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BODA NO. 72117

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

IN THE BOARD OF DISCIPLINARY APPEALS

Annette Loyd,
Appellant
vs.
Commission for Lawyer Discipline,
Appellee

On Appeal from the Chief Disciplinary Counsel
For the State Bar of Texas,
Case No. 2023-00582

APPELLANT'S BRIEF

Appellant:

Annette R. Loyd
Box 7210
Fort Worth, Texas 76111
arlvanicek@gmail.com
Telephone (817) 769-2724

Identity of Parties and Counsel

Appellant:	Annette R. Loyd P. O. Box 7210 Fort Worth, Texas 76111 arlvanicek@gmail.com
Appellee:	Commission for Lawyer Discipline
Appellate Counsel:	Michael Graham Appellate Counsel Office of the Chief Disciplinary Counsel P. O. Box 12487 Austin, TX 78711 Michael.graham@texasbar.com
Trial Counsel:	Deborah Bornio Laurie Guerra Deborah.bornio@texasbar.com Office of the Chief Disciplinary Counsel 14651 Dallas Parkway, Suite 925 Dallas, TX 75254

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STATEMENT OF THE CASE

Nature of the Case:	This case is about whether the District 7 Grievance Committee, Evidentiary Panel 7-1 abused its discretion by entering a Default Judgment and denying Appellant's Motion for New Trial, and whether the sanctions of disbarment imposed on Appellant are appropriate given the circumstances.
Tribunal:	District 7 Grievance Committee, Evidentiary Panel 7-1
Trial Court Disposition:	The District 7 Grievance Committee, Evidentiary Panel 7-1, entered a Default Judgment of disbarment against Appellant.

STATEMENT OF JURISDICTION

The Board of Disciplinary Appeals has jurisdiction over this matter pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure because this is an appeal from a judgment entered by the District 7 Grievance Committee, Evidentiary Panel 7-1.

ISSUES PRESENTED

- Issue 1:** Whether the District 7 Grievance Committee, Evidentiary Panel 7-1 abused its discretion by denying Appellant's Motion for New Trial?
- Issue 2:** Whether there is legally and factually sufficient evidence to support the default judgment?
- Issue 3:** Are the sanctions of disbarment imposed on Appellant appropriate?

To the Honorable Board of Disciplinary Appeals:

Comes now, Annette R. Loyd, Appellant in the above-styled and numbered matter, and files her Appellant's Brief in this cause. In support of same, Appellant would respectfully show the Board as follows:

PROCEDURAL BACKGROUND

On October 11, 2024, the Commission for Lawyer Discipline ("Petitioner" or "the Commission") filed its Evidentiary Petition and Request for Disclosure ("Petition"), alleging that Respondent violated 1.06(b)(2), 1.06(d), 1.09(a)(2) and 8.04(a)(8) of the Texas Disciplinary Rules of Professional Conduct ("TDRPC").

On July 3, 2025, the Commission filed a Motion for Default Judgment against Respondent. A hearing on Petitioner's Motion for Default Judgment was set for November 2, 2022, at 1:30 p.m.

On August 6 2025, Respondent filed her Original Answer and Request for Continuance, requesting a thirty-day continuance of the Default Judgment Hearing. Although Respondent had filed an answer and sought the continuance, Respondent attended the hearing on Petitioner's Motion for Default Judgment via Zoom videoconference (the "Default Judgment Hearing").

At the Default Judgment Hearing, the Evidentiary Panel denied any motion for continuance and moved forward with the Default Judgment without considering my Original Answer.

On August 15, 2025, the Evidentiary Panel entered the Default Judgment of Active Suspension against Respondent (the "Default Judgment"). According to the Default Judgment, all material allegations in the Petition were deemed true. In addition, the Default Judgment ordered that Respondent be disbarred from the practice of law and ordered Respondent to surrender her Texas Law License and permanent State Bar card, ordered Respondent to pay reasonable and necessary attorneys' fees and direct expenses to the Bar, and made several other related orders regarding Respondent.

On September 15, 2025, Respondent files this Motion for New Trial and to Vacate Default Judgment and for Reconsideration, with a Declaration under Penalty of Perjury and supporting documents attached thereto.

On October 1, 2025, a hearing on the Motion for New Trial was held and thereafter an order denying the motion for new trial was entered on the same day. Appellant filed a notice of appeal to this Board on November 13, 2025.

SUMMARY OF ARGUMENTS

The sanctions imposed on Appellant, Annette R. Loyd, are severe and inconsistent with the stated purpose of the attorney discipline process. Moreover, such sanctions are not appropriate, given the facts of this case. Appellant filed her Original Answer before the Default Judgment Hearing, which Appellant attended.

In addition, Appellant's Motion for New Trial filed on September 15, 2025 clearly satisfies the *Craddock* test established by the Supreme Court of Texas. *Craddock v. Sunshine Bus. Lines, Inc.*, 133 S.W.2d 124, 126 (Tex. 1939). First, Appellant's failure to file a timely answer was neither intentional nor the result of Appellant's conscious indifference. Second, Appellant established a meritorious defense to Appellee's allegations of professional misconduct by demonstrating her compliance with the 2018 Judgment. Finally, granting a new trial and allowing Appellant the opportunity to present her case would not have caused delay or injury to Appellee. Accordingly, Appellant is entitled to a new trial, and the Evidentiary Panel's decision to deny Appellant's Motion for New Trial was a clear abuse of its discretion.

ARGUMENT AND AUTHORITIES

While Respondent filed an answer before the Default Judgment Hearing, the Evidentiary Panel proceeded with the Default Judgment Hearing, treating the matter as a no-answer default judgment. To overturn a no-answer default judgment, the Supreme Court of Texas has established a three-factor test. *Craddock v. Sunshine Bus. Lines, Inc.*, 133 S.W.2d 124, 126 (Tex. 1939). Under the *Craddock* test, a no-answer default judgment should be vacated, and a new trial granted when the defaulting party establishes the following: (1) the failure to answer or to appear was not intentional or the result of conscious indifference but rather was due to a mistake or an accident; (2) the motion for a new trial sets up a meritorious defense; and (3) granting a new trial will not cause delay or other injury to the prevailing party. *In re R.R.*, 209 S.W.3d 112, 115 (Tex. 2006); *Craddock*, 133 S.W.2d at 126. When the defaulting party satisfies all three elements of the *Craddock* test, a trial court abuses its discretion if it fails to grant a new trial. *Old Republic Ins. Co. v. Scott*, 873 S.W.2d 381, 382 (Tex. 1994). Respondent contemporaneously submits her Declaration under Penalty of Perjury, with evidence and documents attached thereto, in support of this Motion.

The first element of the *Craddock* test requires the defaulting party to show that its failure to answer was due to mistake or accident, and not the result of conscious indifference. *Craddock*, 133 S.W.2d at 126. Failing to answer or appear intentionally or by conscious indifference means “that the defendant knew it was sued but did not care.” *Fidelity & Guar. Inc. Co. v. Drewery Const. Co., Inc.*, 186 S.W.3d 571, 576 (Tex. 2006). “An excuse need not be a good one to suffice.” *Id.* Here, Respondent’s failure to timely answer the Petition was the result of an accident or mistake. Respondent mistakenly believed that the Texas Rules of Civil Procedure governed the proceedings before the Evidentiary Panel.² Specifically, Respondent believed that Petitioner could not take a

default judgment against Respondent if she had an answer on file before the Default Judgment Hearing. *Id.*; *see also In re S.K.A.*, 260 S.W.3d 463 (Tex. 2008) (no-answer default may not be taken even if the defendant files his or her answer at the hearing to grant default). Consequently, once Respondent filed her Original Answer, she believed that she would have another opportunity to establish that the allegations alleged by Petitioner were false.

Respondent's conduct demonstrates that her failure to file a timely answer was not the result of conscious indifference, but because of accident or mistake. Therefore, the first prong of the *Craddock* test is satisfied by Respondent.

Additionally, Respondent's anxiety and depression coupled with low self-esteem affects her ability to respond for herself in these types of proceedings, and instead Respondent's instinct is to withdraw and disengage from interacting with others or responding.

The second element of the *Craddock* test requires Respondent to set up a meritorious defense. *Craddock*, 133 S.W.2d at 126. For the purposes of this Motion, Respondent's factual assertions regarding meritorious defenses must be accepted as true. *Estate of Pollack v. McMurrey*, 858 S.W.2d 388, 392 (Tex. 1993). Furthermore, Respondent's defenses are sufficient if at least a portion of the judgment would not be sustained upon retrial of the case. *Gotcher v. Barnett*, 757 S.W.2d 398, 401 (Tex. App. Houston [14th Dist.] 1988, no writ).

The Commission alleged without proof that Respondent violated TDRPC 1.06(b)(2), 1.06(d), 1.09(a)(3) and 8.04(a)(8), with respect to a real estate transaction involving owner finance sale of a home by Walid Elwai and his mother, Naida Fathelbab and another relative, Ahmed Mostafa, to Amr Khayat and his wife, Fatima Al-Najjar in 2019. At the time, Elwai, Fathelbab and Mostafa were represented by Asem Eltiar, who was listed as the Trustee in the Deed of Trust recorded in Tarrant County, Texas, Respondent represented the purchasers and drew the

documents which were reviewed by the sellers' attorney, Asem Eltiar. The transaction proceeded and was closed in 2019.

Three years later in June 2022, Elwai and Fathelbab, assisted by new counsel, David Pritchard, sought to foreclose under the Deed of Trust, due to violations of HOA rules and covenants most of which occurred while Mostafa was the owner of the property, and because Khayat and Al-Najjar had secured a property tax loan from FGMS, Inc., to pay real estate property taxes which had accrued after purchase. Respondent was retained to defend the purchasers and enjoin the foreclosure by Elwai, and Fathelbab through court proceedings. A restraining order was granted and ultimately a temporary injunction was entered by the district court and litigation remains pending between and among these parties. No effort was made by David Pritchard as counsel for Elwai and Fathelbab to disqualify Respondent as counsel for the purchasers because of any conflict of interest. A meritorious defense exists because there is no conflict of interest satisfying Elwai's allegations.

The third element of the *Craddock* test is intended to protect Petitioner from "the sort of undue delay or injury which disadvantages him in presenting the merits of his case at a new trial, such as loss of witnesses or other valuable evidence upon retrial." *Jackson v. Mares*, 802 S.W.2d 48, 51 (Tex. App.—Corpus Christi 1990, writ denied). No such delay or injury exists in this case. First, Petitioner's only witness during the Default Judgment Hearing was a compliance monitor for the State Bar of Texas. If the Default Judgment is set aside, nothing would prevent Petitioner from offering the same testimony and evidence it presented to the Panel in obtaining the Default Judgment, at a future hearing. In addition, in accordance with the Default Judgment, Respondent has offered reimbursed Petitioner's attorney's fees and reasonable expenses incurred in obtaining the Default Judgment by September 30, 2025, which is much sooner than the due date.

Accordingly, the third element of the *Craddock* test is satisfied because setting aside the default judgment did not cause undue delay or harm to the Commission, nor will it result in any other injury to the Commission.

Sanction of disbarment is extreme. TRDP 15.01.A provides that the “purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the profession.” TEX. R. DISCIPLINARY P. 15.01.A. As it relates to the imposition of sanctions, TRDP 15.02 states that “[i]n imposing a sanction after a finding of Profession Misconduct, the disciplinary tribunal should consider the following factors: (a) the duty violated; (b) the Respondent’s level of culpability; (c) the potential or actual injury caused by the Respondent’s misconduct, and; (d) the existence of aggravating or mitigating factors. *Id.* at 15.02.

In cases involving prior disciplinary orders, absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, a suspension is generally appropriate when a “Respondent has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.” *Id.* However, a public reprimand is generally an appropriate sanction in cases involving disciplinary orders when a respondent attorney “(a) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession.” *Id.* Further, mitigating circumstances may justify a reduction in the degree of discipline to be imposed. Pursuant to Rule 15.09.C.2, examples of mitigating factors include: personal or emotional problems; timely good

faith effort to make restitution or to rectify consequences of misconduct; and character or reputation. *Id.* at 15.09.C.2(c), (d), and (g).

Here, the sanctions imposed on Appellant do not serve the purposes of the lawyer discipline process. TEX. R. DISCIPLINARY P. 15.01.A. First and foremost, the findings of Professional Misconduct against Appellant set out in the Default Judgment, are not based upon the allegations of Appellant's misconduct with respect to the alleged misconduct but are limited to her failure to timely submit her Answer to the Evidentiary Petition in the present case, which was the result of Appellant's accident or mistake, not Appellant's intentional conduct. Additionally, Appellant was denied an opportunity to present evidence or statements of her mental health counselor, Dr. Klinefelter, regarding her ability to meet her professional duties to her clients, the public, the legal system, and the profession.

Moreover, several mitigating circumstances must be considered in determining the appropriate sanction for Appellant. First, during the hearing on Appellant's Motion for New Trial, Appellant. In addition, Appellant timely complied with all requirements outlined in the Default Judgment against her.

Based on the information outlined above, it is clear that disbaring Appellant from practicing law is an excessive sanction that is not appropriate under these circumstances. Depriving Appellant of her livelihood is a severe punishment that is inconsistent with facts of this case and with the sanctioning instructions outlined in Chapter 15 of the Texas Rules of Disciplinary Procedure.

WHEREFORE, PREMISES CONSIDERED, Appellant Annette R. Loyd respectfully requests that the Board of Disciplinary Appeals reverse and remand the Evidentiary Panel's Default Judgment of Disbarment and return this matter for further proceedings before the Evidentiary Panel, or in the alternative, that the Board of Disciplinary Appeals enter an order modifying the sanctions against Appellant, and grant such other and further relief at law or equity to which Appellant may be justly entitled.

Respectfully submitted,

 /s/ Annette R. Loyd
Annette R. Loyd
Box 7210
Fort Worth, Texas 76111
arlvanicek@gmail.com
Telephone (817) 769-2724
Appellant

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing instrument was served on the following via email on January 14, 2026:

Board of Disciplinary Appeals
Attn: Appeals from Evidentiary Panel Hearings
P O Box 12426
Austin, TX 78711
filing@txboda.org

Michael Graham
Office of the Chief Discip Counsel /s/ Annette R. Loyd
P. O. Box 12487
Austin, TX 78711
michael.graham@texasbar.com
Annette R. Loyd