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Appointed by the Supreme Court of Texas

No. 68164

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

PEJMAN MAADANI,
STATE BAR OF TEXAS CARD No. 24052152,
APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

*On Appeal from an Evidentiary Panel
For the State Bar of Texas District 4
No. 202102105 [Allen]*

BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

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No. 68164

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PEJMAN MAADANI,

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V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

*On Appeal from an Evidentiary Panel
For the State Bar of Texas District 4
No. 202102105 [Allen]*

**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, Pejman Maadani. For clarity, this brief refers to Appellant as “Maadani” and Appellee as “the Commission.” References to the record are labeled CR (clerk’s record), RR EH (reporter’s record of the evidentiary hearing held on Aug. 2, 2023), RR EH, Pet. Ex. __ (Petitioner’s exhibits admitted at the evidentiary hearing), RR EH, Resp. Ex. __ (Respondent’s exhibits admitted at the evidentiary hearing), RR MfNT (reporter’s record of the hearing held on

Maadani’s motion for new trial on Aug. 23, 2023), and App. (appendix to brief).
References to Appellant’s Brief are labeled Apt. Br. References to rules refer to the
Texas Disciplinary Rules of Professional Conduct (the “TDRPCs”) or the Texas
Rules of Disciplinary Procedure (the “TRDPs”), as appropriate.¹

¹ *Reprinted in* TEX. GOV’T CODE ANN., tit. 2, subtit. G, app A (West 2023), and TEX. GOV’T CODE ANN., tit. 2, subtit. G, app A-1 (West 2023), respectively.

STATEMENT OF THE CASE

Type of Proceeding: Attorney Discipline

Petitioner/Appellee: The Commission for Lawyer Discipline

Respondent/Appellant: Pejman Maadani

Evidentiary Panel: 4-3

Judgment: Judgment of Active Suspension
[App 1] [CR 316-20]

*Violations found (Texas
Disciplinary Rules of
Professional Conduct):*

Rule 4.04(a): In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Rule 4.04(b)(1): A lawyer shall not present, participate in presenting, or threaten to present criminal or disciplinary charges solely to gain an advantage in a civil matter.

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 4 Grievance Committee pursuant to Rules 2.23 and 7.08(D) of the Texas Rules of Disciplinary Procedure.

STATEMENT AS TO ORAL ARGUMENT

Appellant's statement as to oral argument is ambiguous and/or conditional. Pursuant to Rule 4.06(b) of the Board's Internal Procedural Rules, Appellee believes oral argument is unnecessary in this case as the facts and legal arguments are adequately presented in the briefs and the record, and the Board's decisional process would not be significantly aided by oral argument. However, should the Board grant oral argument to Appellant, Appellee requests the opportunity to respond.

STATEMENT OF THE ISSUES

1. Maadani has waived his issues by failing to brief them properly.
2. Assuming arguendo that Maadani's issues were properly briefed, the record still does not support his arguments:
 - A. The quorum of the evidentiary panel which heard Maadani's case was properly composed of two attorneys and two public members.
 - B. Maadani's conduct while representing himself in his own child custody case is still subject to the ethical requirements of the TDRPCs.
 - C. Substantial evidence supports the evidentiary panel's conclusions that Maadani violated TDRPCs 4.04(a) and/or 4.04(b)(1).
 - D. The evidentiary panel did not abuse its discretion in denying Maadani's motion for new trial.
 - E. The evidentiary panel acted within its discretion when it assessed a 4-year Active Suspension against Maadani for his ethical violations.

STATEMENT OF FACTS

I. Procedural History

On or about April 2, 2021, attorney Amy Allen (“Allen”) filed a grievance against Appellant, Pejman Maadani, which was subsequently upgraded to a complaint by the Office of the Chief Disciplinary Counsel (“CDC”). [App 2] [CR 48-51 (specifically, CR 50)]. After preliminary investigation, the CDC notified Maadani it had determined that his alleged behavior concerned in Allen’s complaint, constituted potential violations of TDRPCs 4.04(a) and 4.04(b)(1). [App 3] [CR 7-15].

On June 27, 2022, Maadani elected, pursuant to TRDP 2.14(D), to have the matter heard before an evidentiary panel of the District Grievance Committee for his district. [CR 17-25]. The District 4 Grievance Committee was made up of six (6) evidentiary panels comprising a total of thirty-six members; twenty-four (24) of the members were attorneys and twelve (12) of the members were public members. [CR 27-31].

On August 17, 2022, the Chair of the District 4 Grievance Committee assigned Allen’s complaint to proceed before an evidentiary panel of the District 4 Grievance Committee – the panel was made up of four (4) attorney members and two (2) public members. [CR 33-35]. That same day, Maadani was provided a copy of the Order Assigning Evidentiary Panel and a list of the assigned panel members. [CR 37-44].

Further, on January 17, 2023, Maadani was notified of a change in the assigned panel members. [CR 96-98]. This change replaced one of the public members on the panel with a different public member, but otherwise the composition of the panel was unchanged. [*cf.* CR 43 & 98].

On August 24, 2022, the Commission for Lawyer Discipline (the “Commission”) filed its Original Evidentiary Petition related to Allen’s complaint against Maadani (the “Evidentiary Petition”). [App 2]. Generally, the Evidentiary Petition alleged that **while representing himself** in a divorce and child custody matter against his former wife and Allen’s client, Dr. Kristy Ward (“Dr. Ward”), Maadani: (i) repeatedly made unsubstantiated claims against Allen, Dr. Ward and her family, and others (including the district court in which the child custody matter was pending), that were harassing and/or threatening in nature; and (ii) threatened to present and/or presented disciplinary charges against Allen, Dr. Ward, and/or others. [Id.]. Further, the Evidentiary Petition alleged that Maadani’s conduct in those respects had no substantial purpose other than to embarrass, delay or burden third persons and/or was done solely to gain an advantage in the child custody matter. [Id.].

On September 13, 2022, Maadani filed his Answer and Rule 12 Motion, *pro se*. [CR 70-73]. Maadani’s disciplinary matter was initially set for an evidentiary hearing to be held via video and tele-conference on March 1, 2023. [CR 75-79].

However, it was ultimately re-set to be held via video and tele-conference on August 2, 2023. [CR 81-88; 90-94; and 135-39]. Additionally, at some point between Maadani’s *pro se* filing of his answer, and the initial notice of the evidentiary hearing, attorney Clifford A. Lawrence, Jr. (“Lawrence”), appeared in the matter on Maadani’s behalf. [cf. CR 70-73 & 75-79]. On July 17, 2023, Lawrence filed Maadani’s Supplemental Answer. [CR 174-83].

II. The Evidentiary Hearing

The evidentiary hearing in Maadani’s case was held on August 2, 2023. [RR EH]; [App 1]. A quorum of the evidentiary panel members were present for the hearing and included: (1) Mr. David Nachtigall, Chair of the panel and a lawyer member; (2) Ms. Nicole Wignall Deborde, a lawyer member; (3) Mr. Patrick Buckley, a public member; and (4) Ms. Shayla Westmoreland, a public member. [RR EH 7]; [App 4] [CR 202-04].

At the outset of the hearing, disciplinary counsel represented that the Commission would not pursue the factual allegations from Paragraph Nos. 10, 11, and 12 of its Evidentiary Petition, though it was still proceeding as to potential rule violations under both TDRPCs 4.04(a) and 4.04(b)(1). [RR EH 12]; [App 2]. Those particular claims regarded Maadani’s alleged attempts to participate in bringing an attorney disciplinary proceeding against Allen under the name of Maadani’s father. [App 2].

While representing himself in the child custody matter against his ex-wife, Dr. Ward, Maadani sent numerous communications to Allen, Dr. Ward, and others, and made filings in the child custody matter, which Allen perceived as harassing and/or burdensome. [RR EH 20, 27-29, 32-34, 38-48, 50-64 (Allen’s testimony)]; [RR EH 130-33, 137-39, 166-67, 171-73 (Maadani’s testimony)]. Maadani’s communications and filings in connection with the child custody matter included:

- i) Nine (9) “Notices of Violation” that Maadani filed with the district court in the child custody matter, containing a litany of complaints he had regarding (amongst other things) his ex-wife Dr. Ward and their interactions within the context of the child custody matter. [RR EH 21-27]; [RR EH, Pet. Exs. 1-9].
- ii) Two (2) e-mails Maadani sent to Allen and her office staff on August 27th and September 8th, 2020, stating Allen should teach Dr. Ward “proper communication” skills and implying that Dr. Ward was “mentally challenged,” amongst other things. [RR EH 34-37]; [RR EH, Pet. Exs. 10 & 11]. Each of those e-mails included a signature block referencing Maadani’s law firm information and his State Bar Number.
- iii) Four (4) e-mails Maadani sent to Allen and her office staff from September 24-26, 2020, continually escalating Maadani’s demands for payment from \$500 to \$32,000, to dismiss and/or withdraw his threatened response/counterclaim to Dr. Ward’s motion to enforce their divorce decree. [RR EH 37-41]; [RR EH, Pet. Ex. 13]. Each of those e-mails included a signature block referencing Maadani’s law firm information and his State Bar Number.
- iv) E-mail communications between Maadani and Allen (and including the district court) on October 6th & 7th, 2020, regarding the re-setting of a hearing on Dr. Ward’s petition for enforcement in the child custody matter. [RR EH 55-58]; [RR EH, Pet. Ex. 14]. Each of those e-mails included a signature block referencing Maadani’s law firm information and his State Bar Number.

- v) Six (6) sets of e-mails Maadani sent to Allen; her office staff; Dr. Ward (as to at least two of the sets); Allen’s supervisory partner (as to at least one of the sets); and the district court’s coordinator (as to at least three of the sets) – between October 19, 2020, and February 22, 2021. Those included emails in which Maadani disparaged both Dr. Ward and Allen, including expressing his beliefs that Allen was incompetent and Dr. Ward had a “mental disease.” [RR EH 41-45]; [RR EH, Pet. Exs. 15-20]. Each of those e-mails included a signature block referencing Maadani’s law firm information and his State Bar Number.
- vi) Five (5) e-mails Maadani sent to Allen and Dr. Ward – between March 3rd & 10th, 2021 – attached as exhibits to a Motion Seeking Prevention of International Parental Child Abduction filed by Dr. Ward in the child custody matter. [RR EH 45-47]; [RR EH, Pet. Ex. 21, attachments]. Each of those e-mails included a signature block referencing Maadani’s law firm information and his State Bar Number.
- vii) Two (2) e-mails sent from Maadani to Allen and Dr. Ward on March 11, 2021, the first of which was made up (substantively) of only the “Subject” line, “Withdrawal (sic) your motion or you will be sorry.” [RR EH 47-48]; [RR EH, Pet. Exs. 22 & 23]. These e-mails related to the motion seeking prevention of international abduction Dr. Ward filed in the child custody matter. Each of those e-mails included a signature block referencing Maadani’s law firm information and his State Bar Number.
- viii) A Petition for Defamation, Libel and Slander Maadani filed and signed as counsel of record in the child custody matter on March 11, 2021, and three (3) e-mails related to that petition Maadani sent to Allen, her office staff, her supervisory partner, and/or Dr. Ward on March 11th & 30th, 2021. Again, each of the referenced e-mails included a signature block referencing Maadani’s law firm information and his State Bar Number. [RR EH 48-53]; [RR EH, Pet. Exs. 24-27].
- ix) An e-mail Maadani sent to Dr. Lauren Goonan, a child psychologist the parties had engaged for professional services in the child custody matter, on January 21, 2021, asking Dr. Goonan to forward Maadani a copy of her malpractice insurance and that she notify her insurance company of Maadani’s “claims.” [RR EH 63-65]; [RR EH, Pet. Ex. 29]. This e-mail also included the signature block referencing Maadani’s law firm information and his State Bar Number.

- x) Facebook messages Maadani sent to Ms. Ann Brown, Dr. Ward's aunt, on October 6, 2020. [RR EH 163-65]; [RR EH, Resp. Ex. 20].

Further, Maadani threatened to present, and did present, disciplinary charges against his ex-wife Dr. Ward to the Texas Medical Board. [RR EH 33-34, 54, 57-60, 61-63 (Allen's testimony)]; [RR EH, Pet. Exs. 14, 25 & 26]; [RR EH 71-73 (Dr. Nizam Peerwani's testimony)]; [RR EH 164, 168-69, 171, 187-88 (Maadani's testimony)]. The Texas Medical Board found no violations on the part of Dr. Ward. [RR EH 59-60 (Allen's Testimony)]. Finally, Maadani also threatened to present criminal charges against Dr. Ward. [RR EH 61-62]; [RR EH, Pet. Ex. 20].

III. The Judgment and this appeal

At the completion of the evidentiary hearing the evidentiary panel found that Maadani's above-described conduct constituted violations of both TDRPC 4.04(a) and 4.04(b)(1), and imposed a 4-year Active Suspension, along with \$3,897.50 in attorney's fees and costs. [RR EH 205-08]. On August 14, 2023, the Chair of the evidentiary panel signed a Judgment of Active Suspension, in accordance with the panel's decision. [App 1].

That same day, Maadani filed his Notice of Appeal and Motion for Dismissal, Mistrial, New Trial, or in Alternative Motion for Reduction of Sentence and Legal Fees. [CR 330-68]. On August 16, 2023, Maadani filed his Amended Motion for Dismissal, Mistrial, New Trial, or in Alternative Motion for Reduction of Sentence

and Legal Fees and Motion to Stay and Abate Current Voidable Judgment. [CR 372-409]. The Commission also filed its response to Maadani's motions on August 16th. [CR 412-23]. The panel heard argument on Maadani's post-judgment motions on August 23, 2023. [RR MfNT]. On August 28, 2023, the panel issued its order denying Maadani's post-judgment motions. [App 5] [CR 484]. This appeal followed.

SUMMARY OF THE ARGUMENT

The Board should affirm the final Judgment of Active Suspension against Maadani. Maadani has not properly briefed any of his asserted issues and as such, has presented nothing for the Board to review and has waived such issues. Further, even if the Board were to determine Maadani *had* met the applicable briefing requirements, the record provides no support for his arguments.

In his first issue, Maadani improperly conflates the requirements set forth in the TRDPs for the composition of evidentiary panels and the mix of panel members necessary for a quorum. Here, the evidentiary panel was at all times properly composed of four attorney members and two public members pursuant to the required ratio. Further, the quorum of the panel that conducted Maadani's evidentiary hearing was appropriately made up of two attorney members and two public members.

Similarly, in his second and third issues, Maadani contends that as a matter of law, his conduct while representing himself in his own child custody case is not subject to the ethical requirements of the TDRPCs. But he provides no relevant authority in support of his contentions that: (1) his conduct during his child custody litigation constituted only a "family affair," that was exempt from the application of his ethical obligations as an attorney; or (2) that his representation of himself exempted him from the application of those same obligations.

With his fourth issue, Maadani essentially argues there was insufficient evidence presented to demonstrate that he engaged in the complained-of conduct during the underlying child custody litigation for improper purposes. However, there is ample evidence in the record to support the evidentiary panel's findings that Maadani: (1) used means having no substantial purpose other than to embarrass, delay or burden a third person, or used methods of obtaining evidence that violated the legal rights of such a person; and (2) threatened to present or presented disciplinary charges solely to gain an advantage in the child custody case – violations of both TDRPC 4.04(a) and 4.04(b)(1). Substantial evidence supports the panel's findings that Maadani failed to live up to those standards.

In his fifth issue, Maadani contends the panel abused its discretion in denying his motion for new trial. But here again, he provides no relevant authority in support of his contention that the panel abused its discretion. Rather, he simply argues that the panel *could* have granted his motion. Nevertheless, the record here demonstrates the panel was also within its discretion to deny Maadani's motion.

Finally, Maadani argues the sanction imposed by the panel was excessive. The record in this matter does not support his argument. The facts established in the case, in light of the sanctioning guidelines set forth in Part XV of the TRDPs, support the panel's sanction and the panel's Judgment should be affirmed.

ARGUMENT

I. Maadani’s issues are not properly before the Board.

At the outset, the Commission notes that Maadani’s brief fails to properly present his issues for the Board’s review. Maadani’s “Statement of the Facts” does not include a single citation to the record for factual support for **any** of his issues. [Apt. Br. 5-9]. Rather, his “Statement of the Facts” is rife with gratuitous disparaging remarks directed at his ex-wife Dr. Ward, her family, Ms. Allen, his own trial attorney – Mr. Lawrence, and at least one member of the evidentiary panel, all unsupported by any references to the record. [Id.].

While Maadani provides four references to the reporter’s record for his August 2, 2023, evidentiary hearing in his “Statement of the Case,” he mischaracterizes the context of each of those references. [Apt. Br. 2]. Further, while Maadani references several numbered “Exhibits” throughout the argument accompanying his “Issue #4,” he again provides no record references identifying such items in the record. [Apt. Br. 22-31].

Many of Maadani’s legal arguments have similar shortcomings. For example, in his second issue Maadani essentially argues that the Commission’s disciplinary proceeding against him is improper as it targeted his “family affairs.” [Apt. Br. 14-17]. But he fails to provide authority in support of the proposition that disciplinary charges regarding his conduct in the course of ongoing child custody litigation

would be improper, beyond vague references to alleged definitions of “family affairs,” an ethics opinion that addresses an attorney’s ethical rights/obligations when dealing with clients who have provided hot checks as ostensible payment for the attorney’s legal services, and his own conclusory assertions that such charges somehow breach a “Constitutionally protected zone of privacy.” [Id.]

By failing to brief his issues properly, Maadani has presented nothing for the Board’s review and has waived such issues. *See* TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.05(c)(7) (requiring that a brief to BODA in an appeal from an evidentiary panel hearing contain “a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal”); *see also*, TEX. R. APP. P. 38.1(g), (i) (requiring that an appellate brief “be supported by record references” and “contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record”); *Izen v. Comm’n for Lawyer Discipline*, 322 S.W.3d 308, 321-22 & 25-26 (Tex.App.-Houston [1st Dist.] 2010, pet. denied); *Smith v. Comm’n for Lawyer Discipline*, 42 S.W.3d 362, 364 (Tex.App. – Houston [14th Dist.] 2001, no pet.); *see also Lohmann v. Sanchez*, No. 01-19-00984-CV, 2021 WL 3043415, at *4 (Tex.App. – Houston [1st Dist.] July 20, 2021, pet. denied) (mem. op.). “When an appellate issue is unsupported by argument or lacks citations to the record or legal

authority, nothing is presented for review.” *Sanchez*, 2021 WL 3043415, at *4, citing *Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284-85 (Tex. 1994).

II. Assuming arguendo that Maadani’s issues were properly briefed, the record still does not support his arguments.

Even if Maadani’s failure to properly brief the issues had not waived his arguments, the record provides no support for them.

A. The quorum of the evidentiary panel was properly composed of two attorneys and two public members.

Maadani’s first issue centers around his contention that it was improper for the evidentiary panel in his case to proceed with a quorum composed of two attorneys and two public members. [Apt. Br. 11-14]. Maadani’s arguments in this respect fail to appropriately account for the distinction between the requirements for the composition of an *evidentiary panel* versus the composition of a *quorum* of an evidentiary panel.

1. Composition of an evidentiary panel generally

The TRDPs require all District Grievance Committee *panels* to be composed of two attorney members for each public member. TEX. RULES DISCIPLINARY P. R. 2.02, 2.07 & 2.17. Here, the evidentiary *panel* assigned to Maadani’s disciplinary proceeding was (at all times) made up of four attorney members and two public members – clearly within the requirements of the Rules. [CR 33-35 & 96-98]. Maadani argues “This ratio **must be** followed in Evidentiary Quorum as well.” [Apt.

Br. 12]. However, neither the plain language of the TRDPs nor the authorities Maadani offers in support of his contention evidence such a requirement.

2. *Quorum of an evidentiary panel*

The State Bar Act, passed by the legislature “in aid of the judicial department’s powers under the constitution to regulate the practice of law,” provides that “A *quorum* of a panel of a district grievance committee of the state bar must include one public member for each two attorney members.” TEX. GOV’T CODE §§ 81.011(b) & 81.072(j) (emphasis added), respectively. The TRDPs also provide that an evidentiary panel may properly act through less than all of its members via a *quorum*. TEX. RULES DISCIPLINARY P. R. 2.07. Specifically, TRDP 2.07 states “A quorum must include **at least** one public member for every two attorney members present and consists of a majority of the membership of the panel, and business shall be conducted upon majority vote of those members present, a quorum being had.” *Id* (emphasis added).

The Board has previously addressed the circumstances in which a *quorum* is properly constituted for a properly constituted evidentiary panel. See e.g., *Caftero v. Comm’n for Lawyer Discipline*, BODA Case No. 37811 (March 23, 2007) at 7-15 (a mix of 4 attorney members and 1 public member did not constitute a proper quorum) [App 6]; *Allison v. Comm’n for Lawyer Discipline*, BODA Case No. 41135 (June 20, 2008) (en banc) at 2-6 (a mix of 3 attorney members and 1 public member

did constitute a proper quorum) [App 7], aff'd by *In re Allison*, 288 S.W.3d 413 (Tex. 2009).² In fact, the Board's decision in *Allison* presaged the very scenario present in Maadani's case:

Against this background, we determine whether a quorum must consist of no more than two attorneys for each public member (as suggested by Appellant), or whether at least one public member must be present at the hearing for each two attorney members present (the wording of the State Bar Act). To illustrate, the parties would agree that a six-member panel that had two attorney members and one public member present hearing the case would satisfy the attorney/public member requirement but would not constitute a quorum because those present do not constitute a majority of the panel members appointed. *See* TRDP 2.07, State Bar Act §81.072(j). In this example, the addition of one public member would satisfy the quorum requirement that a majority of a six-member panel be present for the hearing. The addition of one public member in this example would also satisfy the requirement that at least one public member for each two attorney members participate. In this example, the quorum would consist of...two public members and two attorney members. *See* State Bar Act §81.072(j).

--*Allison*, BODA Case No. 44135 at 4 (underlined emphasis added).

That is, collectively, the foregoing authorities stand for the proposition that a properly constituted **quorum** of a properly constituted evidentiary panel must include at least one public member for each group of two attorney members. But there is no requirement that such a quorum have only one public member for each

² Compare the Board's decision in *Schaefer v. Comm'n for Lawyer Discipline*, cited by Maadani in his brief, regarding the composition of the evidentiary hearing **panel** assigned to Schaefer's disciplinary proceeding. *Schaefer v. Comm'n for Lawyer Discipline*, BODA Case No. 44292 (Jan. 28, 2011) (en banc) [App 8], rev'd on other grounds by *Comm'n for Lawyer Discipline v. Schaefer*, 364 S.W.3d 831 (Tex. 2012). *Schaefer* raised a distinct question from that raised in *Cafiero* and *Allison* – regarding the authority of a properly constituted quorum of an improperly constituted panel to act in an attorney disciplinary matter.

group of two attorney members. Again, the quorum for Maadani’s evidentiary hearing was made up of two attorney members and two public members – out of a panel that was made up of four attorney members and two public members. [RR EH 7]; [App 4]. Maadani’s complaints as to both the composition of the *panel* that was assigned to hear his disciplinary proceeding and the *quorum* of that panel which ultimately decided his case are without merit.

B. Maadani’s conduct while representing himself in his own child custody case is still subject to the ethical requirements of the TDRPCs.

Maadani’s second and third issues regard his contentions that: (1) his “family affairs” are not the proper subject of a disciplinary inquiry; and (2) an attorney representing himself *pro se* is not subject to the ethical obligations imposed by TDRPC 4.04(a). [Apt. Br. 14-22]. Both of these contentions are without merit.

1. *The Commission’s disciplinary charges against Maadani concerned his conduct as an attorney, not “family affairs” wholly removed from his professional obligations*

Maadani’s second issue is a strawman argument with little to no relevance or application to the actual facts of his disciplinary proceeding. As described at length above, the Commission’s disciplinary proceeding against Maadani arose from his conduct during and/or in connection with a contentious child custody case in which he represented himself against his ex-wife. [CR 46-51]. The panel’s Judgment of Active Suspension reflected its findings and decision as to the appropriate sanction for such conduct. [App 1]. And as Maadani himself points out, the TDRPCs provide:

“A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients *and in the lawyer’s business and personal affairs*. A lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others...”

-- TEX. DISCIPLINARY R. PROF. CONDUCT, PREAMBLE: A LAWYER’S RESPONSIBILITIES, ¶4 (emphasis added).

Further, TDRPC 8.04(a)(1) expressly requires all lawyers to refrain from violating the rules “[w]hether or not the violation occurred in the course of a client-lawyer relationship.”

Maadani also argues that the non-binding Opinion No. 457 of the Professional Ethics Committee for the State Bar of Texas, issued in May 1988 (“Opinion No. 457”), generally stands for the proposition that a lawyer “should not be precluded from doing something that a non-lawyer could do under the same circumstances.” See TEX. COMM. ON PROF’L ETHICS, OP. 457 (1988). But in that respect, Opinion No. 457 was dealing with the narrow question of whether an attorney was ethically precluded from turning over hot checks given to him by clients as ostensible payment for legal services actually rendered, to the District Attorney’s Office for criminal prosecution. *Id.* It was in that context that Opinion No. 457 suggested an attorney would not be precluded from taking such an action that a “non-lawyer could do under the same circumstances.” But Opinion No. 457 also went further and pointed out that even in such circumstances a lawyer still had ethical obligations that required caution in the method of *presenting* any such hot check, so that it would not

appear (for example) that it was done solely for the purpose of obtaining an advantage in a civil matter. *Id.* As such, Maadani’s second issue is without merit.

2. *Attorneys who represent themselves pro se are subject to the ethical requirements of the TDRPCs*

Maadani argues in his third issue that attorneys who represent themselves *pro se* are not subject to the requirements of TDRPC 4.04(a). Maadani’s argument relies on his interpretation of the language of that rule: “In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.” TEX. DISCIPLINARY R. PROF. CONDUCT 4.04(a) (emphasis added). Maadani argues that neither of the definitions for ‘lawyer’ or ‘client’ allow for the possibility that a lawyer representing himself is a ‘client,’ thus TDRPC 4.04(a) cannot apply to a lawyer representing himself *pro se*.

It does not appear this issue has been squarely addressed with respect to TDRPC 4.04(a), but Texas courts have addressed similar arguments with respect to similar provisions of the TDRPCs. In *Vickery v. Comm’n for Lawyer Discipline*, the Houston 14th Court of Appeals addressed a similar argument regarding the “no-

contact” rule contained in TDRPC 4.02(a).³ See *Vickery v. Comm’n for Lawyer Discipline*, 5 S.W.3d 241 (Tex.App. – Houston [14th Dist.] 1999, pet. denied).

In relevant part, *Vickery* concerned an attorney, Vickery, who had gone through a divorce and in the course of litigation aimed at overturning the divorce decree, caused or encouraged a friend, Hoagland (who also happened to be a lawyer, though not necessarily one who was representing Vickery)⁴, to communicate directly with his ex-wife Helen, who was represented by counsel, regarding a potential resolution. *Id.*, at 249-50 & 258-60. Vickery contended (amongst other things) that TDRPC 4.02(a) did not apply to him because any such communication was not made “in the context of representing a client,” as to either he or Hoagland. *Id.*

As support for his argument, Vickery cited a Connecticut case “[w]here an attorney, who was represented by counsel, was being evicted.” *Id.*, at 259 (citing *Pinsky v. Statewide Grievance Comm.*, 578 A.2d 1075 (Conn. 1990)). The *Vickery* Court noted that in *Pinsky*, the subject attorney was a litigant who was represented by counsel, and that in deciding *Pinsky* the Connecticut Supreme Court “[n]oted that

³ The “no-contact” rule contains a similar clause to that at issue in TDRPC 4.04(a): “In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization, or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.” TEX. DISCIPLINARY R. PROF. CONDUCT 4.02(a) (emphasis added).

⁴ Part of what was at issue in *Vickery* was whether Hoagland was acting as Vickery’s lawyer, whether Vickery was being represented by his attorney of record in the matter, Burta Raborn, and/or whether Vickery was representing himself.

contact between litigants is authorized,” and “Without further explanation...concluded the attorney was not representing a client when he sent the letter.” *Vickery*, 5 S.W.3d at 259 (citing *Pinsky*, 578 A.2d at 1079). The *Vickery* Court then identified cases from other jurisdictions that “have held that where an attorney is representing himself, he is necessarily representing a client and can be charged with unauthorized contact,” as well as a Texas case in which a court had held an attorney representing himself in a disciplinary proceeding liable for a violation of TDRPC 3.03(a)(1). *Vickery*, 5 S.W.3d at 259 (citing *Runsvold v. Idaho State Bar*, 925 P.2d 1118, 1120 (1996); *In re Segall*, 509 N.E.2d 988, 990 (1987); *Sandstrom v. Sandstrom*, 880 P.2d 103, 108 (Wyo. 1994); and *Weiss v. Comm’n for Lawyer Discipline*, 981 S.W.2d 8, 20 (Tex.App. – San Antonio 1998, pet. denied)).

Ultimately, *Vickery* repudiated the suggestion that the reasoning in *Pinsky* was persuasive as to whether an attorney representing himself is not *representing a client* and is thus not subject to the “no-contact” rule. Further, as alluded to in *Vickery*, the San Antonio Court of Appeals rejected a similar argument that TDRPC 3.03(a)(1) does not apply to a lawyer representing himself in an attorney disciplinary proceeding. In *Weiss v. Comm’n for Lawyer Discipline*, the respondent attorney argued that the trial court erred by holding that misrepresentations he had made to a bar grievance committee constituted a violation of TDRPC 3.03(a)(1). *Weiss*, 981 S.W.2d at 20. The San Antonio Court disagreed.

TDRPC 3.03(a)(1) provides that a lawyer shall not knowingly make a false statement of material fact or law to a tribunal. The respondent attorney, Weiss, contended the rule did not “apply to an attorney who is a party to a proceeding as opposed to an attorney who is representing a client.” *Id.* Weiss’s argument was based on the rule being contained in TDRPC Section III, titled “Advocate,” and the comments to the rule referring “only to situations involving an attorney representing a client before a tribunal.” *Id.* In rejecting Weiss’s contention that the rule did not apply to an attorney representing himself the San Antonio Court stated:

“We think that a more reasonable interpretation is that the section was placed in the advocate section and that the comments relate to situations involving clients because the section *comes into play most often when the attorney is representing another*. We do not agree with Weiss’s conclusion that the section was not intended to bar an attorney from making false statements of fact or law to a tribunal when they are before the tribunal as a party, at least in a case such as this where his appearance as a party is due to his status as an attorney.”

--*Id.* (emphasis added).

The TDRPCs are “Promulgated rules [that] have the same force and effect as statutes” and are interpreted using the same rules of construction. *Comm’n for Lawyer Discipline v. Hanna*, 513 S.W.3d 175, 178 (Tex.App. – Houston [14th Dist.] 2016, no pet.) (citing *Love v. State Bar of Tex.*, 982 S.W.2d 939, 942 (Tex.App. – Houston [1st Dist.] 1998, no pet.); *O’Quinn v. State Bar of Tex.*, 763 S.W.2d 397, 399 (Tex. 1988)). The primary goal in construing such rules is to determine and give effect to the drafter’s intent, while discerning that intent from the plain meaning of

the words, if possible. *Hanna*, 513 S.W.3d at 178 (citing *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006); *Rodgers v. Comm’n for Lawyer Discipline*, 151 S.W.3d 602, 614 (Tex.App. – Fort Worth 2004, pet. denied)).

Courts interpret rules “by reading the words and phrases in context and construing them according to the rules of grammar and common usage,” and the meaning of words can be determined from many sources, including legal and other widely used dictionaries. *Hanna*, 513 S.W.3d at 178-79 (citing TEX. GOV’T CODE ANN. §311.011(a); *In re Hecht*, 213 S.W.3d 547, 565 (Tex. Spec. Ct. Rev. 2006)). Further, such analysis “[a]lso is informed by the commands contained in the preamble to the Texas Disciplinary Rules of Professional Conduct,” which instructs that the rules are “‘rules of reason’ and ‘presuppose a larger legal context shaping the lawyer’s role.’” *Hanna*, 513 S.W.3d at 179 (citing TEX. DISCIPLINARY R. PROF’L CONDUCT, PREAMBLE: SCOPE, ¶¶ 10, 11).

In short, Maadani’s argument on this issue and the scant authority he offers in support are unpersuasive. Maadani’s interpretation of TDRPC 4.04(a) would lead to the absurd result that by choosing to represent himself in his child custody case he could act as his own, licensed attorney, but: (1) do something he could not do ethically as a licensed attorney for *someone else* in their child custody case; and (2) do something that no other licensed attorney could do if that lawyer were

representing Maadani in *his* child custody case. Maadani’s third issue is also without merit.

C. Substantial evidence supports the evidentiary panel’s conclusions that Maadani violated TDRPCs 4.04(a) and 4.04(b)(1).

Maadani’s fourth issue, construed broadly, seems to be an argument that there was insufficient evidence presented to the panel to support one or both of the ethical violations the panel ultimately found. [Apt. Br. 22-36]. Maadani’s contentions center on his allegations that many of his actions in the underlying child custody case were done for purposes *other* than to embarrass, delay, or burden his ex-wife Dr. Ward and/or for reasons other than “gaining an advantage in a civil proceeding.” However, Maadani’s arguments in these respects: (1) are obscured by his repeated demeaning and/or disparaging allegations directed mainly at Dr. Ward, and are again, unsupported by references to the record; (2) lack substantive legal analysis or authority in support thereof, save his intermittent refrains to Opinion No. 457; and (3) seem to be based mostly on Maadani’s conclusory assessments of his own unsupported allegations and/or the evidence presented by the Commission. His contentions in these regards are also without merit.

1. Standard of Review

The substantial-evidence standard of review applies to the Board’s review of the decisions of evidentiary panels. TEX. GOV’T CODE ANN. §81.072(b)(7) (West 2022); TEX. RULES DISCIPLINARY P. R. 2.23. The focus under the substantial-

evidence standard is whether the record provides some reasonable basis for the action taken by an administrative body. *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994). The reviewing tribunal “must determine whether the evidence as a whole is such that reasonable minds could have reached the conclusion the [administrative body] must have reached in order to take the disputed action.” *Id.* at 186, citing *Texas State Bd. of Dental Examiners v. Sizemore*, 759 S.W.2d 114, 116 (Tex. 1988), *cert. denied*, 490 U.S. 1080 (1989). Moreover, the “findings, inferences, conclusions, and decisions of [the administrative body] are presumed to be supported by substantial evidence,” and the party challenging the decision bears the burden of proving otherwise. *Id.* (citations omitted).

“Substantial evidence requires only more than a mere scintilla, and ‘the evidence on the record actually may preponderate against the decision of [the administrative body] and nonetheless amount to substantial evidence.’” *R.R. Comm'n of Tex. v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995), citing *Texas Health Facilities Comm'n v. Charter Medical – Dallas, Inc.*, 665 S.W.2d 446, 452 (Tex. 1984); *see also Wilson v. Comm'n for Lawyer Discipline*, BODA Case No. 46432, 2011 WL 683809, at *2 (January 30, 2011). In determining whether there is substantial evidence to support the findings and conclusions of the administrative body, the reviewing court may not substitute its judgment for that of the administrative body and must consider only the record upon which the decision is

based. *R.R. Comm'n of Tex.*, 912 S.W.2d at 792; *Tex. State Bd. of Dental Exam'rs*, 759 S.W.2d at 116. The ultimate question is not whether the panel's decision is correct, but only whether the record demonstrates a reasonable basis for its decision. *City of El Paso*, 883 S.W.2d at 185.

2. *The record supports the panel's conclusion that Maadani's conduct during and/or in connection with his child custody matter violated TDRPC 4.04(a)*

In relevant part, TDRPC 4.04(a) provides, "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person..." TEX. DISCIPLINARY R. PROF'L CONDUCT 4.04(a). Here, as is set forth at length above, the record shows several instances of Maadani's: (1) repeated abusive, demeaning and/or disparaging statements directed at and/or regarding Allen, Dr. Ward, and others; and (2) frivolous pleadings filed in the child custody matter, demonstrating his use of means that had no substantial purpose other than to embarrass, delay, or burden Dr. Ward and/or others.

Maadani argues (again, largely without specific reference to the record) that he had some legitimate purpose(s) and/or mitigating circumstances that would explain the statements he made and pleadings he filed throughout his child custody case. [Apt. Br. 22-36]. While Maadani's arguments set forth his general perception of the evidence presented during the evidentiary hearing, and his alleged purpose(s) for engaging in the conduct in question, the factfinder (here, the panel) was the sole

judge of witness credibility and the weight to be given testimony. *Allison v. Comm'n for Lawyer Discipline*, 374 S.W.3d 520, 525 (Tex.App. – Houston [14th Dist.] 2012, no pet.), citing *Curtis v. Comm'n for Lawyer Discipline*, 20 S.W.3d 227, 231 (Tex.App. – Houston [14th Dist.] 2000, no pet.); *see also, Vickery*, 5 S.W.3d at 254-55, fn. 5. Indeed, determining Maadani's intent as to the above-referenced conduct was "uniquely within the realm of the trier of fact." *Yetiv v. Comm'n for Lawyer Discipline*, No. 14-17-00666-CV, 2019 WL 1186822, at *5 (Tex.App. – Houston [14th Dist.] Mar. 14, 2019, no pet.) (mem. op.).

Here, taking each instance of Maadani's conduct individually, and certainly collectively, there is substantial evidence in the record supporting the panel's conclusion that Maadani violated TDRPC 4.04(a).

3. *The record also supports the panel's conclusion that Maadani's conduct during and/or in connection with his child custody matter violated TDRPC 4.04(b)(1)*

TDRPC 4.04(b)(1) provides, "A lawyer shall not present, participate in presenting, or threaten to present: (1) criminal or disciplinary charges solely to gain an advantage in a civil matter." TEX. DISCIPLINARY R. PROF'L CONDUCT 4.04(b)(1). Here, as set forth above, the record contains substantial evidence demonstrating Maadani: (1) continually threatened during the course of the child custody litigation to present a disciplinary complaint against Dr. Ward to the Texas Medical Board and ultimately did present such a complaint; (2) used his father to initiate an attorney

disciplinary proceeding against Allen, and (3) also threatened to present criminal charges against Dr. Ward and/or others. Maadani once again argues that he had other, appropriate motivations for his actions in these respects, and that the “sole” reason for such actions was “not to gain an advantage in the case.” [Apt. Br. 33-36].

Again, Maadani’s *intent* was a question for the panel as the factfinder and one that turns on the panel’s evaluation of the evidence presented. *Yetiv*, 2019 WL 1186822, at *5. Indeed, as in *Yetiv*, the panel here could have disbelieved Maadani’s testimony concerning his alleged motives for such actions. *Id.* Once more, the weighing of the evidence was solely within the province of the panel, and the Board may not substitute its judgment for decisions within the panel’s discretion, provided a reasonable basis exists in the record for the action taken. *R.R. Comm’n of Tex.*, 912 S.W.2d at 792. Here, there is substantial evidence in the record supporting the panel’s conclusion that Maadani violated TDRPC 4.04(b)(1).

D. The evidentiary panel did not abuse its discretion in denying Maadani’s motion for new trial.

In his fifth issue, Maadani complains that the panel erred by denying his motion for new trial. [Apt. Br. 37-38]. Maadani offers no substantive argument or authority in support of this point of error beyond citing caselaw standing for the axiomatic proposition that trial courts have broad discretion in granting new trials.

True, a trial court (or here, the evidentiary panel) has broad discretion in ruling on a motion for new trial. *Dolgenercorp 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). But 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)).

Between his briefing on this issue and his motion for new trial filed before the panel, Maadani seems to argue that a new trial should have been granted and the panel abused its discretion by not doing so because: (1) the panel did not have an appropriate quorum; (2) his trial counsel was ineffective; (3) the evidentiary hearing was held remotely; and/or (4) the panel did not hold a separate sanctions hearing. [Apt. Br. 37-38]; [CR 372-86]. As to (1), the panel conducted the evidentiary hearing with a proper quorum, as set forth at length in Sec. II(A), above.

Maadani’s argument regarding “ineffective assistance” by his trial counsel also lacks merit. The Sixth Amendment right to effective assistance of counsel generally does not apply in civil proceedings. *Dugan v. Compass Bank*, 129 S.W.3d 579, 582 (Tex.App. – Dallas 2003, no pet.) (citing *Approximately \$42,850.00 v. State*, 44 S.W.3d 700, 702 (Tex.App. – Houston [14th Dist.] 2001, no pet.)). And disciplinary proceedings are civil in nature. *State Bar of Texas v. Evans*, 774 S.W.2d

656, 657 n. 1 (Tex. 1989) (citing *Polk v. State Bar of Texas*, 480 F.2d 998, 1001-02 (5th Cir. 1973); and *State Bar of Texas v. Sutherland*, 766 S.W.2d 340, 343 (Tex. App. – El Paso 1989, writ denied) (finding that disciplinary proceedings in Texas are civil in nature and rejecting a “quasi-criminal” description of disciplinary proceedings)).

In fact, courts in other jurisdictions have specifically found that respondents in disciplinary proceedings have no right to counsel and, therefore, no right to effective assistance of counsel. *See e.g.*, *Walker v. State Bar*, 49 Cal.3d 1107, 1116 (1989) (en banc); *In re Slattery*, 767 A.2d 203, 212 n. 10 (D.C. 2001); *Matter of Gannett*, 182 N.E.3d 956, 960 (Mass. 2022) (internal citations omitted); and *Matter of Porche*, No. 18-C-12445, 2023 WL 2569129 at *7 (Cal. Bar Ct. Feb. 9, 2023, as modified Mar. 10, 2023) (citing *Walker*, 49 Cal.3d at 1116). Recently, a Texas court has seemingly taken the same view. *Henderson v. Comm’n for Lawyer Discipline*, No. 01-22-00602-CV, 2023 WL 8939266, at *4 (Tex.App. – Houston [1st Dist.] Dec. 28, 2023, no pet. h.) (mem. op.). Because Maadani is not able to show that he has a right to counsel at all in his disciplinary case, he cannot show he has a right to effective counsel.

Likewise, Maadani offers no authority in support of his arguments that either the panel’s conducting his evidentiary hearing *remotely*, or that its not conducting a separate sanctions hearing, constituted grounds for a new trial. The TRDPs do not

preclude an evidentiary hearing from being held remotely, nor do they require a separate sanctions hearing when an evidentiary hearing is held as to Professional Misconduct. *See* TEX. RULES DISCIPLINARY P. R. 2.17 & 15.03.

The panel considered and ultimately denied Maadani's motion based on the relevant pleadings and the arguments of counsel at the hearing on the motion. [App 5]; [RR MfNT]. Maadani's arguments that the panel abused its discretion by denying his motion for new trial are also without merit.

E. The evidentiary panel acted within its discretion in assessing a four-year Active Suspension.

In his final issue, Maadani complains that the panel abused its discretion in assessing a four-year Active Suspension as its disciplinary sanction for his professional misconduct. [Apt. Br. 38-40]. Maadani provides little to no substantive argument or authority in support of this point of error. While Maadani does reference the sanctioning guidelines set forth in Part XV of the TRDPs, he does not provide supporting authority for his contention that the panel's sanction in his case did not "fit" those guidelines. Rather, Maadani simply reiterates his argument that he was entitled to a separate sanction hearing and offers his subjective, conclusory assertions that his conduct warranted no sanction at all, or a lesser sanction, pursuant to the sanctioning guidelines. Construing Maadani's arguments liberally, he has still failed to demonstrate the panel abused its discretion.

Evidentiary panels have broad discretion to impose discipline; nevertheless, disciplinary sanctions may be reviewed for an abuse of discretion, and a sanction may be so light or heavy as to constitute such an abuse. *Molina v. Comm'n for Lawyer Discipline of The State Bar of Texas*, BODA No. 35426, 2006 WL 6242393, at *4 (March 31, 2006) (citing *State Bar of Texas v. Kilpatrick*, 874 S.W.2d 656, 659 (Tex. 1994)); see also, *McIntyre v. Comm'n for Lawyer Discipline*, 169 S.W.3d 803, 807 (Tex.App. – Dallas 2005, no pet.). And, again, when acting as a factfinder in determining the appropriate sanction for instances of professional misconduct, the evidentiary panel is the sole judge of the credibility of witnesses and the weight to be given their testimony. *Allison*, 374 S.W.3d at 525; *Vickery*, 5 S.W.3d at 254-55, fn. 5.

A court abuses its discretion only when it acts in an unreasonable and arbitrary manner, or without reference to any guiding principles. *McIntyre*, 169 S.W.3d at 807. A court does not abuse its discretion when some evidence supports its decision. *Davis v. Huey*, 571 S.W.2d 859, 863 (Tex. 1978). Further, 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.

The TRDPs do not mandate consideration by an evidentiary panel of *any* particular factor described in TRDP Part XV when determining an appropriate disciplinary sanction in a given case. TEX. RULES DISCIPLINARY P. R. 15.02. Further,

the TRDPs do not require an evidentiary panel to explain in detail or specifically state any (or all) of the factors it considered, or the weight it gave any such factors, in imposing a disciplinary sanction. TEX. RULES DISCIPLINARY P. R. 2.17(P), 2.18, 2.19.

As with any other judgment following a nonjury trial in which findings of fact and conclusions of law are not requested or filed, any fact findings necessary to support the evidentiary panel's decision as to the appropriate sanction to be imposed are presumed. *Shields Limited Partnership v. Bradberry*, 523 S.W.3d 471, 480 (Tex. 2017) (citing *Sixth RMA Partners, L.P. v. Sibley*, 111 S.W.3d 46, 52 (Tex. 2003)); see also, *Vickery*, 5 S.W.3d at 251-52. Such presumed findings may be challenged on appeal when a reporter's record is filed. *Id.* However, in determining such a challenge, the Court "must consider evidence favorable to the finding if the factfinder could reasonably do so and disregard evidence contrary to the finding unless a reasonable factfinder could not." *Id.*, (citing *Waste Mgmt. of Tex., Inc. v. Tex. Disposal Sys. Landfill, Inc.*, 434 S.W.3d 142, 156 (Tex. 2014)).

1. *Guidelines for imposing sanctions in attorney discipline proceedings*

For attorney discipline cases involving grievances filed after June 1, 2018 (such as the present case), the Court replaced the mandatory factors set forth in former Rule 2.18 with TRDP Part XV, *Guidelines for Imposing Sanctions* ("Part XV"). See also, *Ponce v. Comm'n for Lawyer Discipline*, No. 04-20-00267-CV,

2022 WL 1652147, at *7 n. 3 (Tex.App. – San Antonio May 25, 2022, no pet.) (mem. op.); TEX. GOV'T CODE §81.083.⁵ Part XV embodies the broad discretion granted to evidentiary panels (and trial courts) to fashion sanctions in attorney disciplinary proceedings. The Court explained that the purpose of the guidelines was to:

“[s]et forth a comprehensive system for determining sanctions, permitting flexibility and creativity in assigning Sanctions in particular cases of lawyer misconduct. They are designed to promote: (1) consideration of all factors relevant to imposing the appropriate level of Sanction in an individual case; (2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; and (3) consistency in the imposition of disciplinary Sanctions for the same or similar rule violations among the various district grievance committees and district courts that consider these matters.”

-- TEX. RULES DISCIPLINARY P. R. 15.01(B).

Part XV outlines four “general” factors that should be considered by a disciplinary tribunal: (1) the duty violated; (2) the Respondent’s level of culpability; (3) the potential or actual injury created by the misconduct; and (4) the existence of aggravating or mitigating factors. TEX. RULES DISCIPLINARY P. R. 15.02.

Next, Part XV sets forth the spectra of “sanctions [that] are generally appropriate” for various categories of professional misconduct roughly corresponding to the TDRPCs relevant to: (1) violations of duties owed to clients; (2) violations of duties owed to the legal system; (3) violations of duties owed to the public; (4) violations of other duties as a professional; and (5) violations of prior

⁵ Likewise, the analogous factors in former TRDP 3.10 were also eliminated for disciplinary cases tried before a district court, again, in favor of the Part XV sanctioning guidelines.

discipline orders. TEX. RULES DISCIPLINARY P. R. 15.04, 15.05, 15.06, 15.07 & 15.08, respectively. Each of those sanctioning ranges suggests the level of sanction that is “generally appropriate” for particular types of professional misconduct based on the application of the “general” factors outlined in TRDP 15.02, prior to the consideration of any aggravating or mitigating factors. While Part XV provides the above-described guidelines to consider in determining appropriate sanctions for professional misconduct, those guidelines, “[d]o not limit the authority of a district grievance committee...to make a finding or issue a decision.” TEX. RULES DISCIPLINARY P. R. 15.01(B).

Available sanctions are, in descending order of severity: disbarment, suspension (which can be active, probated, or partially probated), public reprimand, and private reprimand. TEX. RULES DISCIPLINARY P. R. 1.06(FF). Sanctions can also include restitution and/or payment of attorney’s fees and costs as ancillary requirement(s). *Id.*

Finally, Part XV provides evidentiary panels the discretion to consider aggravating and mitigating circumstances “in deciding what sanction to impose.” TEX. RULES DISCIPLINARY P. R. 15.09. “Aggravation” or “aggravating circumstances” being “considerations or factors that may justify an increase in the degree of discipline to be imposed;” and “Mitigation” or “mitigating circumstances”

being “considerations or factors that may justify a reduction in the degree of discipline to be imposed.” [Id.]

More specifically, TRDP 15.05(B) sets forth guidelines for determining appropriate sanctions in circumstances involving an attorney’s abuse of the legal process, including using improper means involving third parties, which run from private reprimand to disbarment. TEX. RULES DISCIPLINARY P. R. 15.05(B)(1-4). Additionally, Rule 15.09 provides aggravating and mitigating factors a panel may consider in deciding an appropriate sanction once professional misconduct is established. TEX. RULES DISCIPLINARY P. R. 15.09(A-C).

2. *The record supports the panel’s sanction against Maadani as to either of his violations of TDRPCs 4.04(a) or (b)(1), or both*

The evidentiary panel’s judgment set forth its findings that Maadani had both: (1) “used means that have no substantial purpose other than to embarrass, delay, or burden a third person...”; and (2) “threatened to present disciplinary charges solely to gain an advantage in connection with a civil matter.” [App 1]. And again, the record is replete with evidence demonstrating Maadani’s conduct which led to the panel’s findings that he committed professional misconduct. The panel could reasonably have considered the duties Maadani violated, his culpability, and the injury or potential injury such violations caused to Dr. Ward or others, or the interference or potential interference such violations caused with the underlying

child custody matter, in determining that an active suspension was the appropriate disciplinary sanction. TEX. RULES DISCIPLINARY P. R. 15.02 & 15.05(B).

Further, the record also demonstrates that several of the aggravating circumstances set forth in TRDP 15.09 are potentially applicable in Maadani's case. First, the same evidence demonstrating the nature of Maadani's conduct also demonstrates potential aggravating circumstances including: a dishonest or selfish motive; a pattern of misconduct; and multiple violations. TEX. RULES DISCIPLINARY P. R. 15.09(B)(2)(b), (c) & (d). Second, while Maadani testified he "regretted" sending many of the emails at issue, it was because he had sent them while he was taking medication related to a fall he had experienced and/or was dealing with COVID – **not** because he acknowledged that any of his conduct was wrongful. TEX. RULES DISCIPLINARY P. R. 15.09(B)(2)(g).

Finally, there was evidence presented during the evidentiary hearing that Maadani had submitted false evidence to the panel, in the form of emails and/or text messages that Dr. Ward had allegedly sent Maadani over the years that were derogatory and/or demeaning towards him, or otherwise relevant to his conduct in the underlying child custody matter. During Maadani's testimony, several such items were admitted into evidence over the Commission's objections, and Maadani testified that he had only discovered them some 8-10 days prior to the evidentiary hearing – in his "memory luggage." [RR EH 139-59]; [RR EH, Resp. Exs. 7-13].

Dr. Ward testified clearly, directly, and unequivocally that she did not write any of the emails or text messages Maadani had belatedly discovered. [RR EH 192-99]. The panel could reasonably have concluded that Maadani submitted false evidence in this respect and treated it as a further aggravating factor. TEX. RULES DISCIPLINARY P. R. 15.09(B)(2)(f).

The panel's sanction of a four-year Active Suspension is supported by substantial evidence demonstrating Maadani's repeated use of means having no substantial purpose other than to embarrass, delay, or burden his ex-wife Dr. Ward and/or others throughout the underlying child custody matter, as well as his threats to present (and actual presentation of) a disciplinary complaint against Dr. Ward with the Texas Medical Board and use of his father to initiate an attorney disciplinary proceeding against Allen, solely to gain an advantage in that case. The panel acted within its discretion in issuing a four-year Active Suspension, and the Board should affirm the panel's judgment in all respects.

III. Maadani's "Objection to Records of State Bar".

Maadani also raises objections to the "record of the State Bar." [Apt. Br. 3]. He appears to be making complaints, in some respects, about both the clerk's record and the reporter's records – in any case, those complaints are also without merit. First, to the extent Maadani believed anything material was omitted from either the clerk's record or reporter's record, his remedy would be to seek supplementation of

such record(s) by written motion. TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R.

4.03(d). He has not done so.

Second, as to Maadani's specific complaints in this respect:

1. ***That the Answer of Appellant is missing from the clerk's record:*** Maadani's Answer and Rule 12 Motion filed with the panel on September 13, 2022, is included as part of the clerk's record. [CR 70-73]. Additionally, Maadani's Supplemental Answer filed with the panel on July 14, 2023, is also included as part of the clerk's record. [CR 180-83].
2. ***That emails to the "Prosecutor" in regard to selection of in-person hearing vs. a Zoom hearing are missing from the clerk's record:*** Maadani repeatedly refers to the Commission's trial counsel as the "State Bar Prosecutor." To the extent Maadani, as a party representing himself, would have exchanged emails with opposing counsel (of any kind), such communications would not typically be part of a court's file absent a party submitting them for filing in some fashion. The record does not otherwise demonstrate that Maadani filed any motion, objection, or other request for relief related to the evidentiary hearing being scheduled to take place remotely.
3. ***Audio recording of the evidentiary hearing:*** Maadani suggests that an audio recording of the evidentiary hearing is necessary "from the point of start of Zoom hearing." The reporter's record of the evidentiary hearing indicates that the court reporter began transcribing the hearing when it went on the record, at 9:20 a.m. [RR EH 7].
4. ***That Maadani was "unable to cross-examine the accuser in person":*** Maadani does not explain how this would constitute a problem with either the clerk's record or the reporter's record in this matter.

Maadani's complaints regarding the appellate record are also without merit.

CONCLUSION

Under the guise of briefing his arguments in this appeal, Maadani has simply continued his campaign of abuse directed at Dr. Ward and her family, Ms. Allen,

and anyone else he perceives is aligned against him in his child custody case. Maadani fails to demonstrate even the barest measure of contrition or remorse regarding his conduct. Instead, he persists in levying disparaging and demeaning personal attacks, none of which are supported by specific references to the record, much less credible evidence of any kind. Maadani's continued improper use of the judicial system in this manner, even as he appeals from a Judgment finding he violated his professional obligations throughout the conduct of his child custody case, is not lost on the Commission.

PRAYER

For the foregoing reasons, the Commission prays that the Board affirm the judgment of the District 4-3 Evidentiary Panel of the State Bar of Texas in this matter, in all respects.

RESPECTFULLY SUBMITTED,

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION

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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 9,350 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, Pejman Maadani, via electronic mail to pj@attorneymaadani.com on the 20th day of February, 2024.



MICHAEL G. GRAHAM
APPELLATE COUNSEL
STATE BAR OF TEXAS

No. 68164

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

PEJMAN MAADANI,

APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

*On Appeal from an Evidentiary Panel
For the State Bar of Texas District 4
No. 202102105 [Allen]*

**APPENDIX TO BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE**

- APP 1:** Judgment of Active Suspension (CR 316-20)
- APP 2:** CFLD's Original Evidentiary Petition (CR 48-51)
- APP 3:** CFLD's Just Cause & Election Letter (CR 7-15)
- APP 4:** Evidentiary Hearing Report (CR 202-04)
- APP 5:** Order Denying Maadani's Post-Judgment Motions (CR 484)
- APP 6:** *Cafiero v. Comm'n for Lawyer Discipline*, BODA Case No. 37811 (March 23, 2007)

APP 7: *Allison v. Comm'n for Lawyer Discipline*, BODA Case No. 41135
(June 20, 2008) (en banc)

App 8: *Schaefer v. Comm'n for Lawyer Discipline*, BODA Case No. 44292
(Jan. 28, 2011) (en banc)

App 1

**BEFORE EVIDENTIARY PANEL 4-3 OF THE
STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE**



**Houston Office
Chief Disciplinary Counsel**

COMMISSION FOR LAWYER DISCIPLINE,	§	202102105 [ALLEN]
Petitioner,	§	
	§	
v.	§	
	§	
PEJMAN MAADANI,	§	
Respondent.	§	HARRIS COUNTY, TEXAS

JUDGMENT OF ACTIVE SUSPENSION

Parties and Appearance

On August 2, 2023, came to be heard the above styled and numbered cause. Petitioner, the Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, Pejman Maadani, Texas Bar Number 24052152, appeared in person and through attorney of record and announced ready.

Jurisdiction and Venue

Evidentiary Panel 4-3, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District No. 4, 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 maintains his principal place of practice in Harris County, Texas.
3. In representing a client, Respondent used means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
4. Respondent threatened to present disciplinary charges solely to gain an advantage in connection with a civil matter.
5. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees associated with this Disciplinary Proceeding in the amount of \$3,897.50.

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: 4.04(a) and 4.04(b)(1).

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 an active suspension.

Accordingly, it is ORDERED, ADJUDGED, and DECREED that Respondent shall be actively suspended from the practice of law for a period of four (4) years beginning September 1, 2023, and ending August 31, 2027.

Terms of Active Suspension

It is further ORDERED that during the term of active suspension ordered herein, 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 September 1, 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 that Respondent shall file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before September 1, 2023, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, unearned 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, unearned monies, or other property belonging to clients, Respondent shall submit an affidavit attesting that, at the time of suspension, Respondent had not current clients and did not possess any files, papers, unearned monies, and other property belonging to clients.

It is further ORDERED that Respondent shall, on or before September 1, 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 that Respondent shall file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before September 1, 2023, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice of each and every court 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 September 1, 2023, Respondent shall surrender his law license and permanent State Bar Card to the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) to be forwarded to the Supreme Court of Texas.

Attorneys' Fees

It is further ORDERED that Respondent shall pay reasonable and necessary attorneys' fees to the State Bar of Texas in the amount of \$3,897.50. The payment shall be due and payable on or before September 1, 2023, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Office of the Chief Disciplinary Counsel, 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 \$3,897.50 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 14th day of August, 2023.

**EVIDENTIARY PANEL 4-3
DISTRICT NO. 4
STATE BAR OF TEXAS**



**DAVID A. NACHTIGALL
Panel 4-3 Evidentiary Panel**

App 2

**BEFORE EVIDENTIARY PANEL 4-3 OF THE
STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE**



**Houston Office
Chief Disciplinary Counsel**

COMMISSION FOR LAWYER DISCIPLINE,	§	202102105 [ALLEN]
Petitioner,	§	
	§	
v.	§	
	§	
PEJMAN MAADANI,	§	
Respondent.	§	HARRIS COUNTY, TEXAS

PETITIONER’S ORIGINAL EVIDENTIARY PETITION

COMES NOW Petitioner, the Commission for Lawyer Discipline, a committee of the State Bar of Texas, and would respectfully show unto the Evidentiary Panel as follows:

PARTIES

1. Petitioner is the Commission for Lawyer Discipline, a committee of the State Bar of Texas.
2. Respondent is Pejman Maadani, Texas Bar Card No. 24052152, a licensed attorney and a member of the State Bar of Texas. Respondent may be served at 6430 Richmond Avenue, Suite 480, Houston, Texas 77057.

NATURE OF PROCEEDING

3. Petitioner brings this disciplinary proceeding pursuant to the State Bar Act, Texas Government Code Annotated §81.001, *et seq.* (West 2013); the Texas Disciplinary Rules of Professional Conduct; and the Texas Rules of Disciplinary Procedure. The complaint that forms the basis of this cause of action was filed on or after June 1, 2018.

VENUE

4. Respondent’s principal place of practice is Harris County, Texas; therefore, venue is appropriate in Harris County, Texas, pursuant to Rule 2.11C of the Texas Rules of Disciplinary Procedure.

PROFESSIONAL MISCONDUCT

5. The acts and/or omissions of Respondent, as hereinafter alleged, constitute professional misconduct as defined by Rule 1.06CC of the Texas Rules of Disciplinary Procedure.

CAUSE OF ACTION

6. Between August 27, 2020, and March 21, 2021, while representing himself in a divorce and child custody matter, Respondent used means that had no substantial purpose other than to embarrass, delay, or burden third persons by making unsubstantiated claims against the opposing party, Kristy Ward (“Ward”), her attorney, Amy Allen (“Allen”) and other third parties, including but not limited to Lauren Goonan, Ph.D.

7. On or about October 7, 2020, Respondent threatened to present disciplinary charges against Ward to the Texas Medical Board, solely to gain an advantage in the child custody matter.

8. On or about February 22, 2021, Respondent threatened to present criminal charges against Ward’s employer and a district court judge, solely to gain an advantage in the child custody matter.

9. On or about March 11, 2021, Respondent threatened to present disciplinary charges against Ward to the Texas Medical Board, solely to gain an advantage in the child custody matter.

10. On or about July 8, 2021, Respondent participated in presenting disciplinary charges to the State Bar of Texas, brought under the name Heshmat Maadani, Respondent’s father, against Allen, solely to gain an advantage in the child custody matter.

11. On or about August 13, 2021, Respondent participated in presenting disciplinary charges to the State Bar of Texas, brought under the name Heshmat Maadani, Respondent’s father, against Allen, solely to gain an advantage in the child custody matter.

12. On or about September 21, 2021, Respondent presented disciplinary charges to the State Bar of Texas, against Allen, solely to gain an advantage in the child custody matter.

RULE VIOLATIONS

13. The acts and/or omissions of Respondent described above violates the following Texas Disciplinary Rule of Professional Conduct:

4.04(a) - In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

4.04(b)(1) - A lawyer shall not present, participate in presenting, or threaten to present: criminal or disciplinary charges solely to gain an advantage in a civil matter.

COMPLAINT

14. The complaint that forms the basis of this cause of action was brought to the attention of the Office of the Chief Disciplinary Counsel by Amy Christine Allen's filing of a grievance on or about April 2, 2021.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner, the Commission for Lawyer Discipline, respectfully prays that this Evidentiary Panel discipline Respondent, Pejman Maadani, by reprimand, suspension, or disbarment, as the facts shall warrant; order restitution to Amy Christine Allen, if applicable; and grant all other relief, general or specific, at law or in equity, including injunctive relief, to which Petitioner may show itself to be justly entitled, including, without limitation, expenses and attorneys' fees.

Respectfully submitted,

STATE BAR OF TEXAS

SEANA WILLING
Chief Disciplinary Counsel



E. WILLIAM NICHOLS II
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**ATTORNEYS FOR PETITIONER,
COMMISSION FOR LAWYER
DISCIPLINE**

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 2.09A of the Texas Rules of Disciplinary Procedure, a true and correct copy of the foregoing instrument was forwarded on the 24th day of August, 2022, to the following:

Pejman Maadani
Maadani Law
6430 Richmond Avenue, Suite 480
Houston, Texas 77057
Pro se

E-mail pj@attorneymaadani.com



E. WILLIAM NICHOLS II

App 3

From: [Maribelle Hernandez](#)
To: pi@attorneymaadani.com
Cc: [Will Nichols](#)
Subject: No. 202102105 Amy Christine Allen – Pejman Maadani
Date: Thursday, June 9, 2022 3:27:00 PM
Attachments: [Just Cause and Election Letter to R.pdf](#)
[image001.png](#)

Mr. Maadani,

Attached is a letter dated June 9, 2022, from E. William Nichols II to you with Respondent's Election and Principal Place of Practice Certification form.

Please REPLY TO THIS EMAIL confirming your receipt.

Thank you.

Maribelle Hernandez

LEGAL ASSISTANT TO E. WILLIAM NICHOLS II



State Bar of Texas

Office of the Chief Disciplinary Counsel

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From: [PJ Maadani](#)
To: [Maribelle Hernandez](#)
Cc: [Will Nichols](#)
Subject: Re: No. 202102105 Amy Christine Allen – Pejman Maadani
Date: Friday, June 10, 2022 12:30:04 PM

06.10.2022

I received the letter. I will respond by the expiration of 20 days.

Respectfully,

Pejman J. Maadani
SBN: 24052152
MAADANI LAW
6430 Richmond Ave, Ste 480
Houston, Texas 77057
Tel: (713) 782-5353
Fax: (713) 782-5352
pj@attorneymaadani.com
<http://www.maadanilawfirm.com>

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Mediation Services are available for Business Disputes, Personal injuries, and Property Disputes. Contact me for additional information.

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On Thursday, June 9, 2022, 03:27:35 PM CDT, Maribelle Hernandez <maribelle.hernandez@texasbar.com> wrote:

Mr. Maadani,

Attached is a letter dated June 9, 2022, from E. William Nichols II to you with Respondent's Election and Principal Place of Practice Certification form.

Please REPLY TO THIS EMAIL confirming your receipt.

Thank you.

Maribelle Hernandez

LEGAL ASSISTANT TO E. WILLIAM NICHOLS II



State Bar of Texas

Office of the Chief Disciplinary Counsel

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STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

Email pj@attorneymaadani.com

June 9, 2022

Pejman Maadani
Maadani Law
6430 Richmond Ave, Ste 480
Houston, TX 77057

Re: No. 202102105 Amy Christine Allen – Pejman Maadani

Dear Mr. Maadani:

Following an Investigatory Hearing on April 21, 2022, the Office of the Chief Disciplinary Counsel has completed its investigation of the above Complaint and determined on June 8, 2022, that there is Just Cause to believe that you have committed one or more acts of Professional Misconduct as defined by the Texas Rules of Disciplinary Procedure (TRDP). In accordance with TRDP 2.14D, written notice is hereby given of the alleged acts and/or omissions engaged in by you and written notice of the Texas Disciplinary Rules of Professional conduct that the Chief Disciplinary Counsel contends have been violated:

While representing himself in a divorce and child custody matter, Pejman J. Maadani (“Respondent”) used means that had no substantial purpose other than to embarrass, delay, or burden third persons by making unsubstantiated claims against the opposing party, Kristy Ward (“Ward”), and her attorney, Amy Allen (“Allen”) and threatening sanctions and civil suits against Allen, Ward and other third persons. Respondent’s violation alleged above, and cited below, occurred in communications including but not limited to:

An August 27, 2020, email from Respondent to Allen and Ward instructing Allen to teach Ward how to address him in written communications and to correct Ward’s “behavior problem”. Additionally, implying that Ward is “mentally so challenged” and that their child needs to be withheld until Ward learns “proper manners”.

In emails dated September 24 -September 26, 2020, from Respondent to Allen and Ward, demanding Allen dismiss claims made in the Petition for enforcement of Final Decree of Divorce by Contempt and pay a sum, specified by Respondent, to charity and threatening a \$32,000 sanction.

An October 19, 2020, email from Respondent to Allen and Ward, stating "... your client mental status does not allow her to listen to a man telling her to do something. It is called mental disease for a reason." [sic]

An October 2020 text message from Respondent to Ward stating "Either put a leash on your lawyer or medical board would put a leash on you." [sic]

A December 30, 2020, email from Respondent to Allen, in which Respondent copies one of Allen's peers, and states "your response to Interrogatories include objections are laughable at best. I encourage your boss to hire a 1L from a non-ABA law school to inform you of what you have forgotten to do..."[sic]

A January 21, 2021, email from Respondent to psychologist Lauren Goonan Ph.D., threatening a malpractice claim.

A February 1, 2021, email from Respondent to court staff and Allen, stating Allen has a history of being dishonest to litigants, opposing counsel and courts.

A February 22, 2021, email from Respondent to Allen and Ward, threatening a suit against Ward's employer and a district court judge and threatening to report the suit to news media and law enforcement.

A March 11, 2021, in an email from Respondent to Allen and Ward, with the subject "Withdrawal [sic] your motion or you will be sorry."

A March 11, 2021, in an email from Respondent to Allen and Ward, threatening a \$2,000,000 lawsuit for defamation.

A March 11, 2021, email from Respondent to Allen and Ward stating "Medical Board will resolve it for your client. Way to go Ms. Allen."

A March 12, 2021, email from Respondent to Ward informing her that she has been sued for \$2,000,000 for defamation and libel.

A March 21, 2021, email from Respondent to Allen and others, demanding that Allen report a notice of his claim of defamation to her malpractice insurance and partners and for an apology letter.

Respondent's violation alleged above, and cited below, also occurred in motions filed by Respondent including but not limited to:

Ten separate notices of "violation of decree" against Ward.

A "Verified Motion to Recuse the Judge [*sic*] of 387th for Campaign Violations and Improper Ruling to Leave Child Within Reach of Meth Mouth and Mother who Destroyed Evidence of Child Molestation".

A "Verified Motion to Disqualify Amy Allen as Attorney of Record for Kristy Ward".

A "Verified Petition for Enforcement of Final Decree and to Hold Amy Allen and Kristy Ward in Contempt of Court". [*sic*]

Additionally, Respondent presented, participated in presenting, or threatened to present disciplinary charges solely to gain an advantage in the child custody matter. Respondent did so by filing a grievance against Allen and participating in a grievance filed by his father against Allen. Respondent also threatened to, and did present, disciplinary charges against Ward to the medical board.

These alleged acts violate the following Texas Disciplinary Rules of Professional Conduct:

4.04(a) - In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

4.04(b)(1) - A lawyer shall not present, participate in presenting, or threaten to present: criminal or disciplinary charges solely to gain an advantage in a civil matter.

Pursuant to TRDP 2.15, you must notify this office whether you elect to have the Complaint heard by an Evidentiary Panel of the District Grievance Committee or in a district court of proper venue, with or without a jury. **The election must be in writing and served upon the Chief Disciplinary Counsel's office no later than twenty (20) days after your receipt of this notice.** Failure to file a timely election shall conclusively be deemed an affirmative election to proceed before an Evidentiary Panel in accordance with TRDP 2.17 and 2.18.

Enclosed is a form in which to indicate your election and principal place of practice. It should be mailed to the undersigned at the address shown at the bottom of this letter or emailed to houdcresponses@texasbar.com. In making your election, you should be aware that an Evidentiary Panel proceeding is confidential unless a public sanction is entered and that a **private reprimand is only available before an Evidentiary Panel**. District court proceedings are public and a private reprimand is not an available sanction.

Pejman Maadani
June 9, 2022
Page | 4

Sincerely,

A handwritten signature in blue ink, appearing to read "EWN II", is positioned above the typed name.

E. William Nichols II
Assistant Disciplinary Counsel

EWN/mgh

Enclosure: Respondent's Election and Principal Place of Practice Certification

COMPLAINT AGAINST

§

Pejman Maadani

§

202102105 – [Amy Christine Allen]

§

Houston, Texas

§

§

**RESPONDENT'S ELECTION &
PRINCIPAL PLACE OF PRACTICE CERTIFICATION**

I, Pejman Maadani, hereby elect: (Choose one of the following)

_____ District Court

_____ Evidentiary Hearing - District Grievance Committee

I, Pejman Maadani, hereby certify that:

_____ (City), _____ (County),

Texas, is my principal place of practice and my physical address (no P.O. Box) is

_____.

Signed this _____ day of _____, 20____.

Pejman Maadani

****RETURN THIS FORM WITHIN 20 DAYS OF RECEIPT OF ELECTION NOTICE****

App 4

EVIDENTIARY HEARING REPORT

PANEL: 4-3 COMMITTEE: 4 HEARING DATE: 8/2/2023
CASE NO: 202102105 [A. Allen] STYLE: Commission for Lawyer Discipline v. Pejman Maadani
LOCATION: Video Conference
COURT
REPORTER: Cindi Bench Reporting, cindi@benchreporting.com

PANEL MEMBERS (INDICATE ATTY OR PUBLIC). Please note presiding member with an asterisk (*).

Table with 3 columns: Member Number, Name, and Status. Includes David Allen Nachtigall* (Atty) PRESENT, Fields Alexander (Atty) ABSENT, Erin E. Lunceford (Atty) ABSENT, Nicole Wignall Deborde (Atty) PRESENT, Patrick Buckley (Public) PRESENT, and Shayla Westmoreland (Public) PRESENT.

I. TYPE OF HEARING: (Check One)

- X Evidentiary and Sanction
Continued Evidentiary and Sanction
Sanction Only
Default

II. HEARING RESULT: (Check One)

- Hearing Continued
Dismissed
Default Granted
Default Denied

X PROFESSIONAL MISCONDUCT FOUND (If selected, please continue)

The Panel finds the following Disciplinary Rules were violated: Rules 4.04(a) and 4.04(b)(1)

III. SANCTIONS: (Check One)

- Private Reprimand
Public Reprimand
Disbarment
X Suspension: (If selected, please choose one of the following: Fully Active, Fully Probated, or Partially Probated)

X Fully Active Suspension:
Length: Four (4) years
Beginning: September 1, 2023

Fully Probated Suspension:
Length:
Beginning:

Partially Probated Suspension:

_____ PSYCHOLOGICAL EVALUATION REPORTS (Utilize only if supported by evidence of Mental Illness)

	Evaluation Deadline	Frequency

_____ SUBSTANCE ABUSE TESTING (Utilize only if supported by evidence of Substance Abuse)

	Start Date	End Date	Frequency

_____ LAW OFFICE MANAGEMENT CONTINUING LEGAL EDUCATION COURSES

	No. of hours	Deadline

_____ TRUST ACCOUNT REPORTING (Utilize only if supported by evidence of Trust Account Violation)

	Start Date	Frequency

_____ TRUST ACCOUNT AUDIT (Utilize only if supported by evidence of Trust Account Violation)

	Deadline

OTHER: _____

By my signature below, I request the Office of the Chief Disciplinary Counsel to prepare a Judgment in accordance with this hearing report.



 DAVID ALLEN NACHTIGALL
 District No. 4-3
 Presiding Member

8/7/2023

(Date)

App 5

FILED

08/28/2023



**Houston Office
Chief Disciplinary Counsel**

**BEFORE EVIDENTIARY PANEL 4-3 OF THE
STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE**

COMMISSION FOR LAWYER DISCIPLINE,	§	202102105 [ALLEN]
Petitioner,	§	
	§	
v.	§	
	§	
PEJMAN MAADANI,	§	
Respondent.	§	HARRIS COUNTY, TEXAS

ORDER DENYING RESPONDENT’S POST JUDGMENT MOTIONS

BE IT REMEMBERED that on the 23rd day of August, 2023, came on for consideration *Respondent’s Amended Motion for Dismissal, Mistrial, New Trial, or in Alternative Motion for Reduction of Sentence and Legal Fees and Motion to Stay and Abate Current Voidable Judgment*, and this Panel, having considered same, Petitioner’s Response, and the argument of counsel, has decided that the Motions should be denied. It is, therefore,

ORDERED that *Respondent’s Amended Motion for Dismissal, Mistrial, New Trial, or in Alternative Motion for Reduction of Sentence and Legal Fees and Motion to Stay and Abate Current Voidable Judgment*, be and the same is hereby denied in their entirety.

SIGNED this 28th day of August, 2023.



DAVID A. NACHTIGALL
Presiding Member, Panel 4-3

App 6

VACATED AND REMANDED, Opinion Signed May 10, 2007.



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

No. 37811

CHRISTOPHER JOHN CAFIERO (State Bar Card No. 24031784)

v.

COMMISSION FOR LAWYER DISCIPLINE
OF THE STATE BAR OF TEXAS

On Appeal from the Evidentiary Panel
of the State Bar of Texas District 06A Grievance Committee
SBOT Cause Nos. D0010525697; D0110425311; and D0030526191

OPINION AND ORDER

Submitted March 23, 2007

COUNSEL:

For Appellant Christopher John Cafiero, Dell James, Dallas

For Appellee, Commission for Lawyer Discipline of the State Bar of Texas, Linda A. Acevedo, First Assistant Disciplinary Counsel (on brief), and Cynthia W. Hamilton, Assistant Disciplinary Counsel (brief and argument), Austin

OPINION:

Appellant attorney Christopher John Cafiero appeals from a disciplinary judgment¹ asking that the judgment be vacated because the grievance committee panel that heard the case lacked a proper quorum and, therefore, was powerless to render judgment. The parties do not dispute the facts, but rather the legal effect of a change in the composition of the panel during the lengthy hearing. The panel heard the Bar's evidence against Cafiero in connection with three separate grievances and found that he had violated certain Texas Disciplinary Rules of Professional Conduct ("Professional Conduct Rules")² in each matter. The panel suspended him from the practice of law for 60 months, with the first 18 months to be an active suspension, and the remaining 42 months to be probated on certain terms and conditions.

Alternatively, Cafiero asks that the judgment be reversed because the manner in which the panel conducted the hearing denied him a meaningful opportunity to be heard, denying him procedural due process. Cafiero also challenges the sufficiency of the evidence to support the findings of professional misconduct and argues that the panel's repeated denials of his requests for a continuance were abuses of its discretion.

Finally, Cafiero argues that the restitution the panel awarded was improper as a matter of law because it incorporated a remedy from civil breach of fiduciary duty cases not available to the

¹ Judgment of Partially-Probated Suspension signed April 25, 2006 by an evidentiary panel of the State Bar of Texas District 06A (Dallas) grievance committee in SBOT Cause Nos. D0010525697, D0110425311; and D0030526191.

² TEX. DISCIPLINARY R. OF PROF'L CONDUCT, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A (2005) (TEX. STATE BAR R. Art. X, § 9).

Bar and, therefore, constituted the imposition of an impermissible fine or sanction. Cafiero asks that the case be remanded to a statewide grievance committee.³

Because it is apparent from the face of the record that the evidentiary panel lost its statutory quorum during the misconduct phase of the hearing, we hold that the Judgment of Partially Probated Suspension signed April 26, 2006 is void. Accordingly, we reverse the judgment in its entirety and remand the case to a state-wide grievance committee panel for a full rehearing on the merits, i.e., for a misconduct phase and, if necessary, a sanction phase.

Underlying Grievances

In this disciplinary proceeding the Bar presented its cases against Cafiero in three separate grievances that were consolidated for the hearing. Each complainant – Mr. Pesina, Mr. Tran and Mr. Emerson – appeared and testified at the hearing. Cafiero testified, as well, disputing certain facts to which the complainants had testified.

Pesina Complaint (SBOT Case D0010525697)

Complainant Pesina was injured in a motorcycle accident in October 2002 when he was 18. Pesina's father signed an employment contract with Mr. Lafuente, a cousin of Pesina's and law partner of Cafiero, while Pesina was in the hospital. At Mr. Lafuente's request, Cafiero negotiated with the insurer and settled Pesina's claim against it for policy limits (\$25,000) . Half of this sum was paid directly to the hospital; the remainder, \$12,500, was to be used to pay the remaining outstanding medical bills. It was deposited into the firm's operating account until those bills were

³ TEX. GOV'T CODE § 81.0751(b)(4)(B) provides, in part: "In an appeal of a finding of a panel of a district grievance committee made to the Board of Disciplinary Appeals, the board may . . . reverse the panel's finding and remand the complaint for a rehearing to be conducted by

received. Pesina did not dispute the amount of the attorney fee due to Cafiero pursuant to the contract Pessina's father had signed with Lafuente. During approximately eight months after Pesina signed the authorization to disclose medical information, Pesina and his mother attempted to contact Cafiero for information concerning the status of the case. Although they talked to Cafiero more than once, he did not return all their calls.

Cafiero testified that Lafuente, not Cafiero, was the lead attorney for Pesina. Lafuente and Cafiero's other partner, Lenahan, served as the firm's managing partner and handled accounting for the firm. Cafiero testified that he had had a discussion with Pesina in which Cafiero informed Pesina that the disbursement of the remaining settlement funds could not be finalized until all of the medical bills were submitted and resolved. Cafiero further testified that Pesina had not submitted all of the outstanding medical bills.

The grievance committee panel hearing the case found that Cafiero had violated Professional Conduct Rules 1.03(a) (failure to keep a client reasonably informed and promptly comply with reasonable requests for information); 1.03(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); 1.14(b) (failure to notify promptly a client or third person with an interest that funds or other property have been received); 1.14(c) (failure to segregate funds belonging in whole or in part to a client or third person until there is an accounting and disbursement); and 8.04(a)(8) (failure to respond timely to a request for information from the Chief Disciplinary Counsel).

... a statewide grievance committee panel composed of members selected from the state bar districts other than the district from which the appeal was taken.”

Tran Complaint (SBOT Case No. D0110425311)

Complainant Tran hired Cafiero to pursue a claim against Tran's former employer, a Toyota dealer, for conversion of Tran's mechanic's tools after Tran's employment with the dealership terminated. Cafiero settled the matter for \$7,500 and deposited the settlement check into the firm trust account in December 2003. Tran knew of and approved the settlement and signed a settlement agreement with the dealership in December of 2003. Tran testified, however, that he did not learn of the payment of the settlement money until eight months later. Cafiero testified that he and Tran argued over the amount due to Cafiero under their contract for legal services and, therefore, the amount payable to Tran out of the settlement proceeds.⁴ Tran testified that Cafiero had agreed to take only \$2,500 in attorney's fees, while Cafiero testified that he had always maintained that he was due the 40 percent provided for in the parties' contract.

Tran eventually went to Cafiero's office in August of 2004 and demanded payment of \$5,000. Cafiero was not in the office when Tran appeared, but the receptionist wrote two checks to Tran in the amounts of \$750 and \$4,250. When Tran attempted to negotiate the larger check, he was informed that the account on which it was drawn held insufficient funds to cover the check. When Tran again contacted Cafiero, Cafiero offered to pay Tran the \$3,550 balance that Cafiero calculated was due to Tran under the contract, but Tran maintained that he was entitled to \$5,000 total and demanded \$4,300 (\$4,250 plus \$50 for the returned check charge).⁵

⁴ The contract provided for a 40 percent contingency fee to the firm plus expenses. Cafiero calculated that the firm was entitled to 40 percent of \$7,500 (or \$3,000) plus \$200 in expenses. Tran was, therefore, to recover the balance of \$4,300. Tran testified that he was entitled to \$5,000.

⁵ At the hearing, Tran agreed to accept Cafiero's \$3,550 offer.

The evidentiary panel found that Cafiero had violated Professional Conduct Rules 1.14(a) (failure to hold funds belonging in whole or in part to a client or third person separate from the lawyer's own property); 8.01(b) (failure to respond to a lawful demand for information from a disciplinary authority); and 8.04(a)(3) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

Emerson Complaint (SBOT Case No. D0030526191)

Emerson hired Cafiero in November 2004 to defend him against DIRECTV, Inc.'s threat to sue Emerson over his possession of signal theft equipment. Cafiero had defended a number of similar demands; Emerson hired him and paid him \$1,000, with the understanding that Cafiero would first dispute the claim in writing. Over the next several months, Cafiero responded to requests from Emerson for information about the status of the matter only by replying to an email with a promise that he, Cafiero, would "look into it."

Cafiero testified that he wrote a letter to DIRECTV disputing the claim and spoke with their representative by telephone. In June 2004 a federal appeals court held that the Wiretap Act created no private cause of action for an entity such as DIRECTV to assert against mere possessors of signal theft equipment.⁶ DIRECTV never sued Emerson, and Emerson concluded that this was because DIRECTV had decided to stop pursuing piracy cases following the federal court decision and not due to any efforts on his behalf by Cafiero. As a result, Emerson decided that Cafiero did not earn the \$1,000 fee and demanded a full refund.

⁶ *DIRECTV, Inc. v. Treworgy*, 373 F.3d 1124 (11th Cir. 2004).

The evidentiary panel found that Cafiero had violated Professional Conduct Rules 1.01(b)(1) (neglecting a legal matter entrusted to the lawyer); 1.03(a) (failing to keep a client reasonably informed and promptly comply with reasonable requests for information); and 8.04(a)(8) (failing to respond timely to a request for information from the Chief Disciplinary Counsel).

Evidentiary Proceedings

The grievance committee panel convened the hearing at approximately 1:30 p.m. on Thursday, April 13, 2006 with all six of its members present: there were four attorney members and two public members. An assistant disciplinary counsel (CDC) appeared on behalf of the State Bar Commission for Lawyer Discipline, and Cafiero represented himself.

The CDC called each complainant to testify, and Cafiero cross-examined each of them. At approximately 5:30 p.m., the CDC called Cafiero to testify. Before proceeding, Cafiero informed the panel that he was a single parent and had sole responsibility to pick up his two children (ages eight and three) from daycare by 6:30 p.m. and, after that, to care for them. He explained that the disciplinary counsel had only told him just before the hearing started that it would be “lengthy” and stated that he had had no opportunity to make other arrangements for his children. He expressed concern that he would not have adequate time to put on his case and still meet the deadline for picking up his children. Based on these circumstances, Cafiero asked the panel to recess at 6 p.m. and to continue the matter to another date, thus allowing him to pick up his children and have a fair opportunity, given the time allowed to the prosecutor, to present his evidence.

The CDC opposed Cafiero’s request, arguing that a continuance would disadvantage the CDC by allowing Cafiero more time to prepare his defense. The CDC proposed that, rather than continuing the hearing, Cafiero should bring his children to the hearing and allow her “other staff”

to care for them until the hearing concluded. Cafiero declined this “offer.” The panel announced that it would recess at 6:15 p.m. and reconvene at 8 p.m. to conclude the hearing. After reconvening, the panel heard testimony until just before 11 p.m.

At some point during the misconduct hearing, one of the public members left.⁷ The hearing continued, with four attorney members and the remaining public member all present. The panel then deliberated for approximately 37 minutes before announcing its findings of misconduct. The Chair stated:

Back on the record. The Panel has met, and only three of the attorneys participated in the voting, since there is one public member here. [Public member #2] had to leave early. So there is one public member voting and two attorneys.

This statement indicates that, while four attorneys continued to hear evidence, only three actually voted.⁸ The chair of the panel read the findings and then announced that the sanctions phase of the hearing would begin immediately. The time was approximately 11:34 p.m.

Cafiero again asked that the sanctions hearing be continued to another day, arguing that requiring him to proceed with the sanctions phase of the hearing at almost midnight effectively denied him a meaningful opportunity to put on his case because he could not call witnesses at that late hour. The CDC again opposed Cafiero’s request for a continuance, arguing that Cafiero had been told at the beginning of the hearing that the sanctions phase would, if necessary, immediately follow the misconduct hearing. The CDC also asserted that Cafiero should have had any witnesses

⁷ While the record does not reflect exactly when the public member left, his last statement on the record occurred at approximately 4:46 p.m., prior to the dinner recess.

⁸ The record does not reflect whether all four lawyers or only three retired for the panel’s deliberation. Presumably, the chair would not have felt it necessary to announce that only three lawyers voted if only three lawyers had retired to deliberate.

he wished to call present when the misconduct hearing began at 1:30 p.m. The CDC urged the panel to continue, “so that the testimony of the witnesses is fresh in the Panel’s mind, and so that we can continue it and complete it tonight.”

During a five-minute break, while the panel considered Cafiero’s second motion for continuance, Cafiero called an attorney. After the panel announced that they were denying his second motion for a continuance, Cafiero asked that the commencement of the sanctions phase of the hearing be delayed for approximately 15 minutes, so that his attorney could represent him. The time was now 11:45 p.m. The CDC again strenuously opposed the request, asserting that it would be “absurd” to wait for Cafiero’s attorney because “[w]e will be through in 15 minutes.” The panel denied Cafiero’s request for a delay, finding it to be unreasonable. Within 10 minutes of the beginning of the sanctions hearing, Cafiero’s attorney arrived. The panel did allow Cafiero’s attorney seven minutes to make a closing statement, which he began immediately on his arrival.

After the panel announced the sanction it had decided to impose, Cafiero asked that he be given 90 days to pay a portion of the attorney’s fees awarded as part of the sanction. The panel chair asked the CDC whether it was possible to delay the payment of all or a portion of fees, and she (incorrectly) advised the panel that “You have to make your decision tonight and put it on the record. There is no provision in the Disciplinary Rules to continue a portion of your sanction.” Just before adjourning, the chair asked the CDC whether, in completing the Evidentiary Hearing Report, he had to mark through the names of the panel members that “had to drop out.” The Report shows lines drawn through the names of two members who were originally marked as being “Present.”

Statutory Grievance Committee Panel Composition

Cafiero asks that the judgment be vacated because the evidentiary panel lost its quorum sometime before the completion of the misconduct phase of the hearing. In the absence of a proper quorum required by law to hold court, any judgment rendered by the remaining judges is a nullity, because the court is without authority to render judgment. *Long v. State*, 59 Tex. Crim. 103, 127 S.W. 551, 558 (1910). The number of judges required to be present to authorize a court to transact business is determined by the constitutional and statutory provisions creating the court. *Id.*

This case involves the effect of a judgment rendered by a purportedly improperly-constituted panel as distinguished from a properly-constituted panel proceeding in an irregular manner. *See Greater Fort Worth & Tarrant Co. Cmty. Action Agency v. Mims*, 627 S.W.2d 149 (Tex. 1982); *Swain v. Wiley College*, 74 S.W.3d 143 (Tex. App.—Texarkana 2002, no pet.). It does not raise an issue of how many members of a quorum are required to render a decision, as all the panel members voted unanimously on all findings and sanction.

The State Bar Act, TEX. GOV'T CODE § 81.001 *et seq.* and the Texas Rules of Disciplinary Procedure, *reprinted* in TEX. GOV'T CODE, tit. 2, subtit. G, app. A-1 (2005) (“TRDP” or “Disciplinary Procedural Rules”),⁹ mandate the required composition of a grievance committee, a panel of the committee, and a quorum of a panel. The State Bar President appoints members to district grievance committees based on recommendations by the Directors of the State Bar. TRDP 2.02. Each Committee must consist of two-thirds attorneys and one-third public members. *Id.* Grievance committee members are assigned to panels, TRDP 2.06, which are typically composed of

⁹ The disciplinary rules have the force and effect of statutes. *O'Quinn v. State Bar of Texas*, 763 S.W.2d 397, 399 (Tex. 1988).

either six members or three members. A numerical majority of the panel constitutes a quorum for conducting business. TRDP 2.07. A majority vote of those present permits the conduct of business, if a proper quorum is present. *Id.* Once a panel is assigned, the complainant and respondent must consent to any changes made to the panel to obtain a quorum or to effect a substitution on the day of the hearing. TEX. GOV'T CODE § 81.072(m) and (n).

Like the Committee as a whole, each panel must be comprised of two-thirds attorney members and one-third public members. TRDP 2.02; TRDP 2.07; and TRDP 2.17. In addition, a quorum of a panel must include at least one public member for every two attorney members *present*. TEX. GOV'T CODE § 81.072(j); TRDP 2.07. The Texas legislature amended the State Bar Act in 2001¹⁰ to ensure a certain ratio of public members to attorney members at hearings. Before the addition of this legislative requirement, a quorum of a three-person panel (two attorneys and one public member) could hear a case, with the two attorney members being that quorum. The legislature, presumably, wanted to ensure that hearings proceeded with a certain level of participation by non-lawyer members.

In this case, a full panel of six members with the proper ratio of four attorneys and two public members convened to hear the case. Before determining whether misconduct occurred, however, one public member departed, leaving four attorneys and only one public member to proceed with the hearing. The chair's statement that "The Panel has met, and only three of the attorneys participated in the voting, since there is one public member here" indicates that four

¹⁰ H.B. 792, 77th Leg., R.S., 2001 Tex. Gen. Laws 1436.

attorneys continued to participate in the hearing with only one public member present.¹¹ In presenting argument to this Board, counsel for the Commission conceded that “It does appear that there probably were four lawyers present at some point and only one public member.” The Commission also conceded that a panel comprised of four lawyers and one public member violates the statutory quorum requirements for grievance committee panels. Although there were enough members present to constitute a quorum numerically, the remaining members violated the statutory requirement by proceeding without at least one public member being present for every two attorneys. Having one member abstain from voting after all four lawyers had heard the balance of the evidence – and possibly participated in the misconduct deliberations – could not cure the defect.

We note that the panel chair also stated that “there is one public member voting and two attorneys,” which seems inconsistent with his previous statement that three attorneys participated in the voting. We assume that the chair simply misspoke and meant to say “three attorneys.” However, if only two attorneys and one public member (three members total) voted, then the panel had lost the fourth member required for a numerical quorum. Either way, the panel had lost its authority to act by the time it purported to render the judgment here at issue.

Waiver

The Commission argues that, while the departure of one public member may have resulted in an improperly constituted panel, Cafiero waived the defect by not objecting to the remaining members continuing the hearing. We disagree. The law is clear that a judgment rendered by a court

¹¹ The record reflects that the public member who left early made no statements on the record after 4:45 p.m., but four different attorneys continued to ask questions until at least 10:19 p.m.

without capacity to act is void. *State ex rel. Latty v. Owens*, 907 S.W.2d 484, 485 (Tex. 1995) (per curiam); *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990) (orig. proceeding) (per curiam); *Browning v. Placke*, 698 S.W.2d 362, 363 (Tex. 1985) (orig. proceeding) (per curiam). Although a party need not appeal a void judgment to secure the right not to comply with it, the party may appeal, asking the appellate body to declare the judgment void. *State ex rel. Owens v. Latty* at 486. The grievance committee was not free to disregard the legislative mandate concerning panel composition. *See Anderson v. Grossenbacher*, 381 S.W.2d 72, 74 (Tex. Civ. App.–San Antonio 1964, writ ref'd n.r.e.) (“we are not faced with a parliamentary rule made by the Drafting Commission which it could disregard, but we have a statutory rule which the Drafting Commission could not override or ignore. Without the quorum at the fourth called hearing there was no commission, and without a commission there was no hearing.”). When the remaining members of the panel proceeded with a numerical quorum that, nevertheless, had an incorrect ratio of lawyer members to public members, it lost capacity to act as a properly-constituted grievance committee panel quorum, and its decision was, therefore, void.

Fee Disgorgement

Because Cafiero challenges the judgment’s requirement that he disgorge all of the fees for which he contracted with the complainants, and because the question might arise on remand,¹² we note that the restitution permitted under the Disciplinary Procedural Rules does not include the equitable remedy of total fee forfeiture. The panel confused the award of a civil remedy for breach

¹² Our comments concerning the fee disgorgement awarded should not be construed as a suggestion that, on remand, Cafiero should be found to have committed misconduct. We express no opinion of the merits of the Commission’s misconduct cases.

of fiduciary duty¹³ with the imposition of a sanction intended to restore to a client funds lost as a result of professional misconduct. The panel's interpretation of allowable restitution in this case effectively reads into every disciplinary case a breach of fiduciary duty; if this were the law, total fee disgorgement would be permissible in any case finding any violations of the Texas Disciplinary Rules of Professional Conduct. Without any basis for doing so, the panel here decided that Cafiero was entitled to no fee for any of the work he had performed on behalf of these three clients. That result is clearly punitive and not within the purpose of the disciplinary sanctions.

Because the panel chose to continue the hearing with a quorum that did not include one public member for every two attorney members present, we hold that the Judgment of Partially Probated Suspension is void. Accordingly, we vacate the judgment in Cause Nos. D0010525697, D0110425311, and D0030526191 and remand the case to a state-wide grievance committee panel for further proceedings consistent with this opinion.

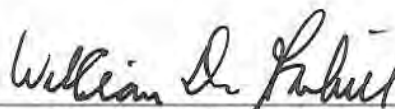
IT IS SO ORDERED.



Karen L. Watkins, Chair



Paul D. Clote, Vice Chairman



William D. Greenhill

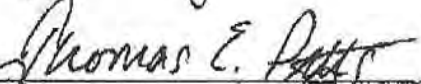
¹³ *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999).

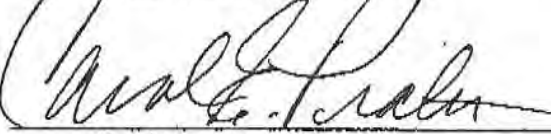

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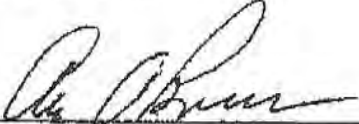
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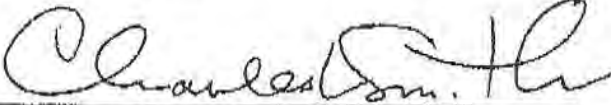
Clement H. Osimeha


Jose I. Gonzalez-Falla


Thomas E. Pitts


Carol E. Prater


Alice A. Brown


Charles L. Smith

Ben Selman not sitting.

App 7

JUDGMENT OF PARTIALLY PROBATED SUSPENSION AFFIRMED.

Opinion and Judgment Signed and Delivered AUG. 21, 2008.



BEFORE THE BOARD OF DISCIPLINARY APPEALS

**APPOINTED BY
THE SUPREME COURT OF TEXAS**

No. 41135

BOMA O. ALLISON, APPELLANT

v.

COMMISSION FOR LAWYER DISCIPLINE, APPELLEE

**On Appeal from the Evidentiary Panel
for the State Bar of Texas,
District 4D07
No. H0120419086**

Opinion and Order

Heard En Banc June 20, 2008

COUNSEL:

For Appellant, Wayne H. Paris, Houston, Texas.

For Appellee, Commission for Lawyer Discipline of the State Bar of Texas, Linda A. Acevedo, First Assistant Disciplinary Counsel, and Cynthia W. Hamilton, Assistant Disciplinary Counsel, Austin, Texas.

OPINION AND ORDER:

Appellant, attorney Ms. Boma O. Allison, appeals from a Judgment of Partially Probated Suspension, alleging (1) that the Evidentiary Panel rendering judgment lacked a proper quorum thus making the judgment void; and (2) that the parties had settled the case prior to the hearing conducted by the Evidentiary Panel.

Because we find (1) that the Evidentiary Panel rendered judgment pursuant to the vote of a proper quorum; and (2) that there is substantial evidence to support the conclusion that the parties had not settled the case prior to the Evidentiary Panel hearing, we affirm the Judgment of Partially Probated Suspension signed on August 17, 2007.

I.

JUDGMENT OF EVIDENTIARY PANEL

Composition of Evidentiary Panel Generally vs. Quorum of Panel

Ms. Allison's disciplinary proceeding was heard by a State Bar of Texas grievance committee pursuant to Part II of the Texas Rules of Disciplinary Procedure. Texas Rules of Disciplinary Procedure, *reprinted* in TEX. GOV'T CODE, tit. 2, subtit. G, app. A-1 (Vernon 2005) ("TRDP"). The parties do not dispute the fact that the Chairman of the Grievance Committee appointed an Evidentiary Panel consisting of four attorney members and two public members to hear Ms. Allison's case. The Evidentiary Panel, as appointed, satisfied the requirement that panels must be composed of two attorney members for each public member. TRDP 2.07. Accordingly, Appellant does not assert any error in the number or mix of members assigned to the Evidentiary Panel.

Because not all members of the panel participated in the evidentiary hearing and subsequent decision, we are left with the question of whether a proper quorum of the Evidentiary

Panel was present to hear the case. Although we held in *Cafiero v. Commission for Lawyer Discipline* (BODA No. 37,811; May 10, 2007), that a judgment rendered by a panel (of four attorney members and one public member) which did not satisfy the composition requirement of TRDP 2.07 was void, we have not addressed whether a mix of three attorney members and one public member may constitute a proper quorum.¹ We address that question now.

Quorum of an Evidentiary Panel

TRDP 2.07 provides that a properly appointed Evidentiary Panel may act through less than all its members (a quorum of the panel). The relevant language of TRDP 2.07 reads as follows: “A quorum must include at least one public member for every two attorney members present....”²

In analyzing the Texas Rules of Disciplinary Procedure, we note that, under the Texas Constitution and the State Bar Act, the Texas Supreme Court has the power to regulate the practice of law. Tex. Const. art. II, § 1; Tex. Gov’t Code Ann. § 81.011(c) (Vernon 2005) (the “State Bar Act”); *In re State Bar of Texas*, 113 S.W. 3d 730, 732 (Tex. 2003). Moreover, the TRDP have the force and effect of statute. *O’Quinn v. State Bar of Texas*, 763 S.W.2d 397, 399 (Tex. 1988). The State Bar Act provides a statutory mechanism whereby the Court promulgates regulations governing the practice of law. *In re State Bar*, 113 S.W. 3d at 732. Accordingly, we take guidance from the State Bar Act on the definition of a quorum.

Section 81.072(j) of the State Bar Act states the relevant quorum requirement as follows: “A quorum of a panel of a district grievance committee of the state bar must include one public

¹ As we discussed in *Cafiero*, the State Bar Act, TEX. GOV’T CODE § 81.001 *et seq.* (Vernon 2005) and the TRDP mandate the required composition of the grievance committee, panels of the committee, and a quorum of the panel. A quorum must meet not only a numerical majority requirement, but it must also satisfy a composition requirement, which is at issue in this case.

² Although the dissent focuses much attention on the word “must” in TRDP 2.07, the majority does not dispute that certain action is required, not suggested. The majority and dissenting opinions diverge, however, on exactly what is required by TRDP 2.07 and the State Bar Act.

member for each two attorney members.” A review of the history of this particular provision leads us to confirm that the Legislature’s definition of a quorum existed at the time the Texas Supreme Court promulgated the present Rules of Disciplinary Procedure. Further, we conclude that the Texas Supreme Court would have been guided by the legislation existing at the time it promulgated the Rule of Disciplinary Procedure.

Against this background, we determine whether a quorum must consist of no more than two attorneys for each public member (as suggested by Appellant), or whether at least one public member must be present at the hearing for each two attorney members present (the wording of the State Bar Act). To illustrate, the parties would agree that a six-member panel that had two attorney members and one public member present hearing the case would satisfy the attorney/public member requirement but would not constitute a quorum because those present do not constitute a majority of the panel members appointed. *See* TRDP 2.07, State Bar Act § 81.072(j). In this example, the addition of one public member would satisfy the quorum requirement that a majority of a six-member panel be present for the hearing. The addition of one public member in this example also would satisfy the requirement that at least one public member for each two attorney members participate. In this example, the quorum would consist of four public members: two public members and two attorney members. *See* State Bar Act § 81.072(j). If, as in the case at bar, an attorney member joined a group of three (consisting of two attorney members and one public member), do the TRDP require the addition of a public member? We conclude that the Rules do not so require.

The TRDP and the State Bar Act expressly provide that, to constitute a quorum, there must be one public member for each instance where there are two attorney members. TRDP 2.07; State Bar Act § 81.072(j). For purposes of a quorum, we have concluded that, not until

four attorney members participate is there a requirement that two public members participate (one public member for each two attorney members). If the Texas Supreme Court intended a different result (as proposed by Appellant), the Court could have required that no more than two attorneys participate for every public member participating. The Court did not so provide. If the Court had included such language in the Rules, three attorney members and one public member would not satisfy the requirement, because more than two attorney members (three in this example) would have participated for each public member (one in this example). Notably, however, neither the Texas Supreme Court nor the Texas Legislature promulgated the language that is necessary to support Appellant's position. Rather than requiring *no more than* two attorney members for each public member, the TRDP required "*at least*" one public member for "every two attorney members" present. These two requirements are not the same.³

In the TRDP rules relating to composition of a panel (but not a quorum), the Texas Supreme Court referred to a ratio of "two attorney members for each public member." *See* TRDP 2.07. The Texas Supreme Court also used a ratio of two attorney members for each public member in other rules. *See* TRDP 2.17 (requirements for an Evidentiary Panel) at 2.02 (requirements for a district grievance committee). But when the Texas Supreme Court set the requirements for a quorum, the Court reversed the order of the constituent members, so that the reference to public members preceded the reference to attorney members. The requirements for a quorum of an Evidentiary Panel are different than the requirements for the composition of an Evidentiary Panel itself -- the quorum requirements are expressed in terms of a minimum number of public members for every group of two attorney members.

³ The dissent suggests a similar wording where a quorum would exist only when the group consists of not less than 1/3 public members. TRDP 2.07 similarly does not use this language. If the Texas Supreme Court or the Texas Legislature intended the result suggested by the dissent, they could have easily used the language suggested therein.

When comparing the quorum requirement set forth in the State Bar Act to the TRDP, we note that the only difference is that the State Bar Act requires “at least one public member for *each* two attorney members” while the TRDP requires “at least one public member for *every* two attorney members.” (emphasis added). We conclude the language of the State Bar Act and the TRDP to be synonymous, and that for each group⁴ of two attorney members, there must be at least one public member. The definitions of “each” and “every” in BLACK’S LAW DICTIONARY confirm that the terms are synonymous:

Each. A distributive adjective pronoun, which denotes or refers to every one of the persons or things mentioned; every one of two or more persons or things, composing the whole, separately considered. The effect of this word, used in the covenants of a bond, is to create a several obligation. The word “any” is equivalent to “each.”

Every. Each one of all; all the separate individuals who constitute the whole, regarded one by one. The term is sometimes equivalent to “all”; and sometimes to “each.”

455, 498 (5th ed. 1979).

In the instant case, although there were three attorney members present, there was not more than one group of two attorneys. Accordingly, for purposes of the necessary quorum,⁵ only one public member was required to be present. Because a quorum existed for the Evidentiary Panel that heard and decided this matter, the judgment was not void.

In reaching the conclusion set forth herein, we have determined that the rule in question is not ambiguous. Nevertheless, we note that the Commission for Lawyer Discipline has previously interpreted the rule in a manner consistent with this opinion. The Board notes that in construing the TRDP and the State Bar Act, it may consider the administrative construction of

⁴ We do not suggest that the word “group” should be inserted into either Rule 2.07 or the State Bar Act. Clearly, however, the phrases “for each two attorney members” and “for every two attorney members” make reference to a group of two attorney members.

⁵ The concept of a quorum connotes action by a group of less than all members. A rule that would require attendance by all public members (as proposed by Appellant and the dissent and applied to panels of 6) seems inconsistent with the meaning of the word quorum. As interpreted by Appellant and the dissent, TRDP 2.07 would not allow a panel of 6 to hear evidence and decide matters unless all public members are present and voting.

the relevant provisions. TEX. GOV. CODE ANN. § 311.023 (Vernon 2005). See also *O'Quinn v. State Bar of Texas*, 763 S.W.2d at 399. Further, the Board may consider the objective to be obtained by the relevant provisions. *Id.* Although not relying on an administrative construction, we have concluded that the construction given herein is consistent with the objective to be obtained, namely a requirement that a decision by an Evidentiary Panel cannot be reached without the involvement of one or more public members.

II.

SETTLEMENT ISSUE

Alleged Settlement by Proposed Agreed Judgment

Appellant argues that, prior to the hearing before the Evidentiary Panel, she settled the claims raised by the Commission for Lawyer Discipline. BODA reviews the evidence whether a prior agreed judgment existed under the substantial evidence standard. TRDP 2.24. In deciding whether substantial evidence exists to support findings, the reviewing body determines whether reasonable minds could have reached the same conclusion. *Texas Health Facilities Commission v. Charter Medical - Dallas, Inc.*, 665 S.W.2d 446, 453 (Tex. 1984) (applying the substantial evidence standard under the APA). The reviewing court may not substitute its judgment for the decisions within the lower court's discretion and is not bound by the reasons stated in the order for the result, provided that some reasonable basis exists in the record for the action taken. *Railroad Comm'n of Texas v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995). Under substantial evidence review, the findings, conclusions, and decisions of the lower court are presumed to be supported, and the burden is on the appellant to prove otherwise. Substantial evidence is something more than a mere scintilla, but the evidence in the record may

preponderate against the decision and still amount to substantial evidence. *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994).

In support of her argument, Appellant directs the Board's attention to an Agreed Judgment executed only by Appellant. The only evidence before the Board of an alleged agreement is evidence that Appellant agreed to a proposed Agreed Judgment. Appellant does not argue, nor can she argue, that the Evidentiary Panel somehow became bound by an agreement that may or may not have been reached between Appellant and Appellee. In fact, Appellant states that she first brought the existence of the alleged agreement to the Evidentiary Panel's attention in a Motion for New Hearing (New Trial). Appellant waited until the Evidentiary Panel heard the evidence and announced its decision before arguing for an Agreed Judgment which contained a more favorable disposition than the judgment rendered against her.

We note that (1) the Evidentiary Panel would not necessarily have been bound by a proposed Agreed Judgment; (2) the "Agreed Judgment" referred to by Appellant expressly adopts Rule 11 of the Texas Rules of Civil Procedure (requiring execution by all parties); (3) no evidence supports the existence of an Agreed Judgment executed by an attorney for the Commission for Lawyer Discipline; and (4) Appellant did not raise the existence of an alleged Agreed Judgment until after the presentation of evidence and rendition of a decision (creating serious doubt as to the existence of such alleged agreement). Based on this evidence, we conclude that Appellant has failed to meet her burden and that the Judgment entered by the Evidentiary Panel must not be reversed on the basis of an alleged prior settlement between the parties. We therefore affirm the Judgment of the Evidentiary Panel in all respects.

IT IS SO ORDERED.

Paul D. Clote

Paul D. Clote, Chair

Jose I. Gonzalez-Falla

Jose I. Gonzalez-Falla, Vice Chairman

Clement H. Osimetha

Clement H. Osimetha

Alice A. Brown

Alice A. Brown

Deborah J. Race

Deborah J. Race

W. Clark Lea

W. Clark Lea

Board Members Yolanda De Leon and Ben Selman not participating.



BEFORE THE BOARD OF DISCIPLINARY APPEALS

**APPOINTED BY
THE SUPREME COURT OF TEXAS**

No. 41135

BOMA O. ALLISON, APPELLANT

v.

COMMISSION FOR LAWYER DISCIPLINE

**ON APPEAL FROM THE EVIDENTIARY PANEL
FOR THE STATE BAR OF TEXAS
DISTRICT 4D07
NO. H0120419086**

Heard En Banc April 4, 2008

Members Thomas E. Pitts, Vice Chairman, Carol E. Prater, Charles L. Smith, and Thomas J. Williams, dissenting:

After numerous delays, a quorum of the evidentiary panel heard this case on July 2, August 1, and August 13, 2007. The quorum consisted of three attorneys and one public member. It found that Boma Allison violated specific provisions of the Texas Disciplinary Rules of Professional Conduct and sanctioned her.

Allison subsequently submitted a timely Motion for New Hearing, claiming that an improper statutory ratio of attorney members (3) and public member (1) had heard and decided the case. Significantly, at the time of the hearing of the Motion for New Hearing on November

13, 2007, three attorney members and two public members were present for a quorum. Based on the *Cafiero* case, which this Board decided on March 23, 2007,¹ Allison contended that the make-up of the evidentiary panel that heard the case and rendered the sanction was improperly constituted and hence was without jurisdiction to hear and decide the case. The newly constituted quorum, however, overruled the motion for rehearing.

Allison has appealed this matter. The majority of this Board has held that the language of the State Bar Act, Section 81.072(j) and Rules 2.02, 2.07, and 2.17 of the Texas Rules of Disciplinary Procedure (“TRDP”) can be interpreted to permit a quorum of three attorneys and one public member to make up the evidentiary panel to hear and decide this case, and it has affirmed the decision of the evidentiary panel in this case. We respectfully dissent from our distinguished colleagues’ decision. In doing so, we would hold that the provisions of the above-mentioned statute and TRDP are clear and that the quorum of the evidentiary panel which conducted the hearing with three attorneys and only one public member violated the statutory requirements, and, therefore, its decision is void and should be vacated.

Before 2001, the TRDP allowed an evidentiary panel to conduct business without public members as long as a majority of the panel’s members were present. Therefore, in order to ensure a certain ratio of public members to attorney members at hearings, the legislature in 2001 amended Section 81.072 to read in part as follows:

(j) a quorum of a panel of a district grievance committee of the State Bar must include one public member for each two attorney members. [Emphasis added]

¹ This case is not the Board’s first review of this problem. In March, 2007, the Board rendered an Opinion in *Cafiero v. Commission for Lawyer Discipline*, which involved the actions of a panel quorum consisting of four attorneys and one public member. Under those circumstances, the Board unanimously held that when the panel conducted the hearing, the quorum did not include one public member for every two attorney members present, and therefore its decision was void.

The TRDP was amended and promulgated by the Texas Supreme Court. Following the lead of the legislature, the Texas Supreme Court promulgated the following applicable Rules. Rule 2.02 relates to the composition of members of the District Grievance Committees. It provides in part as follows:

Each committee **must** consist of no fewer than nine members, two-thirds of whom **must** be attorneys licensed to practice law in the State of Texas and in good standing, and one-third of whom **must** be public members. All Committee panels **must** be composed of two-thirds attorneys and one-third public members.² [Emphasis added]

Rule 2.07 deals with committees and quorums. It provides in part as follows:

Committees shall act through panels, . . . to conduct summary disposition dockets and evidentiary hearings. No panel may consist of more than one-half of all members of the committee or fewer than three members. . . . Panels **must** be composed of two attorney members for each public member. A quorum **must** include **at least** one public member for every two attorney members present. [Emphasis added]

Finally, Rule 2.17³ is relevant to evidentiary hearings and evidentiary panels. It provides in part as follows:

Each Evidentiary Panel **must** have a ratio of two attorney members for every public member. [Emphasis added]

Our task is to construe the Rules as written and arrive at the intention of the legislature and the Supreme Court in promulgating the State Bar Act and TRDP. In order to do so, we are required to begin with the word “must.” The term “must” in a statute is generally recognized as mandatory, creating a duty or obligation and is a condition precedent. Tex. Gov’t Code § 311-016(3); *City of Laredo v. Almagar*, 179 S.W.3d 132, 135 (Tex. App.—San Antonio 2005, no

² These two sentences predate the 2001 legislative addition of part (j) to the Texas Government Code § 81.072 and were not amended afterwards.

³ The language of Rules 2.07 and 2.17 were changed after the 2001 legislative addition of part (j) to § 81.072.

pet.). The term “condition precedent” is not defined by any legislative act or the Rules, and therefore the common usage of that word must be used. Tex. Gov’t Code § 311.011(a); *Dornbush v. State*, 156 S.W.3d 859, 870 (Tex. App.—Corpus Christi 2005, pet. ref’d.); *Delgado v. Jim Wells County*, 82 S.W.3d 640, 642 (Tex. App.—San Antonio 2002, no pet.). The term “condition precedent” means something that must be done before the rule becomes effective; a prerequisite; something indispensable to the occurrence of something else. *Webster’s New Collegiate Dictionary* 909 (1977). And the term “at least” means “not less than.” *Commercial Union Ins. Co. of New York v. Mabry*, 442 S.W.2d 413, 414 (Tex. App.—Houston [1st Dist.] 1969, no writ).

In construing the State Bar Act and the TRDP, it must be presumed that they were intended to be consistent and to operate in harmony with each other. In determining the intent of the legislature in promulgating Section 81.072(j) of the State Bar Act, we must keep in mind that in passing the Act, the legislature intended to ensure a certain ratio of attorney members to public members at hearings. *Caftero v. Commission for Lawyer Discipline*. It consequently was mandating as a condition precedent (with the word “must”) that a quorum of a panel include one public member for each two attorney members. When this is done, the plain and common meaning of the legislative intent was that a quorum of an evidentiary panel must include 33½ percent public members.

The same thing is true with respect with TRDP 2.02. When the plain and common meaning of the words “all committee panels **must** be composed of two-thirds attorneys and one-third public members,” it means exactly what it says. This is particularly true when Section 2.02 is coupled with Section 2.17 which says that “each evidentiary panel **must** have a ratio of two attorney members for every public member.” There can be no doubt about the meaning of these

words – it mandates that each evidentiary panel must be made up of $66\frac{2}{3}$ percent attorney members and $33\frac{1}{3}$ percent public members.

The same requirement is made in Rule 2.07 when it says “Panels **must** be composed of two attorney members for each public member” and that “a quorum **must** include **at least** one public member for every two attorney members present. When all of the above are read together – that is, the State Bar Act and the above-discussed Rules – it must be presumed that they were intended to be consistent and to operate in harmony. When this is done, and the words are given their plain and common meaning with the mandatory emphasis mentioned above, the only conclusion that can be arrived at is that the quorum of every evidentiary panel must be composed of at least (no less than) $33\frac{1}{3}$ percent public members. In light of this, there can be no doubt that the evidentiary panel which heard this case violated the intent and spirit of the statute and TRDP.

Rather than accepting the plain and common meaning of the Statute and of the Rules, the majority has engaged in a forced, strained or even a contrived construction of the Statute and the Rules to find that Rule 2.07 means that the number of public members required for a quorum is based on how many multiples of two attorneys are present. Thus, in the majority’s reasoning, for a six-member evidentiary panel, if three attorneys are present, only one public member is necessary to achieve a valid quorum, because when three attorneys are present, there is only a single set of two attorneys. In essence, it appears as if the majority is attempting to rewrite or amend the Rules to support the conclusion it desires.

In response, we would point out that when statutes and rules are subject to construction, it is not within our province to indulge in acts of legislation or rule writing. We may direct the attention of the rule makers to any defect or omission, but we must take the words as we find them. It is for the legislators and the rule makers, not this Board, to remedy defects or supply a

deficiency in the rules, and to give relief from unjust and unwise legislation and rules. Accordingly, since the primary objective of this Board is to give effect to the intent of the legislature and the Court by looking at the plain and common meaning of the words to determine their intent, we cannot engage in forced or strained construction of the Statute and Rules as the majority has done; instead, this Board must yield to the plain sense of the chosen words. *Powell v. Stover*, 165 S.W.3d 322, 326 (Tex. 2005); *In re Entergy Corp.*, 142 S.W.3d 316, 322 (Tex. 2004); *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex. 2003); *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 866 (Tex. 1999); *Ramco Oil & Gas, Ltd. v. Anglo Dutch (Tenge) LLC*, 171 S.W.3d 905, 913 (Tex. App.—Houston [14th Dist.] 2005, no pet.). A major flaw in the majority’s interpretation is that it fails to recognize the distinction between the requirements for the evidentiary panel and the requirements for a quorum of a panel. Rules 2.07 and 2.17 permit no flexibility whatsoever in determining the composition of the panel itself—it must contain exactly two attorneys, no more and no less, for every one public member. Thus, if there is one public member on the panel, there must be exactly two attorneys—not one and not three; if there are two public members on the panel, there must be exactly four attorneys, not three and not five, and so on.

With respect to the quorum requirement, however, the Supreme Court, presumably recognizing that volunteer members of a local grievance committee will not always be able to attend every hearing, allowed some flexibility by providing that there must be **at least** one (not exactly one) public member for every two attorneys present. Thus, if the panel itself consists of four attorneys and two public members and two attorney members are unable to hear a particular case, the panel may proceed with the remaining two attorneys and the two public members, because there would be “at least” one public member for every two attorney members.

The majority holds that for a quorum to be valid there must be one public member for every “group” of two attorneys. The rule, however, says nothing about “groups” – it says that there must be “at least one public member for every two attorney members present.” If three attorneys are present, an exact one-to-two ratio would mean that there would be 1½ public members present. Therefore, in order to have “at least” one public member for every two attorneys, there must be two public members present if three attorney members are present.

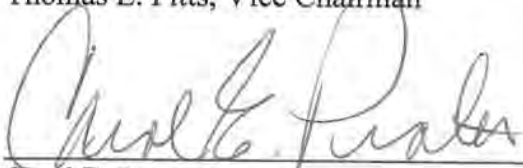
Another flaw in the majority’s opinion is this: The courts should not give undefined statutory language (*i.e.* “a quorum must include at least one public member for every two attorney members present”) a meaning out of harmony or inconsistent with the other provisions, although the language may be susceptible of such a construction if standing alone. *See Barr v. Bernhard*, 562 S.W.2d 844, 849 (Tex. 1978); *Dallas Indep. Sch. Dist. v. Finlan*, 27 S.W.3d 220, 228 (Tex. App.—Dallas 2002, *pet denied*). In ascertaining statutory meaning, we must look primarily to how the words are used throughout the statute as a whole. *See Barr*, 562 S.W.2d at 849; *Finlan*, 27 S.W.3d at 228. Statutory language should be interpreted consistently in every part of an act. *See Finlan*, 27 S.W.3d at 228; *Tex. Dept. of Transportation v. Needham*, 82 S.W.3d 314, 318 (Tex. 2002). In view of the above, to adopt the majority’s construction would mean that although it is mandatory that all grievance committees, committee panels and evidentiary panels must be composed of at least one-third public members, the quorum of an evidentiary panel—arguably the most important body in the entire grievance system, which must listen to the evidence and decide the guilt or innocence of an attorney and the type and duration of any sanctions—can be made up with less than one-third public members—25 percent in this case. In light of the clear mandatory language of the statute and the Rules, and the intent of the legislature to ensure that a quorum of an evidentiary panel include at least (no less than) one

public member for every two attorneys, the majority's interpretation is clearly out of harmony and inconsistent with the other provisions and is consequently untenable.

We would thus hold that the quorum of the evidentiary panel which heard this case was in violation of the statutory requirements and therefore its decision is void and should be vacated.



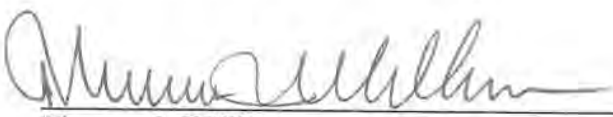
Thomas E. Pitts, Vice Chairman



Carol E. Prater



Charles L. Smith



Thomas J. Williams

App 8

JUDGMENT OF DISBARMENT VACATED.

Opinion and Judgment Signed January 28, 2011, and Delivered January 30, 2011.



BEFORE THE BOARD OF DISCIPLINARY APPEALS

**APPOINTED BY
THE SUPREME COURT OF TEXAS**

No. 44292

HEATHER SCHAEFER, APPELLANT

v.

**COMMISSION FOR LAWYER DISCIPLINE
OF THE STATE BAR OF TEXAS, APPELLEE**

**On Appeal from the Evidentiary Panel
for the State Bar of Texas
District 01A-2 (Dallas) Grievance Committee**

Nos. D0050732097, D0080732685, D0110733526

Opinion and Order on Motion for Rehearing

Considered En Banc October 18, 2010

COUNSEL:

Appellant, Heather Schaefer, Plano, Texas, *pro se*.

For Appellee, Commission for Lawyer Discipline of the State Bar of Texas, Linda A. Acevedo, Chief Disciplinary Counsel; Cynthia W. Hamilton, Senior Appellate Counsel, Office of the Chief Disciplinary Counsel, State Bar of Texas, Austin, Texas.

OPINION AND ORDER:

Attorney Heather Schaefer appealed a judgment disbaring her signed March 3, 2009 by an Evidentiary Panel¹ for the State Bar of Texas District 01A-2 Grievance Committee (Collin County, Texas). The dispositive issue on appeal was whether an evidentiary hearing panel that failed to meet the minimum statutory requirement that all grievance committee panels consist of two-thirds attorneys and one-third public members, TEX. R. DISCIPLINARY P. 2.02, 2.07, 2.17, had authority to convene a hearing and render judgment. This is a question of first impression and distinct from the prior decisions involving the quorum of a properly constituted Evidentiary Panel.² The Supreme Court of Texas has stated that the statutory composition requirement for Evidentiary Panels is inflexible. *In re Allison*, 288 S.W.3d 413, 417 (Tex. 2009).

On July 30, 2010, this Board (“BODA”) held that the Supreme Court of Texas and the Legislature intended that the mandatory composition requirement for an Evidentiary Panel is jurisdictional; that is, a panel without two-thirds attorney members and one-third public members lacks authority to convene a hearing. Because the record in this case disclosed on its face that the

¹ “Evidentiary Panel” means a panel of the District Grievance Committee performing an adjudicatory function other than that of a Summary Disposition Panel with regard to a Disciplinary Proceeding pending before the District Grievance Committee of which the Evidentiary Panel is a subcommittee, TEX. R. DISCIPLINARY PROCEDURE 1.06O, *reprinted* in Tex. Gov’t Code, tit. 2, subtit. G, app. A-1 (Vernon 2005) (“TRDP”). All references to disciplinary rules in this opinion are to these rules, unless otherwise indicated.

² *In re Allison*, 288 S.W.3d 413 (Tex. 2009) (holding that a three-attorney and one-public member quorum of a six-person Evidentiary Panel was a proper quorum under TEX. GOV’T CODE § 81.072(j) and TRDP 2.07); *Caffero v. Comm’n for Lawyer Discipline*, BODA Case No. 37811 (May 10, 2007) (holding that a four-attorney and one-public member quorum of a six-member Evidentiary Panel did not satisfy the requirements of TEX. GOV’T CODE § 81.072(j) and TRDP 2.07).

Schaefer panel lacked the statutorily required members (having only four attorneys and one public member), BODA held that the judgment of disbarment was void, vacated the judgment, and remanded the case for a new hearing before a lawfully constituted panel. The Commission for Lawyer Discipline of the State Bar of Texas filed a motion for rehearing asking BODA to reconsider its holding that the panel lacked authority to render judgment and urging that the mandatory composition requirement was not jurisdictional and that Schaefer had waived any error for the failure of the Chief Disciplinary Counsel and the panel to comply with the TRDP.

We held and today reaffirm that the unambiguous statutory rules for formation and composition of the Evidentiary Panel are not only mandatory but also fundamental to the jurisdiction and integrity of the disciplinary adjudicatory process. The primary purpose of these rules is protection of the public. Further, and importantly, the Office of the Chief Disciplinary Counsel acts as staff for the grievance committee panel in limited circumstances such as those now before us and must scrupulously adhere to the rules when requesting appointments and substitute appointments for Evidentiary Panels. Therefore, we deny the motion for rehearing.

I. PROCEDURAL HISTORY

A. Evidentiary Panel Appointments

This disciplinary action against attorney Schaefer began as three separate complaints filed in 2007. After reviewing each complaint, the Office of the Chief Disciplinary Counsel (“CDC”) of the State Bar of Texas found just cause to believe that Schaefer had committed professional misconduct. The CDC served Schaefer with three separate notices of a finding of just cause and of her right to elect to have each case heard either in district court or by an Evidentiary Panel of the district grievance committee in the county of her place of practice. TRDP 2.14D, 2.15.

Schaefer did not affirmatively elect to have the cases heard in district court, and the Chair of the District 01A Grievance Committee, Brian K. Gary, signed separate orders appointing a six-person Evidentiary Panel to hear each case. TRDP 2.17. Gary, also the chair of the 01A-2 panel, appointed the District 01A-2 panel for all three cases.³ When Gary signed the original orders the other panel members were Bryan Burg (attorney member), Richard Glaser (attorney member), John Hunter Smith (attorney member), Charley J. Ellis, Jr. (public member), and Brenda Hayward (public member). On June 6, 2008, the CDC served Schaefer with a copy of each order with the Second Amended Evidentiary Petition (which consolidated the three cases for trial).

On July 1, 2008, Gary signed a new order appointing the District 01A-2 panel appointed for 2008-2009 to hear the cases. The new panel consisted of five of the same members as the original panel with a new public member, Karen Henning, replacing Brenda Hayward. The CDC sent Schaefer a copy of the order which she received on August 1. The record contains no further appointment orders or notices to Schaefer.

B. Evidentiary Hearing

The CDC personally served Schaefer with hearing notice on February 2, 2009 that the case was set to be heard by the Evidentiary Panel on February 20, 2009.⁴ Schaefer asked for an “emergency continuance” the day before the hearing, stating that she was required to travel out of town on “job-related business” and could not attend. The Commission objected to the continuance, and the panel denied Schaefer’s request. Richard Glaser, panel chair, signed the order denying the continuance.

³ According to the record, the District 01A Grievance Committee had three standing six-member panels at the time.

⁴ The record also contains hearing notices sent to Schaefer by certified mail, return receipt requested, at two different addresses in December 2008 and January 2009 which were returned unclaimed.

The hearing went forward on February 20, 2010 without Schaefer present. According to the Hearing Report,⁵ however, the panel that convened the hearing was different from the last appointed panel. The top portion of the Schaefer Hearing Report was printed as part of the form and was apparently completed before the hearing. The Hearing Report reflects that the Schaefer Evidentiary Panel consisted of only five members: Richard Glaser, Bryan Berg, John Hunter Smith, Thomas Scott Smith, and Charley J. Ellis, Jr. Printed in the blank for the sixth member's name is "Vacant." The rest of the report, including which members attended, was completed and signed by hand, apparently by the panel chair.

The Hearing Report also indicates that four panel members, three attorneys and one public member, were actually present to hear the case: Richard Glaser (attorney member), Bryan Burg (attorney member), Thomas Scott Smith (attorney member), and Charley J. Ellis, Jr. (public member). The record contains no order appointing Thomas Scott Smith to the 01A-2 panel or to any panel assigned to hear the Schaefer cases.⁶

At the conclusion of the evidence, the Commission asked the panel to actively suspend Schaefer's license to practice law for three years, order her to pay restitution totaling \$2,800 to two clients, and order her to pay attorney's fees and expenses to the State Bar. After brief deliberation, the panel announced that it had unanimously voted to disbar Schaefer. After announcing the decision, the panel chair asked for the Assistant Disciplinary Counsel's assistance in completing the Hearing Report, which he referred to as "your [the CDC's] report."

⁵ A Hearing Report details the persons attending the hearing, the findings of misconduct, if any, and the discipline imposed when the panel finds professional misconduct has occurred.

⁶ We do not reach the issue of whether Thomas Scott Smith was properly appointed.

C. Appeal and Rehearing

Schaefer argued three procedural errors on appeal. She pointed out that the Hearing Report showed a panel position “Vacant” which she argued had been created in order to change the size of the panel and obtain a quorum in violation of TEX. GOV’T CODE § 81.072(m).⁷ She also argued that the three attorneys and one public member present did not satisfy the statutory requirement that a quorum “must include one public member for each two attorney members.” TEX. GOV’T CODE § 81.072(j); TRDP 2.07. The Supreme Court conclusively resolved this point against Schaefer, *In re Allison*, 208 S.W.3d 413 (Tex. 2009), and, therefore, this argument is without merit. Finally, Schaefer argued that, because the record discloses that a substitute panel member was appointed at sometime between the July 2008 appointment and the hearing, the substitution violated TEX. GOV’T CODE § 81.072(n) which prohibits substitutions on the day of the hearing for which the panel was assigned without the complainant and respondent’s approval. Although the record does not contain any notice to Schaefer of appointments made after July 2008, the record does not indicate that the substitution was made the day of the hearing. Because we held that the vacancy deprived the panel of authority to render judgment, we did not reach Schaefer’s other two arguments.

The Commission argues on rehearing that BODA should grant its motion and withdraw its judgment vacating the evidentiary panel’s judgment of disbarment because (1) judgments rendered by a court in violation of a mandatory statutory or constitutional requirement have been held to be voidable, not void; and (2) there is no clear indication that the Supreme Court and Legislature intended the two-thirds attorneys/one-third public members panel composition

⁷ TEX. GOV’T CODE § 81.072(m) provides: “A panel of a district grievance committee of the state bar may not be changed in size for the purpose of obtaining a quorum on the panel without the approval of the complainant and the respondent in the grievance matter to which the panel was assigned.”

requirement be jurisdictional. The Commission also urges that it did not have an opportunity to address the issue whether failure to have two-thirds attorneys and one-third public members on the panel was jurisdictional before BODA vacated the judgment.

Schaefer urges BODA not to grant the Commission's motion for rehearing because: (1) the Commission has cited no binding authority which requires a reversal; (2) the Commission had opportunity for oral argument in the case but withdrew its request for argument; and (3) the Commission should have raised the arguments in its motion for rehearing in its brief during the appeal on the merits.

II. FUNDAMENTAL ERROR

We first address the Commission's complaint that BODA improperly raised the issue of an unlawfully constituted panel *sua sponte* thereby depriving the Commission of the opportunity to respond or have argument before vacating the judgment. The Commission originally requested oral argument in this case but withdrew its request a month after BODA notified the parties that the appeal was set for argument on July 23, 2010. The Commission devoted several pages of its original brief to the issue whether the "Vacant" notation on the Hearing Report was a jurisdictional defect that Schaefer could raise for the first time on appeal. Although Schaefer argued in her brief that the vacancy violated a different statutory requirement than the one BODA held had been violated, the Commission was aware that Schaefer had raised an issue concerning the lack of a panel member, had opportunity to address, and did address whether a vacancy on the panel was fundamental error in its original brief. The Commission cites no new authority on the issue in its motion for rehearing not discussed in its brief. Accordingly, we find that the proceedings did not deprive the Commission of an opportunity to be heard on this issue.

While we appreciate the fact that holdings concluding that a court lacked capacity to act are rare, an Evidentiary Panel without the required two-thirds attorney members and one-third public members lacks authority to convene a hearing because any judgment rendered by a court without capacity to act is void. *Mapco v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990) (judgment rendered by disqualified trial judge is void). Additionally, we recognize that true “fundamental error,” error that can be raised for the first time on appeal, exists in limited circumstances, as important policy considerations protecting judgments should require parties to preserve error. *In re B.L.D.*, 113 S.W.3d 340, 350 (Tex. 2003). Fundamental error occurs when the record shows that the court (1) lacked subject matter jurisdiction, (2) lacked jurisdiction over the parties, (3) lacked jurisdiction to enter the judgment, or (4) had no capacity to act as a court. *Mapco*, 795 S.W.2d at 703. The Texas Supreme Court also recognizes fundamental error where “the public interest is directly and adversely affected as that interest is declared in the statutes or the Constitution of Texas.” *Pirtle v. Gregory*, 629 S.W.2d 919, 920 (Tex. 1982).

We find that the question whether an unlawfully constituted Evidentiary Panel lacks authority to convene a disciplinary hearing involves two important considerations: issues of statewide public interest and the capacity of the tribunal, in this case the Evidentiary Panel, to act as a court.

A. The attorney disciplinary system exists for the protection of the public.

The proper functioning of the attorney disciplinary system directly affects the public interest because the grievance system exists primarily to protect the public. Courts have continued to recognize that the attorney discipline system is expressly intended to protect the public. *See generally, Middlesex County Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 434 (1982) (“The judiciary as well as the public is dependent upon professionally ethical

conduct of attorneys and thus has a significant interest in assuring and maintaining high standards of conduct of attorneys engaged in practice.”); *In re State Bar of Texas*, 113 S.W.3d 730, 733 (Tex. 2003) (jurisdictional issue under the attorney regulatory scheme promulgated by the Supreme Court of Texas presented issue of “statewide importance”); *In re Lock*, 54 S.W.3d 305, 311 (Tex. 2001) (“[W]e rely on the Bar to impose appropriate discipline including suspension or disbarment when the facts so warrant, to protect the public from impaired attorneys, and to improve the reputation and integrity of the legal profession.”); *In re Ament*, 890 S.W.2d 39, 41 (Tex. 1994); (compulsory discipline protects the public from attorneys under the disability of criminal censure); *Neely v. Comm’n for Lawyer Discipline*, 196 S.W.3d 174, 187 (Tex. App. – Houston [1st Dist.] 2006, pet. denied) (“The disciplinary rules advance a substantial government interest in protecting the public from false, deceptive or misleading lawyer communications.”); *Rodgers v. Comm’n for Lawyer Discipline*, 151 S.W.3d 602, 612 (Tex. App. – Fort Worth 2004, pet. denied) (“The purpose of the rules is to protect the public from deceptive advertising, which the Supreme Court has recognized as a substantial governmental interest.”); *Favaloro v. Comm’n for Lawyer Discipline*, 994 S.W.2d 815, 823 (Tex. App.—Dallas 1999, no pet.) (the State Bar is charged with regulating the practice of law for the protection of the public).

B. The CDC’s adherence to the disciplinary rules is essential because it occupies a dual role and must avoid even the appearance of impropriety.

The Office of the Chief Disciplinary Counsel serves in a dual capacity in evidentiary proceedings. How the CDC performs its responsibilities is critical to accomplishing the disciplinary system’s goal of protecting the public. Along with filing and prosecuting formal disciplinary proceedings, the CDC also provides staff support to the grievance committees which have no independent clerk or staff. After finding just cause and before filing an evidentiary

petition against an attorney, the CDC requests the appointment of the Evidentiary Panel from the committee chair. The CDC maintains the case file and forwards all pleadings and motions filed by either party to the panel chair. The CDC assists in preparing the Hearing Report for the panel chair to complete at the conclusion of the hearing, drafts the judgment, and prepares the clerk's record if the judgment is appealed to BODA.

Allowing the entity responsible for obtaining panel appointments and substitutions to argue that its failure to strictly comply with the clear statutory requirements is harmless so long as the respondent does not object creates opportunity for a conflict of interest and improper handling of the panel. To prevent even the appearance of impropriety, the CDC must therefore meticulously follow the letter and the spirit of the TRDP to preserve the impartiality of the Evidentiary Panels and public confidence in their decisions. Complying with the requirement that an Evidentiary Panel have two-thirds attorneys and one-third public members is not burdensome: the CDC can simply ask the grievance committee chair for a substitute or replacement appointment.

Additionally, there is some evidence that, even had Schaefer appeared at the hearing, she would not have known that a position on the panel was vacant and, therefore, could not have objected. Frequently, not all members of a six-member panel attend the hearing. The chair introduced only the members present on the record and did not name the absent members of the panel. The only indication that the panel lacked a necessary sixth member was the "Vacant" designation on the Hearing Report. Unless a respondent attorney knew the Hearing Report existed and asked to see a copy at the hearing, his or her first opportunity to learn a position was vacant would be on appeal of the judgment to BODA when the Hearing Report becomes part of

the record of the case. Thus, even an attorney who participated in the hearing would only be able to object to a vacancy on the panel for the first time on appeal.

C. A panel has to comply with the statutory requirements before it has the capacity to act as a court.

The Commission argues that the failure of the panel to comply with the statutory requirement of two-thirds attorneys and one-third public members—a statutory requirement that they concede is mandatory and inflexible—does not affect the Evidentiary Panel’s ability to act so long as a proper quorum was present at the hearing. To support its position, the Commission states that the disciplinary rules do not expressly state that a five-person panel cannot act. We read the rules differently.

The TRDP have the force and effect of statutes. *O’Quinn v. State Bar of Texas*, 763 S.W.2d 397, 399 (Tex. 1988); *State Bar of Texas v. Wolfe*, 801 S.W.2d 202, 203 (Tex. App.—Houston [1st Dist.] 1990, no writ). We apply statutory construction principles to discern the meaning of the TRDP. *In re Caballero*, 272 S.W.3d 595, 599 (Tex. 2008). If a statute is silent as to the consequences for noncompliance, we look to the statute’s purpose to determine the proper consequences. *Helena Chemical Co. v. Wilkins*, 47 S.W.3d 486, 494 (Tex. 2001). All parts of a statute must be read together and given effect, if possible. *Id.* at 493. One provision should not be interpreted inconsistently with other provisions. *Caballero* at 600 (citing *Helena Chemical*, 47 S.W.3d at 493 (“We should not give one provision a meaning out of harmony or inconsistent with other provisions, although it might be susceptible to such a construction standing alone”).

Grievance committees serve two primary functions: sitting as Summary Disposition Panels to review complaints referred by the Office of the Chief Disciplinary Counsel for dismissal and conducting formal disciplinary proceedings as Evidentiary Panels. TRDP 2.07. The State Bar Act and the disciplinary rules set out certain mandatory requirements for grievance

committees and committee panels. These include requirements for committee and panel composition, TRDP 2.02, 2.07, 2.17; quorum composition, TEX. GOV'T CODE § 81.072(j), TRDP 2.07; appointing committee members, TEX. GOV'T CODE § 81.072(l), TRDP 2.02, 2.03; appointing committee panels, TRDP 2.02, 2.07, 2.17; appointing replacement panel members, TRDP 2.06, 2.07; changes to panels, TEX. GOV'T CODE § 81.072(m)-(n); and panel voting, TEX. GOV'T CODE § 81.072(i) & (k), TRDP 2.07. Committees only acquire authority to act through panels, whether as Summary Disposition Panels or as Evidentiary Panels, assigned by the district grievance committee chairs. TRDP 2.06, 2.07. As a result of the two-thirds attorney–one-third public member requirement, grievance committee panels are usually either three members or six members. In practice, the district grievance committees are typically assigned to sit in six-member standing panels.

The statutory requirements for panels are unambiguous. A panel cannot consist of five members, because the inflexible ratio of attorneys to public members becomes impossible. The TRDP contain multiple references to the requirement that panels have two-thirds attorney members and one-third public members. TRDP 2.02, 2.07, 2.17. The analysis of House Bill 792 (the 2001 amendments to section TEX. GOV'T CODE § 81.072 concerning changes to panels after appointment) states that the provisions for public membership on panels apply “for the purpose of convening a meeting.” HOUSE COMM. ON CIVIL PRACTICES, BILL ANALYSIS, Tex. H.B. 792, 77th Leg., R.S. (2001).

The disciplinary rules also expressly require that all panel vacancies be filled. TRDP 2.06, 2.07. Furthermore, the rules treat recused panel members the same as if they are disqualified: if a panel member is disqualified or recused, the chair of the grievance committee shall appoint a replacement member. TRDP 2.06, 2.07. “Promptly” after the chair assigns a panel

or replacement, the State Bar must notify the respondent attorney of the names and addresses of the panel members assigned to each complaint so that the attorney has the opportunity to object to any panelist. TRDP 2.06.

We find, therefore, that the TRDP are clear that committees only have authority to act through duly appointed panels, that all panels must contain two-thirds attorneys and one-third public members, that this ratio is strict and inflexible, and that all panel vacancies must be filled to convene a hearing. Although a four-person quorum (of a six-member panel) consisting of three attorneys and one public member would be proper were the panel itself properly constituted, *In re Allison*, 288 S.W.3d 413 (Tex. 2009), we conclude that it cannot remedy a fatally defective panel lacking two-thirds attorney members and one-third public members.

Given that the Texas Supreme Court and the Legislature carefully structured the requirements for grievance committee and panel composition to create accountability and openness in the disciplinary process and thereby uphold the integrity of the system, only strict adherence to the requirements which the Commission concedes are mandatory will protect public confidence in the decisions of the evidentiary panels. These requirements compel the conclusion that six-member panels must consist of six fully qualified members in order to convene a hearing.

When issuing our original judgment we considered several cases, including the cases which the Commission cites, before concluding that those cases do not control the unique requirements for formation of grievance panels as set out by the Supreme Court of Texas and the Legislature in the State Bar Act and the disciplinary rules. The Commission argues that *Mapco, Inc. v. Forrest*, 795 S.W.2d 700 (Tex. 1990) and *Tesco American, Inc. v. Strong Industries, Inc.*, 221 S.W.3d 550 (Tex. 2006) require BODA to hold that an Evidentiary Panel which fails to meet

the minimum mandatory statutory composition ratio of attorney and public members could nevertheless proceed to convene a hearing absent an objection.

Mapco and *Tesco* deal with multi-judge appellate panels. The Evidentiary Panel at issue here functions as a trial court. Unlike appellate judges, Evidentiary Panel members can participate in a decision only if they are present at the hearing at which the vote takes place. TEX. GOV'T CODE § 81.072(k). In contrast, appellate judges can decide appeals without actually being present to hear argument so long as they have access to the record. TEX. R. APP. P. 41.1(a).

Additionally, the situation here is distinguishable because both appellate panels in *Tesco* and *Mapco* were properly assigned and constituted when the cases were heard. Instead, the problems arose after argument but before the decisions issued. *Mapco* and *Tesco* deal with a properly constituted appellate panel that issued a decision contrary to statute: the *Mapco* opinion did not show a concurrence of a majority of the panel on its face, and the *Tesco* opinion was authored by a justice later determined to be disqualified to sit. Finally, in *Mapco* and *Tesco* neither party was involved in the process of seating the judge in question.

Here the record indicates that the required sixth panel member did not exist at all at the time of the hearing. A five-person panel can never meet the minimum mandatory statutory composition dictated by the disciplinary rules. If the Commission were correct, six-person panels could actually be composed of only four members (so long as those four members satisfied the requirements for a valid quorum), rendering the composition requirement for a certain ratio of attorney members and public members meaningless. *Mapco* and *Tesco* both affirm that, when a court rendering judgment has no capacity to act as a court, the resulting judgment is void. *Tesco*, 221 S.W.3d at 556; *Mapco*, 795 S.W.2d at 703.

CONCLUSION

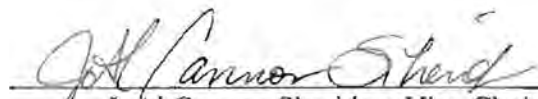
The Supreme Court of Texas and the Legislature have dictated through multiple provisions in the State Bar Act and the TRDP that participation of a precise ratio of attorneys and public members on grievance committees and all panels is important to the proper functioning of the disciplinary system. Grievance committees and all appointed panels “must be composed of two-thirds attorneys and one-third public members,” TRDP 2.02, or, restated, panels must “have a ratio of two attorney members for every public member. . . .” TRDP 2.07. The “mandatory ‘must have’ means that there is no flexibility built into the requirement. . . .” *In re Allison*, 288 S.W.3d at 417. The Supreme Court and the Legislature carefully structured the requirements for grievance committee and panel composition to create accountability and openness in the disciplinary process and thereby uphold the integrity of the system. Only strict adherence to the requirements which the Commission concedes are mandatory will protect public confidence in the decisions of the evidentiary panels. Meeting this requirement is not burdensome to the Commission or the Office of the Chief Disciplinary Counsel. The committee chair may simply appoint substitute panel members, if needed, from the grievance committee as a whole.

The Commission’s Motion for Rehearing is DENIED, the judgment of disbarment is VACATED, and the cause is REMANDED for a new hearing.

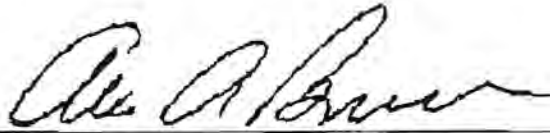
IT IS SO ORDERED.



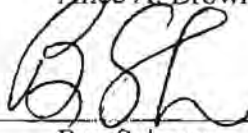
W. Clark Lea, Chair



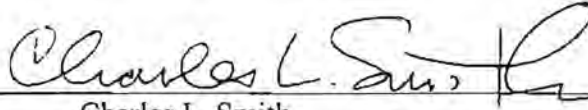
JoAl Cannon Sheridan, Vice Chair



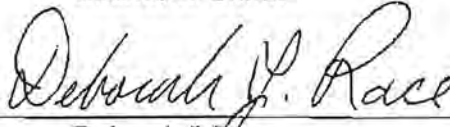
Alice A. Brown



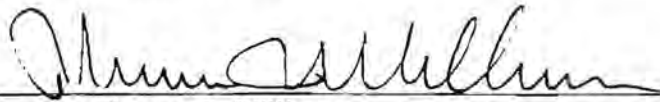
Ben Selman



Charles L. Smith



Deborah J. Race



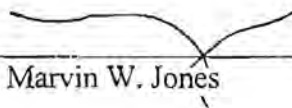
Thomas J. Williams



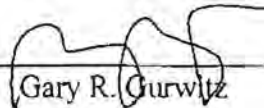
David A. Chaumette



Jack R. Crews



Marvin W. Jones



Gary R. Gurwitz

Not sitting: Kathy J. Owen