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

**BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS**

CARL DONALD HUGHES, JR.,
Appellant

v.

COMMISSION FOR LAWYER DISCIPLINE
Appellee

*On Appeal from the Evidentiary Panel 6 - 2
For the State Bar District 6 Grievance Committee*

BRIEF OF APPELLANT CARL DONALD HUGHES, JR.

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STATEMENT OF THE CASE

This is a disciplinary appeal from the decision of the Evidentiary Panel 6-2 for the District 6 Grievance Committee, State Bar of Texas.

Complainant Gwen Bourgeois filed a Complaint against Appellant with the Office of the Chief Disciplinary Counsel. On **October 18, 2019**, the Office of the Chief Disciplinary Counsel determined that there was Just Cause to believe that Appellant committed one or more acts of Professional Misconduct. On **January 6, 2020**, the Commission for Lawyer Discipline's *Evidentiary Petition* alleging Professional Misconduct against Appellant as a result of alleged violations of TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT 1.03(a), 1.03(b), 1.15(d), 8.04(a)(8) was filed.

On **April 7, 2021**, a *Motion for Default Judgment* was filed on behalf of the Commission and the Office of the Chief Disciplinary Counsel served Appellant a *Notice of Default Hearing* setting such hearing on **May 6, 2021**. On **May 4, 2021**, Appellant's *Answer to Evidentiary Petition* was filed with the Evidentiary Panel. On **May 5, 2021**, Appellant's *Motion for Continuance* was filed with the Evidentiary Panel.

On **May 6, 2021**, the Evidentiary Panel heard and denied Appellant's *Motion for Continuance*. Immediately thereafter, the Evidentiary Panel heard the Commission's *Motion for Default Judgment*. The Evidentiary Panel held Appellant to be in default and immediately proceeded to take up and consider the sanction to be imposed. On **May 18, 2021**, the Evidentiary Panel issued and signed the *Default Judgment of Partially Probated Suspension* which held that Appellant had violated TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT 1.03(a), 1.03(b), 1.15(d), 8.04(a)(8).

On **May 28, 2021**, Appellant filed his *Motion for New Trial Pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.21 and Motion to Stay Judgment of Suspension Pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.24*. On **July 26, 2021**, Appellant filed his *Due Process Objection to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.06 and Objection to Panel Member Price L. Johnson, Jr.* On **August 4, 2021**, the Committee Chair for the District 6 Grievance Committee signed the *Order Overruling Respondent's Due Process Objections to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.06 and Objection to Panel Member Price L. Johnson, Jr.* On **August 4, 2021**, the Evidentiary Panel heard Appellant's *Motion for New Trial Pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.21 and Motion to Stay Judgment of Suspension Pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.24*. On **August 10, 2021**, the Evidentiary Panel signed its *Order Denying Appellant's Motion for New Trial Pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.21 and Motion to Stay Judgment of Suspension Pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.24*.

On **August 13, 2021**, Appellant timely filed his *Notice of Appeal*.

On **August 17, 2021**, Appellant timely filed the *Reporter's Record* (hereinafter, "RR").

On **September 15, 2021**, the Office of the Chief Disciplinary Counsel timely filed the *Clerk's Record* (hereinafter, "CR").

STATEMENT OF JURISDICTION

The Board of Disciplinary Appeals has jurisdiction over this appeal pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.23.

STATEMENT OF ISSUES PRESENTED

Issue One

Whether the requirement of TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17.C. that in the event of a failure to file an answer within the time permitted by RULE 2.17.B. “all facts alleged in the Evidentiary Petition shall be taken as true for the purpose of the Disciplinary Proceeding” violated Appellant’s rights afforded him by the Fourteenth Amendment of the Constitution of the United States of America.

Issue Two

Whether the Evidentiary Panel reversibly erred in construing TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17.O. to permit the conducting of a hearing for default after Respondent’s filing of an Answer to the Evidentiary Petition.

Issue Three

Whether the Evidentiary Panel reversibly erred in interpreting TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17.O. to allow for the setting of an Evidentiary Panel proceeding with less than forty-five days’ notice to Respondent.

STATEMENT OF THE FACTS

On or about **an unknown date**, Complainant Gwen Bourgeois filed a Complaint against Appellant with the Office of the Chief Disciplinary Counsel.

On **October 18, 2019**, the Office of the Chief Disciplinary Counsel determined that there was Just Cause to believe that Appellant committed one or more acts of Professional Misconduct. CR 0011 - 0014. On **January 6, 2020**, the Office of the Chief Disciplinary Counsel filed on behalf of the Commission for Lawyer Discipline an *Evidentiary Petition* alleging Professional Misconduct against Appellant as a result of alleged violations of TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT 1.03(a), 1.03(b), 1.15(d), 8.04(a)(8). CR 0030-0033. On **April 7, 2021**, a *Motion for Default Judgment* was filed on behalf of the Commission. CR 0046 – 0055. Also on

April 7, 2021, the Office of the Chief Disciplinary Counsel served Appellant a *Notice of Default Hearing* setting such hearing on **May 6, 2021**. CR 0057 – 0058; CR 0060 – 0076.

On **May 4, 2021**, Appellant filed with the Evidentiary Panel his *Answer to Evidentiary Petition*. CR 0085 - 0089; CR 0078 - 0083. On **May 5, 2021**, Appellant's *Motion for Continuance* was filed with the Evidentiary Panel. CR 0111 – 0116; CR 0103 – 0109. After receiving Respondent's *Motion for Continuance*, also on May 5, 2021, the Evidentiary Panel Chair emailed counsel for the parties stating: "We will hear this very briefly tomorrow morning." CR 0135 – 0137; emphasis added.

On **May 6, 2021**, the Evidentiary Panel provided a very limited hearing before denying Appellant's *Motion for Continuance*. RR pg. 8, ln. 23 – pg. 11, ln. 13. Specifically, the Panel Chair stated, "I have reviewed it (i.e., the *Motion for Continuance*) and I am going to give each of you a minute or so to make your arguments." RR pg. 9, lns. 5-6. During the time allowed Respondent's counsel for argument on the *Motion for Continuance*, counsel advised the Evidentiary Panel of the contents of RULE 2.17.O. that provide Evidentiary Panel proceedings must be set for hearing with a minimum of forty-five days' notice to all parties unless waived and that the specific language of the RULE reads: "If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent." RR pg. 9, lns. 14-20. Counsel for the Commission's argument was limited to the following: "2.17O does not require any notice from the Commission; and the Commission sending notice about a month prior to the hearing did not obligate it somehow to a 45-day requirement." RR pg. 10, lns. 16-19.

The Panel Chair's rendition of his ruling on May 6, 2021, is as follows: "Mr. Cross, the way that I read the rule, obviously it does require 45 days' notice unless everyone waives it in an instance, presuming that an answer has been filed. Here, we are in a no-answer default scenario. ¶

I understand that you said an answer was filed on Tuesday, two days ago; but the way I read the rule – and I certainly stand to be corrected on appeal, should there be one, but the way that I read the rule is, in a situation like this, if the Respondent fails to answer, a hearing for default may be set not less than ten days without further notice to Respondent. I do not believe that the fact that the CDC gave notice somehow then reverts and subjects them to the 45-day requirement. So based on that, I am going to deny your motion for continuance.” RR pg. 10, ln. 22 – pg. 11, ln. 11.

Respondent’s counsel requested clarification from the Panel Chair regarding whether the Evidentiary Panel intended to proceed with both a default hearing “and the allegations of the petition will be taken as true” as well as a sanction hearing on May 6, 2021. RR pg. 11, ln. 18 – pg. 12, ln. 3. The Panel Chair stated that the Evidentiary Panel would proceed on both. RR pg. 12, lns. 4-5.

Immediately thereafter, the Evidentiary Panel heard the Commission’s *Motion for Default Judgment*. RR pg. 14, ln. 1 – pg. 21, ln. 12. The Evidentiary Panel held Appellant to be in default and immediately proceeded to take up and consider the sanction to be imposed. RR pg. 21, lns. 17 – 21. Also on **May 6, 2021**, the Evidentiary Panel issued and signed the *Order Granting Motion for Default Judgment* in which it is stated that the findings of fact and conclusions of law numbered therein at 1 to 8 “are deemed as true.” CR 0148 – 0149.

On **May 14, 2021**, Respondent through counsel requested the following revisions to the then proposed *Default Judgment of Partially Probated Suspension* inter alia: “1. The *Judgment* does not state that Mr. Hughes filed his *Answer to Evidentiary Petition*. This filing remains a part of the record and should be reflected in the *Judgment*; 2. The *Judgment* does not state that the Evidentiary Panel heard and denied Mr. Hughes filed Motion for Continuance. The *Judgment* should include reference to this fact. 3. The *Judgment* does not state the ruling of the Evidentiary

Panel that Mr. Hughes was not entitled to 45 days' notice of the Evidentiary Hearing. The Judgment should set forth this ruling by the Evidentiary Panel." CR 0180 – 0184. Each of these requests were denied by the Evidentiary Panel Chair. CR 0208 – 0218.

On **May 18, 2021**, the Evidentiary Panel issued and signed the *Default Judgment of Partially Probated Suspension* which held that Appellant had violated TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT 1.03(a), 1.03(b), 1.15(d), 8.04(a)(8). CR 0208 – 0218.

On **May 28, 2021**, Appellant filed his *Motion for New Trial Pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.21 and Motion to Stay Judgment of Suspension Pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.24*. CR 0270 – 0280; CR 0257 – 0268. Appellant's *Motion for New Trial* was premised on both the Evidentiary Panel's violation of procedural due process and the Evidentiary Panel's failure to correctly apply principles of statutory construction in its interpretation and application of TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17.O. CR 0257 – 0268.

On **August 4, 2021**, the Evidentiary Panel heard Appellant's *Motion for New Trial Pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.21 and Motion to Stay Judgment of Suspension Pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.24*. On **August 10, 2021**, the Evidentiary Panel signed its *Order Denying Appellant's Motion for New Trial Pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.21 and Motion to Stay Judgment of Suspension Pursuant to TEXAS RULE OF DISCIPLINARY PROCEDURE 2.24*. CR 0469 – 0471.

On **August 13, 2021**, Appellant timely filed his *Notice of Appeal*. CR 0482 – 0483; CR 0485 – 0486.

ARGUMENT AND AUTHORITIES

Issue One

Whether the requirement of TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17.C. that in the event of a failure to file an answer within the time permitted by RULE 2.17.B. “all facts alleged in the Evidentiary Petition shall be taken as true for the purpose of the Disciplinary Proceeding” violated Appellant’s rights afforded him by the Fourteenth Amendment of the Constitution of the United States of America.

It is well settled that an attorney in a disciplinary proceeding is entitled to procedural due process. *Weiss v. Comm’n for Lawyer Discipline*, 982 S.W. 8, 14 (Tex. App. – San Antonio 1998, pet. denied) citing *In re Ruffalo*, 390 U.S. 544, 551-52, 20 L.Ed.2d 117, 88 S.Ct. 1222 (1968). Included among the due process rights afforded an attorney is the right that the Commission for Lawyer Discipline be required to prove the factual allegations asserted against an attorney by a preponderance of the evidence. This right is found in TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17.M. which states: “The burden of proof is upon the Commission for Lawyer Discipline to prove the material allegations of the Evidentiary Petition by a preponderance of the evidence”.

The Austin Court of Appeals has previously explained that the purpose of professional disciplinary proceedings is to enforce civil statutes. “In civil cases, [n]o doctrine is more firmly established than that issues of fact are resolved from a preponderance of the evidence.” *Tirrez* 2018 Tex. App. LEXIS 433, *11; citing *Pretzer v Motor Vehicle Bd.*, 125 S.W.3d 23, 39 (Tex. App. – Austin 2003), *aff’d in part, rev’d in part*, 138 S.W. 3d 98 (Tex. 2004) (quoting *Sanders v Harder*, 148 Tex. 593, 227 S.W.2d 206, 209 (Tex. 1950).

TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17.C., however, stands in contradiction – and violation – of the fundamental right contained in RULE 2.17.M. to have the material allegations asserted against a respondent proven by a preponderance of the evidence. Specifically, TEXAS

RULE OF DISCIPLINARY PROCEDURE 2.17.C. states: “A failure to file an answer within the time permitted constitutes a default, and all facts alleged in the Evidentiary Petition shall be taken as true for the purposes of the Disciplinary Proceeding”.

RULE 2.17.C. greatly exceeds the general rule in civil court regarding the admission of allegations of fact upon the rendering of a no-answer default judgment. *See Dolgencorp of Tex., Inc. v. Lerma*, 2881 S.W.3d 922, 930 (Tex. 2009). Rather, RULE 2.17.C. precludes the consideration of an answer filed by a Respondent after the timeline set forth in RULE 2.17.B. Moreover, RULE 2.17.C. precludes a Respondent’s ability to invoke the due process protection of proceeding before an Evidentiary Panel when an answer, although procedurally untimely, is filed prior to the commencing of an Evidentiary Proceeding by the Evidentiary Panel.

The Appellant herein filed an answer, although untimely per RULE 2.17.B, on May 4, 2021, prior to the Evidentiary Panel proceeding on this case. CR 0085 – 0089. Despite such filing, the Panel Chair made clear the complete disregard of such filing when he stated: “Here, we are in a no-answer default scenario” RR pg. 10, ln. 25. This statement by the Panel Chair, presumably in reliance on a legal fiction, was simply factually untrue.

Importantly for purposes of due process analysis, the TEXAS RULES OF DISCIPLINARY PROCEDURE apply the same rule whether the answer is filed one day after the time required by RULE 2.17.B. or 2 days before the commencing of an Evidentiary Proceeding, and without regard to the reason or reasons for the untimely filing. RULE 2.17.C. states: “A failure to file an answer **within the time permitted** constitutes a default, and all facts alleged in the Evidentiary Petition shall be taken as true for the purposes of the Disciplinary Proceeding”. There simply exists no procedural rule or guidance within the TEXAS RULES OF DISCIPLINARY PROCEDURE to determine whether or when to give effect to an answer filed after the time required by RULE 2.17.B. but prior

to the rendering of a default by the Evidentiary Panel. This is in marked contrast to the general civil court rule of deemed admission of liability *upon* the rendering of a no-answer default judgment.

Appellant believes the propriety of an Evidentiary Panel disregarding a filed answer to be a matter of first impression before the Board. Moreover, specific guidance from the TEXAS RULES OF CIVIL PROCEDURE is lacking because, as discussed further below, a civil case is deemed ‘contested’ pursuant to TEXAS RULES OF CIVIL PROCEDURE upon the filing of an answer without regard to whether the answer is within the timeline provided by TEXAS RULE OF CIVIL PROCEDURE 99(b) and the parties’ due process right to 45 days’ notice of a first trial setting follows therefrom.

Guidance can, however, be found from due process analysis arising from the use of requests for admission to establish deemed admissions.

“The rule regarding requests for admissions “was designed, not as a trap to prevent the presentation of the truth in a full hearing but as a tool for disposition of litigation with a minimum of delay. *Taylor v. Lewis*, 533 S.W.2d 153, 160 (Tex. Civ. App.—Amarillo 1977, writ ref’d n.r.e.). When a party uses deemed admission to try to preclude presentation of the merits of a case, however, due process concerns may arise *Wheeler v. Green*, 157 S.W.3d 439, 443 (Tex. 2005); *In re Rozelle*, 229 S.W.3d 757, 764 (Tex. App. – San Antonio 2007) (“[Due process] is the guiding rule and principle that applies when requests for admissions are not used as intended, and when a party uses deemed admission to try to preclude presentation of the merits of a case.” (internal quotation marks and citation omitted)). Therefore, overly broad, merits-preclusive requests for admissions are improper and may not result in deemed admissions. *See In re Estate of Herring*, 970 S.W.2d 583, 589 (Tex. App. – Corpus Christi 1988, no pet.)”.

RULE 2.17.C. likewise precludes presentation of the merits of a case based upon a legal ‘admission’ and is therefore violative of Appellant’s due process rights. Appellant was precluded presentation of the merits of his case when the Evidentiary Panel disregarded his filed answer and proceeded as though the matter were a no-answer default.

The following facts were taken as true by the Evidentiary Panel in the absence of the introduction of any probative evidence as to the truth or untruth of such allegations as required by

TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17.M.:

1. On or about January 5 of 2017, Complainant hired Respondent to file a civil action involving a real estate matter. RR pg. 16, lns. 9–12.
2. On February 6 of 2017, Respondent filed the action in district court in Galveston County, Texas. RR pg. 16, lns. 12–14.
3. The case was later removed by the defendants to the United States District Court for the Southern District of Texas, Galveston Division. RR pg. 16, lns. 14–16.
4. Complainant paid Respondent a total of \$25,000 during the representation. RR pg. 16, lns. 17–18.
5. Complainant requested an accounting from Respondent from February 18, 2018, February 20 of 2018, and July 23 of 2018. RR pg. 16, lns. 19–21.
6. Complainant made verbal requests for an accounting in October of 2017 and on May 31, 2017. RR pg. 16, lns. 21–23.
7. Respondent failed to comply with Complainant’s requested requests. RR pg. 16, lns. 23–24.
8. On February 20, 2018, Complainant requested Respondent’s response to a motion for summary judgment in the matter and copies of all requested answers to the Court. RR pg. 16, ln. 25 – pg. 17, ln. 3.
9. Respondent failed to comply with Complainant’s request. RR pg. 17, lns. 3–4.
10. On October 10, 2017, Complainant paid \$6,000 to Respondent for the purpose of taking depositions. RR pg. 17, lns. 5–7.
11. In January of 2018, Complainant paid an additional \$2,000 for the same purpose of taking depositions. RR pg. 17, lns. 7–8.
12. No depositions were taken. RR pg. 17, lns. 8–9.
13. Respondent failed to refund these funds on request. RR pg. 17, lns. 9–10.
14. On June 29, 2018, Respondent’s representation was terminated. RR pg. 17, lns. 11–12.
15. Respondent failed to return Complainant’s client file and other documents. RR pg. 17, lns. 12–13.
16. Respondent failed to return any unearned fees. RR pg. 17, ln. 14.

As stated by the Texarkana Court of Appeals, “Due process is ordinarily absent if a party is deprived of his or her property or liberty without evidence having been offered against him or her in accordance with established rules” *Anthony v. State*, 209 S.W.3d 296, 307 (Tex. App. – Texarkana 2006, no pet.); *citing In re Application of Eisenberg*, 654 F.2d 1107, 1112 (5th Cir. 1981). Appellant herein was deprived of his property in violation of the Fifth and Fourteenth Amendments of the United States Constitution without either: 1.) any evidence being offered

against him prior to the granting of the default and 2.) the Commission for Lawyer Discipline proving the material allegations of the Evidentiary Petition against Appellant by a preponderance of the evidence as required by RULE 2.17.M.

Issue Two

Whether the Evidentiary Panel reversibly erred in construing TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17.O. to permit the conducting of a hearing for default after Respondent's filing of an Answer to the Evidentiary Petition.

The Supreme Court of Texas has prescribed the notice that shall be given to a respondent in an Evidentiary Panel proceeding. Specifically, the notice required is as set forth in *TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17.O.* which states:

“Evidentiary Panel proceedings must be set for hearing with a minimum of forty-five days’ notice to all parties unless waived by all parties. Evidentiary Panel proceedings shall be set for hearing on the merits on a date not later than 180 days after the date the answer is filed, except for good cause shown. If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent. No continuance may be granted unless required by the interests of justice.”

The issue before the Board on Issue Two is founded on a very specific set of facts. On **January 6, 2020**, the Office of the Chief Disciplinary Counsel filed on behalf of the Commission for Lawyer Discipline an *Evidentiary Petition* alleging Professional Misconduct against Appellant as a result of alleged violations of TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT 1.03(a), 1.03(b), 1.15(d), 8.04(a)(8). CR 0030-0033. On **May 4, 2021**, Appellant filed with the Evidentiary Panel his *Answer to Evidentiary Petition*. CR 0085 – 0089; CR 0078 – 0083. On **May 6, 2021**, the Evidentiary Panel heard and considered the Commission’s *Motion for Default Judgment*. RR pg. 14, ln. 1 – pg. 21, ln. 12. The Evidentiary Panel held Appellant to be in default

and immediately proceeded to take up and consider the sanction to be imposed. RR pg. 21, lns. 17–21.

The Evidentiary Panel was, on these facts, required to interpret the meaning and intent of RULE 2.17.O. concerning the granting of default judgments against Respondents. Principles of statutory construction require that a court ascertain and give effect to the intent of a statute as expressed in the very language of the statute itself. “Words are construed according to their plain and common meaning, unless a contrary intention is apparent from the context, or unless such a construction leads to absurd results.” *ML Dev, LP v. Ross Dress for Less, Inc.*, 2021 Tex. App. LEXIS 4066, *7 (Tex. App. – Houston [1st Dist.] May 25, 2021; citing *Youngkin v. Hines*, 546 S.W.3d 675, 680 (Tex. 2018). In the words of the First District Court of Appeals, “We presume the Legislature included each word in the statute for a purpose and **that words not included were purposefully omitted.**” *ML Dev, LP v. Ross Dress for Less, Inc.*, 2021 Tex. App. LEXIS 4066, *7; citing *Lippincott v. Whisenhunt*, 462 S.W.,3d 507, 509 (Tex.2015). Emphasis added.

RULE 2.17.O. provides in pertinent part: “If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent”. The Evidentiary Panel determined that Appellant – despite having filed his Answer with the Evidentiary Clerk on May 4, 2021 – had ‘failed to answer’ and that the Panel could proceed with a Default Hearing. RR pg. 11, lns. 1–10.

The Evidentiary Panel is believed to have based its incorrect interpretation of RULE 2.17.O. on language from RULE 2.17.C, which provides in pertinent part: “A failure to file an answer within the time permitted constitutes a default, and all facts alleged in the Evidentiary Petition shall be taken as true for the purposes of the Disciplinary Proceeding.”

The principals of statutory construction require that in analyzing and harmonizing these two provisions an Evidentiary Panel shall presume that in promulgating and approving the TEXAS RULES OF DISCIPLINARY PROCEDURE the Supreme Court intentionally and purposefully included the words ‘within the time permitted’ in RULE 2.17.C. and intentionally and purposefully excluded those same words from RULE 2.17.O. In other words, had the Supreme Court intended RULE 2.17.O. to read: “If the Respondent fails to answer within the time permitted, a hearing may be had...”, the Court would have so written the rule.

By construing the word “answer” in RULE 2.17.O. to have the same meaning as the word’s use in RULE 2.17.C. in defining a default, the Evidentiary Panel improperly incorporated into RULE 2.17.O. an additional requirement not stated in the RULE. Specifically, the Evidentiary Panel construed RULE 2.17.O. to require that an answer be filed within the time permitted by RULE 2.17.B. and not at any time thereafter to prevent the entry of a default. This additional requirement is not contained within the plain meaning of the words used in RULE 2.17.O and is therefore violative of principles of statutory construction.

Moreover, the Evidentiary Panel’s construction of RULE 2.17.O. incorporates a believed intention of the Supreme Court to deviate from the general civil rules and standards regarding the granting of a default judgment. As discussed at length in *Issue Three*, the Evidentiary Panel’s interpretation from providing good cause for a late filed answer, thereby invoking the protections afforded him or her through an Evidentiary Hearing. There exists no indicia of intent within the confines of RULE 2.17.O. that the Supreme Court intended to impose such a harsh and draconian result. It was reversible error for the Evidentiary Panel to proceed with a hearing for default against Appellant on May 6, 2021, after Appellant filed his Answer on May 4, 2021.

Issue Three

Whether the Evidentiary Panel reversibly erred in interpreting TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17.O. to allow for the setting of an Evidentiary Panel proceeding with less than forty-five days' notice to Respondent.

Procedural due process imposes constraints on governmental decisions which deprive individuals of “‘liberty’ or ‘property’ interests within the Due Process Clause of the Fifth and Fourteenth Amendment to the United States Constitution. *See Baxter Oil Serv. v. Tex. Comm’n on Env’tl. Quality*, 2017 WL 3378902; *citing Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed. 18 (1976). Due process fundamentally requires the opportunity to be heard ‘at a meaningful time and in a meaningful manner’” before an individual is deprived of a property interest. *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed. 18 (1976).

The “general rule is that the legislature in its discretion may prescribe what notice shall be given to a defendant in a suit, subject to the condition that the notice prescribed must confirm to the requirement of due process of law.” *Sgitcovich v. Sgitcovich*, 150 Tex. 398, 214, S.W.2d 142, 146 (Tex. 1951) (citation omitted) (quoting *Mexis Indep. Sch. Dist. V. City of Mexia*, 134 Tex. 95, 133 S.W.2d 118, 121 (Tex. 1939).

The Supreme Court of Texas has prescribed the notice that shall be given to a respondent in an Evidentiary Panel proceeding. Specifically, the notice required is as set forth in TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17.O. which states:

“Evidentiary Panel proceedings must be set for hearing with a minimum of forty-five days’ notice to all parties unless waived by all parties. Evidentiary Panel proceedings shall be set for hearing on the merits on a date not later than 180 days after the date the answer is filed, except for good cause shown. If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent. No continuance may be granted unless required by the interests of justice.”

RULE 2.17.O. is mandatory in its requirement for a minimum of forty-five days' notice to all parties of an Evidentiary Panel proceeding unless waived by all parties – "proceedings must be set for hearing with a minimum of forty-five days' notice". RULE 2.17.O. is merely permissive in the statement that a hearing for default "may be set at any time not less than ten days after the answer date without further notice to the Respondent". The RULE is silent regarding the specific factual situation before the Board; i.e. may a Respondent who has filed an answer be noticed for an Evidentiary Panel proceeding on less than forty-five days' notice.

Appellant believes the issue presented herein to be a matter of first impression for the Board of Disciplinary Appeals on which there is no direct BODA precedent. Appellant's interpretation and construction of RULES 2.17.C. and 2.17.O is, however, analogous to and supported by Texas court precedent regarding TEXAS RULE OF CIVIL PROCEDURE 245 titled Assignment of Cases for Trial.

It is well settled that an attorney in a disciplinary proceeding is entitled to procedural due process. *Weiss v. Comm'n for Lawyer Discipline*, 982 S.W. 8, 14 (Tex. App. – San Antonio 1998, pet. denied) *citing In re Ruffalo*, 390 U.S. 544, 551-52, 20 L.Ed.2d 117, 88 S.Ct. 1222 (1968). The Fourteenth Amendment prohibits a state from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Texas Constitution provides that "[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. I, § 19.

Included among the due process rights afforded an attorney is the right that the Commission for Lawyer Discipline be required to prove the factual allegations asserted against an attorney by a preponderance of the evidence. This right is found in TEXAS RULE OF DISCIPLINARY PROCEDURE

2.17.M. which states: “The burden of proof is upon the Commission for Lawyer Discipline to prove the material allegations of the Evidentiary Petition by a preponderance of the evidence”.

The Austin Court of Appeals has previously explained that the purpose of professional disciplinary proceedings is to enforce civil statutes. “In civil cases, [n]o doctrine is more firmly established than that issues of fact are resolved from a preponderance of the evidence.” *Tirrez* 2018 Tex. App. LEXIS 433, *11; citing *Pretzer v Motor Vehicle Bd.*, 125 S.W.3d 23, 39 (Tex. App. – Austin 2003), *aff’d in part, rev’d in part*, 138 S.W. 3d 98 (Tex. 2004) (quoting *Sanders v Harder*, 148 Tex. 593, 227 S.W.2d 206, 209 (Tex. 1950).

The Texas Supreme Court has recently explained why notice is a vital component of due process as follows:

Most critically, a lack of notice violates basic principles of due process. *See Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 84, 108 S. Ct. 896, 99 L. Ed. 2d 75, [899] (1988) (explaining that a “[f]ailure to give notice violates [‘]the most rudimentary demands of due process of law[‘]” (quoting *Armstrong v. Manzo*, 380 U.S. 545, 550, 85 S. Ct. 1187, 14 L. Ed. 2d 62, [1190] (1965))). Due process demands that a party be afforded “an opportunity to be heard at a meaningful time and in a meaningful manner.” *Univ. of Tex. Med. Sch. At Hous. v. Than*, 901 S.W.2d 926, 930 (Tex. 1995) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18, [902] (1976)).

In re Estate of Clark, 2021 Tex. App. LEXIS 5685, *9. Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property. *In re Marriage of Mohamed*, 2021 Tex. App. LEXIS 6746, *13, citing *Reynoso V. Dibs US, Inc.*, 541 S.W.3d 331, 339 (Tex. App. – Houston [14th Dist.] 2017, no pet.) citing *Carey v. Piphus*, 435 U.S. 2547, f260, 98 S.Ct. 1042, 5 L.Ed. 2d 252 (1978). Due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Univ. of Tex. Med. Sch. At Houston v. Than*, 901 S.W.2d 926, 930 (Tex. 1995).

Appellant was not provided either the notice required by TEXAS RULES OF DISCIPLINARY PROCEDURE 2.17.O. or the opportunity to be heard at a meaningful time and in a meaningful manner. Principles of statutory construction require that in construing the due process prescribed by the Supreme Court in RULE 2.17.O., the Evidentiary Panel and this Board of Disciplinary Appeals afford the words used their plain and common meaning, unless a contrary intention is apparent from the context, or unless such a construction leads to absurd results. Because of the difference in wording utilized by the Supreme Court in promulgating and approving RULES 2.17.C and 2.17.O. of the TEXAS RULES OF DISCIPLINARY PROCEDURE, the Court intentionally and purposefully included the words ‘within the time permitted’ in RULE 2.17.C and intentionally and purposefully omitted the same words from RULE 2.17.O. This principle of statutory construction cannot be ignored. Appellant urges that both the plain and common meaning of the words and the Supreme Court’s omission of the four words ‘within the time permitted’, RULE 2.17.O. is intended and should be construed to mean ‘if the Respondent fails at any time to file an answer’, then a hearing for default may be set at any time not less than ten days after the answer without further notice to the Respondent.

However, Appellant did, in fact, file an Answer and filed an Answer prior to the commencement of the Evidentiary Hearing resulting in the rendition of the default judgment. Having filed his Answer, the common meaning of RULE 2.17.O. (and the due process provided thereby) means that the Evidentiary Panel cannot thereafter set or convene a hearing for default.

This due process analysis is supported by TEXAS RULE OF CIVIL PROCEDURE 245 which provides in pertinent part: “The Court may set contested cases on written request of any party, or on the court’s own motion, with reasonable notice of not less than forty-five days to the parties of a first setting for trial, or by agreement of the parties. ... Noncontested cases may be tried or

disposed of at any time whether set or not, and may be set at any time for any other time.” Although TEXAS RULE OF CIVIL PROCEDURE 245 uses the words “contested” and “noncontested” to categorize the disparate treatment of cases pending before a civil court, this categorization is not dispositive.

A civil matter is “contested” if a party has filed a responsive pleading to a civil petition. *M.B. v. R.B.*, 2021 Tex.App. LEXIS 4374, *10; citing *Highsmith v. Highsmith*, 587 S.W.3d 771, 777 (Tex. 2019). A matter is “noncontested” if a party has not filed a responsive pleading.

As stated by the San Antonio Court of Appeals, “A trial court’s failure to comply with RULE 245 in a contested case deprives a party of its constitutional right to be present at the hearing, to voice its objections in an appropriate manner, and results in a violation of fundamental due process. Failure to give the required notice constitutes lack of due process and is grounds for reversal.” *Custom-Crete, Inc. v. K-Bar Servs.*, 82 S.W.3d 655, 659 (Tex. App.—San Antonio 2002, no pet.).

Likewise, the failure for the Commission for Lawyer Discipline to have given the required notice as established by the Supreme Court of Texas constitutes a lack of due process and is grounds for reversal. Principles of statutory construction require that in construing the due process prescribed by the Supreme Court in RULE 2.17.O., the Evidentiary Panel and this Board of Disciplinary Appeals afford the words used their plain and common meaning, unless a contrary intention is apparent from the context, or unless such a construction leads to absurd results. Because of the difference in wording utilized by the Supreme Court in promulgating and approving the TEXAS RULES OF DISCIPLINARY PROCEDURE, the Court intentionally and purposefully included the words ‘within the time permitted’ in RULE 2.17.C and intentionally and purposefully omitted the same words from RULE 2.17.O. This fact cannot be ignored.

Additionally, the Evidentiary Panel further improperly misconstrued RULE 2.17.O. concerning the notice requirement for a default hearing. RULE 2.17.O. reads, in part: “If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent.” In the words of the Panel Chair, the phrase ‘without further notice to the Respondent’ was construed by the Evidentiary Panel as follows: “[T]he way that I read the rule is, in a situation like this, if the Respondent fails to answer, a hearing for default may be set not less than ten days without further notice to Respondent. I do not believe that the fact that the CDC gave notice somehow then reverts and subjects them to the 45-day requirement.” RR pg. 11, lns. 4–10.

What the Evidentiary Panel omits, however, is that by choosing to issue notice, the Commission for Lawyer Discipline had the obligation to issue the correct notice. RULE 2.17.O. is both mandatory and explicit in its requirement that “Evidentiary Panel proceedings must be set for hearing with a minimum of forty-five days’ notice to all parties...”. The RULE then proceeds to provide an exception: “If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent.” Setting aside that the Appellant did file an answer and the exception is inapplicable, for purposes of argument, the Evidentiary Panel violates principles of statutory construction in holding that a default hearing may be set at any time not less than ten days after the answer date with or without notice to Respondent.

Moreover, the Evidentiary Panel’s holding fails to remember the purpose of notice and of due process. Notice is provided to inform an opposing party of the need to take action. Due process, in turn, requires the opportunity to be heard at a meaningful time and in a meaningful manner. The Commission for Lawyer Discipline chose to provide Applicant notice of the May 6, 2021 setting.

Having so chosen, the Commission is obligated to provide the notice required by RULE 2.17.O. and by due process.

CONCLUSION AND PRAYER FOR RELIEF

The record in this Evidentiary Proceeding establishes multiple violations of Appellant Carl Donald Hughes, Jr.'s rights to due process guaranteed him by the Fourteenth Amendment of the United States Constitution. As demonstrated hereinabove at further length at ARGUMENT AND AUTHORITY for ISSUE ONE, the TEXAS RULES OF DISCIPLINARY PROCEDURE as promulgated improperly deny Appellant the due process right to have the facts alleged against him established by a preponderance of the evidence as required by TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17.M. By mandating that all facts alleged in an Evidentiary Petition be taken as true if a Respondent fails to file a responsive pleading before 5:01 p.m. on the first Monday following the expiration of twenty days after service of the Evidentiary Petition rather than upon the rendering of a default judgment by an Evidentiary Panel, the TEXAS RULES OF DISCIPLINARY PROCEDURE deprive a respondent who does in factual truth file an untimely answer and appear before the Evidentiary Panel, such as Appellant, the right to either introduce evidence in his own defense or have the issues of fact alleged against him proven by a preponderance of the evidence. Such a respondent, generally, and Appellant, specifically, are therefore denied the opportunity to be heard at a meaningful time and in a meaningful manner before being deprived of their property interest.

As also demonstrated hereinabove at further length at ARGUMENT AND AUTHORITY for ISSUE THREE, and independent of the argument in support of ISSUE ONE, the Evidentiary Panel denied Appellant the due process right to have a hearing for default conducted following the provision to Appellant of the correct notice as prescribed by the TEXAS RULES OF DISCIPLINARY PROCEDURE. RULE 2.17.O. is mandatory in its requirement that Evidentiary Panel proceedings be

set for hearing with a minimum of forty-five days' notice to all parties unless waived by all parties. The Evidentiary Panel proceeding against Appellant was noticed to occur on the 29th day following the issuance of the notice in violation of the forty-five days' notice requirement. Nor can this violation be cured by RULE 2.17.O.'s permissive language regarding setting a hearing for default when a Respondent fails to file an answer and no notice is provided the Respondent because Appellant did file an answer and notice (although improper) was provided to Appellant. In layman's terms, the Evidentiary Panel held 'because the Commission was not required to provide any notice of a default hearing the Commission was not required to provide the correct notice when actually noticing the Appellant'. This argument does not withstand due process scrutiny and as a holding of the Evidentiary Panel was violative of Appellant's right to due process.

In light of such violations of Appellant's right to due process, Appellant prays that the Board of Disciplinary Appeals vacate the judgment of the Evidentiary Panel and order Appellant be granted a de novo Evidentiary Hearing on the merits of the Evidentiary Petition to be held after the providing to Appellant of at least the minimum notice required by the Fourteenth Amendment and the TEXAS RULES OF DISCIPLINARY PROCEDURE.

Appellant further prays, as demonstrated hereinabove at further length at ARGUMENT AND AUTHORITY for ISSUE TWO, and independent of the argument in support of ISSUE ONE and ISSUE TWO, that the Board of Disciplinary Appeals reverse the *Order Granting Motion for Default* entered by the Evidentiary Panel for the reason that the Evidentiary Panel failed to apply required rules of statutory construction and improperly construed the notice required to be given Appellant pursuant to RULE 2.17.O., vacate the *Default Judgment of Partially Probated Suspension*, and order Appellant be granted a de novo Evidentiary Hearing on the merits of the

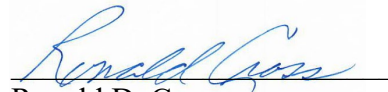
Evidentiary Petition to be held after the providing to Appellant of at least the minimum notice required by the TEXAS RULES OF DISCIPLINARY PROCEDURE.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this *Brief of Appellant Carl Donald Hughes, Jr.*, was served on each attorney of record or party in accordance with the BOARD OF DISCIPLINARY APPEALS INTERNAL PROCEDURAL RULE 1.05(e) and TEXAS RULE OF APPELLATE PROCEDURE 9.5. on October 15, 2021, as follows:

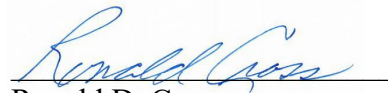
Hon. Douglas S. Lang, Attorney for Appellate – via email to lang.doug@dorsey.com

Rachel Craig, Attorney for the Commission for Lawyer Discipline – via email to Rachel.Craig@TexasBar.com; with a courtesy copy to Sophia.Henderson@TexasBar.com.


Ronald D. Cross

CERTIFICATE OF COMPLIANCE

Pursuant to the Board of Disciplinary Appeals INTERNAL PROCEDURAL RULES, the foregoing brief on the merits contains approximately 8,196 words (total for all sections of brief that are required to be counted), which is less than the 15,000 total words permitted by the Board's INTERNAL PROCEDURAL RULE 4.05(d). Appellant relies on the word count of the computer program used to prepare this brief.


Ronald D. Cross

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IV. Factual Allegations

On or about January 5, 2017, Complainant Gwen Bourgeois (Bourgeois) hired Respondent to file a civil action involving a real estate matter. On February 6, 2017, Respondent filed the action in district court in Galveston County, Texas but the case was later removed by the Defendants to the United States District Court for the Southern District of Texas, Galveston Division (C.A. No. 3:17-CV-00059). Complainant paid Respondent a total of \$25,000 during his representation.

Bourgeois requested an accounting from Respondent on February 18, 2018; February 20, 2018; and July 23, 2018. Bourgeois also made verbal requests for an accounting in October 2017 and on May 31, 2017. Respondent failed to comply with Bourgeois' repeated requests.

On February 20, 2018, Bourgeois requested a summary of Respondent's response to a Motion for Summary Judgment in the matter and copies of all requests and answers to the court. Respondent failed to comply with Bourgeois' request.

On October 10, 2017, Bourgeois paid \$6,000 to Respondent for the purpose of taking depositions. In January 2018, Bourgeois paid an additional \$2,000 for the same purpose. No depositions were taken, and Respondent failed to refund these funds upon request.

On June 29, 2018, Respondent's representation was terminated. Respondent failed to return Bourgeois' client file and other documents. Respondent further failed to return any unearned fees.

Respondent received notice of the grievance but failed to submit a response and failed to allege any legal ground or privilege for his failure to do so.

V. Disciplinary Rules of Professional Conduct

The conduct described above is in violation of the following Texas Disciplinary Rules of Professional Conduct:

- 1.03(a)** A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- 1.03(b)** A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- 1.15(d)** Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.
- 8.04(a)(8)** A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's Office a response unless he/she in good faith timely asserts a privilege or other legal ground for failure to do so.

VI. Complaint

The complaint that forms the basis of the cause of action set forth above was brought to the attention of the Office of the Chief Disciplinary Counsel of the State Bar of Texas by Gwen Bourgeois filing a complaint on or about January 14, 2019.

VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent and that this Evidentiary Panel impose an appropriate sanction against Respondent as warranted by the facts. Petitioner further prays to recover all reasonable and necessary attorneys' fees and all costs associated with this proceeding.

Petitioner further prays for such other and additional relief, general or specific, at law or in equity, to which it may show itself entitled.

VIII. Request for Disclosure

Pursuant to Rule 2.17(D) of the Texas Rules of Disciplinary Procedure, Petitioner requests that Respondent disclose, within fifty (50) days of the service of this request, the following information or material:

1. The correct name of the parties.
2. The factual bases of Respondent's claims or defenses.
3. The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with this disciplinary proceeding.
4. For any testifying expert, the expert's name, address, and telephone number; subject matter on which the expert will testify, and the general substance of the expert's mental impressions and opinions and a brief summary of the basis of them.
5. Any witness statements.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Rachel Craig
Assistant Disciplinary Counsel

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/s/ Rachel Craig
Rachel Craig
State Bar No. 24090049

ATTORNEYS FOR PETITIONER



constitutes a default under Rule 2.17C, and all facts alleged in the Evidentiary Petition shall be taken as true.

III.

Respondent's deadline to answer the Evidentiary Petition expired on Monday, February 24, 2020. Respondent failed to file his responsive pleading by that date.

IV.

Respondent's failure to file a responsive pleading within the time permitted constitutes a default and the following facts alleged in the Evidentiary Petition shall be taken as true for purposes of this Disciplinary Proceeding:

Factual Allegations Grievance No. 201900501

1. On or about January 5, 2017, Complainant Gwen Bourgeois (Bourgeois) hired Respondent to file a civil action involving a real estate matter. On February 6, 2017, Respondent filed the action in district court in Galveston County, Texas but the case was later removed by the Defendants to the United States District Court for the Southern District of Texas, Galveston Division (C.A. No. 3:17-CV-00059). Complainant paid Respondent a total of \$25,000 during his representation.
2. Bourgeois requested an accounting from Respondent on February 18, 2018; February 20, 2018; and July 23, 2018. Bourgeois also made verbal requests for an accounting in October 2017 and on May 31, 2017. Respondent failed to comply with Bourgeois' repeated requests.
3. On February 20, 2018, Bourgeois requested a summary of Respondent's response to a Motion for Summary Judgment in the matter and copies of all requests and answers to the court. Respondent failed to comply with Bourgeois' request.
4. On October 10, 2017, Bourgeois paid \$6,000 to Respondent for the purpose of taking depositions. In January 2018, Bourgeois paid an additional \$2,000 for the same purpose. No depositions were taken, and Respondent failed to refund these funds upon request.

5. On June 29, 2018, Respondent's representation was terminated. Respondent failed to return Bourgeois' client file and other documents. Respondent further failed to return any unearned fees.
6. Respondent received notice of the grievance but failed to submit a response and failed to allege any legal ground or privilege for his failure to do so.
7. Respondent, by his conduct in connection with the grievance initiated by Bourgeois, has violated Rules 1.03(a), 1.03(b), 1.15(d), and 8.04(a)(8) of the Texas Disciplinary Rules of Professional Conduct.

V.

WHEREFORE, Petitioner requests that this matter be set for hearing and that, upon hearing, the Evidentiary Panel enter an order of default with a finding of professional misconduct, conduct a hearing to determine the sanctions to be imposed, and for such other and further relief to which the Commission for Lawyer Discipline is entitled.

Respectfully submitted,

Seana Willing

Chief Disciplinary Counsel

Rachel Craig

Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel

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The Princeton

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Dallas, Texas 75254

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E-Mail: rachel.craig@texasbar.com

/s/ Rachel Craig

Rachel Craig

State Bar No. 24090049

ATTORNEYS FOR PETITIONER

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Motion for Default Judgment has been sent to Respondent, Carl Donald Hughes, Jr., on the 7th day of April, 2021, by the means indicated below:

Carl Donald Hughes, Jr.
PO Box 610326
Dallas, Texas 75261-0326
Via E-Mail: carlhughes@aol.com;
Via Certified Mail No. 7019 2970 0001 2640 3120,
Return Receipt Requested; and
Via First Class U. S. Mail

/s/ Rachel Craig _____
Rachel Craig

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature: <u>X Carl Hughes</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>CARL DONALD HUGHES PO BOX 610326 DALLAS TX 75261-0326</p> <p>0501.EP&RFD&panel appt RC/slh 01.06.20</p>		<p>B. Received by: <u>Carl Hughes, JR</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>C. Date of Delivery: <u>1/29/20</u></p>	
<p>2. Article Number (Transfer from service label)</p> <p>7016 1370 0001 5820 3905</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail (PSN)</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (PSN)</p>		<p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>	

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<p>9590 9402 1753 6074 8794 12</p>		<p>STATE BAR OF TEXAS OFC OF CHIEF DISCIPLINARY COUNSEL 651 DALLAS PKWY STE 925 DALLAS TX 75254</p>	
<p>United States Postal Service</p>		<p>Received JAN 31 2020 State Bar of Texas Dallas Regional Office</p>	
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0050

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

**VIA CERTIFIED MAIL NO. 7016 1370 0001 5820 3905,
RETURN RECEIPT REQUESTED**

January 6, 2020

Carl Donald Hughes
P.O. Box 610326
Dallas, Texas 75261-0326

Re: Case No. 201900501 - Commission for Lawyer Discipline v. Carl Donald Hughes

Dear Mr. Hughes:

The above-referenced Complaint shall proceed through the Evidentiary process under Rules 2.17, *et seq.*, of the Texas Rules of Disciplinary Procedure. Pursuant to Rule 2.17, the Chair of the District Grievance Committee has appointed an Evidentiary Panel to hear the Complaint. The signed Order Assigning Evidentiary Panel and list of the assigned panel members is attached to this notice. Any alleged grounds for disqualification or recusal of a panel member are conclusively waived if not brought to the attention of the panel within ten (10) days after receipt of this notice.

Enclosed is a copy of the Evidentiary Petition that has been filed in this matter. Pursuant to Rule 2.17B, you are required to file a responsive pleading either admitting or denying each specific allegation of Professional Misconduct no later than 5:00 p.m. on the first Monday following the expiration of twenty (20) days after your receipt of the petition.

Also enclosed is Petitioner's Request for Disclosure to Respondent. Pursuant to Rule 2.17D, your responses must be provided to the undersigned within fifty (50) days after service of the Requests.

Please do not hesitate to contact this office if you have any questions.

Sincerely,
/s/ Rachel Craig
Rachel Craig
Assistant Disciplinary Counsel

RC/slh

Enclosures: 1) Order Assigning Evidentiary Panel;
2) Evidentiary Panel Appointment/Assigned Panel Address List; and
3) Evidentiary Petition & Request for Disclosure

The Princeton, 14651 Dallas Parkway, Suite 925, Dallas, Texas 75254
Telephone: (972) 383-2900 Facsimile: (972) 383-2935

0051



IV. Factual Allegations

On or about January 5, 2017, Complainant Gwen Bourgeois (Bourgeois) hired Respondent to file a civil action involving a real estate matter. On February 6, 2017, Respondent filed the action in district court in Galveston County, Texas but the case was later removed by the Defendants to the United States District Court for the Southern District of Texas, Galveston Division (C.A. No. 3:17-CV-00059). Complainant paid Respondent a total of \$25,000 during his representation.

Bourgeois requested an accounting from Respondent on February 18, 2018; February 20, 2018; and July 23, 2018. Bourgeois also made verbal requests for an accounting in October 2017 and on May 31, 2017. Respondent failed to comply with Bourgeois' repeated requests.

On February 20, 2018, Bourgeois requested a summary of Respondent's response to a Motion for Summary Judgment in the matter and copies of all requests and answers to the court. Respondent failed to comply with Bourgeois' request.

On October 10, 2017, Bourgeois paid \$6,000 to Respondent for the purpose of taking depositions. In January 2018, Bourgeois paid an additional \$2,000 for the same purpose. No depositions were taken, and Respondent failed to refund these funds upon request.

On June 29, 2018, Respondent's representation was terminated. Respondent failed to return Bourgeois' client file and other documents. Respondent further failed to return any unearned fees.

Respondent received notice of the grievance but failed to submit a response and failed to allege any legal ground or privilege for his failure to do so.

V. Disciplinary Rules of Professional Conduct

The conduct described above is in violation of the following Texas Disciplinary Rules of Professional Conduct:

- 1.03(a)** A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- 1.03(b)** A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- 1.15(d)** Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.
- 8.04(a)(8)** A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's Office a response unless he/she in good faith timely asserts a privilege or other legal ground for failure to do so.

VI. Complaint

The complaint that forms the basis of the cause of action set forth above was brought to the attention of the Office of the Chief Disciplinary Counsel of the State Bar of Texas by Gwen Bourgeois filing a complaint on or about January 14, 2019.

VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent and that this Evidentiary Panel impose an appropriate sanction against Respondent as warranted by the facts. Petitioner further prays to recover all reasonable and necessary attorneys' fees and all costs associated with this proceeding.

Petitioner further prays for such other and additional relief, general or specific, at law or in equity, to which it may show itself entitled.

VIII. Request for Disclosure

Pursuant to Rule 2.17(D) of the Texas Rules of Disciplinary Procedure, Petitioner requests that Respondent disclose, within fifty (50) days of the service of this request, the following information or material:

1. The correct name of the parties.
2. The factual bases of Respondent's claims or defenses.
3. The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with this disciplinary proceeding.
4. For any testifying expert, the expert's name, address, and telephone number; subject matter on which the expert will testify, and the general substance of the expert's mental impressions and opinions and a brief summary of the basis of them.
5. Any witness statements.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Rachel Craig
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel
State Bar of Texas
The Princeton
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254
Telephone: (972) 383-2900
Facsimile: (972) 383-2935
E-Mail: rachel.craig@texasbar.com

/s/ Rachel Craig
Rachel Craig
State Bar No. 24090049

ATTORNEYS FOR PETITIONER



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Default Hearing was forwarded on the 7th day of April, 2021, to the following:

Carl Donald Hughes, Jr.
PO Box 610326
Dallas, Texas 75261-0326
Via E-Mail: carlhughes@aol.com;
Via Certified Mail No. 7019 2970 0001 2640 3120,
Return Receipt Requested; and
Via First Class U. S. Mail

/s/ Rachel Craig

Rachel Craig

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

**VIA E-MAIL: carlhughes@aol.com;
VIA CERTIFIED MAIL NO. 7019 2970 0001 2640 3120,
RETURN RECEIPT REQUESTED; and
VIA FIRST CLASS U.S. MAIL**

April 7, 2021

Carl Donald Hughes
P.O. Box 610326
Dallas, Texas 75261-0326

Re: Case No. 201900501 - Commission for Lawyer Discipline v. Carl Donald Hughes

Dear Mr. Hughes:

Enclosed please find a Motion for Default Judgment regarding the referenced matter. This Motion has been set for hearing at 9:30 a.m. on Thursday, May 6, 2021. The hearing will be held via Zoom videoconference. Should the panel grant the Motion for Default Judgment, the Commission will request that a hearing on sanctions immediately follow.

Also enclosed please find a copy of the Notice of Default Hearing that has been filed today.

Sincerely,

/s/ Rachel Craig

Rachel Craig
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas

RC/slh

Enclosures: Motion for Default Judgment
Notice of Default Hearing

From: [Sophia Henderson](#)
To: ["carlhughes@aol.com"](mailto:carlhughes@aol.com)
Cc: [Rachel Craig](#)
Subject: Case No. 201900501 - CFLD v. Hughes
Date: Thursday, April 8, 2021 1:54:00 PM
Attachments: [Hughes MFDJ and hearing notice to R.pdf](#)

Mr. Hughes, please see attached correspondence regarding the May 6 hearing that has been scheduled in the referenced matter.

Thank you,
Sophia

Sophia Henderson
Legal Assistant

State Bar of Texas

Office of the Chief Disciplinary Counsel

Please visit the State Bar of Texas' coronavirus information page at texasbar.com/coronavirus for timely resources and updates on bar-related events.

The Princeton
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254
Direct: 972.383.2929
Facsimile: 972.383.2935
E-Mail: sophia.henderson@texasbar.com

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Suite 925
Dallas, Texas 75254



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DALLAS TX 75261-0326

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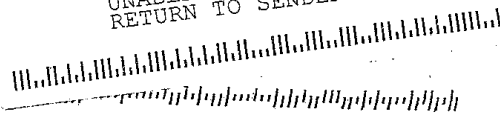
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1. Article Addressed to:

CARL DONALD HUGHES
PO BOX 610326
DALLAS TX 75261-0326

0501.MFDJ & H/N RC/sh 04.07.20



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2. Article Number (Transfer from service label)

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☐ Addressee

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1. Article Addressed to: CARL DONALD HUGHES PO BOX 610326 DALLAS TX 75261-0326 0501.MFDJ & H/N RC/slh 04.07.20  9590 9402 5661 9308 3589 10		B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label) 7019 2970 0001 2640 3120		3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	
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CARL DONALD HUGHES
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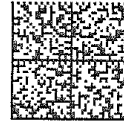
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constitutes a default under Rule 2.17C, and all facts alleged in the Evidentiary Petition shall be taken as true.

III.

Respondent's deadline to answer the Evidentiary Petition expired on Monday, February 24, 2020. Respondent failed to file his responsive pleading by that date.

IV.

Respondent's failure to file a responsive pleading within the time permitted constitutes a default and the following facts alleged in the Evidentiary Petition shall be taken as true for purposes of this Disciplinary Proceeding:

Factual Allegations Grievance No. 201900501

1. On or about January 5, 2017, Complainant Gwen Bourgeois (Bourgeois) hired Respondent to file a civil action involving a real estate matter. On February 6, 2017, Respondent filed the action in district court in Galveston County, Texas but the case was later removed by the Defendants to the United States District Court for the Southern District of Texas, Galveston Division (C.A. No. 3:17-CV-00059). Complainant paid Respondent a total of \$25,000 during his representation.
2. Bourgeois requested an accounting from Respondent on February 18, 2018; February 20, 2018; and July 23, 2018. Bourgeois also made verbal requests for an accounting in October 2017 and on May 31, 2017. Respondent failed to comply with Bourgeois' repeated requests.
3. On February 20, 2018, Bourgeois requested a summary of Respondent's response to a Motion for Summary Judgment in the matter and copies of all requests and answers to the court. Respondent failed to comply with Bourgeois' request.
4. On October 10, 2017, Bourgeois paid \$6,000 to Respondent for the purpose of taking depositions. In January 2018, Bourgeois paid an additional \$2,000 for the same purpose. No depositions were taken, and Respondent failed to refund these funds upon request.

5. On June 29, 2018, Respondent's representation was terminated. Respondent failed to return Bourgeois' client file and other documents. Respondent further failed to return any unearned fees.
6. Respondent received notice of the grievance but failed to submit a response and failed to allege any legal ground or privilege for his failure to do so.
7. Respondent, by his conduct in connection with the grievance initiated by Bourgeois, has violated Rules 1.03(a), 1.03(b), 1.15(d), and 8.04(a)(8) of the Texas Disciplinary Rules of Professional Conduct.

V.

WHEREFORE, Petitioner requests that this matter be set for hearing and that, upon hearing, the Evidentiary Panel enter an order of default with a finding of professional misconduct, conduct a hearing to determine the sanctions to be imposed, and for such other and further relief to which the Commission for Lawyer Discipline is entitled.

Respectfully submitted,

Seana Willing

Chief Disciplinary Counsel

Rachel Craig

Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel

State Bar of Texas

The Princeton

14651 Dallas Parkway, Suite 925

Dallas, Texas 75254

Telephone: (972) 383-2900

Facsimile: (972) 383-2935

E-Mail: rachel.craig@texasbar.com

/s/ Rachel Craig

Rachel Craig

State Bar No. 24090049

ATTORNEYS FOR PETITIONER

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Motion for Default Judgment has been sent to Respondent, Carl Donald Hughes, Jr., on the 7th day of April, 2021, by the means indicated below:

Carl Donald Hughes, Jr.
PO Box 610326
Dallas, Texas 75261-0326
Via E-Mail: carlhughes@aol.com;
Via Certified Mail No. 7019 2970 0001 2640 3120,
Return Receipt Requested; and
Via First Class U. S. Mail

/s/ Rachel Craig _____
Rachel Craig

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature: <u>X Carl Hughes</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>CARL DONALD HUGHES PO BOX 610326 DALLAS TX 75261-0326</p> <p>0501.EP&RFD&panel appt RC/slh 01.06.20</p>		<p>B. Received by: <u>Carl Hughes, JR</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>C. Date of Delivery: <u>1/29/20</u></p>	
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<p>United States Postal Service</p>	<p>• Sender: Please print your name, address, and ZIP+4® in this box•</p> <p>Received</p> <p>JAN 31 2020</p> <p>STATE BAR OF TEXAS OFC OF CHIEF DISCIPLINARY COUNSEL 651 DALLAS PKWY STE 925 DALLAS TX 75254</p> <p>State Bar of Texas Dallas Regional Office</p>



0069

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

**VIA CERTIFIED MAIL NO. 7016 1370 0001 5820 3905,
RETURN RECEIPT REQUESTED**

January 6, 2020

Carl Donald Hughes
P.O. Box 610326
Dallas, Texas 75261-0326

Re: Case No. 201900501 - Commission for Lawyer Discipline v. Carl Donald Hughes

Dear Mr. Hughes:

The above-referenced Complaint shall proceed through the Evidentiary process under Rules 2.17, *et seq.*, of the Texas Rules of Disciplinary Procedure. Pursuant to Rule 2.17, the Chair of the District Grievance Committee has appointed an Evidentiary Panel to hear the Complaint. The signed Order Assigning Evidentiary Panel and list of the assigned panel members is attached to this notice. Any alleged grounds for disqualification or recusal of a panel member are conclusively waived if not brought to the attention of the panel within ten (10) days after receipt of this notice.

Enclosed is a copy of the Evidentiary Petition that has been filed in this matter. Pursuant to Rule 2.17B, you are required to file a responsive pleading either admitting or denying each specific allegation of Professional Misconduct no later than 5:00 p.m. on the first Monday following the expiration of twenty (20) days after your receipt of the petition.

Also enclosed is Petitioner's Request for Disclosure to Respondent. Pursuant to Rule 2.17D, your responses must be provided to the undersigned within fifty (50) days after service of the Requests.

Please do not hesitate to contact this office if you have any questions.

Sincerely,
/s/ Rachel Craig
Rachel Craig
Assistant Disciplinary Counsel

RC/slh

Enclosures: 1) Order Assigning Evidentiary Panel;
2) Evidentiary Panel Appointment/Assigned Panel Address List; and
3) Evidentiary Petition & Request for Disclosure

The Princeton, 14651 Dallas Parkway, Suite 925, Dallas, Texas 75254
Telephone: (972) 383-2900 Facsimile: (972) 383-2935

0070



IV. Factual Allegations

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V. Disciplinary Rules of Professional Conduct

The conduct described above is in violation of the following Texas Disciplinary Rules of Professional Conduct:

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- 1.03(b)** A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- 1.15(d)** Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.
- 8.04(a)(8)** A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's Office a response unless he/she in good faith timely asserts a privilege or other legal ground for failure to do so.

VI. Complaint

The complaint that forms the basis of the cause of action set forth above was brought to the attention of the Office of the Chief Disciplinary Counsel of the State Bar of Texas by Gwen Bourgeois filing a complaint on or about January 14, 2019.

VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent and that this Evidentiary Panel impose an appropriate sanction against Respondent as warranted by the facts. Petitioner further prays to recover all reasonable and necessary attorneys' fees and all costs associated with this proceeding.

Petitioner further prays for such other and additional relief, general or specific, at law or in equity, to which it may show itself entitled.

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Pursuant to Rule 2.17(D) of the Texas Rules of Disciplinary Procedure, Petitioner requests that Respondent disclose, within fifty (50) days of the service of this request, the following information or material:

1. The correct name of the parties.
2. The factual bases of Respondent's claims or defenses.
3. The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with this disciplinary proceeding.
4. For any testifying expert, the expert's name, address, and telephone number; subject matter on which the expert will testify, and the general substance of the expert's mental impressions and opinions and a brief summary of the basis of them.
5. Any witness statements.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Rachel Craig
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel
State Bar of Texas
The Princeton
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254
Telephone: (972) 383-2900
Facsimile: (972) 383-2935
E-Mail: rachel.craig@texasbar.com

/s/ Rachel Craig
Rachel Craig
State Bar No. 24090049

ATTORNEYS FOR PETITIONER



Dallas Office
Chief Disciplinary Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Default Hearing was forwarded on the 7th day of April, 2021, to the following:

Carl Donald Hughes, Jr.
PO Box 610326
Dallas, Texas 75261-0326
Via E-Mail: carlhughes@aol.com;
Via Certified Mail No. 7019 2970 0001 2640 3120,
Return Receipt Requested; and
Via First Class U. S. Mail

/s/ Rachel Craig

Rachel Craig

From: [Rachel Craig](#)
To: [Sophia Henderson](#)
Subject: FW: Case No. 201900501; Commission for Lawyer Discipline v. Carl Donald Hughes, Jr.
Date: Tuesday, May 4, 2021 2:36:36 PM
Attachments: [image001.png](#)
[Answer to Evidentiary Petition.pdf](#)
Importance: High

From: kylie@roncrosslaw.com <kylie@roncrosslaw.com>
Sent: Tuesday, May 4, 2021 2:32 PM
To: Rachel Craig <Rachel.Craig@TEXASBAR.COM>
Cc: Tonya Harlan <Tonya.Harlan@TEXASBAR.COM>; ron@RonCrossLaw.com
Subject: Case No. 201900501; Commission for Lawyer Discipline v. Carl Donald Hughes, Jr.
Importance: High

Good afternoon,

Attached is *Respondent Carl Donald Hughes, Jr. 's Answer to Evidentiary Petition*. Please confirm receipt and let me know if anything further is required on my part to consider this answer filed.

Thank you for your assistance.

Sincerely,

Kylie McDaniel
Paralegal to Ronald D. Cross

RC Law Office of Ronald D. Cross, P.C.

5601 Democracy Drive
Suite 140
Plano, Texas 75024
Kylie@RonCrossLaw.com
P: 972-913-2917
F: 972-913-2917

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**BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-2
STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner**

V.

**CARL DONALD HUGHES, JR.
Respondent**

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CASE NO. 201900501

**RESPONDENT CARL DONALD HUGHES, JR.'S ANSWER
TO EVIDENTIARY PETITION**

COMES NOW, CARL DONALD HUGHES, JR., Respondent, who in response to the *Evidentiary Petition* would respectfully show the following:

Response to Allegations of Paragraph I Titled *Parties*

1. Respondent ADMITS that Petitioner is a committee of the State Bar of Texas.
2. Respondent ADMITS that Respondent is an attorney licensed to practice law in the State of Texas.

Response to Allegations of Paragraph II Titled *Jurisdiction & Venue*

3. Respondent ADMITS that this Disciplinary Proceeding is brought pursuant to the State Bar Act, TEX. GOV'T. CODE ANN. Sec. 81.001, *et seq.*, the Texas Disciplinary Rules of Professional Conduct, and the Texas Rules of Disciplinary Procedure.
4. Respondent ADMITS that the complaint that forms the basis of this Disciplinary Proceeding was filed by Gwen Bourgeois on or after June 1, 2018.
5. Respondent ADMITS that venue is property in Dallas County, Texas, because Dallas County is the county of Respondent's principal place of practice.

**RESPONDENT CARL DONALD HUGHES, JR.'S
ANSWER TO EVIDENTIARY PETITION**

PAGE 1 OF 5

0079

Response to Allegation of Paragraph III Titled *Professional Misconduct*

6. Respondent DENIES that the acts and omissions of Respondent as alleged in the *Evidentiary Petition* constitute professional misconduct.

Response to Allegations of Paragraph IV Titled *Factual Allegations*

7. Respondent ADMITS that on or about January 5, 2017, Complainant Gwen Bourgeois (Bourgeois) hired Respondent for representation in a civil action involving a real estate matter as alleged in the *Evidentiary Petition*.
8. Respondent ADMITS that on or about February 6, 2017, Respondent appeared in an action in district court in Galveston County, Texas.
9. Respondent ADMITS that the action was later removed to the United States District Court for the Southern District of Texas, Galveston Division (C.A. No. 3:17-CV-00059).
10. Respondent at this time is unable to ADMIT or DENY that Bourgeois paid Respondent a total of \$25,000 during his representation. due to the current inaccessibility of records and documents pertaining to the representation of Bourgeois and of Respondent's financial records. Respondent will supplement this answer following his retrieval and review of all necessary records and documents.
11. Respondent at this time is unable to ADMIT or DENY that Bourgeois requested an accounting from Respondent on February 18, 2018; February 20, 2018; and July 23, 2018 due to the current inaccessibility of records and documents pertaining to the representation of Bourgeois. Respondent will supplement this answer following his retrieval and review of all necessary records and documents.
12. Respondent at this time is unable to ADMIT or DENY that Bourgeois made verbal requests for an accounting from Respondent in October 2017 and on May 31, 2017 due to the current

inaccessibility of records and documents pertaining to the representation of Bourgeois. Respondent will supplement this answer following his retrieval and review of all necessary records and documents.

13. Respondent at this time is unable to ADMIT or DENY that on February 20, 2018, Bourgeois requested a summary of Respondent's response to a Motion for Summary Judgment in the matter and copies of all requests and answers to the court due to the current inaccessibility of necessary records and documents pertaining to the representation of Bourgeois. Respondent will supplement this answer following his retrieval and review of all necessary records and documents.
14. Respondent at this time is unable to ADMIT or DENY that on October 10, 2017, Bourgeois paid \$6,000 to Respondent for the purpose of taking depositions due to the current inaccessibility of necessary records and documents pertaining to the representation of Bourgeois and of Respondent's financial records. Respondent will supplement this answer following his retrieval and review of all necessary records and documents.
15. Respondent at this time is unable to ADMIT or DENY that in January 2018, Bourgeois paid \$2,000 to Respondent for the purpose of taking depositions due to the current inaccessibility of necessary records and documents pertaining to the representation of Bourgeois and of Respondent's financial records. Respondent will supplement this answer following his retrieval and review of all necessary records and documents.
16. Respondent ADMITS that his representation of Bourgeois was terminated on or about June 29, 2018.
17. Respondent DENIES that he failed to return Bourgeois' client file and other documents.
18. Respondent DENIES that he failed to return unearned fees.

19. Respondent ADMITS that he failed to submit a response to the grievance and failed to allege any legal ground or privilege for his failure to do so.


Response to Allegations of Paragraph V. Titled *Disciplinary Rules of Professional Conduct*

20. Respondent DENIES that his conduct was in violation of Texas Disciplinary Rule of Professional Conduct 1.03(a).
21. Respondent DENIES that his conduct was in violation of Texas Disciplinary Rule of Professional Conduct 1.03(b).
22. Respondent DENIES that his conduct was in violation of Texas Disciplinary Rule of Professional Conduct 1.15(d).
23. Respondent ADMITS that his conduct was in violation of Texas Disciplinary Rule of Professional Conduct 8.04(a)(8).

Response to Allegations of Paragraph VI. Titled *Complaint*

24. Respondent ADMITS that the complaint that forms the basis of the cause of action set forth in the *Evidentiary Petition* was brought to the attention of the Office of the Chief Disciplinary Counsel of the State Bar of Texas by Bourgeois filing a complaint on or about January 14, 2019.

Respectfully submitted,

By: 
Ronald D. Cross
Law Office of Ronald D. Cross P.C.
Attorney for Respondent
State Bar No.: 00787305
Ron@RonCrossLaw.com
5601 Democracy Dr., Suite 140
Plano, Texas 75024
Tel: 972/913-2917
Fax: 972/913-2917

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on each attorney of record or party in accordance with the TEXAS RULES OF DISCIPLINARY PROCEDURE 2.17.B. on May 4, 2021.



Ronald D. Cross

SBN: 00787305

Attorney for Carl Donald Hughes, Jr.,
Respondent

**BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-2
STATE BAR OF TEXAS**



Dallas Office
Chief Disciplinary Counsel

**COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner**

V.

**CARL DONALD HUGHES, JR.
Respondent**

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CASE NO. 201900501

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Respectfully submitted,

By: 
Ronald D. Cross
Law Office of Ronald D. Cross P.C.
Attorney for Respondent
State Bar No.: 00787305
Ron@RonCrossLaw.com
5601 Democracy Dr., Suite 140
Plano, Texas 75024
Tel: 972/913-2917
Fax: 972/913-2917

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on each attorney of record or party in accordance with the TEXAS RULES OF DISCIPLINARY PROCEDURE 2.17.B. on May 4, 2021.



Ronald D. Cross

SBN: 00787305

Attorney for Carl Donald Hughes, Jr.,
Respondent

From: kylie@roncrosslaw.com
To: [Rachel Craig](#)
Cc: [Sophia Henderson](#); ron@roncrosslaw.com
Subject: Case No. 201900501 - CFLD v. Hughes
Date: Wednesday, May 5, 2021 3:32:27 PM
Attachments: [image001.png](#)
[2021.05.05 - Motion for Continuance.pdf](#)

Ms. Craig,

Attached please find *Respondent Carl Donald Hughes, Jr. 's Motion for Continuance*. Please confirm receipt and return a file-marked copy when available. Thank you so much.

Sincerely,

Kylie McDaniel
Paralegal to Ronald D. Cross

RC

Law Office of Ronald D. Cross, P.C.

5601 Democracy Drive
Suite 140
Plano, Texas 75024
Kylie@RonCrossLaw.com
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**BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-2
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**COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner**

V.

**CARL DONALD HUGHES, JR.
Respondent**

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CASE NO. 201900501

**RESPONDENT CARL DONALD HUGHES, JR.'S
MOTION FOR CONTINUANCE**

This Motion for Continuance is brought by CARL DONALD HUGHES, JR., Respondent, who shows in support:

1. This case is presently set for a default hearing on Thursday, May 6, 2021, at 9:30 a.m. to be held via Zoom videoconference.
2. Respondent is a sole practitioner operating a modest part-time law practice without staff to assist him with docket management or deadline compliance. Respondent maintained a 'brick and mortar' office prior to the Dallas County Covid lockdown order on March 22, 2020. Respondent's then financially tenuous law practice was catastrophically affected by the lockdown order such that he closed his 'brick and mortar' office on or about April 2020. Respondent has since that time operated his law practice out of his home.
3. Respondent is unable to provide to the undersigned counsel documents and information necessary for his representation prior to the current hearing setting of May 6, 2021. Respondent has maintained his records and documents throughout his 35-year career and has a significant physical file regarding his representation of Complainant. When Respondent's economic condition required that he vacate his home on short notice in early 2019, Respondent moved his

law office records to a storage facility. Although relying on the assistance of long-time friends and acquaintances to provide housing for himself since that time, Respondent has been diligent in payment of the storage facility fees. However, he is and has been without transportation for well-over two years due to his inability to afford needed repair work to his vehicle.

4. Respondent has a previous history of anxiety and depression which was successfully in remission prior to the pandemic. Unfortunately, however, the tribulations occasioned by the pandemic have caused Respondent to struggle with anxiety and depression with the result that he became extremely isolated.

5. All of these factors coalesced into a perfect storm whereby Respondent was not able to routinely retrieve mail from his post office box. (Respondent's small practice currently consists of one juvenile law case which does not include the types of cases where certified mail is routinely utilized.)

6. Respondent apologizes for and sincerely regrets this period of immobilization and isolation. Upon recognizing these behaviors within himself, Respondent intentionally re-engaged in the Monday Night Group, a recovery group for lawyers suffering from anxiety, depression, and other mental-illnesses of which he was one of the original members at the founding of the group over a decade ago.

7. Respondent assures the members of the Evidentiary Panel that the depression and anxiety from which he was suffering are now in remission. He is diligently catching up on and fulfilling his responsibilities to his law practice.

8. Respondent requests relief from the Evidentiary Panel because of the extraordinary and unprecedented circumstances in which he found himself. As of the filing of this motion, the State Bar of Texas Office of Chief Disciplinary Counsel continues to work remotely. Even the

normally draconian Internal Revenue Service has extended deadlines for I.R.S. filings because of the havoc wreaked on the life of a majority of citizens due to the pandemic and attendant disabilities. Respondent prays for such a humanitarian response from this panel.

9. The foregoing establishes that Respondent's failure to timely file an answer was not intentional or the result of conscious indifference. Rather, it was due to accident or mistake occasioned by the temporary recurrence of depression and anxiety created by the effects of the global pandemic. Additionally, Respondent will establish a meritorious defense to the claims asserted by Evidentiary Petition.

10. Importantly, granting Respondent's continuance request will not cause undue delay or prejudice to the Commission for Lawyer Discipline, which itself waited 408 days from the answer date before moving for a default and noticing Respondent of a hearing thereon. Respondent presumes, but does not aver, that the Commission's delay of 408 days in pursuing a default was also occasioned, at least in part, by the global pandemic.

11. The interests of justice urgently require an opportunity for the requested continuance to be granted and Respondent to be allowed to fully present his case. Respondent has a meritorious defense to the misconduct alleged by the Evidentiary Petition that will show he did not violate a Disciplinary Rule other than rule 8.04(a)(8), which violation Respondent admitted in *Respondent Carl Donald Hughes, Jr.'s Answer to Evidentiary Petition* filed on May 4, 2021. Alternatively, even if the Evidentiary Panel finds a technical violation of an additional Disciplinary Rule, Respondent has a significant amount of mitigation evidence to be considered in assessing an appropriate sanction, including but not limited to the factors recited above. Due process requires that Respondent have an opportunity to present both his factual and legal defenses as well as his mitigation evidence if such evidence should become necessary.

12. Notice of the May 6, 2021 hearing was served on Respondent by the Commission for Lawyer Discipline on April 7, 2021. Respondent received actual notice of the default hearing on Friday, April 28, 2021 when he retrieved mail from his post office box.

13. Respondent retained the undersigned lawyer to represent Respondent in this Evidentiary Proceeding on Tuesday, May 4, 2021.

14. Pursuant to *Texas Rule of Disciplinary Procedure* 2.17.J., “[t]he Respondent and the Complainant may, if they so choose, have counsel present during any evidentiary hearing”.

15. Respondent’s undersigned lawyer is unable to represent Respondent’s interest to the extent and in the manner of effective assistance of counsel contemplated by *Texas Rule of Disciplinary Procedure* 2.17.J. due to insufficient time to competently review the facts and pleadings of this case, develop a working understanding of the contentions of all parties, and prepare and present Respondent’s defense, including without limitation the factors in mitigation of the sanction to be imposed. The interests of justice require a continuance to afford Respondent competent and effective assistance of counsel.

16. Pleading further, *Texas Rule of Disciplinary Procedure* 2.17.O. states:

“Evidentiary Panel proceedings must be set for hearing with a minimum of forty-five days’ notice to all parties unless waived by all parties. Evidentiary Panel proceedings shall be set for hearing on the merits on a date not later than 180 days after the date the answer is filed, except for good cause shown. If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent. No continuance may be granted unless required by the interests of justice.”

17. The language of rule 2.17.O. is mandatory in its requirement for a minimum of forty-five days’ notice to all parties of an Evidentiary Panel proceeding unless waived by all parties, i.e. “**must** be set for hearing with a minimum of forty-five days’ notice”. In contrast, the language of the rule is merely permissive in the statement that a hearing for default “**may** be set at any time

not less than ten days after the answer date without further notice to the Respondent”. The language of the rule is silent, however, regarding the notice required for a default hearing when notice *is* provided to the Respondent.

18. In this instance, the Evidentiary Hearing was set to occur less than forty-five days after the issuance of Notice to Respondent on April 7, 2021, as evidenced by the *Notice of Default Hearing* attached hereto as Exhibit 1 and incorporated by reference as though set forth fully and at length. Respondent acknowledges that rule 2.17.O does not require he be provided notice of a default hearing. When such notice is provided, however, the rule’s mandatory language requires that such notice be a minimum of forty-five days, unless waived by the parties.

19. Disciplinary Rule 2.17.O is analogous to Texas Rule of Civil Procedure 245 titled Assignment of Cases for Trial. Rule 245 provides in pertinent part: “The Court may set contested cases on written request of any party, or on the court’s own motion, with reasonable notice of not less than forty-five days to the parties of a first setting for trial, or by agreement of the parties. ... Noncontested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time.”

20. As stated by the San Antonio Court of Appeals, “A trial court’s failure to comply with Rule 245 in a contested case deprives a party of its constitutional right to be present at the hearing, to voice its objections in an appropriate manner, and results in a violation of fundamental due process. Failure to give the required notice constitutes lack of due process and is grounds for reversal.” *Custom-Crete, Inc. v. K-Bar Servs.*, 82 S.W.3d 655, 659 (Tex. app.—San Antonio 2002, no pet.).

21. Although the Commission for Lawyer Discipline was not required to provide Respondent with any notice of the setting for default judgment, due process requires that it provide the

minimum notice of 45 days when it elects to provide a respondent with notice of a default hearing.

22. Respondent did not waive the mandatory requirement of a minimum of 45 days' notice of an Evidentiary Panel proceeding. The interests of justice and due process requires that Respondent be afforded a minimum of 45 days' notice to prepare for the Evidentiary Hearing.

23. This continuance is not sought solely for delay. For the reasons set forth herein, the interests of justice require a continuance to afford Respondent competent and effective representation by counsel and to afford Respondent the due process required by *Texas Rule of Disciplinary Procedure* 2.17.O.

CARL DONALD HUGHES, JR., Respondent, prays that this Motion for Continuance be granted.

Respectfully submitted,

By: 

Ronald D. Cross
Law Office of Ronald D. Cross P.C.
Attorney for Respondent
State Bar No.: 00787305
Ron@RonCrossLaw.com
5601 Democracy Dr., Suite 140
Plano, Texas 75024
Tel: 972/913-2917
Fax: 972/913-2917

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on each attorney of record or party in accordance with the TEXAS RULES OF DISCIPLINARY PROCEDURE 2.17.B. on May 5, 2021.



Ronald D. Cross
SBN: 00787305
Attorney for Carl Donald Hughes, Jr., Respondent



Dallas Office
Chief Disciplinary Counsel

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**COMMISSION FOR LAWYER
 DISCIPLINE,
 Petitioner**

V.

**CARL DONALD HUGHES, JR.
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not less than ten days after the answer date without further notice to the Respondent”. The language of the rule is silent, however, regarding the notice required for a default hearing when notice *is* provided to the Respondent.

18. In this instance, the Evidentiary Hearing was set to occur less than forty-five days after the issuance of Notice to Respondent on April 7, 2021, as evidenced by the *Notice of Default Hearing* attached hereto as Exhibit 1 and incorporated by reference as though set forth fully and at length. Respondent acknowledges that rule 2.17.O does not require he be provided notice of a default hearing. When such notice is provided, however, the rule’s mandatory language requires that such notice be a minimum of forty-five days, unless waived by the parties.

19. Disciplinary Rule 2.17.O is analogous to Texas Rule of Civil Procedure 245 titled Assignment of Cases for Trial. Rule 245 provides in pertinent part: “The Court may set contested cases on written request of any party, or on the court’s own motion, with reasonable notice of not less than forty-five days to the parties of a first setting for trial, or by agreement of the parties. ... Noncontested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time.”

20. As stated by the San Antonio Court of Appeals, “A trial court’s failure to comply with Rule 245 in a contested case deprives a party of its constitutional right to be present at the hearing, to voice its objections in an appropriate manner, and results in a violation of fundamental due process. Failure to give the required notice constitutes lack of due process and is grounds for reversal.” *Custom-Crete, Inc. v. K-Bar Servs.*, 82 S.W.3d 655, 659 (Tex. app.—San Antonio 2002, no pet.).

21. Although the Commission for Lawyer Discipline was not required to provide Respondent with any notice of the setting for default judgment, due process requires that it provide the


minimum notice of 45 days when it elects to provide a respondent with notice of a default hearing.

22. Respondent did not waive the mandatory requirement of a minimum of 45 days' notice of an Evidentiary Panel proceeding. The interests of justice and due process requires that Respondent be afforded a minimum of 45 days' notice to prepare for the Evidentiary Hearing.

23. This continuance is not sought solely for delay. For the reasons set forth herein, the interests of justice require a continuance to afford Respondent competent and effective representation by counsel and to afford Respondent the due process required by *Texas Rule of Disciplinary Procedure* 2.17.O.


CARL DONALD HUGHES, JR., Respondent, prays that this Motion for Continuance be granted.

Respectfully submitted,

By: 
Ronald D. Cross
Law Office of Ronald D. Cross P.C.
Attorney for Respondent
State Bar No.: 00787305
Ron@RonCrossLaw.com
5601 Democracy Dr., Suite 140
Plano, Texas 75024
Tel: 972/913-2917
Fax: 972/913-2917

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on each attorney of record or party in accordance with the TEXAS RULES OF DISCIPLINARY PROCEDURE 2.17.B. on May 5, 2021.


Ronald D. Cross
SBN: 00787305
Attorney for Carl Donald Hughes, Jr., Respondent

From: [Price Johnson](#)
To: [Rachel Craig](#)
Cc: ron@roncrosslaw.com; [Sophia Henderson](#)
Subject: Re: CFLD v. Carl Hughes; 201900501 set for Thursday morning
Date: Wednesday, May 5, 2021 5:05:14 PM

We will hear this very briefly tomorrow morning. Please be prepared to address the notice arguments starting in paragraph 16 of the responding Motion for Continuance.

Price L. Johnson, CPA JD

The Johnson Firm

Probate • Business - "That's Our Business"

Price@JohnsonBusinessLaw.com

Dallas Office:

3001 Knox, Suite 400

[Dallas, Texas 75205](#)

[\(214\) 468-9000](tel:(214)468-9000) (phone)

[\(214\) 468-9025](tel:(214)468-9025) (fax)

On May 5, 2021, at 4:15 PM, Rachel Craig <Rachel.Craig@texasbar.com> wrote:

Mr. Johnson,

Attached please find a file-stamped copy of Mr. Cross's motion for continuance. The CFLD is opposed to the relief requested therein.

Thanks,
-Rachel

From: ron@RonCrossLaw.com <ron@RonCrossLaw.com>
Sent: Wednesday, May 5, 2021 12:02 PM
To: Rachel Craig <Rachel.Craig@TEXASBAR.COM>; 'Price Johnson' <price@johnsonbusinesslaw.com>
Cc: Sophia Henderson <Sophia.Henderson@Texasbar.com>
Subject: RE: CFLD v. Carl Hughes; 201900501 set for Thursday morning

Mr. Johnson,

I also want to alert you that, as counsel for Respondent Carl Hughes, I am in the process of preparing and will be filing a Motion for Continuance of tomorrow's hearing. My anticipated goal is to have the document finalized by early afternoon. Thank you.

Ronald Cross

<!--[if !vml]-->
<image001.png>

<!--[endif]--> **RC** Law Office of Ronald D. Cross, P.C.

5601 Democracy Drive
Suite 109
Plano, Texas 75024
Ron@RonCrossLaw.com
P: 972-913-2917
F: 972-913-2917
C: 214-734-5845

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From: Rachel Craig <Rachel.Craig@TEXASBAR.COM>
Sent: Wednesday, May 5, 2021 9:32 AM
To: Price Johnson <price@johnsonbusinesslaw.com>
Cc: ron@RonCrossLaw.com; Sophia Henderson <Sophia.Henderson@Texasbar.com>
Subject: CFLD v. Carl Hughes; 201900501 set for Thursday morning

Mr. Johnson:

I wanted to alert you that the Motion for Default Judgment in the Hughes matter that has been set for tomorrow at 9:30 am may take longer than I had previously estimated. Respondent has retained counsel (Mr. Ron Cross, who is cc'ed on this email) who is opposed to the Motion.

Thanks,

Rachel Craig
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
The Princeton
14651 Dallas Parkway, Suite 925

Dallas, Texas 75254
(972) 383-2913 Telephone
(972) 383-2935 Facsimile
rachel.craig@texasbar.com

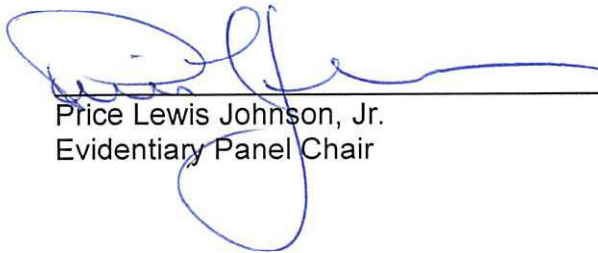
<image002.png>

<Hughes_FM_Rs_Motion_for_Continuance.pdf>

same purpose. No depositions were taken, and Respondent failed to refund these funds upon request.

6. On June 29, 2018, Respondent's representation was terminated. Respondent failed to return Bourgeois' client file and other documents. Respondent further failed to return any unearned fees.
7. Respondent received notice of the grievance but failed to submit a response and failed to allege any legal ground or privilege for his failure to do so.
8. Respondent, by his conduct in connection with the grievance initiated by Bourgeois, has violated Rules 1.03(a), 1.03(b), 1.15(d), and 8.04(a)(8) of the Texas Disciplinary Rules of Professional Conduct.

SIGNED this 6th day of May, 2021.



Price Lewis Johnson, Jr.
Evidentiary Panel Chair

From: ron@roncrosslaw.com
To: [Rachel Craig](#)
Cc: [Sophia Henderson](#); kylie@roncrosslaw.com
Subject: RE: Hughes judgment
Date: Friday, May 14, 2021 1:44:14 PM
Attachments: [image001.png](#)
[image003.png](#)
[2021.05.14 - Ltr to ADC Craig.pdf](#)

Ms. Craig,

Please see my letter that I attach hereto with regard to the Hughes Evidentiary Hearing.

Thank you.

Ron

Ronald Cross

RC

Law Office of Ronald D. Cross, P.C.

5601 Democracy Drive

Suite 140

Plano, Texas 75024

Ron@RonCrossLaw.com

P: 972-913-2917

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From: ron@roncrosslaw.com <ron@roncrosslaw.com>

Sent: Friday, May 14, 2021 11:04 AM

To: 'Rachel Craig' <Rachel.Craig@TEXASBAR.COM>

Cc: 'Sophia Henderson' <Sophia.Henderson@Texasbar.com>; 'kylie@roncrosslaw.com' <kylie@roncrosslaw.com>

Subject: RE: Hughes judgment

Ms. Craig,

I am working on my letter now requesting a few modifications to the order in the Hughes evidentiary matter. I will provide it as promptly as I am able.

0180

Ron

Ronald Cross

RC

Law Office of Ronald D. Cross, P.C.

5601 Democracy Drive

Suite 140

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From: Rachel Craig <Rachel.Craig@TEXASBAR.COM>

Sent: Wednesday, May 12, 2021 5:08 PM

To: ron@roncrosslaw.com

Cc: Sophia Henderson <Sophia.Henderson@Texasbar.com>

Subject: RE: Hughes judgment

Sure, I will submit if Friday afternoon.

From: ron@roncrosslaw.com <ron@roncrosslaw.com>

Sent: Wednesday, May 12, 2021 4:16 PM

To: Rachel Craig <Rachel.Craig@TEXASBAR.COM>

Cc: Sophia Henderson <Sophia.Henderson@Texasbar.com>

Subject: RE: Hughes judgment

Thank you, Ms. Craig.

When do you intend to submit the order to the panel chair? I would like a reasonable opportunity to review, but am unfortunately today and tomorrow quite engaged in other matters. Will you delay submittal of the order to the panel chair until Friday afternoon?

Ronald Cross



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From: Rachel Craig <Rachel.Craig@TEXASBAR.COM>

Sent: Wednesday, May 12, 2021 4:00 PM

To: ron@RonCrossLaw.com

Cc: Sophia Henderson <Sophia.Henderson@Texasbar.com>

Subject: Hughes judgment

Ron,

Here is the judgment I intend to submit to the panel chair for signing. Thanks.

Rachel Craig

Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel

State Bar of Texas

The Princeton

14651 Dallas Parkway, Suite 925

Dallas, Texas 75254

(972) 383-2913 Telephone

(972) 383-2935 Facsimile

rachel.craig@texasbar.com



STATE BAR of TEXAS



5601 Democracy Drive
Suite 140
Plano, Texas 75024

Ron@RonCrossLaw.com
Phone: 972-913-2917
Fax: 972-913-2917

Sent via Electronic Mail: rachel.craig@texasbar.com

May 14, 2021

Ms. Rachel Craig
Asst. Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
The Princeton
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254

Re: Case No. 201900501; Commission for Lawyer Discipline v. Carl Donald Hughes, Jr., Before the District 6 Grievance Committee Evidentiary Panel 6-2

Dear Ms. Craig,

Thank you for providing my client and I the opportunity to review and comment upon the proposed *Default Judgment of Partially Probated Suspension* (“*Judgment*”) you state you intend to submit Price L. Johnson, District 6, Panel 6-2 Presiding Member, for signature. The following are matters that my client and I believe to constitute error in the proposed *Judgment*. We request that these matters be corrected prior to submission to the Presiding Member.

1. The *Judgment* does not state that Mr. Hughes filed his *Answer to Evidentiary Petition*. This filing remains a part of the record and should be reflected in the *Judgment*.
2. The *Judgment* does not state that the Evidentiary Panel heard and denied Mr. Hughes filed *Motion for Continuance*. The *Judgment* should include reference to this fact.
3. The *Judgment* does not state the ruling of the Evidentiary Panel that Mr. Hughes was not entitled to 45 days’ notice of the Evidentiary Hearing. The *Judgment* should set forth this ruling by the Evidentiary Panel.
4. The *Judgment* does not afford Mr. Hughes adequate time for compliance with the terms of active suspension. The *Judgment* should afford Mr. Hughes adequate time to comply with the following provisions (compliance is currently required in less than 30 days):
 - a. Notify each of Respondent’s current clients and opposing counsel in writing of the suspension, including the return of files, papers, unearned monies and other property belonging to current clients.
 - b. File with the State Bar of Texas, Chief Disciplinary Counsel’s Office, 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 current claims have been returned as ordered.

- c. 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 the *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.
- d. File with the State Bar of Texas, Chief Disciplinary Counsel's office, an affidavit stating Respondent has notified 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 the *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.
- e. 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).

Mr. Hughes and I hope that these matters may be corrected prior to the submission of the *Judgment* to the Presiding Member and that the filing of a motion to modify the judgment pursuant to *Texas Rules of Disciplinary Procedure 2.21* will not be required.

If you have any questions or which to discuss these matters further, please do not hesitate to contact me.

Respectfully,



Ronald D. Cross

From: [Price Johnson](#)
To: [Rachel Craig](#)
Cc: ron@roncrosslaw.com; [Sophia Henderson](#); jwm@themillslawfirm.com
Subject: RE: Hughes Judgment and objections
Date: Tuesday, May 18, 2021 7:33:00 PM
Attachments: [image004.png](#)
[Hughes.Default Partially Probated Suspension - Revised.pdf](#)
[2021.05.14 - Ltr to ADC Craig.pdf](#)

Ms. Craig and Mr. Cross,

Attached is the signed Judgment.

I carefully review Mr. Cross' letter and evaluated his requests. I denied the requests Mr. Cross sets forth in this numbered paragraphs 1-3. It is my determination that those items do not belong in the Judgment. The fact that Mr. Hughes filed a very late and untimely answer is set forth in the record and should not be reflected in the Judgment. The fact that the late-filed Motion for Continuance was both heard and denied likewise does not belong in the Judgment. Should anyone wish to submit an order stating that the Motion was heard and that based on the evidence, arguments of counsel, and interests of justice was denied you certainly may and I will review and sign it. Please submit any such order in Word.

I did, however, make some modifications to certain of the deadlines. I extended certain deadlines to June 15 and June 30. While I did this in the interest of justice and fairness and to be as reasonable as possible, I caution Mr. Cross to recall the arguments and evidence he submitted that Mr. Hughes has essentially one current client. Given that, the original time requirements are extremely generous. Nonetheless, I extended certain deadlines. I also extended the deadline to make the initial payment. No further extensions will be granted.

Please take careful notice of the deadlines and note that the deadline to surrender his license as well as the beginning and end dates of the active and probated suspension are NOT extended.

Should anyone have any questions please let me know. Also, should Mr. Cross wish to file a Motion to Modify please do so in accordance with the rules and applicable deadlines but you will note my rulings in this e-mail and the attached revised Judgment.

Price L. Johnson, CPA JD



AV rated - Martindale-Hubbell Peer Review Ratings

www.the-johnson-firm.com

Price@JohnsonBusinessLaw.com

(214) 468-9000 (214) 468-9025 (fax)

PLEASE NOTE OUR NEW DALLAS OFFICE ADDRESS BELOW EFFECTIVE 10/1/2020.

0208

Dallas Office:

3001 Knox Street, Suite 400
Dallas, Texas 75205-7309

NO ELECTRONIC SIGNATURE

Unless expressly stated otherwise, nothing in this email is intended to constitute an electronic signature under the Uniform Electronic Transactions Act or any other applicable law.

From: Rachel Craig [mailto:Rachel.Craig@TEXASBAR.COM]

Sent: Friday, May 14, 2021 2:56 PM

To: Price Johnson <price@johnsonbusinesslaw.com>

Cc: ron@roncrosslaw.com; Sophia Henderson <Sophia.Henderson@Texasbar.com>

Subject: Hughes Judgment and objections

Hello Mr. Johnson,

Attached is my proposed judgment for the Hughes case. Mr. Cross has some objections which he memorialized in the attached letter. I believe my proposed judgment is in the proper form. I included my proposed judgment in Word in case you want to make any edits yourself, or if you would prefer, you can direct me to make changes to the judgment as you see fit.

Thanks,
-Rachel

Rachel Craig

Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
The Princeton
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254
(972) 383-2913 Telephone
(972) 383-2935 Facsimile
rachel.craig@texasbar.com



STATE BAR of TEXAS

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 his principal place of practice in Dallas County, Texas.
3. On or about January 5, 2017, Complainant Gwen Bourgeois (Bourgeois) hired Respondent to file a civil action involving a real estate matter.
4. Respondent failed to keep Bourgeois reasonably informed about the status of her case and failed to promptly comply with reasonable requests for information.
5. Respondent failed to explain the legal matter to the extent reasonably necessary to permit Bourgeois to make informed decisions regarding the representation.
6. Upon termination of representation, Respondent failed to surrender papers and property to which Bourgeois was entitled.
7. Upon termination of representation, Respondent failed to refund advance payments of the fee that had not been earned.
8. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure. Respondent did not in good faith timely assert a privilege or other legal ground for failure to do so.
9. Respondent owes restitution in the amount of Thirteen Thousand and no/100 Dollars (\$13,000.00) payable to Gwen Bourgeois.

10. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney's fees and direct expenses associated with this Disciplinary Proceeding in the amount of One Thousand Seven Hundred Thirty-Four and no/100 Dollars (\$1,734.00).

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: 1.03(a), 1.03(b), 1.15(d), and 8.04(a)(8).

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 that Respondent be suspended from the practice of law for a period of thirty-six (36) months, beginning June 1, 2021, and ending May 31, 2024. Respondent shall be actively suspended from the practice of law for a period of eighteen (18) months, beginning June 1, 2021, and ending November 30, 2022. If Respondent complies with all of the following terms and conditions timely, the eighteen (18) month period of probated suspension shall begin on December 1, 2022, and shall end on May 31, 2024:

1. Respondent shall pay restitution on or before June 30, 2022, to Gwen Bourgeois, in the amount of Thirteen Thousand and no/100 Dollars (\$13,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Gwen Bourgeois, and delivered 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).

2. Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of One Thousand Seven Hundred Thirty-Four and no/100 Dollars (\$1,734.00). The payment shall be due and payable on or before September 1, 2021, 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
3. 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.

Should Respondent fail to comply with all of the above terms and conditions timely, Respondent shall remain actively suspended until the date of compliance or until May 31, 2024, whichever occurs first.

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 himself 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 himself out to others or using his 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 June 15, 2021, 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 June 15, 2021, 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 June 15, 2021, 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 June 15, 2021, 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 June 1, 2021, 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.

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.

Restitution, Attorney's Fees and Expenses

It is further **ORDERED** Respondent shall pay restitution on or before June 30, 2022, to Gwen Bourgeois in the amount of Thirteen Thousand and no/100 Dollars (\$13,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made

payable to Gwen Bourgeois and delivered 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).

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of One Thousand Seven Hundred Thirty-Four and no/100 Dollars (\$1,734.00). The payment shall be due and payable on or before September 1, 2021, 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: 1) restitution to Gwen Bourgeois in the amount of Thirteen Thousand and no/100 Dollars (\$13,000.00); and 2) attorney's fees and direct expenses to the State Bar of Texas in the amount of One Thousand Seven Hundred Thirty-Four and no/100 Dollars (\$1,734.00).

Publication

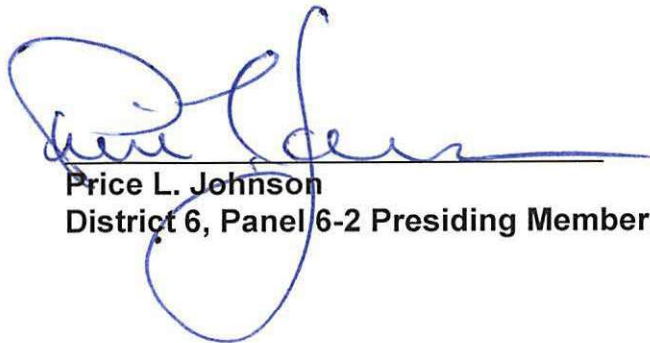
This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 18th day of May, 2021.

**EVIDENTIARY PANEL 6-2
DISTRICT NO. 6
STATE BAR OF TEXAS**

A handwritten signature in blue ink, appearing to read "Price L. Johnson", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

**Price L. Johnson
District 6, Panel 6-2 Presiding Member**

From: kylie@roncrosslaw.com
To: [Rachel Craig](#); [Sophia Henderson](#)
Cc: ["Ron Cross"](#)
Subject: Case No. 201900501 - CFLD v. Hughes
Date: Friday, May 28, 2021 5:03:54 PM
Attachments: [image001.png](#)
[Motion for New Trial.pdf](#)

Good afternoon,

Attached for filing in the above-referenced case is *Respondent Carl Donald Hughes, Jr. 's Motion for New Trial Pursuant to Texas Rule of Disciplinary Procedure 2.21. and Motion to Stay Judgment of Suspension Pursuant to Texas Rule of Disciplinary Procedure 2.24.*

Please confirm receipt and forward a file-marked copy when available. Thank you.

Sincerely,

Kylie McDanie
Paralegal to Ronald D. Cross

RC Law Office of Ronald D. Cross, P.C.

5601 Democracy Drive
Suite 140
Plano, Texas 75024
Kylie@RonCrossLaw.com
P: 972-913-2917
F: 972-913-2917

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**BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-2
STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner**

V.

**CARL DONALD HUGHES, JR.
Respondent**

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CASE NO. 201900501

**RESPONDENT CARL DONALD HUGHES, JR.'S
MOTION FOR NEW TRIAL PURSUANT TO TEXAS RULE OF DISCIPLINARY
PROCEDURE 2.21. AND MOTION TO STAY JUDGMENT OF SUSPENSION
PURSUANT TO TEXAS RULE OF DISCIPLINARY PROCEDURE 2.24.**

This *Motion for New Trial and Motion to Stay Judgment of Suspension* is brought by
CARL DONALD HUGHES, JR., Respondent, who shows in support:

I. FACTUAL BACKGROUND

1. On May 6, 2021, this case was set for a default hearing before Evidentiary Panel 6-2 of the District 6 Grievance Committee held via Zoom videoconference at 9:30 a.m.
2. On April 7, 2021, Notice of the May 6, 2021 hearing was served on Respondent by the Commission for Lawyer Discipline. On April 28, 2021, Respondent received actual notice of the default hearing.
3. On May 4, 2021, Respondent retained the undersigned lawyer to provide representation in this Evidentiary Proceeding. Also on May 4, 2021, Respondent filed his *Respondent Carl Donald Hughes, Jr.'s Answer to Evidentiary Petition*.
4. On May 5, 2021, Respondent filed his *Respondent Carl Donald Hughes, Jr.'s Motion for Continuance* wherein Respondent contended:
 - a. Respondent's undersigned lawyer is unable to represent Respondent's interest to the extent and in the manner of effective assistance of counsel contemplated by

Texas Rule of Disciplinary Procedure 2.17.J. due to insufficient time to competently review the facts and pleadings of this case, develop a working understanding of the contentions of all parties, and prepare and present Respondent's defense, including without limitation the factors in mitigation of the sanction to be imposed. The interests of justice require a continuance to afford Respondent competent and effective assistance of counsel.

- b. Pleading further, *Texas Rule of Disciplinary Procedure 2.17.O.* states:
“Evidentiary Panel proceedings must be set for hearing with a minimum of forty-five days’ notice to all parties unless waived by all parties. Evidentiary Panel proceedings shall be set for hearing on the merits on a date not later than 180 days after the date the answer is filed, except for good cause shown. If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent. No continuance may be granted unless required by the interests of justice.”

The language of rule 2.17.O. is mandatory in its requirement for a minimum of forty-five days’ notice to all parties of an Evidentiary Panel proceeding unless waived by all parties, i.e. “**must** be set for hearing with a minimum of forty-five days’ notice”.

5. On May 6, 2021, Evidentiary Panel 6-2 heard argument on *Respondent Carl Donald Hughes, Jr.’s Motion for Continuance*. Evidentiary Panel 6-2 thereafter denied Respondent’s *Motion for Continuance* and proceeded to the Evidentiary Hearing, which hearing had been Noticed on less than forty-five days’ notice

II. SUMMARY ARGUMENT AND REQUESTED RELIEF

6. The Evidentiary Hearing was scheduled to occur and did in fact occur less than forty-five days after the issuance of Notice to Respondent on April 7, 2021, as evidenced by the *Notice of Default Hearing* attached hereto as Exhibit 1 and incorporated by reference as though set forth fully and at length.

7. Evidentiary Panel 6-2 violated Respondent’s Fourteenth Amendment right to due process by the denial of Respondent’s *Motion for Continuance* and proceeding on the May 6, 2021 Evidentiary Hearing pursuant to the Notice served upon Respondent on April 7, 2021 because

Respondent was not provided 45-days' notice of the Evidentiary Hearing as required by *Texas Rule of Disciplinary Procedure 2.17.O*.

8. Respondent requests that Evidentiary Panel 6-2 grant this *Motion for New Trial*, set aside the *Order Granting Motion for Default Judgment* rendered and signed May 6, 2021, set aside the *Default Judgment of Partially Probated Suspension* signed May 18, 2021, and re-set all matters Noticed for May 6, 2021 to a future date of which Respondent is provided notice as required by the *Texas Rules of Disciplinary Procedure* and the Fourteenth Amendment to the U.S. Constitution.

9. Respondent further requests that Evidentiary Panel 6-2 grant this *Motion to Stay Judgment of Suspension* pending the conclusion of the appeal from the May 6, 2021 *Order Granting Motion for Default Judgment* and the May 18, 2021 *Default Judgment of Partially Probated Suspension*, which such relief is requested pursuant to *Texas Rule of Disciplinary Procedure 2.24*

III. AGRUMENT AND ANALYSIS

A. VIOLATION OF PROCEDURAL DUE PROCESS

10. Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment to the United States Constitution. *See Baxter Oil Serv. V. Tex. Comm'n on Env'tl. Quality*, 2017 WL 3378902; *citing Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976). Due process fundamentally requires "the opportunity to be heard 'at a meaningful time and in a meaningful manner'" before an individual is finally deprived of a property interest. *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976).

11. The “general rule is that the legislature in its discretion may prescribe what notice shall be given to a defendant in a suit, subject to the condition that the notice prescribed must conform to the requirement of due process of law.” *Sgitcovich v. Sgitcovich*, 150 Tex. 398, 214, S.W.2d 142, 146 (Tex. 1951)(citation omitted) (quoting *Mexia Indep. Sch. Dist. v. City of Mexia*, 134 Tex 95, 133 S.W.2d 118, 121 (Tex. 1939)). In the instant matter, the Supreme Court of Texas has prescribed what notice shall be given to a defendant (respondent) in a suit (Evidentiary Hearing matter).

12. *Texas Rule of Disciplinary Procedure 2.17.O.* states:

“Evidentiary Panel proceedings must be set for hearing with a minimum of forty-five days’ notice to all parties unless waived by all parties. Evidentiary Panel proceedings shall be set for hearing on the merits on a date not later than 180 days after the date the answer is filed, except for good cause shown. If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent. No continuance may be granted unless required by the interests of justice.”

13. The language of rule 2.17.O. is mandatory in its prescription for a minimum of forty-five days’ notice of an Evidentiary Panel proceeding to all parties unless waived by all parties, i.e. “**must** be set for hearing with a minimum of forty-five days’ notice”. Nor can the Commission for Lawyer Discipline avail itself of the limited protection provided by Rule 2.17.O. wherein it is stated: “If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent” for the reason that Respondent Carl Donald Hughes, Jr. did in fact file an *Evidentiary Answer* to the *Evidentiary Petition* filed by the Commission for Lawyer Discipline. (Respondent refers the Evidentiary Panel to Section I.B. of this *Motion for New Trial and Motion to Stay Judgment of Suspension* for further argument and elaboration on this point of law.)

14. Disciplinary Rule 2.17.O. is analogous to Texas Rule of Civil Procedure 245 titled Assignment of Cases for Trial. Rule 245 provides in pertinent part: “The Court may set contested cases on written request of any party, or on the court’s own motion, with reasonable notice of not less than forty-five days to the parties of a first setting for trial, or by agreement of the parties. ... Noncontested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time.”

15. As stated by the San Antonio Court of Appeals, “A trial court’s failure to comply with Rule 245 in a contested case deprives a party of its constitutional right to be present at the hearing, to voice its objections in an appropriate manner, and results in a violation of fundamental due process. Failure to give the required notice constitutes lack of due process and is grounds for reversal.” *Custom-Crete, Inc. v. K-Bar Servs.*, 82 S.W.3d 655, 659 (Tex. app.—San Antonio 2002, no pet.).

16. Respondent did not waive the mandatory requirement of a minimum of 45 days’ notice of an Evidentiary Panel proceeding. Proceeding to the May 6, 2021 Evidentiary Hearing over the Respondent’s objection for failure to give the notice required by Rule 2.17.O. constituted a violation of Respondent’s fundamental due process pursuant to the U.S. Constitution and the Constitution of the State of Texas.

B. EVIDENTIARY PANEL’S RULING VIOLATES PRINCIPLES OF STATUTORY CONSTRUCTION

17. In writing about the principles of statutory construction, the First District Court of Appeals has recently stated that in performing statutory construction analysis the court ascertains and gives effect to the Legislature’s intent as expressed in the language of the statute. *See ML Dev, LP v. Ross Dress for Less, Inc.*, 2021 Tex. App. LEXIS 4066 (Tex. App – Houston [1st Dist.] May 25, 2021. “Words are construed according to their plain and common meaning, unless

a contrary intention is apparent from the context, or unless such a construction leads to absurd results.” *ML Dev, LP v. Ross Dress for Less, Inc.* 2021 Tex. App. LEXIS 4066, *7; citing *Youngkin v. Hines*, 546 S.W.3d 675, 680 (Tex. 2018). Importantly, the Court noted that “We presume the Legislature included each word in the statute for a purpose and **that words not included were purposefully omitted.**” *ML Dev, LP v. Ross Dress for Less, Inc.* 2021 Tex. App. LEXIS 4066, *7; citing *Lippincott v Whisenhunt*, 462 S.W.3d 507, 509 (Tex. 2015). Emphasis added.

18. The provision that Evidentiary Panel 6-2 interpreted in its decision denying Respondent’s *Motion for Continuance*, and thus the subject of this *Motion for New Trial*, is Texas Rule of Disciplinary Procedure 2.17.O. which states:

Setting: Evidentiary Panel proceedings must be set for hearing with a minimum of fort-five days’ notice to all parties unless waived by all parties. ... If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent.

19. Importantly, the wording of Rule 2.17.O. is distinctly different than the wording of *Texas Rules of Disciplinary Procedure* 2.7.C. entitled Default, which provides in relevant part: “Default: A failure to file an answer ***within the time permitted*** constitutes a default...”. Emphasis added. Because of the difference in language utilized by the Supreme Court, the principals of statutory construction require the presumption that in promulgating and approving the *Texas Rules of Disciplinary Procedure* the Supreme Court intentionally and purposefully included the words ‘within the time permitted’ in Rule 2.17.C., and intentionally and purposefully omitted the words ‘within the time permitted’ from Rule 2.17.O.

20. The effect of the omission of these 4 words from Rule 2.17.O. means that in promulgating Rule 2.17.O. the Supreme Court intended Rule 2.17.O. to be construed to mean that ‘if the Respondent fails at any time to file an answer’, then a hearing for default may be set

at any time not less than ten days after the answer date. In this instance, however, Respondent Carl Donald Hughes, Jr. did file an *Answer* to the *Evidentiary Petition*. Therefore the required condition precedent of “If the Respondent fails to answer” cannot be said to have occurred.

21. In denying Respondent’s *Motion to Continue* filed on May 5, 2021, the Evidentiary Panel improperly construed Rule 2.17.O. as meaning that, if an answer is not filed ***within the time permitted by Rule 2.17.B.***, a hearing for default may be set at any time without notice to the Respondent.

22. Additionally, Evidentiary Panel 6-2 further improperly construed Rule 2.17.O. by interpreting the Rule to include words omitted therefrom. Specifically, the Evidentiary Panel construed Rule 2.17.O. to mean that, if the condition precedent is satisfied, a hearing for default may be set at any time not less than ten days after the answer date ***with or*** without further notice to the Respondent. This construction renders meaningless the first sentence of Rule 2.17.O. which requires that Evidentiary Panel proceedings must be set for hearing with a minimum of forty-five days’ notice to all parties unless waived by all parties.

23. Neither the term ‘Evidentiary Panel proceedings’ nor the term ‘proceedings’ which are found in Rule 2.17.O. are defined in *Texas Rule of Disciplinary Procedure* 1.06 titled Definitions. Thus, principals of statutory construction dictate that these terms be given their normal meaning as would be found in the common usage of the term. Dictionary.com defines ‘proceedings’ as:


1. a particular action or course or manner of action.
2. a series of activities or events; happenings.
3. the act of a person or thing that proceeds.
4. a record of the doings or transactions of a fraternal, academic, etc., society.
5. *Law*.
 - a. The instituting or carrying on of an action at law.
 - b. A legal step or measure.

24. Respondent contends, therefore, that the term ‘Evidentiary Panel proceedings’ means any legal step or measure undertaken by an Evidentiary Panel; including a proceeding upon a request for the entry of a default against a respondent. This definition is further supported by the definition of an “Evidentiary Hearing” in Rule 1.06 which means “an adjudicatory proceeding before a panel of a grievance committee,” as this definition establishes ‘adjudicatory proceedings’ as a subset of the larger classification ‘proceedings’.

25. Because the Evidentiary Panel’s actions on May 6, 2021 constituted an Evidentiary Panel proceeding, Respondent was entitled to a minimum of forty-five days’ notice, which notice was not waived by the Respondent. Moreover, as Respondent had on file an *Evidentiary Answer* at the time the Evidentiary Panel’s ruling denying Respondent’s *Motion for Continuance*, the Evidentiary Panel erred in its holding that proceedings for default are exempted from compliance with the forty-five days’ notice requirement when notice is in fact provided a respondent.


WHEREFORE, CARL DONALD HUGHES, JR., Respondent, prays that this *Motion for New Trial and Motion to Stay Judgment of Suspension* be granted; that the *Order Granting Motion for Default Judgment* rendered and signed May 6, 2021 be set aside; that the *Default Judgment of Partially Probated Suspension* signed May 18, 2021 set aside; that all matters Noticed for May 6, 2021 be set to a future date of which Respondent is provided notice as required by the *Texas Rules of Disciplinary Procedure* and the Fourteenth Amendment to the U.S. Constitution; that the suspension imposed by the May 18, 2021 *Default Judgment of Partially Probated Suspension* be stayed pending the Respondent’s appeal of such order; and such other and further relief to which Respondent may show himself justly entitled.

Respectfully submitted,

By: 
Ronald D. Cross
Law Office of Ronald D. Cross P.C.
Attorney for Respondent
State Bar No.: 00787305
Ron@RonCrossLaw.com
5601 Democracy Dr., Suite 140
Plano, Texas 75024
Tel: 972/913-2917
Fax: 972/913-2917

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on each attorney of record or party in accordance with the TEXAS RULES OF DISCIPLINARY PROCEDURE 2.17.B. on May 28, 2021.


Ronald D. Cross
SBN: 00787305
Attorney for Carl Donald Hughes, Jr., Respondent

04/07/2021



Dallas Office
Chief Disciplinary Counsel

**BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-2
STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner**

V.

CARL DONALD HUGHES, JR.
Respondent

CASE NO. 201900501

NOTICE OF DEFAULT HEARING

TO: Respondent, Carl Donald Hughes, Jr., P.O. Box 610326, Dallas, Texas 75261-0326

YOU ARE NOTIFIED that the above-captioned case has been set for a default hearing before Evidentiary Panel 6-2 of the State Bar District No. 6 Grievance Committee on **Thursday, May 6, 2021, at 9:30 a.m.** The hearing will be held via Zoom videoconference.

Respectfully submitted,

STATE BAR OF TEXAS

Seana Willing
Chief Disciplinary Counsel

/s/ Rachel Craig
Rachel Craig
 Assistant Disciplinary Counsel
 State Bar No. 24090049

Office of the Chief Disciplinary Counsel
State Bar of Texas
The Princeton
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254
Telephone: (972) 383-2900
Facsimile: (972) 383-2935
E-mail: rachel.craig@texasbar.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Default Hearing was forwarded on the 7th day of April, 2021, to the following:

Carl Donald Hughes, Jr.
PO Box 610326
Dallas, Texas 75261-0326
Via E-Mail: carlhughes@aol.com;
Via Certified Mail No. 7019 2970 0001 2640 3120,
Return Receipt Requested; and
Via First Class U. S. Mail

/s/ Rachel Craig

Rachel Craig



Dallas Office
Chief Disciplinary Counsel

**BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
 EVIDENTIARY PANEL 6-2
 STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER
 DISCIPLINE,
 Petitioner**

V.

**CARL DONALD HUGHES, JR.
 Respondent**

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CASE NO. 201900501

**RESPONDENT CARL DONALD HUGHES, JR.'S
 MOTION FOR NEW TRIAL PURSUANT TO TEXAS RULE OF DISCIPLINARY
 PROCEDURE 2.21. AND MOTION TO STAY JUDGMENT OF SUSPENSION
 PURSUANT TO TEXAS RULE OF DISCIPLINARY PROCEDURE 2.24.**

This *Motion for New Trial and Motion to Stay Judgment of Suspension* is brought by
 CARL DONALD HUGHES, JR., Respondent, who shows in support:

I. FACTUAL BACKGROUND

1. On May 6, 2021, this case was set for a default hearing before Evidentiary Panel 6-2 of the District 6 Grievance Committee held via Zoom videoconference at 9:30 a.m.
2. On April 7, 2021, Notice of the May 6, 2021 hearing was served on Respondent by the Commission for Lawyer Discipline. On April 28, 2021, Respondent received actual notice of the default hearing.
3. On May 4, 2021, Respondent retained the undersigned lawyer to provide representation in this Evidentiary Proceeding. Also on May 4, 2021, Respondent filed his *Respondent Carl Donald Hughes, Jr.'s Answer to Evidentiary Petition*.
4. On May 5, 2021, Respondent filed his *Respondent Carl Donald Hughes, Jr.'s Motion for Continuance* wherein Respondent contended:
 - a. Respondent's undersigned lawyer is unable to represent Respondent's interest to the extent and in the manner of effective assistance of counsel contemplated by

Texas Rule of Disciplinary Procedure 2.17.J. due to insufficient time to competently review the facts and pleadings of this case, develop a working understanding of the contentions of all parties, and prepare and present Respondent's defense, including without limitation the factors in mitigation of the sanction to be imposed. The interests of justice require a continuance to afford Respondent competent and effective assistance of counsel.

- b. Pleading further, *Texas Rule of Disciplinary Procedure 2.17.O.* states:
“Evidentiary Panel proceedings must be set for hearing with a minimum of forty-five days’ notice to all parties unless waived by all parties. Evidentiary Panel proceedings shall be set for hearing on the merits on a date not later than 180 days after the date the answer is filed, except for good cause shown. If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent. No continuance may be granted unless required by the interests of justice.”

The language of rule 2.17.O. is mandatory in its requirement for a minimum of forty-five days’ notice to all parties of an Evidentiary Panel proceeding unless waived by all parties, i.e. “**must** be set for hearing with a minimum of forty-five days’ notice”.

5. On May 6, 2021, Evidentiary Panel 6-2 heard argument on *Respondent Carl Donald Hughes, Jr.’s Motion for Continuance*. Evidentiary Panel 6-2 thereafter denied Respondent’s *Motion for Continuance* and proceeded to the Evidentiary Hearing, which hearing had been Noticed on less than forty-five days’ notice

II. SUMMARY ARGUMENT AND REQUESTED RELIEF

6. The Evidentiary Hearing was scheduled to occur and did in fact occur less than forty-five days after the issuance of Notice to Respondent on April 7, 2021, as evidenced by the *Notice of Default Hearing* attached hereto as Exhibit 1 and incorporated by reference as though set forth fully and at length.

7. Evidentiary Panel 6-2 violated Respondent’s Fourteenth Amendment right to due process by the denial of Respondent’s *Motion for Continuance* and proceeding on the May 6, 2021 Evidentiary Hearing pursuant to the Notice served upon Respondent on April 7, 2021 because

Respondent was not provided 45-days' notice of the Evidentiary Hearing as required by *Texas Rule of Disciplinary Procedure 2.17.O*.

8. Respondent requests that Evidentiary Panel 6-2 grant this *Motion for New Trial*, set aside the *Order Granting Motion for Default Judgment* rendered and signed May 6, 2021, set aside the *Default Judgment of Partially Probated Suspension* signed May 18, 2021, and re-set all matters Noticed for May 6, 2021 to a future date of which Respondent is provided notice as required by the *Texas Rules of Disciplinary Procedure* and the Fourteenth Amendment to the U.S. Constitution.

9. Respondent further requests that Evidentiary Panel 6-2 grant this *Motion to Stay Judgment of Suspension* pending the conclusion of the appeal from the May 6, 2021 *Order Granting Motion for Default Judgment* and the May 18, 2021 *Default Judgment of Partially Probated Suspension*, which such relief is requested pursuant to *Texas Rule of Disciplinary Procedure 2.24*

III. AGRUMENT AND ANALYSIS

A. VIOLATION OF PROCEDURAL DUE PROCESS

10. Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment to the United States Constitution. *See Baxter Oil Serv. V. Tex. Comm'n on Env'tl. Quality*, 2017 WL 3378902; *citing Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976). Due process fundamentally requires "the opportunity to be heard 'at a meaningful time and in a meaningful manner'" before an individual is finally deprived of a property interest. *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976).

11. The “general rule is that the legislature in its discretion may prescribe what notice shall be given to a defendant in a suit, subject to the condition that the notice prescribed must conform to the requirement of due process of law.” *Sgitcovich v. Sgitcovich*, 150 Tex. 398, 214, S.W.2d 142, 146 (Tex. 1951)(citation omitted) (quoting *Mexia Indep. Sch. Dist. v. City of Mexia*, 134 Tex 95, 133 S.W.2d 118, 121 (Tex. 1939)). In the instant matter, the Supreme Court of Texas has prescribed what notice shall be given to a defendant (respondent) in a suit (Evidentiary Hearing matter).

12. *Texas Rule of Disciplinary Procedure 2.17.O.* states:

“Evidentiary Panel proceedings must be set for hearing with a minimum of forty-five days’ notice to all parties unless waived by all parties. Evidentiary Panel proceedings shall be set for hearing on the merits on a date not later than 180 days after the date the answer is filed, except for good cause shown. If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent. No continuance may be granted unless required by the interests of justice.”

13. The language of rule 2.17.O. is mandatory in its prescription for a minimum of forty-five days’ notice of an Evidentiary Panel proceeding to all parties unless waived by all parties, i.e. “**must** be set for hearing with a minimum of forty-five days’ notice”. Nor can the Commission for Lawyer Discipline avail itself of the limited protection provided by Rule 2.17.O. wherein it is stated: “If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent” for the reason that Respondent Carl Donald Hughes, Jr. did in fact file an *Evidentiary Answer* to the *Evidentiary Petition* filed by the Commission for Lawyer Discipline. (Respondent refers the Evidentiary Panel to Section I.B. of this *Motion for New Trial and Motion to Stay Judgment of Suspension* for further argument and elaboration on this point of law.)

14. Disciplinary Rule 2.17.O. is analogous to Texas Rule of Civil Procedure 245 titled Assignment of Cases for Trial. Rule 245 provides in pertinent part: “The Court may set contested cases on written request of any party, or on the court’s own motion, with reasonable notice of not less than forty-five days to the parties of a first setting for trial, or by agreement of the parties. ... Noncontested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time.”

15. As stated by the San Antonio Court of Appeals, “A trial court’s failure to comply with Rule 245 in a contested case deprives a party of its constitutional right to be present at the hearing, to voice its objections in an appropriate manner, and results in a violation of fundamental due process. Failure to give the required notice constitutes lack of due process and is grounds for reversal.” *Custom-Crete, Inc. v. K-Bar Servs.*, 82 S.W.3d 655, 659 (Tex. app.—San Antonio 2002, no pet.).

16. Respondent did not waive the mandatory requirement of a minimum of 45 days’ notice of an Evidentiary Panel proceeding. Proceeding to the May 6, 2021 Evidentiary Hearing over the Respondent’s objection for failure to give the notice required by Rule 2.17.O. constituted a violation of Respondent’s fundamental due process pursuant to the U.S. Constitution and the Constitution of the State of Texas.

B. EVIDENTIARY PANEL’S RULING VIOLATES PRINCIPLES OF STATUTORY CONSTRUCTION

17. In writing about the principles of statutory construction, the First District Court of Appeals has recently stated that in performing statutory construction analysis the court ascertains and gives effect to the Legislature’s intent as expressed in the language of the statute. *See ML Dev, LP v. Ross Dress for Less, Inc.*, 2021 Tex. App. LEXIS 4066 (Tex. App – Houston [1st Dist.] May 25, 2021. “Words are construed according to their plain and common meaning, unless

a contrary intention is apparent from the context, or unless such a construction leads to absurd results.” *ML Dev, LP v. Ross Dress for Less, Inc.* 2021 Tex. App. LEXIS 4066, *7; citing *Youngkin v. Hines*, 546 S.W.3d 675, 680 (Tex. 2018). Importantly, the Court noted that “We presume the Legislature included each word in the statute for a purpose and **that words not included were purposefully omitted.**” *ML Dev, LP v. Ross Dress for Less, Inc.* 2021 Tex. App. LEXIS 4066, *7; citing *Lippincott v Whisenhunt*, 462 S.W.3d 507, 509 (Tex. 2015). Emphasis added.

18. The provision that Evidentiary Panel 6-2 interpreted in its decision denying Respondent’s *Motion for Continuance*, and thus the subject of this *Motion for New Trial*, is Texas Rule of Disciplinary Procedure 2.17.O. which states:

Setting: Evidentiary Panel proceedings must be set for hearing with a minimum of fort-five days’ notice to all parties unless waived by all parties. ... If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent.

19. Importantly, the wording of Rule 2.17.O. is distinctly different than the wording of *Texas Rules of Disciplinary Procedure* 2.7.C. entitled Default, which provides in relevant part: “Default: A failure to file an answer ***within the time permitted*** constitutes a default...”. Emphasis added. Because of the difference in language utilized by the Supreme Court, the principals of statutory construction require the presumption that in promulgating and approving the *Texas Rules of Disciplinary Procedure* the Supreme Court intentionally and purposefully included the words ‘within the time permitted’ in Rule 2.17.C., and intentionally and purposefully omitted the words ‘within the time permitted’ from Rule 2.17.O.

20. The effect of the omission of these 4 words from Rule 2.17.O. means that in promulgating Rule 2.17.O. the Supreme Court intended Rule 2.17.O. to be construed to mean that ‘if the Respondent fails at any time to file an answer’, then a hearing for default may be set

at any time not less than ten days after the answer date. In this instance, however, Respondent Carl Donald Hughes, Jr. did file an *Answer* to the *Evidentiary Petition*. Therefore the required condition precedent of “If the Respondent fails to answer” cannot be said to have occurred.

21. In denying Respondent’s *Motion to Continue* filed on May 5, 2021, the Evidentiary Panel improperly construed Rule 2.17.O. as meaning that, if an answer is not filed ***within the time permitted by Rule 2.17.B.***, a hearing for default may be set at any time without notice to the Respondent.

22. Additionally, Evidentiary Panel 6-2 further improperly construed Rule 2.17.O. by interpreting the Rule to include words omitted therefrom. Specifically, the Evidentiary Panel construed Rule 2.17.O. to mean that, if the condition precedent is satisfied, a hearing for default may be set at any time not less than ten days after the answer date ***with or*** without further notice to the Respondent. This construction renders meaningless the first sentence of Rule 2.17.O. which requires that Evidentiary Panel proceedings must be set for hearing with a minimum of forty-five days’ notice to all parties unless waived by all parties.

23. Neither the term ‘Evidentiary Panel proceedings’ nor the term ‘proceedings’ which are found in Rule 2.17.O. are defined in *Texas Rule of Disciplinary Procedure* 1.06 titled Definitions. Thus, principals of statutory construction dictate that these terms be given their normal meaning as would be found in the common usage of the term. Dictionary.com defines ‘proceedings’ as:


1. a particular action or course or manner of action.
2. a series of activities or events; happenings.
3. the act of a person or thing that proceeds.
4. a record of the doings or transactions of a fraternal, academic, etc., society.
5. *Law*.
 - a. The instituting or carrying on of an action at law.
 - b. A legal step or measure.

24. Respondent contends, therefore, that the term ‘Evidentiary Panel proceedings’ means any legal step or measure undertaken by an Evidentiary Panel; including a proceeding upon a request for the entry of a default against a respondent. This definition is further supported by the definition of an “Evidentiary Hearing” in Rule 1.06 which means “an adjudicatory proceeding before a panel of a grievance committee,” as this definition establishes ‘adjudicatory proceedings’ as a subset of the larger classification ‘proceedings’.

25. Because the Evidentiary Panel’s actions on May 6, 2021 constituted an Evidentiary Panel proceeding, Respondent was entitled to a minimum of forty-five days’ notice, which notice was not waived by the Respondent. Moreover, as Respondent had on file an *Evidentiary Answer* at the time the Evidentiary Panel’s ruling denying Respondent’s *Motion for Continuance*, the Evidentiary Panel erred in its holding that proceedings for default are exempted from compliance with the forty-five days’ notice requirement when notice is in fact provided a respondent.


WHEREFORE, CARL DONALD HUGHES, JR., Respondent, prays that this *Motion for New Trial and Motion to Stay Judgment of Suspension* be granted; that the *Order Granting Motion for Default Judgment* rendered and signed May 6, 2021 be set aside; that the *Default Judgment of Partially Probated Suspension* signed May 18, 2021 set aside; that all matters Noticed for May 6, 2021 be set to a future date of which Respondent is provided notice as required by the *Texas Rules of Disciplinary Procedure* and the Fourteenth Amendment to the U.S. Constitution; that the suspension imposed by the May 18, 2021 *Default Judgment of Partially Probated Suspension* be stayed pending the Respondent’s appeal of such order; and such other and further relief to which Respondent may show himself justly entitled.

Respectfully submitted,

By: 
Ronald D. Cross
Law Office of Ronald D. Cross P.C.
Attorney for Respondent
State Bar No.: 00787305
Ron@RonCrossLaw.com
5601 Democracy Dr., Suite 140
Plano, Texas 75024
Tel: 972/913-2917
Fax: 972/913-2917

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on each attorney of record or party in accordance with the TEXAS RULES OF DISCIPLINARY PROCEDURE 2.17.B. on May 28, 2021.


Ronald D. Cross
SBN: 00787305
Attorney for Carl Donald Hughes, Jr., Respondent

04/07/2021



Dallas Office
Chief Disciplinary Counsel

**BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-2
STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner**

V.

CARL DONALD HUGHES, JR.
Respondent

CASE NO. 201900501

NOTICE OF DEFAULT HEARING

TO: Respondent, Carl Donald Hughes, Jr., P.O. Box 610326, Dallas, Texas 75261-0326

YOU ARE NOTIFIED that the above-captioned case has been set for a default hearing before Evidentiary Panel 6-2 of the State Bar District No. 6 Grievance Committee on **Thursday, May 6, 2021, at 9:30 a.m.** The hearing will be held via Zoom videoconference.

Respectfully submitted,

STATE BAR OF TEXAS

Seana Willing
Chief Disciplinary Counsel

/s/ Rachel Craig
Rachel Craig
 Assistant Disciplinary Counsel
 State Bar No. 24090049

Office of the Chief Disciplinary Counsel
State Bar of Texas
The Princeton
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254
Telephone: (972) 383-2900
Facsimile: (972) 383-2935
E-mail: rachel.craig@texasbar.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Default Hearing was forwarded on the 7th day of April, 2021, to the following:

Carl Donald Hughes, Jr.
PO Box 610326
Dallas, Texas 75261-0326
Via E-Mail: carlhughes@aol.com;
Via Certified Mail No. 7019 2970 0001 2640 3120,
Return Receipt Requested; and
Via First Class U. S. Mail

/s/ Rachel Craig _____
Rachel Craig

**BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-2
STATE BAR OF TEXAS**

COMMISSION FOR LAWYER DISCIPLINE,	§	
Petitioner,	§	
	§	
v.	§	CASE NO. 201900501
	§	
CARL DONALD HUGHES, JR.,	§	
Respondent.	§	

ORDER

On August 5, 2021, came on to be heard Respondent Carl Donald Hughes, Jr.'s Motion for New Trial Pursuant to Texas Rule of Disciplinary Procedure 2.21 and Motion to Stay Judgment of Suspension Pursuant to Texas Rule of Disciplinary Procedure 2.24 (the "Motion"), filed in the above-styled and numbered cause. The Commission for Lawyer Discipline ("Petitioner"), appeared by and through its attorney of record. Respondent, Carl Donald Hughes, Jr., Texas Bar Number 10209000 ("Respondent"), appeared through and with his counsel of record.

An Evidentiary Petition was served on Respondent on January 29, 2020. Respondent did not file a timely response.

Petitioner filed its Motion for Default Judgment on April 7, 2021. At the same time, Petitioner served Respondent with the Motion for Default Judgment and a Notice of Hearing, setting the Motion for hearing on May 6, 2021. Respondent received the Motion and the Notice.

On May 4, 2021, Respondent filed an untimely answer to the Evidentiary Petition. On the afternoon of May 5, 2021, fewer than twenty-four hours before the noticed hearing on Petitioner's Motion for Default Judgment, Respondent filed a Motion to Continue the hearing.

At the hearing on May 6, 2021, Petitioner appeared by and through its attorney of record, and Respondent appeared through and with his counsel of record.

The Panel Chair denied the Motion to Continue.

Considering the Motion for Default Judgment, the Panel found that 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 Texas Rule of Disciplinary Procedure 2.17(B); accordingly, the Panel found Respondent in default, and that all facts alleged in the Evidentiary Petition were deemed true pursuant Texas Rules of Disciplinary Procedure 2.17(C).

The Panel did take and hear evidence from Respondent, and heard argument from Respondent, regarding his default, the allegations in the Evidentiary Petition, and in mitigation of sanctions.

After the hearing, the Panel found professional misconduct, assessed a sanction of a three-year partially probated suspension, and ordered Respondent to pay restitution to Gwen Bourgeois and attorneys' fees and costs to the State Bar of Texas. On May 18, 2021, the panel chair signed a Default Judgment of Partially Probated Suspension and the Judgment was entered.

On May 28, 2021, Respondent filed the Motion. Petitioner filed a Response to the Motion on August 2, 2021.

The Motion was originally set to be heard on July 1, 2021, and reset to June 30, 2021. The hearing on the Motion was then reset to August 5, 2021 at the request of Respondent.

Upon consideration of the Motion, the Response, the evidence submitted, arguments of counsel, and the file in this proceeding, the Panel FINDS that (i)

Respondent's Motion for New Trial was overruled by operation of law on August 2, 2021, pursuant to Texas Rule of Civil Procedure 329b(c), as incorporated by Texas Rule of Disciplinary Procedure 2.21, and in the alternative, following a hearing on the Motion, and upon consideration of the arguments of counsel and the file in the proceeding, FINDS that Respondent did not provide or prove any grounds which would justify a new trial; and (ii) Respondent did not establish by a preponderance of competent evidence that Respondent's continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public, or the appropriateness or advisability of the imposition of reasonable terms or affirmative acts conditioning a stay of the Default Judgment of Partially Probated Suspension. Accordingly, it is therefore

ORDERED that Respondent's Motion for New Trial is DENIED; it is further

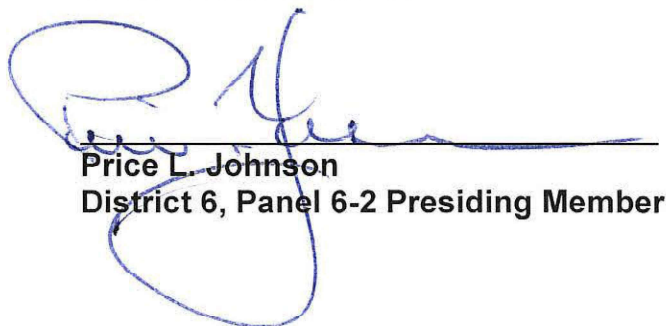
ORDERED that Respondent's Motion to Stay Judgment of Suspension Pending Appeal is DENIED.

All requested relief not expressly herein granted is expressly DENIED.

So Ordered.

Signed this 10th day of August 2021.

**EVIDENTIARY PANEL 6-2
DISTRICT NO. 6
STATE BAR OF TEXAS**



Price L. Johnson
District 6, Panel 6-2 Presiding Member

**BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-2
STATE BAR OF TEXAS**



FILED
Aug. 13, 2021

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

**COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner**

V.

**CARL DONALD HUGHES, JR.
Respondent**

§
§
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§
§
§
§
§
§


CASE NO. 201900501

RESPONDENT CARL DONALD HUGHES, JR.'S NOTICE OF APPEAL

This Notice of Appeal is filed by CARL DONALD HUGHES, JR., Respondent, a party to this proceeding who seeks to alter the Evidentiary Panel's judgment or other appealable order.

1. The District Grievance Committee, Evidentiary Panel number, case number, and style of this case are as shown in the caption above.
2. The judgment or order appealed from was signed on May 18, 2021.
3. CARL DONALD HUGHES, JR. desires to appeal from all portions of the judgment.
4. This appeal is being taken to the Board of Disciplinary Appeals.

Respectfully submitted,

By: 
 Ronald D. Cross
 Law Office of Ronald D. Cross P.C.
 Attorney for Respondent
 State Bar No.: 00787305
 Ron@RonCrossLaw.com
 5601 Democracy Dr., Suite 140
 Plano, Texas 75024
 Tel: 972/913-2917
 Fax: 972/913-2917

CERTIFICATE OF SERVICE

I certify that a true copy of this Notice of Appeal was served on each attorney of record or party in accordance with the BOARD OF DISCIPLINARY APPEALS INTERNAL PROCEDURAL RULE 1.05(e) and TEXAS RULE OF APPELLATE PROCEDURE 9.5. on August 13, 2021, as follows:

Rachel Craig, Attorney for the Commission for Lawyer Discipline – via email to Rachel.Craig@TexasBar.com; with courtesy copy to Sophia.Henderson@TexasBar.com.

I further certify that a true copy of this Notice of Appeal was delivered to the following court reporter in accordance with the BOARD OF DISCIPLINARY APPEALS INTERNAL PROCEDURAL RULE 4.02 and TEXAS RULE OF APPELLATE PROCEDURE 34.6. on August 13, 2021, as follows:

Name of reporter: Amanda J. Leigh

Address of reporter: Leigh & Associates Court Reporting and Video
911 West Loop 281, Suite 211
Longview, Texas 75604

Method of delivery: via email to info@leightreporting.com



Ronald D. Cross

SBN: 00787305

Attorney for Carl Donald Hughes, Jr., Respondent

From: [TXBODA Filing](#)
To: kylie@roncrosslaw.com; [Lang, Doug](#)
Cc: [Rachel Craig](#); [Sophia Henderson](#); ["Ron Cross"](#); [Lauren Baisdon](#); [Jenny Hodgkins](#); [Matthew Greer](#)
Subject: BODA # 65757 CLD v Carl Donald Hughes Jr.
Date: Monday, August 16, 2021 11:27:04 AM
Attachments: [image002.png](#)

The Board of Disciplinary Appeals received and filed a ***Notice of Appeal*** for this matter on August 13, 2021. The Respondent's Motion for New Trial was filed on May 28, 2021.

The clerk's record and reporter's record from the evidentiary hearing are due to be filed with the Board within 120 days from the date of the Evidentiary Judgment. The State Bar of Texas will file the clerk's record with the Board. It is the Appellant's responsibility to obtain and file the reporter's record with the Board. Appellant must designate what portion of the proceedings and any exhibits are to be included in the reporter's record in accordance with the Texas Rules of Appellate Procedure 34.6(b) (1).

The Board's Internal Procedural Rules are available at www.txboda.org under "Rules." Please file all pleadings by email at filing@txboda.org.

Thank you,

Jackie Truitt
Executive Assistant
Board of Disciplinary Appeals
PO Box 12426
Austin, TX 78711
512-427-1578
www.txboda.org

From: kylie@roncrosslaw.com <kylie@roncrosslaw.com>
Sent: Friday, August 13, 2021 2:14 PM
To: TXBODA Filing <filing@txboda.org>
Cc: 'Rachel Craig' <Rachel.Craig@TEXASBAR.COM>; 'Sophia Henderson' <Sophia.Henderson@Texasbar.com>; 'Amanda J. Leigh, CSR, CLR, CCVS' <info@leighreporting.com>; 'Ron Cross' <ron@roncrosslaw.com>
Subject: Case No. 201900501 - Commission for Lawyer Discipline v Carl Donald Hughes, Jr.
Importance: High

Good afternoon,

Attached please find *Respondent Carl Donald Hughes, Jr.'s Notice of Appeal*.

Please confirm receipt and provide a file-marked copy when available. Thank you very much for your attention to this matter.

Sincerely,

Kylie McDaniel
Paralegal to Ronald D. Cross

RC Law Office of Ronald D. Cross, P.C.

5601 Democracy Drive
Suite 140
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P: 972-913-2917
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NOTICE OF CONFIDENTIALITY: This communication and any attachments to it are confidential and intended solely for the use of the person to whom it is addressed. The information contained in and transmitted with this email is subject to the attorney-client and attorney work product privilege. If you have received this email in error, please reply and notify the sender immediately. You are hereby notified that any disclosure, distribution, copying, or the taking of any action in reliance on the contents of this information is unauthorized and prohibited. Any email erroneously transmitted to you should be immediately destroyed. Nothing in this message may be construed as a digital or electronic signature of any employee of Ronald D. Cross, P.C.

1 At this time, I ask anyone present who
2 may give testimony today to raise your right hand and be
3 sworn.

4 Mr. Hughes.

5 And, Ms. Craig, do you anticipate giving
6 testimony, as well?

7 MS. CRAIG: On attorney's fees, yes, sir.

8 PANEL CHAIR JOHNSON: Okay. Thank you.

9 (Witnesses administered oath.)

10 PANEL CHAIR JOHNSON: All right.

11 And do I have everyone's agreement that
12 you or anyone acting on your behalf will not record any
13 part of this proceeding?

14 Mr. Hughes?

15 MR. CROSS: I will not be recording the
16 proceeding; and I am instructing Mr. Hughes, who is on
17 mute, to answer the question.

18 MR. HUGHES: I agree with my counsel. I
19 will not, also.

20 PANEL CHAIR JOHNSON: Thank you.

21 So we've already done this off the
22 record. My fault. We will do this on the record.

23 I was informed yesterday, about 9:30, the
24 day before the hearing, that Mr. Hughes had retained
25 Mr. Cross. Mr. Cross advised me, a couple of hours

1 later, that he intended to file a motion for
2 continuance; and I received a copy of that motion -- I'm
3 sure it had been filed, but I received a copy of it
4 probably a little bit after 5:00 o'clock yesterday.

5 I have reviewed it, and I'm going to give
6 each of you a minute or so to make your arguments. I
7 had asked and ask again that you focus -- we reviewed
8 the factual allegations, but that you focus on the
9 2.17 issue of whether or not it requires 45 days' notice
10 or ten days' notice.

11 Mr. Cross, it's your motion. Will you
12 please proceed?

13 MR. CROSS: Yes, sir.

14 Evidentiary Rule 2.170 provides that
15 "Evidentiary Panel proceedings must be set for hearing
16 with a minimum of forty-five days' notice to all parties
17 unless waived...", "If the Respondent fails to answer, a
18 hearing for default may be set at any time not less than
19 ten days after the answer date without further notice to
20 the Respondent."

21 By analogy to Texas Rule of Civil
22 Procedure 245, I point the panel to the Tarrant County
23 appellate case (phonetic) 242421, Sentz versus
24 Volkswagen -- excuse me, versus State of Texas, also to
25 the cases Mathews v. Eldridge, that provide due process

1 requirement of notice must be provided at a meaningful
2 time and in a meaningful manner.

3 In this instance, although the Commission
4 did not have the obligation to provide any notice to
5 Mr. Hughes, when it elected to do so, it is required to
6 comply with the Disciplinary Rules of Procedure.

7 Importantly, the rule of procedure says
8 "If the Respondent fails to answer, a hearing for
9 default may be set at any time." In this instance, we
10 have an answer. It was filed two days ago. And, as
11 such, we feel that we are entitled to the notice that we
12 receive having been the mandatory 45 days' notice.

13 PANEL CHAIR JOHNSON: Thank you,
14 Mr. Cross.

15 Ms. Craig, response?

16 MS. CRAIG: 2.170 does not require any
17 notice from the Commission; and the Commission sending
18 notice about a month prior to the hearing did not
19 obligate it somehow to a 45-day requirement. So we
20 would ask that the motion for continuance be denied.

21 PANEL CHAIR JOHNSON: All right.
22 Mr. Cross, the way that I read the rule, obviously it
23 does require 45 days' notice unless everyone waives it
24 in an instance, presuming that an answer has been filed.
25 Here, we are in a no-answer default scenario.

1 I understand that you said an answer was
2 filed on Tuesday, two days ago; but the way I read the
3 rule -- and I certainly stand to be corrected on appeal,
4 should there be one, but the way that I read the rule
5 is, in a situation like this, if the Respondent fails to
6 answer, a hearing for default may be set not less than
7 ten days without further notice to Respondent. I do not
8 believe that the fact that the CDC gave notice somehow
9 then reverts and subjects them to the 45-day
10 requirement. So based on that, I am going to deny your
11 motion for continuance.

12 All right. Ms. Craig, are you ready to
13 proceed?

14 MS. CRAIG: Yes, sir.

15 MR. CROSS: May I ask for a
16 clarification, Mr. Johnson?

17 PANEL CHAIR JOHNSON: Of course.

18 MR. CROSS: With respect to the
19 continuance, we have two issues. One is whether there
20 is a default and the allegations of the petition will be
21 taken as true. The second issue is whether a sanctions
22 hearing is going to be conducted today. And with
23 respect to a sanctions hearing, Mr. Hughes has the right
24 to present mitigation evidence that we simply have not
25 had the opportunity, in the last two days, to create and

1 to present today.

2 Is the panel intending to proceed on both
3 the default as well as the sanctions hearing today?

4 PANEL CHAIR JOHNSON: Yes. Yes, we would
5 proceed on both. And first we will take up the issue on
6 the default, as I read in my opening statement. I know
7 I flew through that fairly quickly. We will come back
8 with a ruling on that. And depending on what the ruling
9 on that is, then we would move into the sanctions phase,
10 if there is a finding on the default.

11 So with that --

12 MR. HUGHES: Mr. Johnson, may I have a
13 minute to confer with my counsel privately on the phone
14 before we proceed any further, maybe five minutes to do
15 that, in light of your ruling?

16 PANEL CHAIR JOHNSON: Tell you what, I'm
17 going to allow that. But, Mr. Cross, can we maybe keep
18 it to a couple of minutes? because we have many other
19 hearings today and we've got a lot to do. So I'm going
20 to give you two minutes -- let's take a pretty strick
21 two minutes, because I'd hate for you to not be back in
22 two minutes and we proceed. Okay?

23 MR. CROSS: Yes, sir.

24 (Recess taken, 9:59 a.m. until 10:02
25 a.m.)

1 Ms. Craig, you may proceed.

2 MS. CRAIG: Thank you.

3 Okay. On or about January 29 of 2020,
4 the Respondent, who is Carl Donald Hughes, Jr., whose
5 bar number is 1029000, was served via certified mail,
6 return receipt requested, with an evidentiary petition
7 request for disclosure regarding the subject cause. At
8 this time, I will move to admit Petitioner's 1.

9 And if I may, Mr. Johnson, I believe
10 Ms. Henderson has emailed Mr. Cross and the panel all of
11 my exhibits; but if I can, I'd like to just share-screen
12 and show the exhibits on the screen. That way, the
13 panel just has copies for their own purpose, if they
14 prefer to look at them on their own computer.

15 PANEL CHAIR JOHNSON: Please do.

16 And to be clear, when you say your
17 Exhibit 1, are you referencing your motion for default
18 with the attachments?

19 MS. CRAIG: Well, yes, but the -- the
20 attachments to the motion for default are numbered, I
21 think, differently. I believe they're -- it's A, B, C,
22 D. And these happen to be numerical. So you do already
23 have copies because they all are part of the motion.

24 PANEL CHAIR JOHNSON: Okay. Understood.
25 Go ahead.

1 MS. CRAIG: If I may share-screen, I will
2 do so at this time. Here is Exhibit 1.

3 I move to admit Exhibit 1.

4 PANEL CHAIR JOHNSON: All right,
5 Mr. Cross, do you have any response or objection?

6 MR. CROSS: I was -- my response is that
7 I just, moments ago, received the email with these
8 materials attached; and I would like the record to
9 reflect that, additionally, for the due process claims.
10 But I do not have an objection to the admission of
11 Exhibit 1.

12 PANEL CHAIR JOHNSON: Exhibit 1 is
13 admitted.

14 MS. CRAIG: Okay. And just to be clear,
15 for the record, like Mr. Johnson pointed out, these
16 exhibits were all attached to the motion that has been
17 previously tendered to Mr. Cross.

18 PANEL CHAIR JOHNSON: Yes, and that's
19 correct. It's just that on the motion that is your
20 CFLD 1, that was just admitted, is Exhibit A on your
21 motion.

22 MS. CRAIG: Thank you, Mr. Johnson.

23 Pursuant to Rule 2.17B of the Texas Rules
24 of Disciplinary Procedure, Respondent was required to
25 file a responsive pleading either admitting or denying

1 each specific charge of the petition no later than
2 5:00 p.m. on the first Monday following the expiration
3 of 20 days after date of service of the petition.
4 Respondent's failure to timely file a responsive
5 pleading within the time permitted constitutes a default
6 under Rule 2.17C, and all facts as alleged in the
7 petition shall be taken as true.

8 Those allegations are as follows:

9 On or about January 5 of 2017,
10 Complainant Gwen Bourgeois--and that's
11 B-O-U-R-G-E-O-I-S--hired Respondent to file a civil
12 action involving a real estate matter. On February 6 of
13 2017, Respondent filed the action in district court in
14 Galveston County, Texas, but the case was later removed
15 by the defendants to the United States District Court
16 for the Southern District of Texas, Galveston Division.
17 Complainant paid Respondent a total of \$25,000 during
18 the representation.

19 Bourgeois requested an accounting from
20 Respondent from February 18, 2018, February 20 of 2018,
21 and July 23 of 2018. Bourgeois also made verbal
22 requests for an accounting in October of 2017 and on
23 May 31, 2017. Respondent failed to comply with
24 Bourgeois' requested requests.

25 On February 20, 2018, Bourgeois requested

1 a summary of Respondent's response to a motion for
2 summary judgment in the matter and copies of all
3 requested answers to the Court. Respondent failed to
4 comply with Bourgeois' request.

5 On October 10, 2017, Bourgeois paid
6 \$6,000 to Respondent for the purposes of taking
7 depositions. In January of 2018, Bourgeois paid an
8 additional 2,000 for the same purpose. However, no
9 depositions were taken and Respondent failed to refund
10 these funds upon request.

11 On June 29, 2018, Respondent's
12 representation was terminated. Respondent failed to
13 return Bourgeois' client file and other documents.
14 Respondent further failed to return any unearned fees.

15 Respondent received notice of this
16 grievance but failed to submit a response and failed to
17 allege any legal ground or privilege for his failure to
18 do so.

19 Respondent, by his conduct in connection
20 with the grievance initiated by Bourgeois, has violated
21 Rules 1.03(a), 1.03(b), 1.15(d), and 8.04(a)(8) of the
22 Texas Disciplinary Rules of Professional Conduct.

23 And at this time, I'm going to move to
24 admit Commission's 2, which is the certificate of
25 Mr. Hughes' last known mailing address.

1 PANEL CHAIR JOHNSON: Mr. Cross, any
2 objection or response?

3 MR. CROSS: The same response as with
4 Exhibit 1. No objection to the admission.

5 PANEL CHAIR JOHNSON: All right.

6 Ms. Craig, your Exhibit 2 is admitted.

7 MS. CRAIG: And at this time, I move to
8 admit Exhibit 3, which is an unsworn declaration related
9 to Mr. Hughes not being in the military.

10 PANEL CHAIR JOHNSON: Okay.

11 Mr. Cross, any objection?

12 MR. CROSS: Same response and no
13 objection.

14 PANEL CHAIR JOHNSON: Exhibit 3 is
15 admitted.

16 MS. CRAIG: And, lastly, I will move to
17 admit Exhibit 4, which is just the letter containing the
18 notice for today's hearing.

19 MR. CROSS: Same response and no
20 objection.

21 PANEL CHAIR JOHNSON: Exhibit 4 is
22 admitted.

23 MS. CRAIG: Okay. At this time, I
24 request that my motion for default be granted based on
25 the evidence before the panel.

1 PANEL CHAIR JOHNSON: Ms. Craig, I do
2 have a question and just for -- really for
3 clarification.

4 So your Exhibit 1, the green card, it's a
5 little hard to read, but I believe it is signed as
6 received January 29 of '20. So just doing some quick
7 calculations--and I'm not trying to say this is
8 accurate--but I believe the answer would have been done
9 on Monday -- due on Monday, February 24 of 2020. Does
10 that sound about right to you?

11 MS. CRAIG: Yes, that is correct.

12 PANEL CHAIR JOHNSON: Okay. All right.

13 Mr. Cross, this is, obviously, a motion
14 for default. That said, even though this is a motion
15 for no-answer default, I'm going to give you a brief
16 opportunity to respond, if you have any response. And
17 it may just be what you've already argued, which is
18 fine.

19 MR. CROSS: I do reurge the due process
20 argument, Mr. Panel Chair. With respect to the default
21 itself, under Rule 2.17C, the definition for a default
22 does relate to a failure to answer within the time
23 permitted. And so we do not contest that an answer was
24 not provided within the deadlines established by the
25 Rules of Procedure.

1 PANEL CHAIR JOHNSON: Mr. Cross, I just
2 have one question for you, and we'll see if any panel
3 members. Why is it that no response was filed until, I
4 believe you said, two days ago, May the 4th of 2021,
5 which was, roughly, 15 months after the answer due date?

6 MR. CROSS: Thank you for asking that
7 question. The reason being, Mr. Hughes participated in
8 a investigatory hearing prior to the filing of the
9 evidentiary petition; and it's my understanding that the
10 investigatory hearing was handled by a different
11 assistant disciplinary counsel, that it was not
12 Ms. Craig. In conversations with that counsel, it was
13 Mr. Hughes' understanding that he had agreed to not be
14 an attorney of record for a period of time and believed
15 that he had an agreement with the Commission for Lawyer
16 Discipline with respect to that.

17 Now, the additional factors that come
18 into play is Mr. Hughes has a history of depression and
19 anxiety, that, although it is in recovery now, due to
20 the circumstances that were occurring in late 2019,
21 early 2020, he was simply not mentally in a state where
22 he was capable of taking the actions that he needed to
23 do at that time.

24 There are many factors of mitigation that
25 we would like to present to this panel that we're simply

1 not able to do today as a result of my having been
2 retained only two days ago, and would reurge, with
3 respect to the sanctions portion of this hearing, that
4 we be given additional time in order to present all of
5 the appropriate mitigation evidence to the panel, so it
6 can make a knowing decision.

7 PANEL CHAIR JOHNSON: Panel members, any
8 questions for anyone?

9 All right. Seeing no questions, we will
10 move into our deliberations process on the motion for
11 default, and we'll come back here, hopefully, not too
12 long and see where we go from there.

13 MR. CROSS: Thank you, Mr. Johnson.

14 PANEL CHAIR JOHNSON: Thank you, sir.

15 (Recess for panel deliberations, 10:13
16 a.m. until 10:22 a.m.)

17 PANEL CHAIR JOHNSON: All right, the
18 panel has deliberated. We have made a finding in favor
19 of the motion for default. The motion for default has
20 been granted. With that, we will move into any evidence
21 with respect to any sanctions.

22 What I intend to do here -- and,
23 Ms. Craig, I'm going to ask you to be very specific,
24 since, obviously, we now have counsel here -- and I am
25 going to allow him to have some time, of course. I want