No. 67514

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

CURTIS LILLY
STATE BAR OF TEXAS CARD NO. 24030063,
APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

On Appeal from an Evidentiary Panel
For the State Bar of Texas District 6
No. 201905562 [SBOT]

BRIEF OF APPELLEE COMMISSION FOR LAWYER DISCIPLINE

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR
ADMINISTRATION

MICHAEL G. GRAHAM
APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY COUNSEL
COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS
P.O. BOX 12487
AUSTIN, TEXAS 78711-2487
Michael.Graham@texasbar.com
T: (512) 427-1350; (877) 953-5535
F: (512) 427-4253

IDENTITY OF PARTIES AND COUNSEL

APPELLANT

CURTIS LILLY, PRO SE
TEXAS BAR NO. 24030063
Email: clilly@clillylaw.com

APPELLEE

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

COUNSEL FOR APPELLEE

SEANA WILLING
Chief Disciplinary Counsel

ROYCE LEMOINE
Deputy Counsel for Administration

MICHAEL G. GRAHAM
Appellate Counsel
STATE BAR CARD NO. 24113581
Email: Michael.Graham@texasbar.com
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
T: (512) 427-1350; (877) 953-5535
F: (512) 427-4253

TABLE OF CONTENTS

CASES **INDEX OF AUTHORITIES** PAGE

STATUTES PAGE

NO. 67514

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

CURTIS LILLY,

APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

On Appeal from an Evidentiary Panel
For the State Bar of Texas District 6
No. 201905562 [SBOT]

BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits this brief in response to the brief filed by Appellant, Curtis Lilly. For clarity, this brief refers to Appellant as "Lilly" and Appellee as "the Commission." This brief designates record references as CR __ (clerk's record), RR Vol. __, ___ (reporter's record volume, and page nos.), and App. (appendix to brief). References to the Appellant's brief are labeled Apt. Br., followed by the relevant page number(s). References to

rules refer to the Texas Disciplinary Rules of Professional Conduct ("TDRPC")[1] or the Texas Rules of Disciplinary Procedure (the "TRDP" or the "Rules")[2] unless otherwise noted.

[1] *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app A. (West 2023).
[2] *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app A-1. (West 2023).

STATEMENT OF THE CASE

Type of Proceeding:	Attorney Discipline
Petitioner/Appellee:	The Commission for Lawyer Discipline
Respondent/Appellant:	Curtis Lilly
Evidentiary Panel:	6-5
Judgment:	Judgment of Partially Probated Suspension [App 1; CR 853-60]
Violations found (Texas Disciplinary Rules of Professional Conduct):	**Rule 3.03(a)(1):** A lawyer shall not knowingly make a false statement of material fact or law to a tribunal. **Rule 8.04(a)(3):** A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

STATEMENT OF JURISDICTION

The Board of Disciplinary Appeals has jurisdiction over this appeal from the decision of an Evidentiary Panel of the State Bar of Texas District 6 Grievance Committee pursuant to Rules 2.23 and 7.08(D) of the Texas Rules of Disciplinary Procedure.

STATEMENT AS TO ORAL ARGUMENT

Appellant has not requested oral argument. Pursuant to Rule 4.06(b) of the Board's Internal Procedural Rules, Appellee believes oral argument is unnecessary in this case as the dispositive issues have been authoritatively decided, the facts and legal arguments are adequately presented in the briefs and record, and/or the Board's decisional process would not be significantly aided by oral argument. However, should the Board direct Appellant to appear and argue, Appellee requests the opportunity to respond.

STATEMENT OF THE ISSUES

I. The evidentiary panel acted within its discretion when it denied Lilly's motion for new trial in part and granted it in part; **denying** a new trial as to the panel's determination that Lilly had engaged in professional misconduct but **granting** a new trial as to the *appropriate sanction(s)* for his professional misconduct.

   (A) The evidentiary panel acted within its discretion when it granted the Commission's motion for discovery sanctions, striking Lilly's pleadings, thus adjudicating the merits as to *liability*; i.e., whether Lilly engaged in professional misconduct.

   (B) Even if the *Craddock* factors applied here, Lilly failed to establish **either** the first or second *Craddock* factors to warrant a new hearing as to whether he committed professional misconduct.

II. The evidentiary panel acted within its discretion in assessing a four year, Partially Probated Suspension, including an eighteen month Active Suspension, in light of Lilly's professional misconduct.

STATEMENT OF FACTS

I. Lilly's false statements in federal court and the resulting Northern District of Texas suspension.

In early 2019 Lilly represented criminal defendant, Jason Lee Sirovica ("Sirovica"), in connection with a criminal matter pending before the U.S. District Court for the Northern District of Texas. [RR Vol. 4, Exh. CFLD P's 1]. More specifically, on January 15, 2019, Lilly appeared on behalf of Sirovica at a hearing to determine whether Sirovica's continued detention was warranted in light of pending probation revocation proceedings (the "Detention Hearing"). [RR Vol. 4, Exh. CFLD P's 3].

During the Detention Hearing, U.S. Magistrate Judge Jeffrey L. Cureton advised Lilly and his client, on the record, that a revocation hearing would be held in the matter before U.S. District Judge Reed O'Connor on January 28, 2019, at 9:00 A.M. (the "Revocation Hearing"). [Id., p. 26]. Further, the court also entered contemporaneous orders requiring "defendant, his attorney, and counsel for the United States of America…" to appear at the Revocation Hearing on January 28th. [RR Vol. 4, Exh. CFLD P's 4]; [RR Vol. 4, Exh. CFLD P's 1].

On January 28th, the Government and Sirovica appeared at the Revocation Hearing, but Lilly did not. [App 2; RR Vol. 4, Exh. CFLD P's 4]. At that time, Sirovica represented to the court that Lilly had told him that he (Lilly) would be in trial and was unsure if he would attend the Revocation Hearing. [Id.] As a result,

Judge O'Connor entered an order requiring Lilly to show cause why he should not be held in contempt for his failure to appear at Sirovica's Revocation Hearing (the "1st Show Cause Order"). [Id.].

On February 1, 2019, Lilly filed his response to Judge O'Connor's 1st Show Cause Order. [App 3; RR Vol. 4, Exh. CFLD P's 5]. Lilly represented in that response, under penalty of perjury, that:

1) He had set up a new Microsoft Outlook "rule" and folder designed to notify him of e-mails for Sirovica's case, but the rule "did not include the cause number for the probation violation;"[3]

2) He "[d]id not know anything about the 1/28/2019 hearing until [he] saw an email popped up from the court at 3:40 PM on 1/28/2019;" and

3) He would have requested a continuance if he knew about the hearing, because he "was suffering from an upper respiratory infection that caused [him] to lose [his] voice," that "would have prevented [him] from properly representing [Sirovica] at that time."

-- [Id.].

On February 21, 2019, Judge O'Connor entered a second order, finding that Lilly's response to the 1st Show Cause Order was false and ordering Lilly to file another response, this time explaining why the court should not discipline him for having "[a]cted unbecoming a member of the bar, failed to comply with a court order, and

[3] Sirovica's relevant criminal case was tried in the U.S. District Court for the Eastern District of Texas. The case was then moved to the Northern District for purposes of monitoring Sirovica's probation. [RR Vol. 4, Exh. CFLD P's 1].

[having] acted unethically" (the "2nd Show Cause Order"). [App 4; RR Vol. 4, Exh. CFLD P's 6].

On February 28, 2019, Lilly filed his response to Judge O'Connor's 2nd Show Cause Order. [App 5; RR Vol. 4, Exh. CFLD P's 7]. This time, Lilly gave a different account of the reason(s) for his failure to appear at Sirovica's Revocation Hearing. In *this* response Lilly represented, again under penalty of perjury, that:

1) At the January 15th Detention Hearing, Judge Cureton "reset the hearing to January 28, 2019, in Judge O'Connor's Court;"

2) After the Detention Hearing, Lilly approached a court clerk about confirming the date for the next hearing, and the clerk indicated she would email him to confirm;

3) Sirovica's statement to Judge O'Connor at the January 28th Revocation Hearing that Lilly had told him he was "in trial" and "might not come" was a mistaken reference to a different conversation Sirovica and Lilly had regarding a different hearing that Lilly could not attend; and

4) If he had known about the hearing he would have requested a continuance, because he was sick and could not properly represent Sirovica at that time.

-- [Id.].

After reviewing Lilly's response to his 2nd Show Cause Order, Judge O'Connor entered an Order opening a miscellaneous case "related to the possibility of the Court taking disciplinary action" against him. [RR Vol. 4, Exh. CFLD P's 8].

On March 22, 2019, Judge O'Connor held a hearing at Lilly's request regarding the pending miscellaneous case and potential disciplinary action facing him in the Northern District. [RR Vol. 4, Exh. CFLD P's 9]. At that hearing, Lilly

acknowledged that Judge Cureton **had** given him notice of the January 28th setting for the Revocation Hearing during the January 15th Detention Hearing:

> Judge O'Connor: You say today and in this affidavit: "I did not know in the first affidavit or the first response on February 1, 2019, that I did not know anything about the 1-28-2019 hearing until I saw an e-mail pop up from the Court at 3:40 p.m. on 1-28-2019." And I've concluded that that's a false statement.
>
> Lilly: That's correct.
>
> Judge O'Connor: And I've concluded it's a false statement because there are two orders on the docket of this case setting that hearing and during the initial appearance before Judge Cureton he in open court told you and your client that the case was set on January 28, 2019, at nine a.m. So I conclude that this is a false statement. Why would I be wrong?
>
> Lilly: Well, first off, I – When the Judge used that particular date, I looked at my calendar. I saw that I had some issues with that particular date…
>
> Judge O'Connor: And so the – It's your testimony or your representation to the Court today that after Judge Cureton told you about the January 28, 2019, revocation hearing that his clerk advised you that she would confirm that my court would be available on the 28th?
>
> Lilly: Yes.
> --[RR Vol. 4, Exh. CFLD P's 9, at pp. 9-10].

> Judge O'Connor: …But you are saying that [the clerk] said – You are saying that you didn't believe that the case was firmly set on the 28th because you had raised conflicts to Judge Cureton's deputy clerk and the deputy clerk told you she would have to check or confirm that Judge O'Connor's Court would be available on the 28th.

Lilly: Yes.

Judge O'Connor: And because she told you that you didn't believe that the case was going forward on the 28th.

Lilly: Well, how it goes, Judge is Judge Cureton had made his – he indicated what dates that he wanted it to be; okay?

--[Id., at pp. 16-17].

On April 2, 2019, Judge O'Connor issued an Order suspending Lilly from membership in the bar of the Northern District of Texas for four years, for "unethical behavior" arising from his violations of TDRPCs 3.03(a)(1) and 8.04(a)(3). [App 6; RR Vol. 4, Exh. CFLD P's 10]. Judge O'Connor explained that Lilly's conduct in violation of the TDRPCs constituted grounds for disciplinary action pursuant to Texas Northern District Local Criminal Rule 57.8(b)(1), (2), and (3). [Id.].

II. The state disciplinary proceeding.

On March 13, 2020, the Commission for Lawyer Discipline (the "Commission") filed its Evidentiary Petition and Request for Disclosure alleging Lilly's behavior in Sirovica's criminal case constituted violations of TDRPCs 3.03(a)(1) and 8.04(a)(3). [CR 32-35]. Lilly was eventually served with the petition via Substitute Service, pursuant to the evidentiary panel's order, on or about March 25, 2021. [CR 128].

On or about October 6, 2021, the Commission filed and served on Lilly both its Motion for Default Judgment and Notice of Default Hearing indicating the matter

was set for hearing on November 22, 2021, at 1:15 P.M. [CR 183-234]. On the morning of November 22, 2021, Lilly filed his Original Answer along with his Response to Motion for Default Judgment. [CR 274-87].

Though the record is not clear in this regard, it appears the default hearing was passed and the matter proceeded before the evidentiary panel pursuant to its Order Setting Schedule entered on June 3, 2022. [CR 323-29]. Amongst other things, that order set the matter for an evidentiary hearing on September 20, 2022. [Id].

On July 8, 2022, the Commission filed and served Petitioner's Motion to Compel, complaining of Lilly's failures to respond to either its request for disclosure or first requests for production. [CR 331-65; 367-403]. The evidentiary panel set the motion to compel for a Zoom hearing on Friday, July 29, 2022. [CR 410-21]. On the morning of July 29th, Lilly accepted the Zoom invitation for the hearing on the Commission's motion to compel while indicating that he was in federal court in Sherman, Texas at the time and would log in "as soon as the judge releases me." [CR 425-26]. On August 4, 2022, the evidentiary panel issued its Order Granting Petitioner's Motion to Compel, requiring Lilly to provide his discovery responses within five days, without objection, and waiving any future objections by Lilly on the basis of "Failure to Receive Notice" or "Improper Service" predicated on "outdated or incorrect contact information." [App 7; CR 446-47].

On September 2, 2022, the Commission filed and served Petitioner's Motion for Discovery Sanctions, this time complaining of Lilly's failure to provide discovery responses as required by the panel's order granting its previous motion to compel. [CR 498-505]. On September 16, 2022, the Commission filed and served Petitioner's Pre-Trial Report (the "Report"), in accordance with the panel's prior scheduling order. [CR 516-18]. The Report indicated that: (1) the Commission had provided Lilly with witness and exhibit lists for the evidentiary hearing, but had not received witness and exhibit lists from Lilly; (2) the Commission objected to any exhibits subsequently provided by Lilly as untimely; (3) Lilly had not objected to the Commission's witness or exhibit list; and (4) the Commission was requesting a ruling on its previously filed motion for discovery sanctions, and specifically, that the panel grant the motion and strike Lilly's defensive pleadings, leading to a default as to liability and "a hearing only pertaining to sanctions…" [Id.]. That same day, the panel chair sent an e-mail to the parties providing Lilly one last opportunity to respond to the Commission's motion for discovery sanctions, requiring such response to be filed by 9:00 A.M., on Monday, September 19, 2022, and indicating that a failure to timely respond would result in the granting of the Commission's motion and the striking of his pleadings. [CR 520-21].

By the afternoon of Monday, September 19, 2022, having not received any responsive filing from Lilly, the panel chair sent another e-mail to the parties noting

Lilly's failure to respond to the Commission's motion for discovery sanctions and the resultant granting of that motion, including the striking of Lilly's pleadings. [CR 523-25]. Thereafter, Lilly sent e-mails to the panel chair and the Commission's counsel suggesting he would be sending and/or did send a "CD or jump drive" or "flash drive" to the CDC's office. [CR 527-29 & 534-36].

On September 20, 2022, the evidentiary panel convened the evidentiary hearing in Lilly's case by Zoom. [RR Vol. 2] [CR 538-40]. Lilly did not appear, despite being provided notice several times, via several methods. [RR Vol. 2, 8-9] [RR Vol. 4, Exhs. P's 14-16]. The Commission noted the striking of Lilly's defensive pleadings as a discovery sanction and presented documentary exhibits and arguments as to both Lilly's alleged professional misconduct **and** the appropriate sanction(s) for such misconduct. [RR Vol. 2, 8-19] [RR Vol. 4, Exhs. P's 1-16]. After deliberating, the evidentiary panel found that Lilly had violated Rules 3.03(a)(1) and 8.04(a)(3), and that the appropriate sanction for his professional misconduct was a four-year partially probated suspension, including eighteen months active suspension, attorney's fees and expenses to the Bar in the amount of $3,378.85, and eight hours of additional CLE in ethics along with six hours of additional CLE in practice management. [RR Vol. 2, 19-22] [CR 538-40]. On September 21, 2022, the panel chair signed an Order Granting Petitioner's Motion

for Sanctions, memorializing his decision regarding same on September 19th. [App 8; CR 623-24] [CR 523-25].

On September 27, 2022, in response to the circulation of a proposed judgment arising from the evidentiary hearing (but prior to the issuance of judgment), Lilly sent an e-mail, from one of the same e-mail addresses (clilly@clillylaw.com) to which the prior notices of the evidentiary hearing had been provided, claiming he was unaware the evidentiary hearing was set for September 20th and requesting a new trial.[4] [CR 555-66]. On October 6, 2022, the panel chair signed a Judgment of Partially Probated Suspension and advised Lilly that while his e-mail had been premature, he now had thirty days in which to have his motion for new trial heard. [CR 577-86].

The evidentiary panel set Lilly's motion for new trial for hearing via Zoom on Tuesday, October 18, 2022, at 9:00 A.M. [CR 602-15]. On October 14, 2022, the Commission filed its Objections and Response to Respondent's Motion for New Trial pointing out, amongst other things, that: (1) Lilly's motion did not provide any affidavit or evidence in support of his contention that his failure to appear was the result of a mistake or accident; and (2) Lilly's motion did not "set up" a meritorious defense to the Commission's allegations of professional misconduct. [CR 617-39].

[4] Lilly's Motion for New Trial was attached to his September 27th e-mail but was not file-stamped until October 6th. [CR 597-600].

On October 18, 2022, the panel chair sent an e-mail indicating the panel had *partially* granted Lilly's motion for new trial, by granting a new trial as to the **sanctions** portions of its judgment only. [CR 698-99]. The chair's e-mail also stated that ruling was contingent on Lilly attending a subsequent status conference to confirm his understanding of the panel's ruling. [Id.]. The panel's Order on Motion for New Trial was signed on November 16, 2022. [App 9; CR 729-30].

The panel held its new hearing as to sanctions in Lilly's case on December 22, 2022, via Zoom. [RR Vol. 3]. At the sanctions hearing, the Commission provided additional evidence in the form of Lilly's disciplinary record, consisting of five prior sanctions, including a judgment of fully probated suspension issued on October 16, 2019, which arose (at least in part) from Lilly's having made "several false statements of material fact" to a tribunal, in violation of Rules 3.03(a)(1) and 8.04(a)(3). [RR Vol. 3, 7-8] [RR Vol. 4, P's Sanction Exh. 1]. Lilly also appeared and provided testimony. [RR Vol. 3, 8-19]. Ultimately, the panel issued as its sanction a four-year partially probated suspension, including eighteen months active suspension, along with attorney's fees and expenses to the Bar in the amount of $4,668.85. [App 1; CR 853-60] [RR Vol. 3, 25-27]. This appeal followed.

SUMMARY OF THE ARGUMENT

This case is based on Lilly's false statements, and dishonesty, deceit or misrepresentations to the federal court during the course of proceedings in his client, Mr. Sirovica's criminal case.

In the course of the underlying disciplinary proceeding, the evidentiary panel granted the Commission's motion for discovery abuse sanctions against Lilly, striking his pleadings, and effectively prohibiting him from presenting any defenses as to liability at trial. As such, the proper inquiry is not whether Lilly meets the *Craddock* factors for a new trial, but whether the panel's discovery sanction was "just." Since the panel's discovery sanction was justified, and Lilly's pleadings were struck, no new trial as to his *liability* on the Commission's claims of professional misconduct was warranted. Moreover, the panel also acted within its discretion in **granting** Lilly's motion for new trial as to the appropriate sanction to be imposed.

But even if the *Craddock* factors were implicated, Lilly failed to meet either the first or second element of the *Craddock* test, and the panel was within its discretion to deny his motion for new trial as to *liability*. Lilly's motion was not supported by any affidavits or evidence, nor did his unsupported allegations expressly address his lack of intent or conscious indifference **or** offer a defense to the claims that he submitted false statements to the federal court and/or engaged in dishonesty, deceit or misrepresentations in connection with Sirovica's case. As

such, even under a *Craddock* analysis, the panel was within its discretion to deny Lilly's motion for a new trial as to *liability*.

Finally, Lilly also argues the sanction imposed by the panel for his professional misconduct was excessive. But the record in this matter does not support his arguments. The facts established in the case, as well as the evidence presented at the sanctions hearing, in light of the sanctioning guidelines set forth in Part XV of the Texas Rules of Disciplinary Procedure, support the panel's sanction. Thus, Lilly has failed to demonstrate an abuse of discretion by the panel in its imposition of that sanction in any respect, and the panel's Judgment should be affirmed.

ARGUMENT

I. Lilly has not shown that the evidentiary panel abused its discretion by denying his motion for new trial as to professional misconduct or that the panel abused its discretion by striking his pleadings as a discovery sanction.

In his first issue, Lilly complains that the panel erred by denying his motion for new trial. [Apt. Br. 11-15]. Though Lilly's brief is not clear on this point, the panel actually denied his motion for new trial in part and granted it in part. [App 9; CR 729-30]. The panel *denied* Lilly's request for a new trial insofar as it sought a new trial as to the panel's determination that he had committed professional misconduct, but it *granted* Lilly's request for a new trial as to the issue of the appropriate sanction(s) to be imposed. [Id.]. As such, the inquiry on Lilly's first issue should be limited to whether the panel erred in not granting Lilly a new trial as to its determination that he committed professional misconduct.

Further, a complete discussion of Lilly's first issue necessarily implicates his second issue. That is, Lilly also complains that the panel erred in striking his pleadings as a discovery sanction. [Apt. Br. 15-16]. The panel's action in this respect effectively served to adjudicate Lilly's *liability* as to the Commission's claims of professional misconduct as a post-answer default judgment. *See Paradigm Oil, Inc. v. Retamco Operating, Inc.*, 372 S.W.3d 177, 183-84 (Tex. 2012); *see also Levasseur v. Avezzano,* No. 10-17-00145-CV, 2019 WL 3801599, *4 (Tex.App. – Waco Aug. 7, 2019, no pet.) (mem. op.). Here, Lilly's complaints are without merit because:

(1) the panel acted within its discretion by striking his pleadings as a discovery sanction; and (2) the panel's subsequent ruling as to Lilly's *liability* on the Commission's claims of professional misconduct was based not only on the striking of Lilly's defensive pleadings, but the Commission's evidence presented on the record in support of its claims.

A. The evidentiary panel did not abuse its discretion by denying Lilly's motion for new trial as to his professional misconduct.

A trial court (or here, the evidentiary panel) has broad discretion in ruling on a motion for new trial. *Dolgencorp of Texas, Inc. v. Lerma*, 288 S.W.3d 922, 926 (Tex. 2009) (per curiam); *Dir., State Employees Workers' Comp. Div. v. Evans*, 889 S.W.2d 266, 268 (Tex. 1994). Generally, "the test for an 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, but 'whether the court acted without reference to any guiding rules and principles.'" *Cire v. Cummings*, 134 S.W.3d 835, 838-39 (Tex. 2004) (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241 (Tex. 1985).

Notwithstanding the foregoing, motions for new trial following default judgment cases typically employ a more specific, stricter standard of review - the *Craddock* test. *Jatoi v. Decker, Jones, McMackin, Hall & Bates*, 955 S.W.2d 430, 432-33 (Tex.App. – Fort Worth 1997, pet. denied) (citing *Cliff v. Huggins*, 724 S.W.2d 778, 778-79 (Tex. 1987) and *Craddock v. Sunshine Bus Lines, Inc.*, 133

S.W.2d 124, 126 (Tex. 1939)). However, not all "default" judgments are created equal, and "different rules apply in different circumstances." *Paradigm*, 372 S.W.3d at 183. For instance, defaults caused by a defendant's failure to answer after service (a "no-answer default") are treated differently than defaults caused by a defendant's failure to appear after answering (a "post-answer default"). *Id*., at 183, citing *Jatoi*, 955 S.W.2d at 432.

And here, as was the case in *Paradigm*, we are confronted with a variation on a post-answer default where the panel struck Lilly's answer as a discovery sanction resulting in (essentially) a default that was "technically post-answer, but…also…similar to a no-answer default judgment." *Paradigm*, 372 S.W.3d at 184. In such a situation the Court explained:

> Even though a death-penalty discovery sanction may be similar to a no-answer default judgment, it is not the same for all purposes. This type of default judgment implicates not only the broader principles that apply to default judgment generally but also the rules that apply to discovery abuse, specifically those principles that control the use of a case-ending discovery sanction. *See TransAmerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913 (Tex. 1991) (explaining the limitations on death penalty sanctions). Our review must then take into consideration both general default judgment principles and our discovery rules.
> --*Id.*

That is, the Court's reasoning in *Paradigm* first turned on its analysis of whether the trial court had abused its discretion in granting death-penalty sanctions for discovery abuse.

Discovery in evidentiary panel proceedings is generally governed by Rule 2.17; and specifically, discovery disputes are to be ruled upon "[in] accord with the Texas Rules of Civil Procedure." TEX. RULES DISCIPLINARY P. R. 2.17(G). The discovery rules "provide a variety of sanctions for discovery abuse," but any such sanction(s) must be "just." *See* TEX. R. CIV. P. 215; *Paradigm*, 372 S.W.3d at 184. Whether a discovery abuse sanction is "just" depends on two factors: (1) a direct relationship between the offensive conduct and the sanction; and (2) the sanction must not be excessive.[5] *Id.*, citing *TransAmerican*, 811 S.W.2d at 917.

Discovery sanctions that determine the merits of a case are "appropriate only when the sanctioned party's conduct during discovery justifies a presumption that an asserted claim or defense lacks merit." *Paradigm*, 372 S.W.3d at 186, citing *TransAmerican*, 811 S.W.2d at 918. "The existence, or not, of facts establishing liability," lends itself to such a presumption:

> For instance: Did the defendant's negligence proximately cause the occurrence? *Morgan v. Compugraphic Corp.*, 675 S.W.2d 729, 732-33 (Tex. 1984). Was the defendant indebted to the plaintiff? *Paramount Pipe & Supply Co. v. Muhr*, 749 S.W.2d 491, 496 (Tex.

[5] Lilly appears to have cut and pasted the majority of his argument as to the panel's discovery sanction against him from a website: https://www.nortonrosefulbright.com/en-hk/knowledge/publications/d13b2f34/death-penalty-sanctions-a-rare-last-resort-for-egregious-civil-misconduct#asdefined. [Apt. Br., at 15-16]. However, many of the cases referenced in that online article (which was compiling authority from multiple jurisdictions) deal with analysis of death-penalty sanctions for discovery abuse under the ***federal*** rules ("*Moore v. Citgo Ref. & Chems. Co., L.P.,*" and "*alliantgroup v. Mols*"), or the ***Colorado*** rules ("*Pinkstaff v. Black & Decker, Inc.*") and are thus inapposite. The one Texas case included, "*Pressel v. Gibson,*" (actually, *Pressil v. Gibson*, 558 S.W.3d 349 (Tex.App. – Houston [14th Dist.] 2018, no pet.)) properly follows Texas's *TransAmerican* analysis.

> 1988). Striking the defendant's answer establishes the answers to these questions.
> --*Id*.

Here, Lilly's responsive pleadings that were ultimately struck consisted of his response to the Commission's prior motion for default judgment, with an attached original answer he had purportedly faxed offering a general denial. [CR 284-87]. Those pleadings were struck as a result of Lilly's failure to comply with the Commission's discovery requests seeking information regarding his defenses to its claims of professional misconduct, and his subsequent failure to comply with the panel's order compelling discovery compliance. [CR 331-365] [App 7; CR 446-47] [CR 491-496] [CR 523-25] [App 8; CR 623-24].

That is, the panel first assessed lesser sanctions pursuant to its order on the Commission's motion to compel, requiring Lilly to respond to the Commission's discovery requests, without objection, and barring further, prospective objections asserted on the basis of "'Failure to Receive Notice' or 'Improper Service' where the basis for the objections is outdated or incorrect contact information." [App 7; CR 446-47]. Then, after Lilly failed to comply, the panel assessed a sanction directly related to his failure to provide discovery responses. [App 8; CR 623-24].

By striking Lilly's answer, the panel established the answers to the questions of whether Lilly knowingly made a false statement of material fact to the federal court in Sirovica's case and/or engaged in conduct involving dishonesty, fraud,

deceit or misrepresentation, in the affirmative. *See Paradigm*, 372 S.W.3d at 186; *Levasseur*, 2019 WL 3801599, at *4. In other words, the panel determined that Lilly *could not* set up a meritorious defense to the Commission's allegations of professional misconduct, effectively addressing the *Craddock* test at that point. Indeed, as to the *liability* determination, the Court in *Paradigm* did not decide the matter with reference to *Craddock* at all.

Finally, an important distinction between the instant case and *Paradigm* is that in *Paradigm*, the trial court's death-penalty sanction "not only adjudicated the merits of Paradigm's defense but also denied it the right to participate in the trial to determine actual damages, punitive damages, and attorney's fees, all of which were unliquidated." *Id*. In *Paradigm*, while the Court found that the trial court's adjudication of *liability* via death-penalty sanctions was appropriate, the "additional sanction of precluding Paradigm from the damages trial was excessive." *Id.*, at 187. Thus, the Court reversed and remanded in *Paradigm*, for further proceedings as to damages. But in the instant case, unlike in *Paradigm*, the panel **granted** Lilly's motion for new trial as to the appropriate sanction to be issued for his professional misconduct (i.e., like the unliquidated damages at issue in *Paradigm*). [App 9; CR 729-30]. And Lilly did in fact participate in the new hearing the panel granted as to the appropriate sanction. [RR Vol. 3].

The evidentiary panel properly struck Lilly's pleadings as discovery abuse sanctions, thus adjudicating the merits of the Commission's professional misconduct claims against him as to liability. The panel also properly granted Lilly a new trial as to the appropriate sanction to be imposed, and Lilly participated in that hearing. Thus, the Board should affirm.

1. Even under the Craddock test, Lilly has failed to show that the trial court abused its discretion.

Assuming *arguendo* that the *Craddock* analysis applies to Lilly's motion for new trial in this case, he would still fail to show that the trial court abused its discretion by not granting a new trial as to liability. Under *Craddock*, an evidentiary panel should grant a new trial only if the respondent attorney shows: (1) that the default was neither intentional nor the result of conscious indifference; (2) a meritorious defense; and (3) that a new trial would cause neither delay nor undue prejudice. *Craddock*, 133 S.W.2d at 124, 126 (Tex. 1939)*; see also Fidelity and Guaranty Insurance Co. v. Drewery Construction Co.*, 186 S.W.3d 571, 574 (Tex. 2006). Here, Lilly fails to establish his entitlement to a new trial as to liability under the first and second *Craddock* factors.

First, Lilly's motion for new trial was not sworn and did not include any affidavits or evidence in support of its sole allegation related to the first *Craddock* factor that "Movant's failure to appear was not intentional. Defendant became aware of the default by an email from opposing counsel on 9/27/2022." [CR 597-600].

"[B]efore a trial court examines the record to see if the defendant's assertions are controverted, the defendant's motion and supporting affidavit must meet the first prong of *Craddock* and show a lack of intentional or consciously indifferent conduct." *Bitter v. Comm'n for Lawyer Discipline*, No. 02-12-00197-CV, 2014 WL 1999315, *3, fn. 14 (Tex.App. – Fort Worth May 15, 2014, no pet.) (mem. op.) (citing *Evans*, 889 S.W.2d at 269). Lilly's bare, conclusory allegation did not even expressly address his intent or conscious indifference with respect to his knowledge of and/or failure to appear at the trial setting, but rather, simply explained when he became aware of the *judgment*. As such, Lilly's motion for new trial fell well short of the requirements for the first *Craddock* factor.

Second, Lilly's motion did not **set up** a meritorious defense to the Commission's claims of professional misconduct. To set up a meritorious defense, "[T]he motion must allege Facts which in law would constitute a defense to the cause of action asserted by the plaintiff, and must be supported by affidavits or other evidence proving prima facie that the defendant has such meritorious defense." *Ivy v. Carrell*, 407 S.W.2d 212, 214 (Tex. 1966). Again, Lilly's motion was not supported by affidavits or any other evidence. [CR 597-600].

Further, even Lilly's unsupported allegations fail to set up a meritorious defense to the Commission's claims of professional misconduct. That is, Lilly's allegations do not offer a defense to the claim that he was dishonest when he stated

to the federal court that he "did not know anything about the 1/28/2019 hearing until I saw an email popped up from the court at 3:40 PM on 1/28/2019." [Id.] [App 3; RR Vol. 4, Exh. CFLD P's 5]. At best, they offer only alternative explanations for why Lilly failed to appear at Sirovica's Revocation Hearing. Arguably, Lilly's motion actually **supports** the federal court's determination that he had been untruthful in his initial response, "The transcript indicated that the Magistrate Judge had announced a date, but [Lilly] did not calendar the date relying on the representation that the date would be emailed." [CR 598, ¶(c)]. As such, Lilly's assertions do not set up meritorious defenses to his dishonesty in Sirovica's case and the Board should affirm the panel's decision.

2. Lilly's reference to the reciprocal discipline procedures set forth in the current version of the Texas Rules of Disciplinary Procedure is inapposite.

Lilly also seems to suggest that the reciprocal discipline rules in Part IX of the Texas Rules of Disciplinary Procedure, specifically those relating to defenses to reciprocal discipline should play a role in the analysis here. [Apt. Br. 13-14, citing TEX. RULES DISCIPLINARY P. R. 9.04]. However, those rules are irrelevant, as the Commission's petition was not brought against Lilly as reciprocal discipline, but simply as a general attorney disciplinary case asserting violations of TDRPCs 3.03(a)(1) and 8.04(a)(3). [CR 32-35].

II. The panel acted within its discretion in assessing a four year Partially Probated Suspension that includes an eighteen month Active Suspension.

Lilly's final complaint is that the sanction imposed by the evidentiary panel was excessive. [Apt. Br. 17-18]. For the reasons set forth below, Lilly's argument fails to demonstrate an abuse of discretion by the panel in the imposition of the above-referenced sanction. As such, the Board should affirm the panel's Judgment.

Trial courts (or, as here, evidentiary panels) have broad discretion to impose discipline, though a sanction may be so light or heavy as to constitute an abuse of discretion. *State Bar of Texas v. Kilpatrick,* 874 S.W.2d 656, 659 (Tex. 1994); *see also, Molina v. Commission for Lawyer Discipline of The State Bar of Texas*, BODA No. 35426, 2006 WL 6242393, at *4 (March 31, 2006) (citing *Kilpatrick*). Sanctions imposed for professional misconduct are reviewed for abuse of discretion. *McIntyre v. Commission for Lawyer Discipline*, 169 S.W.3d 803, 807 (Tex. App.—Dallas 2005, no pet.). A court abuses its discretion only when it acts in an unreasonable and arbitrary manner, without reference to any guiding principles. *Id.,* at 807; *Love v. State Bar of Texas*, 982 S.W.2d 939, 944 (Tex.App. – Houston [1st Dist.] 1998, no pet.). Moreover, the fact that an appellate court might impose a sanction different from that imposed by the trial court does not show an abuse of discretion. *Love*, 982 S.W.2d at 944-45 (citing *Downer*, 701 S.W.2d at 241).

Part XV of the Texas Rules of Disciplinary Procedure provides guidelines to consider in determining appropriate sanctions for professional misconduct. General

factors that should be considered include the duty violated, the respondent attorney's level of culpability, the potential or actual injury caused by the misconduct, and the existence of aggravating or mitigating factors. TEX. RULES DISCIPLINARY P. R. 15.02.

More specifically, Rule 15.05(A)(1-4) sets forth guidelines for determining appropriate sanctions in circumstances involving an attorney engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation directed at the court or another, that span the gamut from private reprimand to disbarment. TEX. RULES DISCIPLINARY P. R. 15.05(A)(1-4). And contrary to Lilly's argument, Rule 15.08, regarding violations of prior disciplinary orders, is not applicable. The Commission's claims against Lilly in this matter relate not to any prior disciplinary order he violated, but solely to his false statements to the federal court in the Sirovica case. [CR 32-35].

Here, the record supports the sanction imposed by the panel. As discussed at length above, the panel granted Lilly's motion for new trial as to the sanction to be imposed and held a separate evidentiary hearing on that matter. [App 9; CR 729-30] [RR Vol. 3; RR Vol. 4, Exhs. P's Sanction – 1 & 2]; *see also* TEX. RULES DISCIPLINARY P. R. 2.17(C) & 15.03.

Three of the four general factors that evidentiary panels should consider when determining sanctions identified in TRDP 15.02(a) - (c) are essentially accounted

for in the "generally appropriate" sanctioning ranges set forth in Rule 15.05. TEX. RULES DISCIPLINARY P. R. 15.02 & 15.05. That is, Rule 15.05 contemplates the application of: (1) the duty (or duties) violated; (2) the Respondent's level of culpability; and (3) the potential or actual injury caused by the Respondent's misconduct, to the panel's determination of the appropriate sanction. *Id*.

A. The duties violated

Lilly engaged in conduct that violated TDRPCs 3.03(a)(1) and 8.04(a)(3) by knowingly misrepresenting to the federal court, in his response to the court's 1st Show Cause Order, that he did not know "anything" about the setting for Sirovica's Revocation Hearing prior to January 28, 2019. [App 3; RR Vol. 4, Exh. CFLD P's 5] [App 4; RR Vol. 4, Exh. CFLD P's 6] [RR Vol. 4, Exh. CFLD P's 3]. Further, the federal court found that Lilly made additional misrepresentations in both his response to the court's 2nd Show Cause Order and his appearance at the show cause hearing in his disciplinary proceeding before that court. [App 6; RR Vol. 4, Exh. CFLD P's 10].

Appendix A to the Rules provides guidance as to which sanctioning guidelines subsection(s) apply to violations of the Texas Disciplinary Rules of Professional Conduct. Here, TRDP 15.05 applies to both Lilly's specific misrepresentations to the federal court (Rule 3.03(a)(1)) **and** his conduct before the federal court that

constituted dishonesty, fraud, deceit or misrepresentation (Rule 8.04(a)(3)). TEX. RULES DISCIPLINARY P. R. APPENDIX A. [App. 10].

B. Lilly's level of culpability

The evidentiary panel had (at least) the following facts established during the case and/or evidence presented during the sanctions hearing to consider in determining Lilly's culpability:

- Its Order granting discovery sanctions against Lilly, establishing his liability for the Commission's claims of professional misconduct by virtue of striking his pleadings/defenses. [App 8; CR 623-24].

- The Commission's documentary evidence admitted during the initial evidentiary hearing held on September 20, 2022, demonstrating Lilly's misrepresentations to the federal court in Sirovica's case. [RR Vol. 2] [RR Vol. 4, Exhs. P's 1-10].

The trial court's consideration of any or all of the above-described information and/or the reasonable inferences therefrom, would provide support for its determination that Lilly's level of culpability as to his professional misconduct met the guidelines for suspension posed in TRDP 15.05(A)(2).

C. Actual or potential injury caused by Lilly's professional misconduct

For violations subject to the guidelines in Rule 15.05(A)(2), suspension is generally appropriate when misconduct causes "injury or potential injury" to a party, or causes "an adverse or potentially adverse effect on the legal proceeding." TEX. RULES DISCIPLINARY P. R. 15.05(A)(2). The paramount importance of an attorney's

duty of candor to a tribunal and honesty in principle, especially in proceedings before a court, can hardly be overstated. Indeed, at least one court has found that **disbarment** was not an excessive sanction for an attorney who made misrepresentations to a grievance committee. *Weiss v. Comm'n for Lawyer Discipline*, 981 S.W.2d 8, 24-25 (Tex.App. – San Antonio 1998, pet. denied). That Lilly's conduct in this respect caused potentially serious injury to Sirovica, or significant or potentially significant adverse effect on Sirovica's legal proceedings cannot be gainsaid.

D. The existence of aggravating or mitigating factors

The fourth general factor in determining sanctions that TRDP 15.02 identifies is the existence of aggravating or mitigating factors. While Lilly argues that "several mitigating circumstances must be considered" in determining the appropriate sanction in his case, he provides no record references identifying any mitigating factors he presented before the panel, nor does he articulate any particular mitigating factors he believes should be considered in his brief. [Apt. Br. 18].

At both the evidentiary hearing and the sanctions hearing granted in response to Lilly's motion for new trial, the Commission provided evidence of several aggravating factors that the panel could consider:

- Lilly's prior, Texas disciplinary record, including: (1) two Judgments of Private Reprimand; (2) a Judgment of Fully Probated Suspension, for amongst other things, violations of TDRPCs 3.03(a)(1) and 8.04(a)(3), regarding false statements of material fact to a tribunal, issued October 16, 2019; (3) a

Judgment of Public Reprimand, issued September 3, 2020; and (4) a Judgment of Partially Probated Suspension, issued November 23, 2022. TEX. RULES DISCIPLINARY P. R. 15.09(B)(2)(a). [RR Vol. 3, 7 & 19-21]; [RR Vol. 4, Exh. P's Sanction 1-10].

- A dishonest or selfish motive evidenced by Lilly's false statements in Sirovica's case. TEX. RULES DISCIPLINARY P. R. 15.09(B)(2)(b). [RR Vol. 2] [RR Vol. 4, Exhs. P's 1-10].

- A pattern of misconduct evidenced by Lilly's prior Judgment of Fully Probated Suspension that also included violations of TDRPCs 3.03(a)(1) & 8.04(a)(3), **and** Judge O'Connor's federal disciplinary order against Lilly for his conduct in Sirovica's case, which referenced another strikingly similar circumstance for which Lilly had been sanctioned in the Northern District in 2008. TEX. RULES DISCIPLINARY P. R. 15.09(B)(2)(c). [RR Vol. 4, Exh. P's Sanction 1] [App 6; RR Vol. 4, Exh. CFLD P's 10].

- Multiple rule violations. TEX. RULES DISCIPLINARY P. R. 15.09(B)(2)(d). [RR Vol. 2, 20-21] [RR Vol. 3, 7].

- Lilly's refusal to acknowledge the wrongful nature of his conduct, from the proceedings before Judge O'Connor, all the way through the underlying disciplinary proceeding. TEX. RULES DISCIPLINARY P. R. 15.09(B)(2)(g). [App 3; RR Vol. 4, Exh. CFLD P's 5] [App 5; RR Vol. 4, Exh. CFLD P's 7] [RR Vol. 3] [RR Vol. 4, Exh. P's Sanction 1-10].

Lilly offered little testimony or other evidence to demonstrate mitigating circumstances at the sanctions hearing. Examining the little he did offer in the light most favorable to Lilly, the following *may* have constituted mitigating circumstances the panel could consider:

- Absence of a dishonest or selfish motive. TEX. RULES DISCIPLINARY P. R. 15.09(C)(2)(b). That is, Lilly suggests that his reason for not appearing at Sirovica's Revocation Hearing was that he had a miscommunication with a court clerk, who he believed would send him an e-mail confirming the January 28, 2019, date for Sirovica's Revocation Hearing, **and/or** that he was ill

and/or suffering from gout such that he could not appear. [RR Vol. 3, 8-11, & 14-18]

- A physical disability suffered by Lilly at the time of the misconduct that caused or contributed to the misconduct. TEX. RULES DISCIPLINARY P. R. 15.09(C)(2)(h). That is, Lilly suggests that his reason for not appearing at Sirovica's Revocation Hearing was that he was ill and/or suffering from gout such that he could not appear. [RR Vol. 3, 8-11 & 16-18]. But, as with the prior potentially mitigating circumstance, while that *may* provide an alternative explanation for Lilly's failure to appear at Sirovica's Revocation Hearing, it does not provide an explanation for, or excuse, his misrepresentations to the federal court regarding same.

In sum, the record provides ample support for the panel's decision as to the appropriate sanction to issue in Lilly's case. As such, the panel did not err in issuing its Judgment imposing a forty-eight month partially probated suspension, with eighteen months active, against Lilly and the Board should affirm the panel's Judgment.

CONCLUSION AND PRAYER

For the foregoing reasons, the Commission prays that the Board affirm the judgment of the District 6-5 Evidentiary Panel of the State Bar of Texas in this matter in all things.

RESPECTFULLY SUBMITTED,

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION

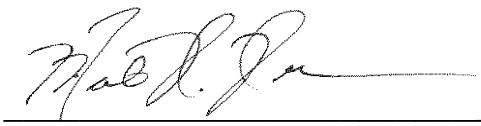
MICHAEL G. GRAHAM
APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY COUNSEL
STATE BAR OF TEXAS
P.O. BOX 12487
AUSTIN, TEXAS 78711
Michael.Graham@texasbar.com
T: (512) 427-1350; (877) 953-5535
F: (512) 427-4253

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

CERTIFICATE OF COMPLIANCE

Pursuant to the Board of Disciplinary Appeals Internal Procedural Rules, the foregoing brief on the merits contains approximately 6,779 words (total for all sections of brief that are required to be counted), which is less than the total words permitted by the Board's Internal Procedural Rules. Counsel relies on the word count of the computer program used to prepare this petition.



MICHAEL G. GRAHAM
APPELLATE COUNSEL
STATE BAR OF TEXAS

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing brief of Appellee, the Commission for Lawyer Discipline has been served on Appellant, Curtis Lilly, via electronic mail to clilly@clillylaw.com on the 6th day of October, 2023.

MICHAEL G. GRAHAM
APPELLATE COUNSEL
STATE BAR OF TEXAS

NO. 67514

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

CURTIS LILLY,

APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

On Appeal from an Evidentiary Panel
For the State Bar of Texas District 7
No. 201905562 [SBOT]

APPENDIX TO BRIEF OF APPELLEE COMMISSION FOR LAWYER DISCIPLINE

APP 1: Judgment of Partially Probated Suspension [CR 853-60]

APP 2: 1st Show Cause Order [RR Vol. 4, Exh. P's 4]

APP 3: Lilly Response to 1st Show Cause Order [RR Vol. 4, Exh. P's 5]

APP 4: 2nd Show Cause Order [RR Vol. 4, Exh. P's 6]

APP 5: Lilly Response to 2nd Show Cause Order [RR Vol. 4, Exh. P's 7]

APP 6: Federal Court disciplinary Order [RR Vol. 4, Exh. P's 10]

APP 7: Panel Order Granting Commission's Motion to Compel [CR 446-47]

APP 8: Panel Order Granting Commission's Motion for Discovery Sanctions [CR 623-24]

APP 9: Panel Order Granting Motion for New Trial in Part [CR 729-30]

APP 10: TEXAS RULES OF DISCIPLINARY PROCEDURE APPENDIX A

App 1

BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-5
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE,	§	
Petitioner	§	
	§	
V.	§	**CASE NO. 201905562**
	§	
CURTIS LILLY,	§	
Respondent	§	

JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On September 20, 2022, and on December 20, 2022, came to be heard the above styled and numbered cause. Petitioner, Commission for Lawyer Discipline (Petitioner), appeared by and through its attorney of record and announced ready. Respondent, **CURTIS LILLY** (Respondent), Texas Bar Number **24030063**, appeared in person and announced ready.

Jurisdiction and Venue

The Evidentiary Panel 6-5, 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.

Professional Misconduct

The Evidentiary Panel, having considered all of the pleadings, evidence, stipulations, and argument, 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 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. In January 2019, Respondent represented Jason Sirovica (Sirovica) in a federal criminal matter.

4. On January 28, 2019, Respondent failed to appear for a hearing scheduled in Sirovica's matter. In response to the Court's request for show cause, Respondent knowingly made false statements of material facts or law to the tribunal.

5. Due to Respondent's false statements, the Court found Respondent's conduct unbecoming of a member of the bar and suspended Respondent from the Northern District of Texas for a period of four (4) years.

6. 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 Four Thousand Six Hundred Sixty-Eight Dollars and 85/100 ($4,668.85).

Conclusions of Law

The Evidentiary Panel concludes that, based on foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: 3.03(a)(1) and 8.04(a)(3).

Sanction

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

Accordingly, it is **ORDERED**, **ADJUDGED** and **DECREED** that Respondent be

suspended from the practice of law for a period of forty-eight (48) months, beginning January 23, 2023, and ending January 22, 2027. Respondent shall be actively suspended from the practice of law for a period of eighteen (18) months beginning January 23, 2023, and ending July 22, 2024. If Respondent complies with all of the following terms and conditions timely, the thirty (30) months period of probated suspension shall begin on July 23, 2024, and shall end on January 22, 2027:

1. Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of Four Thousand Six Hundred Sixty-Eight Dollars and 85/100 ($4,668.85). The payment shall be due and payable on or before July 22, 2024, 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).

2. 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 January 22, 2027, 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, on or before January 23, 2023, Respondent shall notify each of Respondent's current clients and opposing counsel in writing of this suspension.

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

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before January 23, 2023, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein. If it is Respondent's assertion that at the time of suspension he possessed no current clients and/or Respondent was not in possession of any files, papers, monies or other property belonging to clients, Respondent shall submit an affidavit attesting that, at the time of suspension, Respondent had no current clients and did not possess any files, papers monies and other property belonging to clients.

It is further **ORDERED** Respondent shall, on or before January 23, 2023, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is

representing.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before January 23, 2023, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court. If it is Respondent's assertion that at the time of suspension he was not currently listed as counsel or co-counsel in any matter pending before any justice of the peace, judge, magistrate, administrative judge or officer, or chief justice of any court or tribunal, Respondent shall submit an affidavit attesting to the absence of any such pending matter before any justice of the peace, judge, magistrate, administrative judge or officer, or chief justice.

It is further **ORDERED** that, on or before January 23, 2023, Respondent shall surrender his law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of Texas.

Terms of Probation

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

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

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

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

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

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

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

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

8. Respondent shall make contact with the Chief Disciplinary Counsel's Offices' Compliance Monitor at 877-953-5535, ext. 1334 and Special Programs Coordinator at 877-953-5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

Probation Revocation

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

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

It is further **ORDERED** that any conduct on the part of Respondent which serves as

the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Attorney's Fees and Expenses

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of Four Thousand Six Hundred Sixty-Eight Dollars and 85/100 ($4,668.85). The payment shall be due and payable on or before July 22, 2024 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).

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

It is further **ORDERED** that Respondent shall remain actively suspended from the practice of law as set out above until such time as Respondent has completely paid attorney fees and direct expenses in the amount of Four Thousand Six Hundred Sixty-Eight Dollars and 85/100 ($4,668.85) to the State Bar of Texas.

Publication

This suspension shall be made a matter of record and appropriately published in

accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 9th day of January, 2023.

EVIDENTIARY PANEL 6-5
DISTRICT NO. 6
STATE BAR OF TEXAS

Eric Michael Friedman
District 6-5 Presiding Member

App 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	Criminal No. 4:18-CR-147-O
	§	
JASON LEE SIROVICA	§	

ORDER

The Court set this case for hearing this morning at 9:00 am. *See* Orders, Jan. 15, 2019, ECF No. 7, 10. The Court ordered "defendant, his attorney, and counsel for the United States of America appear at 9:00 am on January 28, 2019, before the undersigned ....". *See* ECF No. 7. When the Court called this case today, the Government appeared, announced it was ready, and that its witnesses were present and prepared to testify. Defendant Jason Lee Sirovica ("Sirovica") also appeared. However, defense counsel Curtis Lilly ("Lilly") did not appear. When asked about his attorney, Sirovica stated that his counsel told him last week that he was in trial and was not sure he would attend today's hearing.

It appears that defense counsel Lilly has violated the Court's order, which directed him to appear this morning at 9:00 am. Indeed, based on his client's statement, Lilly knew sometime last week that he would not attend today's hearing and did not notify the Court or opposing counsel. Accordingly, Lilly is directed to file a pleading on the docket showing cause, if he may, as to why he should not be found in contempt or sanctioned for failing to comply with the Court's order no later than February 1, 2019.

Signed this 28th day of January, 2019.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

EXHIBIT
CFLD - P's 4

App 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	
	§	Criminal No 4:18-cr-00147
	§	
JASON SIROVICA	§	

RESPONCE TO MOTION TO SHOW CAUSE

COMES NOW Curtis Lilly, and files this response consistent with the court order to show cause.

1. I have represented Mr. Sirovica for more than 10 years in various state and federal matters.

2. Because of the number of emails in his previous federal case, I set up a rule and a folder in Microsoft Outlook with these words "Sirovica 4:12-cr-00029 txed". This would notify me of any new emails based on the above mentioned criteria. This rule did not include the new cause number for the probation violation.

3. I did not know anything about the 1/28/2019 hearing until I saw an email popped up from the court at 3:40 PM on 1/28/2019. I had not seen any of the other emails regarding this case. These email did not appear in the "Sirovica" folder.

4. This case was also set for a forfeiture case in the Tarrant County District Court on the same date and time.

5. If I had known about the hearing, I would have requested a continuance on the 1/28/2019 hearing, I was suffering from an upper respiratory infection that caused me to lose my voice. This would have prevented me from properly representing my client at that time. Presently, I have the Flu.

6. There was no intent to be disobedient to or disrespectful of the court or its offices.

Respectfully submitted,

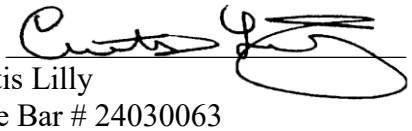
By: 
Curtis Lilly
State Bar # 24030063

EXHIBIT
CFLD - P's 5

2201 Main, Suite 1220
Dallas, TX 75201
Tel. 214-573-7660
Fax 214-573-7661

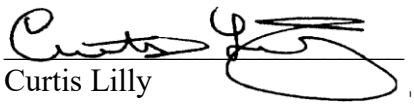
ATTORNEY IN CHARGE FOR
Defendant's Jason Sirovica

DECLARATION UNDER PENALTY OF PERJURY

STATE OF TEXAS §
DALLAS COUNTY §

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

EXECUTED on February 1, 2019.



Curtis Lilly

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	
	§	Criminal No 4:12 cr 29
	§	
JAMES CECIL HOLLEY, JR	§	

ORDER ON DEFENDANT'S MOTION FOR CONTINUANCE

After considering Defendant's motion for continuance and the response, the court

DENIES the motion.

GRANTS the motion and continues this case for ___ days, until _____, 2013.

SIGNED on _____, 2013.

_____
U.S. DISTRICT JUDGE

App 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	Criminal No. 4:18-CR-147-O
	§	
JASON SIROVICA	§	
	§	

ORDER

Defendant has been on supervised release following a term of imprisonment served as a result of his conviction for Conspiracy to Possess with Intent to Distribute Marijuana in the Eastern District of Texas. Upon his release from prison, the Eastern District of Texas transferred Defendant's term of supervised release to this district. *See* Order, July 3, 2018, ECF No. 1.

The Court subsequently ordered Defendant arrested because his supervising officer alleged he had violated his conditions of release by committing new criminal offenses. *See* Petition for Offender Under Supervision, January 9, 2019, ECF No. 5. The Court set Defendant's revocation hearing for Monday, January 28, 2019, at 9:00 am. *See* Order, January 15, 2019, ECF No. 7. Defense counsel Curtis Lilly ("Lilly") appeared with Defendant for his initial appearance, and at this hearing Magistrate Judge Cureton orally informed Defendant and Lilly that the final revocation hearing would take place on January 28, 2019. *See* Minute Entry, January 15, 2019, ECF No. 9; *see also* Order, January 15, 2019, ECF No. 10.

On Monday, January 28, 2019, the Government appeared for the hearing with its witnesses and announced it was prepared to proceed. Defendant also appeared, but Lilly did not. Defendant stated to the Court that he had talked to Lilly the previous Friday and Lilly told Defendant that Lilly

was in a trial and therefore might not appear at the Monday hearing. Because Lilly failed to appear as directed, or otherwise requested to be excused from appearing, the Court ordered him to show cause explaining why. *See* Order, January 28, 2019, ECF No. 16. Lilly filed a document, under penalty of perjury, attesting that he did not receive notice of this hearing and that, had he received notice, he would have sought a continuance because he was ill. *See* Response, February 1, 2019, ECF No. 18.

This response is false. First, Magistrate Judge Cureton notified Lilly at Defendant's initial appearance that the final revocation hearing would be held on January 28, 2019 at 9:00 am. Further, two written orders appear on the docket of this case providing notice that the final revocation hearing would occur on January 28, 2019. Next, Lilly says he would have sought a continuance had he known the hearing was set that day because he was ill. However, his client represented to the Court that he had talked to Lilly the previous Friday and that Lilly told him to appear for the revocation hearing but that Lilly may not appear because he was in trial. Based on the foregoing, it appears Lilly has acted unbecoming a member of the bar, failed to comply with a court order, and has acted unethically.

As it appears that Lilly has violated Local Criminal Rules 57.8 (b)(1), (2), and (3), Lilly is ordered to file a pleading on the docket of this case showing cause, if any he has, why he should not be disciplined, including temporary or permanent removal from the bar of this court. Any factual statements made by Lilly in his response must be verified by oath or statutory declaration. His response shall be filed no later than February 28, 2019.

SIGNED this 21st day of February 2019.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

App 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	
	§	Criminal No 4:18-cr-00147
	§	
JASON SIROVICA	§	

RESPONCE TO SECOND MOTION TO SHOW CAUSE

COMES NOW Curtis Lilly, and files this response consistent with the second court order to show cause.

1. On January 9, 2019, I appeared at a revocation hearing for Mr. Sirovica (Defendant). At that hearing, Magistrate Judge Cureton reset the hearing to January 28, 2019, in Judge O'Connor's Court.

2. Immediately after the hearing, I approached the court clerk (clerk) to confirm the date, I had discovered several conflicts. I was "on call" for a final trial in a Tarrant County Family District Court and a forfeiture hearing was set at the same time and date in a Tarrant County District Court.

3. The Clerk advised me that she would have to confirm that Judge O'Connor's court would be available on the 28th. I then asked if she would email me, she responded yes. She confirmed my email address and I left the court. I did not calendar the event and waited for the email as stated in my previous response.

4. As to the Defendant, I can only speculate as to what was meant by his statement to the court. I do not know what question was asked of him or the context of his answer.

5. When I spoke to the Defendant after the hearing, he indicated "he told them (refereeing to the court) that he did not know where I (Curtis Lilly) was. He said he then told them that "I was in trial and that he might not come".

6. Taken in context, the Wednesday prior to the January 28, 2019, hearing, I could not appear at an Eviction hearing for the Defendant in Mansfield, TX. I had to appear on a Motion for Habeas Corpus in a Harris County District Court in Houston, TX. I advised the Defendant that he needed to appear no matter what, but I would probably not be there. I filed a motion for continuance and that matter was reset. I think that in a panic, the Defendant may have conveyed what I told him about the other matter.

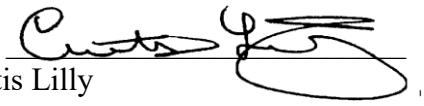
EXHIBIT
CFLD - Ps 7

7. I did not tell the Defendant that I was not appearing in a Federal Court matter. I am very familiar with the Federal, State and Local rules regarding these matters. In other words, Federal matters supersede all others. If I had known about the hearing, I would have requested a continuance, I was sick, suffering from an upper respiratory infection that caused me to ultimately lose my voice. This would have prevented me from properly representing my client at that time.

8. When I arrived back in Dallas on the night of the 23rd, I knew I was sick. I took the normal medications to try and get better, but by Sunday the 27th, I had lost my voice and spend most of the weekend in the bed sleeping. If I had not been sick, I may have caught this mistake and appeared, had someone else appear or requested a continuance.

6. I apologize to this court and my client for any problems my nonappearance caused. There was no intent to be disobedient to or disrespectful of the court or its staff.

Respectfully submitted,

By: 

Curtis Lilly
State Bar # 24030063

2201 Main, Suite 1220
Dallas, TX 75201
Tel. 214-573-7660
Fax 214-573-7661

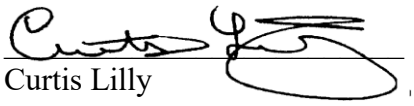
ATTORNEY IN CHARGE FOR
Defendant's Jason Sirovica

DECLARATION UNDER PENALTY OF PERJURY

STATE OF TEXAS §
DALLAS COUNTY §

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

EXECUTED on February 28, 2019.



Curtis Lilly

App 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE POSSIBLE DISCIPLINE OF CURTIS LILLY	§ § § §	No. 4:19-MC-010-O

ORDER

In several previous orders, the Court has provided a summary of the facts that led to the conclusion that disciplinary action against Curtis Lilly ("Lilly"), including the possibility of a temporary or permanent removal from the bar of the Northern District of Texas, should be considered. *See* Orders, ECF Nos. 4, 6. This conclusion resulted from Lilly's response to two previous orders requiring him to explain why he failed to appear at a scheduled hearing as directed. As discussed in these orders, Lilly provided false information. *Id.* To permit Lilly an opportunity to address anything covered by these orders in person, the Court notified him that he may have a hearing. Order, ECF No. 6, 7. Lilly requested a hearing and appeared and addressed these orders. *See* ECF Nos. 7, 8, and 9.

For the following reasons, the Court finds that (1) Lilly's membership in the bar of the Northern District of Texas should be and is hereby suspended for a period of four years, and (2) that such suspension shall continue thereafter until (a) Lilly has submitted to the Chief Judge of this district an application for reinstatement of his membership, to which he shall attach a copy of this order, and (b) such application has been approved by the Chief Judge or his/her designee for renewed membership.

I. BACKGROUND

This matter arises from Defendant Jason Sirovoca's ("Sirovoca") supervised release following his term of imprisonment served as a result of his conviction for Conspiracy to Possess with Intent to Distribute Marijuana in the Eastern District of Texas. Upon his release from prison, the Eastern District of Texas transferred Sirovoca's term of supervised release to this district. *See* Order, 4-18-CR-147-O, July 3, 2018, ECF No. 1.

The Court subsequently ordered Sirovoca arrested because his supervising officer alleged he had violated his conditions of release by committing new criminal offenses. *See* Petition for Offender Under Supervision, January 9, 2019, 4-18-CR-147-O, ECF No. 5. The Court set Sirovoca's revocation hearing for Monday January 28, 2019, at 9:00 am. *See* Order, January 15, 2019, 4-18-CR-147-O, ECF No. 7. Lilly represented Sirovoca and appeared with him at his initial appearance. At this hearing, Magistrate Judge Cureton orally informed Sirovoca and Lilly that the final revocation hearing would take place before the undersigned on Monday January 28, 2019. *See* Minute Entry, January 15, 2019, 4-18-CR-147-O, ECF No. 9; *see also* Order, January 15, 2019, 4-18-CR-147-O, ECF No. 10.

On Monday January 28, 2019, the Government appeared for the hearing with its witnesses and announced it was prepared to proceed. Sirovoca also appeared, but Lilly did not. Sirovoca reported that he had talked to Lilly the previous Friday and Lilly told Sirovoca that Lilly was in a trial and therefore might not appear at the Monday hearing.

II. First Show Cause Order

Because Lilly failed to appear as directed, or otherwise request to be excused from appearing, the Court ordered him to show cause explaining why. *See* Order, January 28, 2019, 4-18-CR-147-O,

ECF No. 16. Lilly filed a document, under penalty of perjury, attesting that he did not receive notice of the hearing and that, had he received notice, he would have sought a continuance because he was ill. *See* Response, February 1, 2019, 4-18-CR-147-O, ECF No. 18 ("I did not know anything about the 1/28/2019 hearing until I saw an email ... from the court at 3:40 PM on 1/28/2019.").

The Court concluded this response was false because it is undisputed that Magistrate Judge Cureton notified Lilly on the record at Sirovoca's initial appearance (two separate times) that the final revocation hearing would be held on January 28, 2019 at 9:00 am. Next, two written orders appear on the docket of this case providing notice that the final revocation hearing would occur on January 28, 2019. And finally, Lilly said he would have sought a continuance had he known the hearing was set that day because he was ill. His client, however, represented that he had talked to Lilly the previous Friday and that Lilly told him to appear for the Monday revocation hearing. It is simply not true that he did not know anything about the January 28, 2019 hearing.

III. Second Show Cause Order

Based on Lilly's response, the Court concluded that it appeared Lilly had acted in a manner unbecoming a member of the bar, failed to comply with a court order, and acted unethically, in violation of Local Criminal Rules 57.8 (b)(1), (2), and (3). *See* Order, 4-18-CR-147-O, February 21, 2019, ECF No. 24. Accordingly, Lilly was ordered to file a pleading showing cause, if any he had, why he should not be disciplined. On February 28, 2019, Lilly filed, under penalty of perjury, his response. Response, 4-18-CR-147-O, February 28, 2019, ECF No. 25. After reviewing this pleading, it appeared Lilly made additional false statements.

In this response, Lilly stated that, after the initial appearance before Magistrate Judge Cureton concluded, Lilly approached the deputy clerk "to confirm the date, I had discovered several

conflicts." Presumably, what Lilly meant by this statement is that, after being notified that the final hearing would take place on January 28, 2019, he approached the deputy clerk to discuss his scheduling concerns. He then stated:

> The Clerk advised me that she would have to confirm that Judge O'Connor's court would be available on the 28th. I then asked if she would email me, she responded yes. She confirmed my email address and I left the court. I did not calendar the event and waited for the email as stated in my previous response.

This portion of the response is false.

Magistrate Judge Cureton presided over Sirovoca's initial appearance and deputy clerk Julie Harwell ("Harwell") served as the deputy clerk during this hearing. Prior to the initial appearance, the undersigned set Sirovoca's final revocation hearing for January 28, 2019, and that date was provided to Judge Cureton. As the date for the final revocation hearing is a matter for the undersigned to determine, Harwell would have no need to "confirm that Judge O'Connor's court would be available on the 28th." Lilly also stated that he asked Harwell if she would email him after she confirmed the January 28, 2019 date.

Harwell denied that she made either of these representations. Her denial is corroborated by the standard practice for initial appearances in this division. First, Harwell ensures the records related to initial appearances (and other hearings) conducted by Judge Cureton are appropriately preserved on the docket. But she has no role in setting the dates for final hearings before other judges. Any scheduling conflict would have to be resolved by the assigned judge. It seems clear that this conversation did not take place.

Finally, as to Sirovoca's representations to the Court about Lilly's conversations with him, Lilly states that Sirovoca may have misunderstood their conversation and surmised that Sirovoca

may have, in a panic, misspoken. On Monday January 28, 2019, Sirovoca represented to the Court that he talked to Lilly the previous Friday and that Lilly told Sirovoca that he might or might not appear for the hearing. The exchange with Sirovoca was as follows:

> **THE COURT:** Do you know where your lawyer is in trial?
> **THE DEFENDANT:** I do not, sir.
> **THE COURT:** Or what kind of trial it is?
> **THE DEFENDANT:** I do not. I don't talk to him about other cases.
> **THE COURT:** So he just told -- So you talked to him on Friday?
> **THE DEFENDANT:** Yes, sir.
> **THE COURT:** Did he tell you -- He told you to be here, obviously?
> **THE DEFENDANT:** Yes.
> **THE COURT:** But he told you he would not be here?
> **THE DEFENDANT:** No. He said that he might be here but he said he's still in trial.

Nothing about this exchange suggests Sirovoca was panicked, nor did it appear he was panicked at the time. Indeed, Sirovoca matter-of-factly recounted his exchange with Lilly that had taken place the previous Friday. Further, counsel for the Government also represented that she had communicated with Lilly on the same previous Friday and that Lilly was in trial. But Lilly's response emphatically provides that he was not in trial on the previous Friday.

Based on the foregoing, the Court concluded Lilly made false statements in that response. To permit Lilly to address any of these issues in person, the Court notified him he may have a hearing to present anything he wished. Lilly requested a hearing.

IV. The March 22, 2019 Hearing

At this hearing, Lilly reiterated much of what he submitted in his previous responses. He explained in more detail how sick he was the previous week, that he was engaged in travel on another case during the previous week, and that he would not intentionally miss a court date.

He also explained that he missed the scheduled revocation hearing because he did not

schedule it on his calendar. He said he intended to wait to schedule the revocation hearing until he received an email with the setting information because his email system would automatically transfer that information to his calendar. He said this did not happen because the Microsoft Outlook rule he established to highlight any emails involving his client in this case was set to identify Eastern District of Texas emails and not Northern District of Texas emails. As a result, he did not see the emails setting his client's revocation hearing and therefore never input the information onto his calendar.

Nothing Lilly provided at this hearing changes the Court's previous conclusions. Rather, the hearing reinforces the conclusion set out in the previous orders that Lilly has provided false statements in response to the Court's show cause orders. Indeed, the version Lilly presented at this hearing for why he did not attend the revocation hearing appeared to further evolve from what he originally presented. He said he did not attend the revocation hearing because he did not receive the email setting the hearing because of the rule established in his Microsoft Outlook. Yet he said he received the order requiring him to show cause by email immediately, even though it too was from the Northern District and related to his client. And while discussing this case with the Assistant United States Attorney, he told her he had conflicts on the day the revocation hearing was scheduled—but Lilly would need to know the date for which the revocation hearing was set to know there was a conflict. Similarly, Sirovoca, his client, told the Court that Lilly told him to appear for the Monday revocation hearing setting.[1] Yet Lilly represented in his first response to the Court that

[1]At the March 22, 2019 hearing, Lilly denied he told his client to appear for the revocation hearing and surmised that his client's probation officer must have told him to appear. His client, however, represented to the Court that he had talked to Lilly the previous Friday, and Lilly told him to appear for the revocation hearing. His client's statement in this regard is corroborated by all of the information and is credible.

he "did not know anything about the 1/28/2019 hearing" before it took place, and has persisted in that position despite all of the evidence to the contrary.

In any event, nothing Lilly presented at his hearing changes the Court's previous conclusions.

V. Discussion

Local Criminal Rule 57.8(b)(1), (2), and (3) provides that an attorney may be disciplined for conduct unbecoming a member of the bar, failure to comply with a court order, and for engaging in unethical conduct. "Although 'conduct unbecoming a member of the bar' is not defined in the Local Rules, the Supreme Court has interpreted the same language, as used in Federal Rule of Appellate Procedure 46, to mean 'conduct contrary to professional standards that shows an unfitness to discharge continuing obligations to clients or the courts, or conduct inimical to the administration of justice.'" *In re Hermesmeyer*, 688 F. App'x 300, 305 (5th Cir. 2017). The term "unethical behavior," as used in the local rules, "means conduct undertaken in or related to a criminal proceeding in this court that violates the Texas Disciplinary Rules of Professional Conduct." *In re Luttrell*, No. 4:17-MC-012-A, 2017 WL 5646351, at *13 (N.D. Tex. May 15, 2017), *aff'd in part, rev'd in part,* 749 F.App'x 281 (5th Cir. 2018). Rule 3.03 of the Texas Disciplinary Rules of Professional Conduct provides that a lawyer shall not knowingly make a false statement of material fact to a tribunal, and Rule 8.04 prohibits a lawyer from engaging in dishonesty, fraud, deceit, or misrepresentation.

Based on the reasons set out above, the Court concludes Lilly has violated Local Criminal Rule 57.8 (b)(1), (2), and (3). Specifically, Lilly failed to comply with the directive from Judge Cureton and from the undersigned to appear for the final revocation hearing on January 28, 2019,

in violation of subsection (b)(2). *See* Minute Entry, January 15, 2019, 4-18-CR-147-O, ECF No. 9; *see also* Order, January 15, 2019, 4-18-CR-147-O, ECF No. 10. His various statements that he "did not know anything about" that hearing date and was awaiting confirmation of it, as well as his characterization of his conversation with Harwell and his explanation of his client's statements, all essentially re-urged at the March 22 hearing, are not credible. These statements also represent conduct unbecoming a member of the bar and amount to unethical behavior in violation of subsections (b)(1) and (b)(3).

VI. Conclusion

Because Lilly has engaged in conduct unbecoming a member of the bar, engaged in unethical conduct, and failed to comply with a court order, the Court must decide what discipline to impose. *In re Luttrell*, No. 4:17-MC-012-A, 2017 WL 5646351, at *14. When imposing discipline, courts should ensure it is severe enough to deter repetition of the offending conduct but is no more than is reasonably necessary to accomplish that goal. *Id.* This takes into account the importance that members of the bar conduct themselves in an appropriate manner, showing due respect for the court, its judges, and others associated with the justice system. *Id.*

In this regard, this is not the first time Lilly has failed to appear and responded to the failure by claiming he did not receive notice. In 2008, the Honorable Jane J. Boyle sanctioned Lilly and later held him in civil contempt for failure to follow that sanction order. *See United States v. Price*, No. 3-08-cr-268-B (N.D. Tex. 2008). In that case, Darren Price ("Price") retained Lilly to represent him. Price later sought to replace Lilly because he claimed Lilly abandoned him. Judge Boyle set the dispute for a hearing and, despite receiving notice of the hearing, Lilly failed to appear.

Explaining why he failed to appear at the hearing, Lilly first asserted he mistakenly

scheduled it for the wrong date but, during a subsequent hearing, contended he did not receive the email notice of the hearing. Order, 3-08-cr-268-B, ECF No. 126, 2-3. Addressing Lilly's candor about receiving notice,[2] Judge Boyle concluded:

> Lilly vacillated as to when and how he was receiving notice of the scheduled hearings. Reasserting that he never received his electronic notifications of the hearings, Lilly was unable to explain how this representation reconciled with his previous statement to the Court, when contacted telephonically, that he missed the hearing because he scheduled it for the wrong day. Lilly was not credible in demeanor or in substance.

Order, 3-08-cr-268-B, ECF No. 126, 4.

VII. Discipline Order

Based on the foregoing, the Court concludes that the least severe action that would appropriately address what the Court considers to be serious violations by Lilly, and given his previous similar conduct, is that (1) Lilly's membership in the bar of the Northern District of Texas be suspended for a period of four years, and (2) that such suspension shall continue thereafter until (a) Lilly has submitted to the Chief Judge of this district an application for reinstatement of his membership, to which he shall attach a copy of this order, and (b) such application has been approved by the Chief Judge or his/her designee for renewed membership. No lesser sanction appears likely to succeed in deterring this behavior, particularly given that Lilly has engaged in conduct of this nature in the past and the lesser sanction turned out to be insufficient to adequately deter this conduct.

The Clerk of Court is directed to note on her records that Lilly is not authorized to practice

---

[2] Judge Boyle sanctioned Lilly for abandoning his client and ordered him to return $1,500 of the $1,700 fee his client paid. Judge Boyle later held Lilly in civil contempt for not returning this portion of the fee as ordered. Contempt Order, 3-08-cr-268-B, ECF No. 132. And while Lilly appealed this order, the Fifth Circuit dismissed the appeal for want of prosecution. Judgment, 3-08-cr-268-B, ECF No. 167.

in the Northern District of Texas at any time before the end of four years after the date of this order or at anytime thereafter until he has applied for reinstatement of his membership and his application has been approved as contemplated by the immediately preceding part of this order, and to provide a copy of this order to each district, bankruptcy, and magistrate judge in this district.

The Court further orders the Clerk of the Court to mail copies of this order with an appropriate cover letter, as well as ECF Nos. 2 and 4 on the docket of this case, as well as ECF Nos. 126 and 132 from case number 3-08-cr-268-B, to the State Bar of Texas at the following address:

State Bar of Texas
Chief Disciplinary Counsel
P.O. Box 12487
Austin, Texas 78711

Signed this 2nd day of April, 2019.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

United States District Court
Northern District of Texas

Karen Mitchell
Clerk of Court

Fort Worth Division

April 2, 2019

State Bar of Texas
Chief Disciplinary Counsel
P.O. Box 12487
Austin, Texas 78711

RE: IN RE POSSIBLE DISCIPLINE OF CURTIS LILLY

Style: IN RE POSSIBLE DISCIPLINE OF CURTIS LILLY, No. 4:19-MC-010-O

Dear Chief Disciplinary Counsel:

Enclosed is a certified copy of an Order regarding the above referenced matter, as well as ECF Nos. 2 and 4 on the docket of this case, as well as ECF Nos. 126 and 132 from case number 3-08-cr-268-B.

If you have any questions regarding this matter, I may be reached at 940-767-1902 .

Sincerely,
Karen Mitchell, Clerk

By: /s/ Simona K Gerdts
Deputy Clerk

Enclosure

cc:

App 7

BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-5
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE,	§	
Petitioner	§	
	§	
V.	§	**CASE NO. 201905562**
	§	
CURTIS LILLY,	§	
Respondent	§	

ORDER GRANTING PETITIONER'S MOTION TO COMPEL

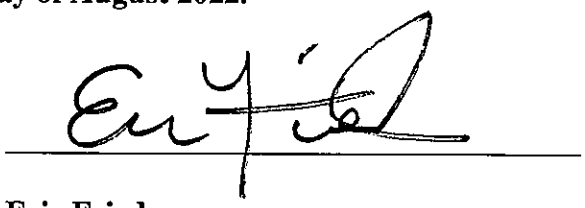
On this day, Petitioner's Motion to Compel was considered. After reviewing the evidence submitted and after a hearing, the Evidentiary Panel is of the opinion that Petitioner's Motion to Compel should be, and is hereby, GRANTED.

IT IS, ACCORDINGLY, ORDERED that Curtis Lilly shall deliver full and complete responses, without objections, to Petitioner's First Request for Production, within five (5) days of the granting of this Order, to the Office of the Chief Disciplinary Counsel, State Bar of Texas, 14651 Dallas Parkway, Suite 925, Dallas, Texas 75254, or via electronic means.

FURTHER, IT IS, ACCORDINGLY, ORDERED that no objections to the Motion to Compel were submitted by Curtis Lilly at least twenty-four hours prior to the hearing, or at the hearing, and thus all objections to the Motion to Compel are waived.

FURTHER, IT IS, ACCORDINGLY, ORDERED that all future objections asserted by Curtis Lilly for 'Failure to Receive Notice' or 'Improper Service' where the basis for the objections is outdated or incorrect contact information are hereby waived.

SIGNED this 4 day of August 2022.



Eric Friedman
Evidentiary Panel Chair, Panel 6-5

App 8

BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-1
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, **Petitioner**	§	
V.	§	**CASE NO. 201703394**
CURTIS LILLY, **Respondent**	§	

ORDER GRANTING PETITIONER'S MOTION FOR SANCTIONS

ON THIS DAY CAME TO BE CONSIDERED, Petitioner's Motion for Sanctions filed in the above-styled and numbered cause. After consideration of all evidence submitted, and the arguments of Petitioner's counsel and pro-se Respondent, if any, the Evidentiary Panel Chair is of the opinion that Petitioner's Motion for Sanctions should be and is hereby **GRANTED** as set out below.

The Panel Chair makes the following findings in support of the sanctions imposed for discovery abuse:

The Panel Chair makes the following findings in support of the sanctions imposed for discovery abuse:

1. Respondent failed to comply with the Order Granting Petitioner's Motion to Compel, signed on August 4, 2022;

2. Respondent failed to deliver any documents in response to Petitioner's First Request for Production of Documents;

3. Respondent acted in flagrant bad faith or callous disregard for the responsibilities of discovery under the rules;

4. There is a direct relationship between the sanction and the offensive conduct because Respondent has not produced documents or electronic data in response to Petitioner's Request for

Production.

5. This sanction is no more severe than necessary to promote full compliance.

IT IS ORDERED that, (1) Respondent shall be prohibited from conducting any further discovery in this matter; (2) discovery matters that Respondent has not produced in accordance with the orders of this Panel shall be taken as established for the purposes of this suit according to the claims of Petitioner; (3) Respondent shall be prohibited from opposing Petitioner's claims, prohibited from supporting Respondent's defenses, and prohibited from introducing controverting matters into evidence; and (4) Respondent's pleadings shall be struck.

IT IS FURTHER ORDERED that all such other relief requested is hereby **DENIED.**

SIGNED this the 21 day of SEPTEMBER, 2022.

Eric Friedman
Evidentiary Panel Chair, District 6-5

App 9

BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-5
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE,	§	
Petitioner	§	
	§	
V.	§	**CASE NO. 201905562**
	§	
CURTIS LILLY,	§	
Respondent	§	

ORDER ON MOTION FOR NEW TRIAL

On October 18, 2022, came to be considered Respondent's *Motion for New Trial* relative to the *Judgment of Active Suspension* signed on October 6, 2022. After considering Respondent's motion, Petitioner's response, the pleadings, the evidence, and the arguments of counsel, the Evidentiary Panel is of the opinion that the Respondent's *Motion for New Trial* should be denied; IT IS THEREFORE ORDERED that Respondent's *Motion for New Trial* is DENIED, in part, subject to the following paragraph.

However, the Evidentiary Panel is also of the opinion that the matters of Professional Misconduct and Sanctions are separable and conducting a separate hearing on Sanctions would not be unfair to the parties. Further, Texas Rule of Disciplinary Procedure 15.03 provides that, in any Disciplinary Proceeding where Professional Misconduct is found to have occurred, the district grievance committee may, in its discretion, conduct a separate hearing and receive evidence as to the appropriate Sanctions to be imposed. As such, sua sponte, the Evidentiary Panel GRANTS a partial new trial as to the issue of the appropriate Sanction(s) to be imposed only.

New Sanctions Hearing

This order shall serve as notice that the above-captioned case has been set for a Sanctions hearing before Evidentiary Panel 6-5 of the State Bar District No. 6 Grievance Committee on **December 20, 2022 at 9:30 a.m.** The hearing will be held via Zoom videoconference. The Panel

will hear arguments and consider limited evidence narrowly tailored to the Sanctions described in the October 6, 2022 *Judgment of Active Suspension*. All previously signed and entered interim rulings by the Panel Chair stand and remain in effect.

Any and all exhibits that Respondent intends to offer at the new Sanctions hearing must be tendered to Petitioner by 5:00 p.m. on November 17, 2022. Petitioner will have until December 2, 2022 to object to any exhibits tendered by Respondent.

SIGNED this 16 of ~~October~~ November 2022.

Mr. Eric Friedman
Evidentiary Panel Chair

App 10

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 2. Judicial Branch (Refs & Annos)
Subtitle G. Attorneys
Title 2, Subtitle G--Appendices
Appendix B Rules of Disciplinary Procedure (Refs & Annos)
Appendix a (Refs & Annos)

V.T.C.A., Govt. Code T. 2, Subt. G App. A-1, Disc. Proc., App. A

Appendix A to the Texas Rules of Disciplinary Procedure

Currentness

APPENDIX

Competent and Diligent Representation 1.01	Guideline 15.04A
Scope and Objectives of Representation	
1.02 (a)(b)	Guideline 15.04A
1.02 (c)(d)(e)(f)	Guideline 15.05A
1.02 (g)	Guideline 15.07
Communication 1.03	Guideline 15.04A
Fees 1.04	Guideline 15.07; 15.04E
Confidentiality of Information 1.05	Guideline 15.04C
Conflict of Interest: General Rule 1.06	Guideline 15.04D
Conflict of Interest: Intermediary 1.07	Guideline 15.04D
Conflict of Interest: Prohibited Transactions 1.08	Guideline 15.04D

Conflict of Interest: Former Client 1.09	Guideline 15.04D; 15.04C
Successive Government and Private Employment 1.10	Guideline 15.04D
Adjudicatory Official or Law Clerk 1.11	Guideline 15.04D
Organization as a Client 1.12	Guideline 15.04D
Conflicts: Public Interest Activities 1.13	Guideline 15.04D
Safekeeping Property 1.14	Guideline 15.04B
Declining or Termination Representation 1.15 1.15(d)	 Guideline 15.07 Guideline 15.04B
Advisor 2.01	Guideline 15.07
Evaluation for Use by Third Person 2.02	Guideline 15.07
Meritorious Claims and Contentions 3.01	Guideline 15.05B
Minimizing the Burdens and Delays of Litigation 3.02	Guideline 15.05B
Candor Toward the Tribunal 3.03	Guideline 15.05A
Fairness in the Adjudicatory Proceedings 3.04	Guideline 15.05B; 15.05A
Maintaining Impartiality of Tribunal	Guideline 15.05C

3.05	
Maintaining Integrity of Jury System	Guideline 15.05C
3.06	
Trial Publicity	Guideline 15.05B
3.07	
Lawyer as Witness	Guideline 15.04D
3.08	
Special Responsibilities of a Prosecutor	Guideline 15.05B; 15.06B
3.09	
Advocate in Nonadjudicative Proceedings	Guideline 15.05B; 15.05C
3.10	
Truthfulness in Statement to Others	Guideline 15.05A
4.01	
Communication with One Represented by Counsel	Guideline 15.05C
4.02	
Dealing with Unrepresented Person	Guideline 15.05C
4.03	
Respect for Rights of Third Persons	Guideline 15.05B
4.04	
Responsibilities of a Partner or Supervisory Lawyer	Guideline 15.07
5.01	
Responsibilities of a Supervised Lawyer	Guideline 15.07
5.02	
Responsibilities Regarding Nonlawyer Assistants	Guideline 15.07
5.03	
Professional Independence of a Lawyer	Guideline 15.07; 15.04D
5.04	
Unauthorized Practice of Law	Guideline 15.07
5.05	

Restrictions on Right to Practice 5.06	Guideline 15.07
Prohibited Discriminatory Activities 5.08	Guideline 15.05B
Accepting Appointments by a Tribunal 6.01	Guideline 15.07
Firm Names and Letterhead 7.01	Guideline 15.07
Communications Concerning a Lawyer's Services 7.02	Guideline 15.07
Prohibited Solicitations and Payments 7.03	Guideline 15.07
Advertisements in the Public Media 7.04	Guideline 15.07
Prohibited Written, Electronic, or Digital Solicitation 7.05	Guideline 15.07
Prohibited Employment 7.06	Guideline 15.07
Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations 7.07	Guideline 15.07
Bar Admission, Reinstatement, and Disciplinary Matters 8.01	Guideline 15.07
Judicial and Legal Officials 8.02	Guideline 15.07
Reporting Professional Misconduct 8.03	Guideline 15.07
Misconduct 8.04	Guideline 15.04--15.08

8.04(a)(2)(5)(6)(9)	15.06A
8.04(a)(3)	15.04E; 15.05A
8.04(a)(4)	15.05A
8.04(a)(7)(10)(11)	15.08
8.04(a)(8)(12)	15.07

Jurisdiction	Guideline: None
8.05	

Severability	Guideline: None
9.01	

<An order of the Supreme Court dated Feb. 26, 1991, as amended by an order of the Supreme Court dated Oct. 9, 1991, adopted the Texas Rules of Disciplinary Procedure, effective May 1, 1992.>

<An order of the Supreme Court dated Aug. 28, 2018, amended the Rule of Disciplinary Procedure, applying the amendments to grievances filed on or after June 1, 2018. The order also adopted a cross-reference table for the Guidelines on Imposing Sanctions as Appendix A to the Rules of Disciplinary Procedure. >

V. T. C. A., Govt. Code T. 2, Subt. G App. A-1, Disc. Proc., App. A, TX ST RULES DISC P App. A
Current with amendments received through August 1, 2023. Some rules may be more current, see credits for details.

End of Document