21 [2.20].

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment,

(d) Preparation of Clerk's Record.

(1) To prepare the clerk's record, the evidentiary panel clerk must:

(i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) Electronic Filing of the Clerk's Record. The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

(h) Inaccuracies or Defects. If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction.

Rule 4.03. Time to File Record

(d) Supplemental Record. If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel

D. Determining the Date of Filing

The Texas Supreme Court confirmed in *Coastal Banc SSB v. Helle* that "Mechanism. Electronic filing must be done through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration."

(5) Technical Failure. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court.

TRCP 21(f)

(5) Timely Filing. Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight (in the court's time zone) on the filing deadline. An electronically filed

document is deemed filed when transmitted to the filing party's electronic filing service provider, except: (A) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday;

(11) Non-Conforming Documents. The clerk may not refuse to file a document that fails to conform with this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format.

Rule TRCP 21a (b)(3) Electronic service is complete on transmission of the document to the serving party's electronic filing service provider. The electronic filing manager will send confirmation of service to the serving party.

Rule TRCP 21a (e) Proof of Service. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or an attorney of record, or the return of the officer, or the affidavit of any other person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the document notice or instrument was not received, or, if service was by mail, that it the document was not received within three days from the date that it was deposited of deposit in the mail **post office** or official depository under the care and custody of the United States Postal Service, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just.

The Texas high courts emphasize that a party's right to appeal should not depend on technicalities.¹³ Requiring a motion to be filed within the same 15-day window as the late notice of appeal is a technical requirement. Currently, the lack of an initial motion to extend is remedied in civil cases by allowing a party to

¹³ See *McClellan v. Livingston*, 486 S.W.3d 561, 564-65 (Tex. 2016); *Harkcom v. State*, 484 S.W.3d

subsequently provide a reasonable explanation, as required by Rule 44.3. That is, a court of appeals cannot dismiss an appeal for formal defects or irregularities in appellate procedure without allowing a reasonable time to correct or amend.¹⁴ But the need to “amend” an “implied” motion can be eliminated by changing the rule to permit a motion for extension to be filed after the grace period; the rule itself could make clear that only the notice would be required.¹⁵ The goal should be to reach the merits, not dismiss a case on procedural technicalities.

E. SBOT Open Records Department’s “Full Release” under Public Information Act

On May 5, 2023, the SBOT Open Records Department (“ORD”) made what it is calling a “full release” of records to Appellant,¹⁶ after Appellant remitted a \$255.00 fee to the SBOT. Upon receipt, Appellant was surprised to learn that the previously requested disciplinary file, which was outright denied, had actually been partially included in the release. But not fully, and still missing the November 12, 2020 hearings recordings, still sought by the **contents** of this motion.

¹⁴ *See id.*

¹⁵ *See, e.g.,* Tex. R. App. P. 28.3(d).

¹⁶ However, this production has only served to confuse Appellant, and question what it is the CDC and the SBOT believe to be the respective duties under, under which set of rules to which they must adhere -- for this purpose, providing a suspended member with the full release of records of her own disciplinary file.

The SBOT released files responsive to several requests for public information by/regarding Respondent for her SBOT statutory profile and online portal access/physical address history.

The released records of May 5, 2023, which request has not actually been fully released nor finalized, is still open and pending, and incomplete/missing many known and unknown records.

However, the matters that have been released, to date, reflect as follows:

As well as the SBOT release of public records from official PIA response regarding Respondent's statutory profile and online portal login and address information; and, the pleadings of opposing counsel/rulings in prior disciplinary proceedings, all which data source cannot reasonably be questioned, and must be judicially noticed by the Panel; which further, prevent positions and bar assertions in this actions/ negate offers of proof as submitted in this action by the CDC as contrary to positions taken in those other matters or in precedent for this area of law under stare decisis.

March 13, 2023: New PIA Request made upon original request, Ref. No. R001880-022323 marked as completed, and "Not an Open Records Request:

... the portion of the original request that is an open records request, and not related to my disciplinary history, I believe this is the proper forum for same. I seek to obtain the address and contact information as present/updated with the

State Bar from the first date I entered same to now, both submissions made available on the State Bar membership roll and if/when available to the public...I seek the dates and times of my address and phone number/fax number/website and email addresses updates/compliance submissions...any and all information related to each time I interacted with the State Bar of Texas beyond the compliance submissions on the SBOT website, such as requested documents, paid fees, or entered hours for CLE compliance, and for each -- the date and time and contact information/address and phone number/email etc. which was available to the Bar based on each the interaction/certification/submissions/payment, and if the action was public facing or private, and for each occurrence, the information made available to the State Bar of Texas from the interaction, such as IP address, email, phone, address, payment info, etc. *17* Reciprocal Discipline Action: U.S. Dist. Court for the Northern District of Texas, Dallas Division

Also on February 23, 2023, the Honorable Judge Jane J. Boyle of the U.S. District Court for the Northern District of Texas, the Dallas Division, entered an Order for Respondent to Show Cause why the Court should not impose Reciprocal Discipline in the Northern District, as Respondent was admitted before the Northern District in or round 2017.

¹⁷ HARRIS.0649.

The Show Cause Order was entered upon receipt of a Judgment Alert sent by Guerra of the Office of the Chief Disciplinary Counsel on the date the Judgment was entered, February 7, 2023. The alert which summarized the Judgment terms, and while indicating that if a Court seeks a copy of the Judgment, to reach out to the Office; however, the alert also attaches the full Default

F. Judgment of Partially Probated Suspension.

Respondent filed responsive documents under seal with the Court on March 17, 2023, and the Court entered its second Order on March 21, 2023, which declined to make the Reciprocal Ruling at that time and provided Respondent with further instructions. 0577-0579/HARRIS 0629-0632

Further, without notice that Guerra even sought to contact Appellant, regular life proceeded normally for Appellant with the SBOT: paid dues, attended CLEs, and without understanding the hypocrisy, Appellant ordered a Certificate of Good standing from the CDC itself on December 12, 2022, for use in job applications.

For this Order, CDC accepted Appellant's remitted payment, and Appellant received from the CDC an email transmission attaching same, as well as a separate cover for the receipt, and the PDF certificate of good standing itself; but, in all these direct communications with the CDC, they did not include – any notice whatsoever to Appellant related to the pending evidentiary proceedings which

would soon thereafter remove the good standing of that certificate and provide a no-notice default suspension from the practice of law/termination from employment.¹⁸

The *third* CDC role, also in the underlying evidentiary proceedings, is as *Clerk of the Evidentiary Panel*, a title which cannot even be found in the text of the Texas Rules of Disciplinary Procedure.¹⁹ Whereas, the title itself is recurring in the BODA IPR, seen in Rules 4.02(c)(2),²⁰ 4.02(h),²¹ and 4.03(d),²² yet, even the IPR does not specifically define who, person or entity, is designated to complete the duties listed for the titled role.²³ Appellant shall reserve the remainder of the discussion related to this role for the ensuing Motion which covers same.

This joint Clerk/CDC role and the outcomes therefrom to the detriment of the Respondent attorney shall be preserved for the ensuing motion for same.

Secondary sources have proved most helpful for this topic such as the BODA FAQ webpage:

¹⁸

¹⁹ Within the TRDP, the term “clerk” is only present for the “Clerk of the Supreme Court” and “district clerk for the county of alleged venue” under Section III. In fact, no procedure for a Respondent **attorney’s** “filing” of required documents before the Evidentiary Panel is even provided. The only portion of the rules that seems to delineate with specificity what actor is required to comply or carry-out any of the Section II proscribed acts was found in Rule 2.20: although no particular entity, person or party is stated to complete the duty to send the notice of the Evidentiary Panel to the Commission and the Respondent attorney as proscribed in this rule, it does conclusively state that the “Evidentiary Petition and the judgment shall be transmitted by the Office of the Chief Disciplinary Counsel to the Clerk of the Supreme Court.” TRDP 2.20. At least the SCOT has clarity.

²⁰ TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. *Reporter/Recorder duty to produce Reporter’s Record* 4.02(c)(2).

²¹ TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. *Inaccuracies or Defects*, 4.02(h),

²² TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.03(d),

²³ *See* TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.02; 4.03, generally.

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

The State Bar Chief Disciplinary Counsel's office will file the clerk's record from the evidentiary hearing with BODA after receiving our acknowledgment that an appeal has been filed.²⁴

Further, the Supreme Court's 2011 Opinion first issued in *Schaefer*,²⁵ overruled on other grounds, specifically addresses the CDC role as the administrative staff to the evidentiary panels: "importantly, the Office of the Chief Disciplinary Counsel acts as staff for the grievance committee panel in limited circumstances such as those now before us and must scrupulously adhere to the rules when *[acting as such]* for Evidentiary Panels."²⁶ and 34.5(d), which allows supplementation of the record "[i]f anything relevant is omitted from the clerk's record." The supplementation rules "ensure[] that the record on appeal accurately reflects all of the evidence that was seen by, used by, or considered by the trial judge at the time he made a ruling." *Amador v. State*, 221 S.W.3d 666, 677 (Tex. Crim. App. 2007).

TRAP 34.5(c)

- (3) Lost or destroyed items:

²⁴ <https://www.txboda.org/frequently-asked-questions>

²⁵ Overruled after rehearing by the Supreme Court's 2012 Memorandum Opinion.

²⁶ (*emphasis added*) *Schaefer v. Commission for Lawyer Discipline*, No. 44292, (Tex. April 20, 2012).

(a) Clerk's record. Parties may, by written stipulation, deliver copy of lost or destroyed item to clerk for inclusion in clerk's record. If parties cannot agree, trial court must—on any party's motion or at appellate court's request—determine what constitutes an accurate copy of missing item and order it to be included in clerk's record [Tex. R. App. P. 34.5(e)].

- Items omitted from record:

- (a) If relevant item has been omitted from clerk's record or reporter's record, either trial court, appellate court, or any party by letter, may direct clerk or reporter to prepare, certify, and file supplement containing omitted item in appellate court [Tex. R. App. P. 34.5(c)(1)—clerk's record;

- (b) Appellate record may be supplemented at any time the distinction between supplementation requests made before submission and those made after submission is eliminated [*see* Tex. R. App. P. 34.5(c)(1)].

Supplementation is possible whether the appellant omitted items from the record by mistake or on purpose [Gallagher v. Fire Ins. Exchange, 950 S.W.2d 370, 371 (Tex. 1997)]. Date filed not date file marked by office of chief disc counsel recording of November 20 2020 setting as they record all hearings, then they are the reporter for nov 20 2020 and march 24 2023 hearing so what is the fee and release pursuant to rules bc use in disciplinary matter 2.16

-

all communications sent received for 202000647 including

all pre-evidentiary petition communications and letter

All phone logs or fax notifications of calls made to respondent

specifically all emails for 202000647 investigator

Respondent responses and documents

IVH panel letters and assignment

IVH panel offer

All post-evidentiary petition communications

All phone logs or fax notifications of calls made to respondent

all emails for scheduling court reporter for jan 27 2023 setting

Notification letter 2.20 of default judgment

Any stipulations or waiver of 45 notice for march 24 2023

hearing

Panel assignment for march 24 2023 hearing

All communications regarding exhibit binder 0001-0479

hearing report for march 2023 setting

all emails to court reporter for march 24 setting

notice of hearing for march 24 2023 setting

All emails with Guerra regarding hearing

All ex parte emails with travis biggs,

Specifically all emails which transmitted proposed orders to Biggs as I was not on any and for sure ones explaining email title for default judgment, for sure one sending March 24, 2023 proposed orders not on and one sending proposed orders to Biggs during hearing

Formal bill of exceptions

Records bar

First exhibit binder

Judicial notice

■ Pamphlets

○ Venue 2,11 each of **these** venues AT THE TIME OF GRIEVANCE

FILING NOT AT TIME of service or decision **arbitrarily** made by CDC

■ Other pleadings

○ 2.15 The election must be in writing and served upon the Chief Disciplinary Counsel no later than twenty days after the Respondent's receipt of written notification pursuant to Rule 2.14.

In re Barber, 982 S.W.2d 364, 367 (Tex. 1998) (holding that the date of signing rather than the date of entry by the clerk controls whether the granting of a new trial was timely)

In *Amador*, the Court of Criminal Appeals explained that when the parties and the trial court treat evidence as formally introduced and when the trial court

considers that evidence in its ruling, even if the evidence was not formally offered and introduced into evidence or contained in the original appellate record, that evidence should be properly included in an appellate record to be considered

Beginning at p. 224. See *Id.* at 673–74; see also *Harden v. State*, 417 S.W.2d 170, 174 (Tex. Crim. App. 1967) (when assessing sufficient of evidence, Court of Criminal Appeals requested and considered photograph that had been shown to jury but not formally introduced or included in appellate record). Similarly, here, because the trial court and the parties treated the search warrants and supporting affidavits as formally introduced and because the trial court *necessarily* considered them when ruling on whether they lacked probable cause, they should properly be included in the appellate record and considered by this Court on rehearing.

The board must adhere to the mandates and standards delegated to the legal assistants of the assigned CDC counsel, captive employees of the CDC.²⁷ Appellant has only found this duty couched in general terms as an extension of the CFLD and District Grievance Committee Evidentiary Panels assigned to a disciplinary case instigated by the CDC. Appellant has not found any explicit assignment of this power or to this duty in the Texas Disciplinary Rules of Procedure, although Rule 5.02(K) and (M), although the Evidentiary Panel requirements and duties

²⁷ The purported “Clerk’s Record” in this appeal was filed on June 1, 2023, and is signed “Cassidy M. Orozco, Evidentiary Clerk” who has served from time-to-time as an alternate point of contact to Brittany Paynton, the assistant/point of contact for Appellant in “filing” documents before the Evidentiary Panel or serving matter or serving Laurie Guerra in the underlying evidentiary proceedings.

under the District Grievance Committee are clear where when the clerk's record is incomplete, appellant or any other party should seek to supplement the record. Tex. R. App. P. 34.5(c).

The San Antonio Court of Appeals considered a lawyer's duties under the disciplinary rules and standards for appellate court conduct in its decision to impose sanctions based upon the rules on a party and its counsel for submitting a misleading record with its petition for writ of mandamus. *Id.* at *5 (citing Tex. R. App. P. 52.11(d)). ADT filed a petition for writ of mandamus asserting the trial court erred in **denying its** second motion for continuance when real parties in interest failed to comply with the trial court's **order compelling** the production of discovery. *Id.* at *1. ADT included in the record only five pages of a **one hundred** eighteen page reporter's record. *Id.* at *2. Along with the petition, ADT filed an emergency **motion for** temporary relief in this court, seeking to stay the ongoing trial. *Id.* at *1. Based on ADT's allegations, the court of appeals requested a response from the real parties in interest and granted the emergency motion, staying the ongoing trial. *Id.* After the real parties in interest filed a response and motion for sanctions, pointing out the deficiencies in ADT's record, ADT filed a response to the motion for sanctions and a **supplemental** record that included the full reporter's record. *Id.* at *3. The court of appeals **imposes sanctions** "with

caution and only after careful deliberation.” *Id.* at *4 (citing TEX. R. APP. P. 52.11(d)).

ADT responded that it was not necessary to submit the full transcript with its petition to comply with the rules of appellate procedure, which “require only that a relator attach a ‘transcript of any relevant testimony from any underlying proceeding.’” *Id.* (citing TEX. R. APP. P. 52.7(a)(2)). The court disagreed. The court concluded that “ADT clearly failed to provide this court with that portion of the reporter’s record that would have informed this court of [the trial judge’s] reasoning for not granting the motion for continuance.” *Id.* at *5. “Had ADT provided this court with the full reporter’s record . . . it is highly unlikely that this court would have granted the stay of the ongoing trial or requested a response from [the real parties in interest].” *Id.* The conduct of ADT’s counsel was considered in light of a lawyer’s obligations to maintain the highest standards of ethical conduct and to provide a fair and accurate understanding of the facts and law applicable to their case. *Id.* at *4 (citing Tex. R. Disciplinary Prof’l Conduct preamble, para. 1; Texas Supreme Court, Standards for Appellate Conduct, available at <http://www.supreme/rules/conduct.asp>). The court also stated that a lawyer’s duty of honesty and candor to the appellate court includes fairly portraying the record on appeal and in original proceedings. *Id.* (citing *In re Lerma*, 144 S.W.3d 21, 27 (Tex. App.—El Paso 2004, orig. proceeding); *Schlaflly v. Schlaflly*,

33 S.W.3d 863, 873 (Tex. App.—Houston [14th Dist.] 2000, pet. denied)). Accordingly, the court concluded that the imposition of a sanction for the attorneys' fees expended in responding to the petition for writ of mandamus pursuant to Rule of Appellate Procedure 52.11. *Id.* (citing TEX. R. APP. P. 52.11(d)).

Respondent respectfully requests that the Panel enter Order instructing the Clerk, the Office of the Chief Disciplinary Counsel, to: make a full and complete record of these proceedings by any method necessary; to include all information related to this cause at every stage of proceeding -- from the date the Grievance was filed, on or about January 15, 2020 – through the date Order is entered.

Respondent seeks a Panel ruling instructing the Clerk to make a complete record of non-privileged materials in this or any other ancillary proceedings.

Even if not expressly overruled by the August 15, 2023 Order of BODA, this Response reflects a fundamental failure to understand the relationship of the appellate court to the trial court/evidentiary panels and failure to recognize the relationship between the Evidentiary Panel as trial court -and the relationship to - the appellate court, here BODA, but a systemic failure of fairness in conducting these proceedings and fundamental principles of equity of the judicial system and adjudicatory proceedings, not to mention the and conduct of counsel under not only the disciplinary rules, but the Texas Lawyer's Creed.

Petitioner's counsel, this Response, and the post-judgment action generally, reflects a disconnect from the industry standards/tenor of practice before the Texas State and federal courts/acceptable and unacceptable conduct of counsel/communication and actions which are/are not appropriate while in the zealous advocacy of a client.

Respondent asserts that if this is the manner in which the panels and CDC operate in all cases, and the experiences of Respondent from 2019 to the present in the pre-evidentiary panel period with the investigator/investigatory hearings/and conduct of counsel in due diligence and the intentionally misleading and inequitable actions as a recurring theme now – and this is normal par for the course --- then it is a manifest failure of the attorney discipline system -- and the attorney discipline system is a manifest failure.

Texas Rule of Appellate Procedure 34.5(d) allows supplementation of the record “[i]f anything relevant is omitted from the clerk’s record.” The supplementation rules “ensure[] that the record on appeal accurately reflects all of the evidence that was seen by, used by, or considered by the trial judge at the time he made a ruling.” *Amador v. State*, 221 S.W.3d 666, 677 (Tex. Crim. App. 2007).

PRAYER

Wherefore, premises considered, Appellant respectfully requests that the Board:

- (A) Order the Clerk of the Evidentiary Panel to correct, supplement, certify, and transmit the complete and accurate Clerk's record relating to this or any other ancillary proceeding to BODA;
- (B) Reset the briefing schedule once the record is complete; and
- (C) Grant such other and further relief to which Appellant may show herself to be entitled.