Cause No. 65757

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 APPELLEE

DOUGLAS S. LANG SB #11895500 DORSEY & WHITNEY LLP 300 Crescent Court, Suite 400 Dallas, Texas 75201 (214) 981-9985 (214) 981-9901 - Facsimile e-mail: lang.doug@dorsey.com	SEANA WILLING SB #00787056 CHIEF DISCIPLINARY COUNSEL ROYCE LEMOINE SB #24026421 DEPUTY COUNSEL FOR ADMINISTRATION Office of the Chief Disciplinary Counsel P.O. Box 12487 Austin, Texas 78711-2487 (5120 427-1350 (512) 427-4167 - Facsimile

NAMES AND ADDRESSES OF ALL PARTIES TO THE FINAL DECISION AND THEIR COUNSEL

APPELLANT

Carl Donald Hughes, Jr.
c/o Ronald D. Cross
LAW OFFICE OF RONALD D. CROSS, P.C.
5601 Democracy Dr., Suite 140
Plano, Texas 75024
(214) 501-5789

Counsel for Appellant:

Ronald D. Cross
LAW OFFICE OF RONALD D. CROSS, P.C.
5601 Democracy Dr., Suite 140
Plano, Texas 75024
(214) 501-5789
Ron@RonCrossLaw.com

APPELLEE

COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS
P.O. Box 12487
Austin, Texas 78711

COUNSEL FOR APPELLEE

DOUGLAS S. LANG
SB #11895500
DORSEY & WHITNEY LLP
300 Crescent Court, Suite 400
Dallas, Texas 75201
Phone: 214.981.9985
Fax: 214-981-9901
e-mail: lang.doug@dorsey.com

SEANA WILLING
SB #00787056
Chief Disciplinary Counsel
e-mail: seana.willing@texasbar.com

ROYCE LEMOINE
SB #24026421
Deputy Counsel for Administration
e-mail: royce.lemoine@texasbar.com

State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
512.427.1350; 1.877.953.5535
Fax: 512.427.4167

Rachel Craig, Assistant Disciplinary Counsel - Trial Counsel
Office of Chief Disciplinary Counsel
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254
(972) 383-2900

STATEMENT AS TO ORAL ARGUMENT

Appellant has not requested oral argument. Appellee does not believe oral argument will assist the Board in making its decisions. However, should the Board grant oral argument to Appellant, Appellee request the opportunity to appear and argue.

ABBREVIATIONS

"App." will refer to Appendix.

"App. BR" followed by the page number are references to appellant's brief.

Appellant, CARL DONALD HUGHES, JR., will be referred to as "Appellant" or "Hughes."

Appellee, the "Commission for Lawyer Discipline" will be referred to as "Appellee" or "the Commission."

CR will refer to the Clerk's Record.

RR will refer to the Reporter's Record.

Tex. R. App. P. or TRAP reference the Texas Rules of Appellate Procedure.

Tex. R. Disc. Proc. references the Texas Rules of Disciplinary Procedure.

TDRPC refers to Texas Disciplinary Rules of Professional Conduct.

T.R.C.P. references the Texas Rules of Civil Procedure.

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1. Default Judgment of Partially Probated Suspension, May 18, 2021, CR 222.
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STATEMENT OF THE CASE

Type of Proceeding: Attorney Discipline

Petitioner/Appellee: The Commission for Lawyer Discipline

Respondent/Appellant: Carl Donald Hughes, Jr.

Nature of the Case: The Commission for Lawyer Discipline brought a disciplinary action against Hughes regarding professional misconduct in violation of Texas Disciplinary Rules of Professional Conduct 1.03(a), 1.03(b), 1.15(d), and 8.04(a)(8).

Disposition: A Default Judgment of Partially Probated Suspension was rendered in this matter on May 18, 2021. Notice of appeal was timely filed on August 13, 2021.

ISSUES PRESENTED

APPELLEE'S ISSUE IN REPLY TO APPELLANT'S ISSUES, TEX. R. APP. PROC. 38.2(a)(2):

Has Appellant failed to preserve his issues on appeal since, pursuant to Tex. R. App. Proc. 33.1, those issues do not comport with the motion for continuance presented to and denied by the Evidentiary Panel?

APPELLANT'S ISSUES:

ISSUE NUMBER ONE

Whether the requirement of TEXAS RULE OF DISCIPLINARY PROCEDURE 2.17C. 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 NUMBER TWO

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

ISSUE NUMBER THREE

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

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Comes now, Appellee, the Commission for Lawyer Discipline (Commission) and files this its Appellee's Brief in this case. Appellee respectfully shows the Board of Disciplinary Appeals (Board) as follows:

I. Summary of The Argument

Appellant's complaint boils down to this: He acknowledges he was duly served with the Evidentiary Petition and Request for Disclosure on January 29, 2020. (Petition). Also, he admits he failed to answer timely the Petition by the date designated by the rules, Monday, February 24, 2020. Nevertheless, in his appeal, he claims the Evidentiary Panel (Panel) should have given him 45 days' advance notice of the hearing set for the Commission's Motion for Default Judgment so he could present his alleged defenses to the discipline sought.

TRDP 2.17B states in plain language that when a "Respondent" is served with a Petition, he "must" file an answer or appearance "no later than 5:00 p.m. on the first Monday following the expiration of twenty days after service of the Evidentiary Petition."[1] The term "must" is not a suggestion, it directs that an answer or

[1] TRDP 2.17 B, "Answer**:** A responsive pleading either admitting or denying each specific allegation of Professional Misconduct must be filed by or on behalf of the Respondent no later than 5:00 p.m. on the first Monday following the expiration of twenty days after service of the Evidentiary Petition."

appearance is mandatory to be filed in the time prescribed.[2] Further, TRDP 2.17C provides, in plain language, that once a respondent is in default of timely filing an answer, ". . . all facts alleged in the Evidentiary Petition *shall* be taken as true for the purposes of the Disciplinary Proceeding." (Emphasis added).[3]

So, it is "mandatory" that a respondent answer timely. Otherwise, "all facts" in the Petition "shall be taken as true." The core and thrust of Appellant's appeal ignores the mandatory language of TRDP 2.17B and 2.17C and asks this Board to do likewise and, thereby, create new rules and rights for a defaulting "Respondent."

However, Appellant has not preserved his points about the rules and actions of the Panel. The issues raised by Appellant on appeal do not comport with the pivotal objection and position presented in the motion for continuance he filed on May 5, 2021 that was denied by the Panel. In particular, the motion for continuance was the method appellant chose to seek the 45 day continuance. However, by not

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[2] *See AC Interests, L.P. v. Tex. Comm'n on Envtl. Quality*, 543 S.W.3d 703, 709 (Tex. 2018), "The words 'shall' and 'must' in a statute are generally understood as mandatory terms that create a duty or condition. [*Helena Chemical Co. v.*]*Wilkins*, 47 S.W.3d 486, 495 (Tex. 2001)] [] (citing Tex. Gov't Code § 311.016(2), (3)). But we have cautioned that such labels can be misleading absent context. *See State v. $435,000,* 842 S.W.2d 642, 644 (Tex. 1992) (per curiam). *'More precisely the issue is not whether 'shall' [or 'must'] is mandatory, but what consequences follow a failure to comply*." (Emphasis added); *See* also Tex. Gov't Code § 311.016, "The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute: (1) "May" creates discretionary authority or grants permission or a power. (2) "Shall" imposes a duty. (3) "Must" creates or recognizes a condition precedent. . . ."

[3] TRDP 2.17C provides in 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."

claiming error regarding the Panel's denial of his motion for continuance, Appellant has waived the alleged barriers and errors he claims thwarted his efforts to avoid the default judgment prescribed by TRDP 2.17B, C, and O.

Even though he has not claimed the denial of the motion for continuance was error, the Commission will show the Panel did not err in denying the motion for continuance. That is because the Motion did not meet the requirements of TRCP 251 since the motion was not sworn to, nor did it clearly and specifically state the reasons for a continuance. As a matter of law, the Panel was and is possessed of discretion to grant or deny a motion for continuance. On this record, since the motion for continuance did not comply with TRCP 251, the Panel cannot be said to have abused its discretion in denying the motion for continuance.

As with other litigants who fail to timely attend to their obligations to answer legal process, Hughes must accept the results directed by the Texas Rules of Disciplinary Procedure (TRDP), the Texas Disciplinary Rules of Professional Conduct (TDRPC), and the Texas Rules of Civil Procedure (TRCP). As a matter of law, Appellant may not subvert the application of properly promulgated rules, TRDP 2.17B, C, and O.

II. Statement of Facts.

The timeline in this case is not contested by Appellant.[4] The Commission filed its Petition on January 6, 2020. On January 29, 2020, Appellant was served with the petition by certified mail, return receipt requested. Pursuant to TRDP 2.17B, Respondent is required to file a responsive pleading either admitting or denying each specific charge of the Petition no later than 5:00 p.m. on the first Monday following the expiration of twenty (20) days after the date of service of the petition. It is uncontested that Appellant's answer or response date was Monday, February 24, 2020. However, Appellant failed to file a responsive pleading by that time.

According to standard procedure and the rules, when the Appellant defaulted in the obligation to appear and answer timely, the Commission filed a Motion for Default Judgment on April 7, 2021. On that same day, the Commission served Appellant with a Motion for Default Judgment and Notice of Default Hearing that was set for May 6, 2021. Appellant acknowledges the Commission had no obligation under the rules to serve him with notice of the upcoming default judgment hearing.[5]

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[4] App. Br. 9-12. Appellant described the time sequence as noted in this recitation.; see also Commission's Motion for Default Judgment, April 7, 2021, CR 46; Order Granting Default Judgment, May 6, 2021, CR 43.

[5] App. Br. 25.

Almost a month later, on May 4, 2021, Appellant filed his late "Answer to Evidentiary Petition."[6] Then, on the eve of the default hearing, May 5, 2021, Appellant filed a Motion for Continuance.[7]

On May 6, 2021, the Panel convened the hearing as scheduled. It heard and denied Appellant's unsworn and vaguely worded Motion for Continuance.[8] Then, the Panel heard the Commission's Motion for Default Judgment, granted it, considered evidence as to the sanction to be imposed, and rendered a sanction against Appellant of a partially probated suspension. That Default Judgment of Partially Probated Suspension was signed May 18, 2021. The default judgment states Appellant violated Texas Disciplinary Rules of Professional Conduct 1.03(a), 1.03(b), 1.15(d), and 8.04(a)(8).[9] Several post judgment motions were filed by appellant. All of those motions were denied by the Panel.

Now, appellant contends that he should have been allowed to present his alleged defenses even after his default because the Commission sent him notice of the hearing and he filed an answer on May 4, 2020, 435 days after his lawful answer date.

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[6] CR 85.
[7] CR 111.
[8] RR 10.
[9] CR 162, Default Judgment of Partially Probated Suspension, Appendix 1.

Appellant claims that the Default Judgment of Partially Probated Suspension should be vacated and the case should be remanded for a "de novo" hearing.

III. STANDARD OF REVIEW

In disciplinary cases, the substantial evidence standard of review applies.[10] Under the substantial evidence test, the findings of an administrative body are presumed to be supported by substantial evidence, and the party challenging the findings bears the burden of proving otherwise.[11] The fact finder is the exclusive judge of credibility and may believe or disbelieve one witness and not others.[12] The reviewing court may not substitute its judgment for that of the administrative body and must consider only the record upon which the decision is based.[13]

The substantial evidence standard focuses on whether there is any reasonable basis in the record for the administrative body's findings.[14] Anything more than a scintilla of evidence is sufficient to support a finding.[15] The ultimate question is not whether a finding is correct, but only whether there is some reasonable basis for it.[16]

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[10] Tex. Gov't Code Ann. § 81.072(b)(7) (West 2011) (State Bar Act); *Comm'n for Lawyer Discipline v. Schaefer*, 364 S.W.3d 831, 835 (Tex. 2012).
[11] *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994).
[12] *Miller v. Comm'n for Lawyer Discipline*, 2004 Tex. App. LEXIS 11725 * 2 (Tex. App.-San Antonio, 2004, no pet.).
[13] *R.R. Comm'n of Tex. v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995); *Tex. State Bd. of Dental Exam'rs v. Sizemore*, 759 S.W.2d 114, 116 (Tex. 1988).
[14] *City of El Paso*, 883 S.W.2d at 185.
[15] *Tex. Dep't of Pub. Safety v. Cuellar*, 58 S.W.3d 781, 783 (Tex. App. - San Antonio 2001, no pet.).
[16] *City of El Paso*, 883 S.W.2d at 185.

IV. ARGUMENT AND AUTHORITIES.

A. Application of the Law to the Facts.

1. Appellee's Issue in Reply to Appellant's Issues, Tex. R. App. Proc. 38.2(a)(2):

"Has Appellant failed to preserve his issues on appeal since, pursuant to Tex. R. App. Proc. 33.1, those issues do not comport with the motion for continuance presented to and denied by the Evidentiary Panel?"

a. Failure to Raise the Central Issue-Denial of Motion for Continuance.

Appellant has raised three issues, but none address the denial of Appellant's motion for continuance. The denial of the motion for continuance is the ruling on which this case should rest. Those three issues expressly focus only on his interpretation of three procedural rules, TRDP 2.17B, 2.17C, and 2.17O. However, the issues Appellant asserts in his opening brief do not comport with the objection request for a ruling presented to the Panel, *i.e.*, the motion for continuance.[17] Accordingly, Appellant's three issues are not preserved. There is nothing for this Court of Appeals to review.

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[17] *See TRAP* **33.1** Preservation; How Shown. (a) In General. As a prerequisite to presenting a complaint for appellate review, the record must show that: **(1)** the complaint was made to the trial court by a timely request, objection, or motion . . . ." *See* also *Gutierrez v. Hiatt*, 2006 Tex. App. LEXIS 1747 * 4 (Tex. App.-San Antonio 2006, pet. denied); *J.C. Penney Life Ins. Co. v. Heinrich*, 32 S.W.3d 280, 290 (Tex. App.- San Antonio 2000, pet. denied), (Points on appeal must comport with arguments asserted in trial court,).

It is without question that an appellate court, or the Board in this case, has the power to review only the arguments that appear in the parties' briefs.[18] The Appellant's opening brief defines the threshold scope of issues an appellate court may reach in a given case.[19] "The statement of an issue or point will be treated as covering every subsidiary question that is fairly included." Tex. R. App. P. 38.1(f)."[20] However, nothing in the three issues raised by Appellant touches on the discretion of the Panel to deny the continuance.

b. Even Were the Motion for Continuance to Be Considered-It Did Not Comply With the Rules.

Even assuming without acknowledging that somehow the denial of the motion for continuance has been asserted by Appellant on appeal, the Panel has not been shown to have erred in denying that motion. It is beyond dispute that the granting of a continuance rests within the sound discretion of the trial court.[21] Rule 251 of the Texas Rules of Civil Procedure provides that no continuance shall be granted "except for sufficient cause supported by affidavit, or by consent of the parties, or by

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[18] *Pat Baker Co., Inc. v. Wilson*, 971 S.W.2d 447, 450 (Tex.1998) (appellate courts cannot address unassigned error).
[19] *Id.; Phillips Dev. & Realty, L.L.C. v. LJA Eng., Inc.*, 499 S.W.3d 78, 89 (Tex.App.--Houston [14th Dist.] 2016, pet. denied)(court limited to reviewing points raised in appellant's opening brief).
[20] *Hogg v. Lynch, Chappell & Alsup, P.C.*, 553 S.W.3d 55, 65 (Tex. App.-El Paso 2018, no pet.).
[21] *See BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 800 (Tex. 2002).

operation of law."[22] Without question, TRCP 251 applies in lawyer disciplinary proceedings.[23]

The record shows that Appellant's motion for continuance is deficient according to the rules in at least two respects. First, it is not supported by an affidavit.[24] Second, it does not identify his purported "meritorious defense" which he asserted he would present.[25] On this record, the Panel certainly did not abuse its discretion when it denied the motion for continuance.

c. Appellant's Constitutional Point Has Not Been Preserved.

Even assuming without agreeing that somehow the denial of the motion for continuance constituted the denial of procedural due process, Appellant has not met the requirements for preserving any constitutional point. A successful claim of denial of due process purportedly arising from the denial of a motion for continuance must be premised on "the reasons presented to the trial judge at the time the request [for continuance] is denied."[26] Such a claim is unfounded when the

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[22] Rule 251. Continuance. "No application for a continuance shall be heard before the defendant files his defense, nor shall any continuance be granted except for sufficient cause supported by affidavit, or by consent of the parties, or by operation of law." *See Serrano v. Ryan's Crossing Apt.*, 241 S.W.3d 560, 564 (Tex. App. – El Paso 2007, pet. denied) (appellate court presumes no abuse of discretion in denying motion for continuance that is not verified or supported by affidavit).
[23] TRDP 3.08 provides in part, "In all Disciplinary Actions brought under this part, the following additional rules apply: . . . B. Except as varied by these rules, the Texas Rules of Civil Procedure apply. . . ."
[24] CR 111, Motion for Continuance.
[25] *Id.* at ¶ 9, 11, 15,
[26] *Ungar v. Sarafite*, 376 U.S. 575, 589-590 (1964).

trial court was offered only vague, conclusory statements in support of the motion for continuance.[27]

A reviewing court considers on a case-by-case basis whether a trial court, (here, the Panel), committed a clear abuse of discretion in denying a motion for continuance.[28] A trial court abuses its discretion when it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.[29] However, "the test for abuse of discretion is not whether, in the opinion of the reviewing court, the facts present an appropriate case for the trial court's action. Rather, it is a question of whether the court acted without reference to any guiding rules and principles." [30] Deciding whether, and to what degree, to credit the evidence is the factfinder's role, not that of an appellate court.[31] Accordingly, an appellate court must not review the trial court's decision to determine if the appellate court would have ruled differently, but to determine if the trial court's ruling was arbitrary or unreasonable.[32]

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[27] Id., See 8, supra; CR 111, Motion for Continuance.
[28] *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 800 (Tex. 2002).
[29] *Id.*
[30] *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985).
[31] *In the Interest of R.S.*, 2020 Tex. App. LEXIS 5839 * 14-15 (Tex. App.-Houston [1st Dist.] 2020, no pet.); ("The factfinder is the sole arbiter of witness credibility. *Id.; In re J.S.*, 584 S.W.3d 622, 634 (Tex. App.—Houston [1st Dist.] 2019, no pet.). In a bench trial, the trial judge is the factfinder who weighs the evidence, resolves evidentiary conflicts, and evaluates witnesses' demeanor and credibility. *In re R.J.*, 579 S.W.3d 97, 117 (Tex. App.—Houston [1st Dist.] 2019, pet. denied).").
[32] *Roberts v. GMC, Roper Motor Co., Jimmy Banks, Edwin Dean Lawrence, & Will Allen Lynch,* 2002 Tex. App. LEXIS 6183 *14 (Tex. App.-Houston [14th Dist.] 2002, pet. denied).

B. Appellant's Issues.

1. Appellant's Issue Number One:

a. Issue Number 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."

b. Commission's Response.

Appellant's contention that he has been denied his rights under the "Fourteenth Amendment of the Constitution of the United States of America" is founded, in substance, on the theory that his failure to answer timely the Petition, as required by TRDP 2.17B and C, should have no effect on his ability to present a defense.

Appellant focuses on two arguments. First, he claims the Panel violated his rights when it complied with TRDP 2.17C after Appellant failed to timely file his answer. He asserts that even though he was in default at the time of the answer date, he should have been allowed to present his evidence after 45 days' advance notice and not at the May 6, 2020, hearing set for the Commission's Motion for Default Judgment. Yet, it is clear on the record that at the time of the hearing on the

Commission's Motion for Default Judgment, the panel proceeded precisely as required by TRDP 2.17B and C.

After concluding Appellant had not filed an answer until 435 days after the prescribed answer date of February 24, 2020, and 27 days after being served with the Motion for Default Judgment filed by the Commission, the Panel rendered a default judgment. The Panel followed the directions of the rules promulgated by the Texas Supreme Court, TRDP 2.17C, when it "took as true" for the purposes of the Disciplinary Proceeding, "all facts alleged in the Evidentiary Petition." Of course, once again, the Panel followed TRDP 2.17C when it set the hearing for the Commission's Motion for Default Judgment and directed both Appellant and the Commission to present evidence regarding the appropriate sanction to be opposed.[33]

In his second argument, Appellant over reaches when he asserts that the taking of a default judgment against him is a denial of due process which he claims is analogous to an evil he sees when, in general civil litigation, a party fails to answer requests for admission. He claims Texas appellate courts have ruled to support his

[33] TRDP 2.17C, "Default**:** 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. Upon a showing of default, the Evidentiary Panel shall enter an order of default with a finding of Professional Misconduct and *shall conduct a hearing to determine the Sanctions to be imposed*." (Emphasis Added).

contention that due process is denied when a party fails to answer requests for admission and the facts inquired about are taken as "admitted."[34]

However, the cases he cites do not stand for that proposition. Uniformly, the cases he cites[35] recognize requests for admission are a proper method of proceeding in civil cases. The Fourteenth District Court of Appeals in the *Hendrickson* case observed that "[a]fter an action is filed, a party may serve written requests for admission that encompass "any matter within the scope of discovery, including statements of opinion or of fact or of the application of law to fact . . . ." Tex. R. Civ. P. 198.1; *Marino v. King*, 355 S.W.3d 629, 632 (Tex. 2011) (per curiam)."[36] The *Hendrickson* court proceeded to explain the operation of Rule 198.1 where it said, "[i]f the opposing party does not respond to the admissions requests within 30 days,

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[34] App. Br. 15.

[35] *Taylor v. Lewis*, 533 S.W.2d 153, 160 (Tex. Civ. App.— Amarillo 1977, writ ref'd n.r.e.); *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); *In re Estate of Herring*, 970 S.W.2d 583, 589 (Tex. App. – Corpus Christi 1988, no pet.); App. Br. 15. (These cases cite to potential situations that *could* raise due process issues). The Fourteenth Court of Appeals, in *Hendrickson v. Heard*, 2018 Tex. App. LEXIS 8089 *7 (Tex. App.-Houston [14th Dist.] 2018, no pet.), made clear that the situation addressed by the Texas Supreme Court in *Wheeler* where it addressed "due process concerns," is far different from ignoring an answer date for 435 days. The Fourteenth Court analyzed the Wheeler case as follows, "[t]he pro se litigant in *Wheeler* filed her responses to the requests for admissions two days late because of a miscalculation with respect to the mailbox rule. [] The supreme court held that the litigant did not waive her complaint regarding withdrawal of the deemed admissions by presenting it for the first time in her motion for new trial because 'nothing in this record suggests that before summary judgment was granted, [the litigant] realized that her responses were late, that she needed to move to withdraw deemed admissions, or that she needed to file a response to the summary judgment raising either argument.' *Id.* at 442. Unlike the litigant in *Wheeler*, Hendrickson was on notice of his failure to respond to Heard's requests for admission."

[36] *Hendrickson v. Heard*, 2018 Tex. App. LEXIS 8089 *7 (Tex. App.-Houston [14th Dist.] 2018, no pet.).

the matters in the requests are deemed admitted against the party without the necessity of a court order. Tex. R. Civ. P. 198.2(c); *Marino*, 355 S.W.3d at 633. A matter deemed admitted is conclusively established unless the trial court, on motion, permits withdrawal or amendment of the admission. Tex. R. Civ. P. 198.3."[37] The case law does not label requests for admission or default judgments, as improper.

2. Appellant's Issue Number Two.

a. Issue Number Two.

> "Whether the Evidentiary Panel reversibly erred in construing Texas Rules 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."

b. Commission's Response.

In his second issue, Appellant argues, in substance, that the Panel erred by not ordering that a hearing on the motion for default judgment should have been be set on "45 days' notice." However, at this juncture it is critical to notes several lapses in Appellant's logic.

First, Appellant argues for the 45 days' notice, but does not identify how the rules would allow him to present the merits of a defense even if the default hearing

[37] *Id.*

been set on 45 day's advance notice. TRDP 2.17C still requires that after default, the facts alleged in the petition be "taken as true." A mere extension of 45 days for a setting of a default judgment hearing would not cure his default nor exchange and the operation of TRDP 2.17C.

Second, Appellant confuses and fails to give effect to the plain language of TRDP 2.17B, 2.17C, and 2.17O. His conclusion is: "[T]he 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." [38] This additional, highlighted language is not contained within the plain meaning of the words used in Rule 2.17.O and is therefore violates several principles of statutory construction.

Both of the above flaws arise from Appellant's failure to give heed to the rules of construction applicable to statutes and procedural rules. The principles of statutory construction apply to the rules of civil procedure, and it is a well-settled principle of statutory construction that the specific controls over the general.[39]

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[38] App. Br. 17-19.

[39] *See In the Interest of R.C.M.*, 2010 Tex. App. LEXIS 2412 *13-14 (Tex. App.-Fort Worth 2010, no pet.) Tex. Gov't Code Ann. § 311.026 (Vernon 2005) (recognizing specific statute will control over general); *BASF Fina Petrochemicals Ltd. P'ship v. H.B. Zachry Co.*, 168 S.W.3d 867, 871 (Tex. App.--Houston [1st Dist.] 2004, pet. denied) (recognizing principles of statutory construction apply to rules of civil procedure)."

Further, words and phrases must be read in context and construed according to the rules of grammar and common usage.[40]

TRDP 2.17B is very specific as to when an answer must be filed to avoid default. It says, "B. Answer**:** *A responsive pleading* either admitting or denying each specific allegation of Professional Misconduct *must be filed* by or on behalf of the Respondent no later than 5:00 p.m. on the first Monday following the expiration of twenty days after service of the Evidentiary Petition." (Emphasis added).

There is no equivocation in this rule. It provides when "a responsive pleading" "must be filed." It does not say anything like a responsive pleading "may be filed" when a Respondent decides to do so. The rule's language is mandatory.[41]

Next, Appellant misconstrues TRDP 2.17C. His argument appears to claim that the phrase "within the time permitted" by TRDP 2.17C is meaningless. The full rule says the following:

> "Default**:** *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. Upon a showing of default, the Evidentiary Panel shall enter an order of default with a finding of Professional Misconduct and shall conduct a hearing to determine the Sanctions to be imposed." (Emphasis added).

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[40] *See* § 311.011. "Common and Technical Usage of Words. **(a)** Words and phrases shall be read in context and construed according to the rules of grammar and common usage."
[41] *See* n. 2, *supra.*

TRDP 2.17C stands on its own to make clear a default has occurred when an answer is not filed within the specific time permitted. That time period identified in TRDP 2.17B is the "time permitted." The time for an answer is mandatory, not a suggestion.[42]

Finally, Appellant misconstrues TRDP 2.17O using the faulty premises he offers regarding TRDP 2.17B and C. Here, he contends the Panel implied that an answer "could not be filed" at any time once a respondent, like Appellant, has failed to timely answer as required by TRDP 2.17B. However, if Appellant's speculation is correct, the Panel did not err. There was no need for the Panel or anyone else to construe the rules as Appellant argues.

This rule must be read in conjunction with TRDP 2.17C that unequivocally provides "*A failure to file an answer within the time permitted constitutes a default*." The reference in TRDP 2.17O to "If a Respondent fails to answer," can only reasonably be tied back to the default language of TRDP 2.17C. It just makes no sense to claim that TRDP 2.17C, which directs when a default occurs for failure to timely answer a Petition, is meaningless and that TRDP 2.17O allows a defaulting Respondent to *nullify* his default by filing an answer at any time after the deadline for answering.

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[42] *Id; see* also n. 42, *supra*.

Contrary to Appellant's arguments, the law directs that when construing the meaning of a rule, different sections of the rule must be harmonized and read in context to render a reasonable meaning.[43] Appellant has simply faired to follow the rules of construction and his arguments cannot prevail.

3. Appellant's Issue Number Three.

a. Issue Number 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 with less than forty-five days' notice to Respondent."

b. Commission's Response.

Issue number three appears to be a different approach to the same subject as Appellant's first two issues. In this issue, Appellant bolsters his constitutional argument contending that the Panel's failure to read TRDP 2.17O his way and require 45 day's advance notice of the hearing on the motion for default judgment

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43 *In re CVR Energy, Inc.*, 500 S.W.3d 67, 76-77 (Tex. App.-Houston [1st Dist.] 2016, no pet.) ("As part of construing a term or phrase, we consider the content of the entire statute-the surround words or the 'lexical environment.' (See [*In re*] *Ford Motor,* 442 S.W.3d [265,] 271-73 (looking beyond meaning of term "plaintiff" to its context and stating that 'context is essential to textual analysis because '[l]anguage cannot be interpreted apart from context'); ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 70 (2012) (ordinary meaning applies unless there is "reason to thin otherwise, which ordinarily comes from context"); *Id.* at 167 (stating that whole text canon requires courts 'to consider the entire text, in view of its structure and the physical and logical relation of its many parts' and that and that '[c]ontext is a primary determinant of meaning')."").

means he was denied "procedural due process."[44] Appellant incorrectly views TRDP 2.17O's reference to the ten day period as only a minimum notice period which is to be overlaid into the 45 day rule for advance notice.

Once again, as with his prior arguments, Appellant ignores the fact that under TRDP 2.17B and C, the failure of a Respondent to file a timely answer is a "default," and "all facts alleged in the Evidentiary Petition shall be taken as true for the purposes of the Disciplinary Proceeding."[45]

There are at least three solid reasons why TRDP 2.17O must not be interpreted to direct that 45 days' advance notice is required for a hearing on a motion for default judgment. First, the forty-five day notice rule is a general provision. That follows because the last two sentences of the rule specifically address only the particular situation when the "Respondent" fails to answer. Read in context, the failure to answer triggers the requirement of a ten day waiting period after the Respondent fails to timely answer, not a 45 day notice.[46]

Second, since the 10 day minimum notice applies only to the setting of a hearing on a motion for default judgment, it does not logically follow that the 10 day minimum period is to somehow be read into and overlaid with a 45 day notice period

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[44] App. Br. 20-26.
[45] TRDP 2.17C.
[46] *See* n. 47, *supra.*

for default judgment hearing. Were it required that a defaulting Respondent receive 45 days' notice of the motion for default judgment hearing, the 10 day minimum notice period provision would be meaningless and surplusage. That interpretation would run headlong into and violate a basic ruberic of rule and statutory interpretation that a court is to "give effect to the Legislature's intent from the plain and common meaning of the statute.[47] In order to follow that rule of construction, a reviewing court "must not interpret the statute in a manner that renders any part of the statute meaningless or superfluous."[48]

Third, another flaw in Appellant's position is apparent when one considers the fact that TRDP 2.17O does not even require additional notice be given of the hearing on a motion for default judgment to a defaulting Respondent. It does not follow that 45 days' advance notice must be given for a hearing on a default when such a hearing "may be set without further notice to the Respondent."[49] The above

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[47] *Columbia Med. Ctr. of Las Colinas, Inc. v. Hogue*, 271 S.W.3d 238, 255-256 (Tex. 2008), citing *McIntyre v. Ramirez*, 109 S.W.3d 741, 745 (Tex. 2003) (quoting *Tex. Dep't of Transp. v. Needham*, 82 S.W.3d 314, 318 (Tex. 2002)).

[48] *Columbia Med. Ctr. of Las Colinas, Inc. v. Hogue*, 271 S.W.3d at 255-256, Citing *City of Marshall v. City of Uncertain*, 206 S.W.3d 97, 105 (Tex. 2006) (citing *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 29 (Tex. 2003))

[49] TRDP 2.17C.

discussion shows that Appellant's 45 days' notice position, if adopted, would be an "absurd result" which the rules of statutory and rule interpretation will not accept.[50]

Even though notice of the May 6, 2021 default judgment hearing was given, because the rule provides notice "may be given,"[51] that does not change the reading of the rule to transform it into an obligation to give 45 days' advance notice. Had the Supreme Court meant 45 days' notice was needed for a hearing on a motion for default judgment, it would have said so.

Finally, the Appellant's "*cannot*" argument must be addressed. Appellant contends 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."[52] So, in sum, Appellant is claiming, without case law or the language of a rule so directing, that

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[50] *See Iliff v. Iliff*, 339 S.W.3d 74, 79 (Tex. 2011), ("Where statutory language is unambiguous and only yields one reasonable interpretation, 'we will interpret the statute according to its plain meaning. *Id. see also City of Rockwall v. Hughes*, 246 S.W.3d 621, 625-26 (Tex. 2008) '[W]e construe the statute's words according to their plain and common meaning unless a contrary intention is apparent from the context intention is apparent from the context or unless such a construction leads to absurd results.'").

[51] See Tex. Gov't Code § 311.016, **"**The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute**:** (1) "May" creates discretionary authority or grants permission or a power . . . ."

[52] App. Br. 23.

TRDP 2.17.O, "means that the Evidentiary Panel *cannot* [ever, after an answer is filed] thereafter set or convene a hearing for default."(Emphasis and bracketed language added).[53] The assertion *"cannot"* has no support in the law and runs directly against the grain of the rules.[54] Appellant's assertion is inapposite.

Rules are to be interpreted according to their plain meaning, not according some interpretation that injects words that are not consistent with a rule's context. As the Fourteenth Court of Appeals recently determined citing to Texas Supreme Court's directive, "When applying the ordinary meaning, courts 'may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, and implications from any statutory passage or word are *forbidden* when the legislative intent may be gathered from a reasonable interpretation of the statute as it is written.'"[55] Appellant requests this Board do the *forbidden*, i.e., "add words" to TRDP 2.17O.

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[53] *Id.*
[54] *Id.*
[55] *Hotze v. Turner*, 2021 Tex. App. LEXIS 8279 * 19-20 (Tex. App.-Houston [14th Dist.] 2021, no pet.), "We cannot enlarge the meaning and scope of section 9.005(a) given the reasonable interpretation of the law as it is written. See *Monsanto Co. v. Cornerstones Mun. Util. Dist.*, 865 S.W.2d 937, 939 (Tex. 1993) ("When applying the ordinary meaning, courts 'may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, and implications from any statutory passage or word are *forbidden* when the legislative intent may be gathered from a reasonable interpretation of the statute as it is written.'") (quoting *Sexton v. Mount Olivet Cemetery Ass'n*, 720 S.W.2d 129, 138 (Tex. App.—Austin 1986, writ ref'd n.r.e.) (emphasis in original)); see also *Jasek v. Tex. Dep't of Family & Protective Servs.*, 348 S.W.3d 523, 535 (Tex. App.—Austin 2011, no pet.) ("A court may not judicially amend a statute and add words that are

Appellant's arguments about the rules just do not follow. Once a Respondent is in default as determined by TRDP 2.17B and C, a panel sets a hearing for a motion for default judgment and rules on appropriate sanctions. That is precisely what happened in this case.

VI. CONCLUSION.

As a matter of law, appellant may not subvert the application of properly promulgated rules that direct facts alleged in the Petition to be taken as true once a respondent fails in his obligation to timely answer. Appellant's urging that the Board revise the rules is contrary to the law.

The Commission respectfully requests that the Board decide Appellant's issue against him and that the judgment of private reprimand be affirmed.

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not implicitly contained in the language of the statute.") (citing *Lee v. City of Houston*, 807 S.W.2d 290, 295 (Tex. 1991)).”

PRAYER

Appellee, the Commission for Lawyer Discipline, respectfully prays that this Court affirm the Judgment of Disbarment in all respects.

RESPECTFULLY SUBMITTED:

DOUGLAS S. LANG SB #11895500 DORSEY & WHITNEY LLP 300 Crescent Court, Suite 400 Dallas, Texas 75201 (214) 981-9985 (214) 981-9901 - Facsimile e-mail: lang.doug@dorsey.com	SEANA WILLING SB #00787056 CHIEF DISCIPLINARY COUNSEL ROYCE LEMOINE SB #24026421 DEPUTY COUNSEL FOR ADMINISTRATION Office of the Chief Disciplinary Counsel P.O. Box 12487 Austin, Texas 78711-2487 (5120 427-1350 (512) 427-4167 - Facsimile

Douglas S. Lang

DOUGLAS S. LANG
STATE BAR CARD NO. 11895500

ATTORNEYS FOR APPELLEE

CERTIFICATE OF COMPLIANCE

Pursuant to the Texas Rules of Appellate Procedure, the enclosed Brief of the Commission for Lawyer Discipline contains approximately 5,990 words (total for all sections of brief that are required to be counted), which is less than the total words permitted by the TRAPs. Counsel relies on the word count of the computer program used to prepare this Brief.

Douglas S. Lang
DOUGLAS S. LANG

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Brief of the Commission for Lawyer Discipline has been served on Appellant, Carl Donald Hughes, Jr., through his counsel, Ronald D. Cross, 5601 Democracy Dr., Suite 140, Plano, Texas 75024 by email to Ron@RonCrossLaw.com on the 15th day of November 2021.

Douglas S. Lang
DOUGLAS S. LANG

Appendix 1

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**	§	

DEFAULT JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On May 6, 2021, came to be heard the above-styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record. Respondent, **CARL DONALD HUGHES, JR.**, Texas Bar Number **10209000** (Respondent), appeared with his counsel of record.

Jurisdiction and Venue

The Evidentiary Panel 6-2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 6, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Default

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

Professional Misconduct

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

Findings of Fact

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

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

2. Respondent resides in and maintains 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

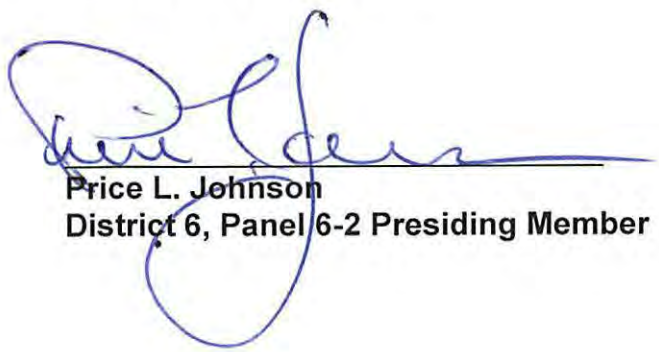
This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

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



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

Appendix 2

Rule 1.03. Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Appendix 3

Rule 1.03. Communication

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Appendix 4

Rule 1.15. Declining or Terminating Representation

(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.

Appendix 5

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

B. Answer: A responsive pleading either admitting or denying each specific allegation of Professional Misconduct must be filed by or on behalf of the Respondent no later than 5:00 p.m. on the first Monday following the expiration of twenty days after service of the Evidentiary Petition.

Appendix 6

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

C. Default: 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. Upon a showing of default, the Evidentiary Panel shall enter an order of default with a finding of Professional Misconduct and shall conduct a hearing to determine the Sanctions to be imposed.

Appendix 7

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

O. Setting: 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.

Appendix 8

Rule 8.04. Misconduct

(a) A lawyer shall not:

(8) fail to timely furnish to the Chief Disciplinary Counsels office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so;