FILED

Jan 18 2024

THE BOARD *of* DISCIPLINARY APPEALS
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

RESPONSE TO: APPELLEE'S OPPOSED MOTION FOR EXTENSION OF TIME TO FILE BRIEF

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION/
AUSTIN REGIONAL COUNSEL

MICHAEL G. GRAHAM
APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY COUNSEL
COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS
P.O. BOX 12487
AUSTIN, TEXAS 78711-2487

T: (512) 427-1350
F: (512) 427-4253

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

RESPONSE TO: Appellee's Opposed Motion for Extension of Time to File Brief

---

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, a committee of the State Bar of Texas, asks the Court, under the authority of Rule 1.09, Supreme Court of Texas Board of Disciplinary Appeals Internal Procedural Rules, for an extension of time to file the Appellee's brief. The Appellant Maadani was unopposed if the Appellee would agree to reinstate the Appellant Maadani immediately and take 2-3 minutes to review the Brief and Records and enter the agreed order of reversal of all

terms due to improper number of Attorney to Public Ration on the Panel. Instead, the Appellee determined to file this motion to ask for an extension of time as opposed.

I.

Movant claimed in their motion that:

"On August 14, 2023, an Evidentiary Panel of the State Bar District No. 4 Grievance Committee entered a Judgment of Partially Probated Suspension against Appellant in *Commission for Lawyer Discipline v. Pejman Maadani,* No. 202102105." This statement is either false and misleading with intent to deceive the Board or shows neglect of the Commission for Lawyer Discipline's attorney. In Alternative it is an admission of CFLD and agreement of CFLD that the sentence is now reduced to a partially probated sentence until completion of appeal. **The sentence was Four Years of Active Suspension, however, based on admissions of CFLD Appellant moves for an order to reduce this sentence at this time to a partially probated sentence without prejudice to his appeal rights.** See the order attached as *Exhibit 1.*

The appellant previously filed a motion to temporarily abate this Four Years of Active Suspension, which does not allow Appellant Pejman Maadani to practice law, so his docket of 100 plus clients would not be prejudiced. The panel was incorrectly set with two members of the public and two attorneys, as fully explained

in the Appellant's brief here attached as Exhibit 1, due to incorrect and misleading arguments of CFLD counsel who just alleged public danger without any reasons or cause or facts.

II.

Appellant filed a notice of appeal on August 14, 2023. The reporter's records were filed on November 17, 2023. The clerk's record was filed on November 22, 2023. Appellant's brief was filed on December 20, 2023, See *Exhibit 2,* which was six days before the deadline of December 26, 2023. Appellee deadline was January 19, 2024. Appellee filed this last-minute request to extend time.

III.

The Appellee has presented that: "Appellee's counsel, the undersigned, needs additional time to file the brief due to a heavy briefing and oral argument schedule, including the following:

- No. 23-0684, *Annette R. Loyd v. Commission for Lawyer Discipline*, before the Supreme Court of Texas; Appellee's Brief filed January 12, 2024.
- No. 14-23-00646-CV, *In the Matter of Kennitra M. Foote*, before the Fourteenth Court of Appeals; Appellee's Brief due January 29, 2024.
- No. 05-23-00497-CV, *Commission for Lawyer Discipline v. Sidney Powell*, before the Fifth Court of Appeals; Oral Argument set for February 7,

2024." Appellant claims each reason is not relevant and not enough reason to raise to the level needed to grant the motion to extend time.

First, the Appellee claims the Case "No. 23-0684, *Annette R. Loyd v. Commission for Lawyer Discipline*, before the Supreme Court of Texas; Appellee's Brief filed January 12, 2024, is the reason why he needs an additional 30 days. The deadline falls well before the deadline to file this brief. CFLD had prepared a response to appeal in the same case to BODA. See Exhibit 3, and Exhibit 4 attached. These briefs are substantially the same. Both sets of facts, issues, and arguments are about the same. As counsel for CFLD for both appeals is the same person, and he was familiar with all records, he should have finished this brief well before he was served with Appellant Maadani's Brief on December 20th, 2023. Appellee knew or should have known that he would receive the Appellant brief within 30 days from the time that he filed the clerk's record, which was November 22, 2023. Based on the evaluation of two appellate briefs in No. 23-0684, *Annette R. Loyd v. Commission for Lawyer Discipline*, before the Supreme Court of Texas; no more than 20-25 hours of work was needed to complete the appellate brief which is the small modification of lower Court brief. Therefore, the fact that Appellee neglected and wasted time on deadlines that were well before this deadline, does not raise to level of good cause or relevant fact to the level that would satisfy Rule 1.09. The Appellee's brief in this

case could have been completed, finished, and filed before he even received the current Appellant Brief on December 20, 2023. Therefore, the deadline that was well before this deadline has no relevance to this case, and the Appellee's extension of time is due to sloth and neglect.

Second, the Appellee claims:

> "No. 14-23-00646-CV, *In the Matter of Kennitra M. Foote*, before the Fourteenth Court of Appeals; Appellee's Brief due January 29, 2024" is another reason why he needs additional time. This statement is misleading and simply not excusable that a deadline that falls after the current deadline is a reason for the delay of the current deadline. Appellant filed her brief on December 28, 2023, after only asking for three extensions of time. Appellee CFLD may easily ask for an extension of time in that case, and devote his time to his current deadline of 01/19/2024, as it is apparent that since the Appellant received three extensions it would be prejudicial to not grant an extension to CFLD Appellee in that case. Also, another Appellant attorney is working on that same case whose name is: Robert Khadijia as it appears from Court records. See *Exhibit 5* attached. Therefore, this deadline which falls well after the deadline of this matter has no relevance to this deadline of 01/19/2024.

Third, the Appellee claims:

- No. 05-23-00497-CV, *Commission for Lawyer Discipline v. Sidney Powell*, before the Fifth Court of Appeals; Oral Argument set for February 7, 2024."

Another false and misleading statement made by CFLD. This brief was filed on 07/21/2023 and No ORAL Argument was requested. See *Exhibit 6.* It also shows this case is set for Submission docket which means CFLD has ZERO work to do on this file. See *Exhibit 7.* It is unclear how CFLD claims a deadline on 07/20/2023 which was met is relevant to the deadline of 01/19/2024, which was four months later than the previous deadline. CFLD claims preparation for oral argument is necessary and that is false and misleading because the deadline is a submission deadline, which means no oral arguments will be made.

As CFLD has a pattern of being dishonest with their request for an extension of time and presented false facts, including a sentence of Appellant, the deadline that was four months before this deadline, and a deadline that is 10 days after this deadline, it is fair and reasonable to deny this motion for extension of time. It is clear that this motion for an extension of time is made with neglect as it contains false facts and information and it should be denied.

The motion of the Appellee is due to sloth or neglect and made for delay of justice.

Appellee's counsel has conferred with Appellant, who is representing himself Pro Se, regarding this request, and Appellant has indicated he is unopposed if:

a. Sentence to be abated;
b. CFLD agreed to enter an order of reversal and dismissal if the Panel Ratio was incorrect

However, at that time, the Appellant did not know that CFLD intended to present false facts to obtain an extension of time and CFLD has not presented this motion to the Appellant for review. Furthermore, it is unclear from the motion if the facts presented are within the knowledge of the appellee. Therefore, the request for an extension of time as it is not verified and does not contain language that declares the facts are within the knowledge of the person who signed the motion as mandated by Texas Rule of Appellate Procedure 10.2, the motion to extend the deadline is defective and should not be granted.

IV.

For these reasons, the Appellant prays that the BODA denies the Appellee's Motion For an Extension of time and keeps the deadline of the Appellee to 01/19/2024. Furthermore, the Appellant moves to reduce the sentence of the Appellant based on the Admission of CFLD in their own motion without prejudice to the rights of the Appeal of the Appellant.

RESPECTFULLY SUBMITTED,

/s/ Pejman Maadani
Pro Se
SBN: 24052152 (Actively Suspended)
4811 Cedar Street
Bellaire, Texas 77401
pj@attorneymaadani.com

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Appellee's Motion for Extension of Time to File Brief has been served on Appellant via electronic mail to CFLD on 01/19/2024.

/s/ Pejman Maadani

F I L E D
Jan 18 2024
THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

FILED
08/14/2023

Houston Office
Chief Disciplinary Counsel

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

COMMISSION FOR LAWYER DISCIPLINE, Petitioner,	§	**202102105 [ALLEN]**
	§	
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

F I L E D
Jan 18 2024
THE BOARD *of* DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

NO: 68164

BEFORE THE BOARD OF DISCIPLINARY APPEALS

PEJMAN MAADANI, APPELLANT
STATE BAR OF TEXAS CARD NO. 24052152
Appellant

V

COMMISSION FOR LAWYER DISCIPLINE OF THE STATE BAR OF TEXAS
Appellee

Appeal from the Judgment of the District 4 Evidentiary Panel, Evidentiary Panel 4-3 in File No. 202102105

APPELLANT'S BRIEF

Pejman Maadani, *Pro Se*
State Bar No. 24052152 (not active)
4811 Cedar Street
Bellaire, Texas 77401
Telephone: (832) 293-3070
Email: pj@attorneymaadani.com

ORAL ARGUMENT REQUESTED
WITH EXPLANATION

TABLE OF CONTENTS

INDENTITY OF PARTIES AND COUNSEL

INDEX OF AUTHORITIES

STATEMENT OF THE CASE

STATEMENT REGARDING ORAL ARGUMENT

STATEMENT OF JURISDICTION

ISSUES PRESENTED

STATEMENT REGARDING ORAL ARGUMENT

STATEMENT OF THE FACTS

ARGUMENT

SUMMARY OF ARGUMENTS

PRAYER

NAME OF PARTIES AND COUNSEL

APPELLANT

Pejman Maadani, *Pro Se*
State Bar No. 24052152 (not active)
4811 Cedar Street
Bellaire, Texas 77401
Telephone: (832) 293-3070
Email: pj@attorneymaadani.com

APPELLEE

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

COUNSEL FOR APPELLEE

Matthew Greer
Deputy Director & Counsel
Board of Disciplinary Appeals
P.O. Box 12426
Austin, TX 78711
(T) 512-427-1578 (F) 512-427-4130
Email: **Matthew.Greer@texasbar.com**

INDEX OF AUTHORITIES

1. United States Constitution…………………………………………………………...……4
2. Tex. R. Disc. P. 2.02, 2.07, OR 2.17……………………………………………………….4
3. Tex. R. Disc. P. 15………………………………………………………….………5
4. Texas Rules of Ethics…………………………………………………………...…5
5. Tex. Gov't Code Ann. § 81.072(b)(7) (West 2011)……………………….……………9
6. *Quick v. City of Austin,* 7 S.W. 3d 109, 116 (Tex. 1998) ………………………………………9
7. *I.N.S. v. Cardoza-Fonseca,* 480 U.S. 421 (1987) …………………………………...9,13
8. Tex. Gov't Code Ann. § 81.072(b)(7) (West 2011*)*………………………………………9
9. *Comm'n for Lawyer Discipline v. Schaefer*, 364 S.W.3d 831, 835 (Tex. 2012). ……..…..9
10. *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994) ……..…..9
11. *Miller v. Comm'n for Lawyer Discipline*, 2004 Tex. App. LEXIS 11725 * 2 (Tex. App.-San Antonio, 2004, no pet.) ……………………………………………………...10
12. *R.R. Comm'n of Tex. v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995)………10
13. *Tex. State Bd. of Dental Exam'rs v. Sizemore,* 759 S.W.2d 114, 116 (Tex. 1988)………10
14. *City of El Paso*, 883 S.W.2d at 185…………………………………………….....10
15. *Tex. Dep't of Pub. Safety v. Cuellar*, 58 S.W.3d 781, 783 (Tex. App. - San Antonio 2001, no pet.)……………………...………………………………………………10
16. *R.R. Comm'n v. Shell Oil Co.,* 161 S.W.2d 1022, 1029 (Tex. 1942)…………………..…10
17. *See Northern Plains Res. Council v. Fidelity Exploration and Dev. Co*., 325 F.3d 1155 ……………………………………………………………………..……..………10
18. *AC Interests, L.P. v. Tex. Comm'n on Envtl. Quality*, 543 S.W.3d 703, 709 (Tex. 2018) ……………………………………………………………………………………11
19. Tex. Gov't Code § 311.016,…………………………………………………………11
20. *Gutierrez v. Hiatt*, 2006 Tex. App. LEXIS 1747 * 4 (Tex. App.-San Antonio 2006, pet. Denied………………………………………………………………..………..12
21. *J.C. Penney Life Ins. Co. v. Heinrich*, 32 S.W.3d 280, 290 (Tex. App.- San Antonio 2000, pet. denied)……………………………………………………………...………..12
22. TRAP 33.1 …..………………………………………………………………………12

23. *J.C. Penney Life Ins. Co. v. Heinrich*, 32 S.W.3d 280, 290 (Tex. App.- San Antonio 2000, pet. denied),……………………………………………………………………………12
24. *Schaefer v. Comm'n for Lawyer Discipline of the State Bar of Tex.*, Bd. Of Disciplinary Appeals Case No. 44292 (Jan. 28, 2011) at 8, 14………………………………………..13
25. *In re Allison 288 S.W.3d 413 at 415-17* ……………………………………………….…13
26. *Mapco, Inc. v. Forrest*, 795 S.W.2d 700 (Tex. 1990), ………………………………….……13
27. *Tesco American, Inc. v. Strong Industries, Inc.,* 221 S.W.3d 550 (Tex. 2006), ……..…..13
28. https://www.txcourts.gov/media/658799/SupplementalInstructionsForSRLs.pdf............14
29. https://oneminuteenglish.org/en/family-affairs-meaning/...15
30. *Tex. Comm. on Professional Ethics,* Op. 457, V. 51 Tex. B.J. 808 (1988)………………..15
31. FAMILY CODE, Sec. 71.003…………………………………………………………15
32. Texas Constitution…………………………..……………………………………...16
33. *https://www.americanbar.org/groups/public_education/resources/public-information/what-is-a-lawyer-/* ……………………………………………….……16
34. *https://www.merriam-webster.com/dictionary/client* 19
35. *Iliff v. Iliff, 339 S.W.3d 74, 79 (Tex. 2011)*…………………………………………….....22
36. *City of Rockwall v. Hughes, 246 S.W.3d 621, 625-26 (Tex. 2008*)………………………..22
37. *Sexton v. Mount Olivet Cemetery Ass'n*, 720 S.W.2d 129, 138 (Tex. App.—Austin 1986, writ ref'd n.r.e.) ……………………………………………………………….……22
38. *Jasek v. Tex. Dep't of Family & Protective Servs.*, 348 S.W.3d 523, 535 (Tex. App.—Austin 2011, no pet.) …………………………………………………………….……22
39. *Lee v. City of Houston*, 807 S.W.2d 290, 295 (Tex. 1991) ……………………..……...22
40. *The Professional Ethics Committee Opinion 457, Tex. Comm. on Professional Ethics, Op*. 457, V.51 Tex. B.J. 808 (1988) ………………………………………………….….…22
41. *https://www.tmb.state.tx.us/page/complaints#:~:text=Texas%20Medical%20Board&text=Anyone%20may%20register%20a%20complaint,by%20insurance%20and%20pharmaceutical%20companies* ……………………………………………………………………26
42. *Occupational Code Sec. 160.006. BOARD CONFIDENTIALITY. (a)* ………………....31
43. Sec. 164.051. GROUNDS FOR DENIAL OR DISCIPLINARY ACTION. (4) (A)……..31
44. Sec. 164.051. GROUNDS FOR DENIAL OR DISCIPLINARY ACTION. (4) (D)…..…31

45. Sec. 164.052. PROHIBITED PRACTICES BY PHYSICIAN OR LICENSE APPLICANT ……………………………………………………………………...…….31
46. .” *https://www.legalethicstexas.com/resources/opinions/opinion-457/*...........................33
47. . *Opinion 589, September of 2009*………………………...………………………….……40
48. *Columbia*, 290 S.W.3d at 210 (citing Johnson v. Fourth Court of Appeals, 700 S.W.2d 916, 917 (Tex. 1985))………………………………………………………………37
49. Texas Rules Of Disciplinary Procedure 15……………………………………….…..38
50. Texas Rules Of Disciplinary Procedure Section 15.06………………………………….39
51. *Swartz v. Swartz*, 76 S.W.2d 1071, 1072 (Tex. Civ. App. -- Dallas 1934, no writ)…….39

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

COMES NOW, Appellant, Pejman Maadani, and files his brief in this case. Appellant respectfully presents to the Board of Disciplinary Appeals ("Board") as follows:

STATEMENT OF THE CASE

I. Nature of the Case:

The COMMISSION FOR LAWYER DISCIPLINE OF THE STATE BAR OF TEXAS ("CFLD") brought this action against Pejman Maadani ("Appellant"), stemming from retaliation of the attorney of an ex-wife of Appellant, Amy Allen ("AA") who had destroyed evidence of potential sexual abuse of the child of Appellant. For destruction of evidence and many other reasons, the Appellant turned in his ex-wife to the Medical Board. The complaint against Appellant's ex-wife ("KKW") included mixing of her mental medication drugs with certain drugs that contradicted each other and counter-balanced mental stability of the doctor which resulted in (1) destruction of evidence of abuse of the child, (2) KKW started the daily spanking of the child for no reason, (3) KKW was making a false police report regarding seeing a gun in possession of Appellant while Appellant was at least 10 miles away from where she could see.

Furthermore, the Appellant filed a motion for a New Trial and asserted that along with many other issues:

1. Rules of Ethic does not apply to text sent between family members, because the rule does not show family affairs of a lawyer is subject to rules of ethics
2. Sentencing was not heard
3. A lawyer representing himself is not a lawyer in that case or context of the rules of ethics
4. The appellant's attorney was not competent to represent him in this case and had no prior experience representing anyone in front of the CFLD.

5. In the alternative, the Appellant asked for a reduction of sentence or stay of the order which the board denied altogether.
6. The witness of the State Bar testified that the rule does not apply to a lawyer representing himself in a case based on the definition of a lawyer. See *Evidentiary Hearing of August 2, 2023 transcript*, Page 104 line 24 to Page 105, line 3

   Q: If you are someone reading this rule at first glance of this rule, you would agree with me that he is not representing a client, he is representing himself?

   A. He is representing himself, yes.

   No dispute rule 4.04(a) does not apply to the appellant and there is nothing in the record that suggests the agency has interpreted the rule in a different way before or after this case.

Furthermore, AA has testified that Rule 4.04(b) does not apply to the Appellant because she reads the rule to mean and states that the rule is not ambiguous:

> "it's just a lawyer don't threaten another lawyer to gain an advantage on a case of another lawyer, as an officer of the Court" *Evidentiary Hearing of August 2, 2023 transcript*. Page 109, line 17-24

AA had agreed that the Appellant was not a lawyer in this case and therefore, rule 4.04(a)(1) does not apply to him. Furthermore, AA has testified that rule 4.04 (b)(1) applies to lawyers. Based on witnesses' testimony Appellant has not violated any rules.

The panel decided on its own not to have a sentencing hearing. See *Evidentiary Hearing of August 2, 2023*, Page 206- lines 13-15. Neither the State bar nor the respondent were informed. See admissions of State Bar Representative, Page 207, lines 16-21. The record is not complete. There was a whole conversation as to why Mr. Lawrence was not informed of this matter. The Court reporter's record is incomplete and does not contain portions that are beneficial to the Appellant but it was in the hearing. Incomplete Court records and missing comments made that

were prejudicial, make the record improper record and incomplete record. All records of the Evidentiary Panel therefore should be stricken from the record because it is obvious that parts of the record are missing. The appellant asks the Court to rule on this objection. *The Rule* 2.17 (N. Record of the Hearing: A verbatim record of the proceedings will be made by a certified shorthand reporter in a manner prescribed by the Board of Disciplinary Appeals. In the event of an appeal from the Evidentiary Panel to the Board of Disciplinary Appeals, the party initiating the appeal shall pay the costs of preparation of the transcript. Such costs shall be taxed at the conclusion of the appeal by the Board of Disciplinary Appeals.

II. Disposition of the Case. The evidentiary panel after hearing by ZOOM against what Appellant had requested, decided professional misconduct was committed and thereafter issued 4 years of suspension. Finding of facts and conclusion of law is present in final order.

<u>OBJECTION TO RECORDS OF STATE BAR</u>

The record of the State Bar is incomplete. State Bar of Texas has not sent a copy of their full file. Appellant therefore objects to the incompleteness of record and suggests as CFLD has failed to submit correct and complete records to gain an advantage in this case, CFLD records are to be stricken completely from the appellate records. After striking the record of CFLD, it is proper without reading the rest of this brief to reverse the ruling against the Appellant and reinstate him.

The record is missing:

1. Answer of Appellant
2. Emails to Prosecutor in regard to selection of in person hearing v. Zoom
3. Audio recording of the hearing from the point of start of Zoom hearing
4. The appellant was unable to cross-examine the accuser in person in violation of the appellant's Sixth Amendment clause of the United States Constitution as a panel member suggested that she sees lots of “little crimes”.

STATEMENT OF JURISDICTION

The Board of Disciplinary Appeals has jurisdiction over this appeal under Rule 2.24, of the Texas Rules of Disciplinary Procedure. The Evidentiary Panel Judgment was signed on August 14, 2023. The Appellant, Appellant filed a timely Notice of Appeal and Motion for a New Trial. Records were filed with the Court within 120 days of 08/14/2023, on or before 11/22/2023.

STATEMENT REGARDING ORAL ARGUMENT

Appellant believes that the question in this appeal is a question of law and that no oral argument is necessary to reverse the previous order, however, if there is a need for an explanation of why the case needs to be reversed, the Appellant believes at that point oral argument may be necessary.

ISSUES PRESENTED

ISSUE NUMBER ONE

Did the State Bar of Texas violate its own set of rules, specifically Tex. R. Disc. P. 2.02, 2.07, OR 2.17 which resulted in an evidentiary panel not satisfying the requirement of law and lack the capacity to act as a court?

ISSUE NUMBER TWO

Is Family Affair of Attorney now subject to Rules of Ethics although it is not stated to be included in Rules of Ethics?

ISSUE NUMBER THREE

Is a pro-se person who is an attorney, representing himself, an attorney in the case therefore subject to the same standard of an attorney representing the client, and entitled to legal fees, client-attorney privilege, client-attorney relationship and client-attorney work-product privilege?

ISSUE NUMBER FOUR

Did the Appellant have any reason to turn KKW to her board other than gaining an advantage in a civil proceeding?

ISSUE NUMBER FIVE

Did the panel make an error when the panel did not grant the post-trial motion of the Appellant?

ISSUE NUMBER SIX

Did the sentencing of the Appellant fit Chapter 15 guidelines?

I. STATEMENT OF THE FACTS

KKW met Appellant in 2002. Both were students at the time. KKW was a suicidal medical student after a breakup with her first boyfriend. KKW was an adult and her boyfriend at the time was a minor, without the consent of minor's parents, they were dating, and eventually, at the time of break up she became emotional, depressed with anxiety, and became suicidal.

KKW was on the edge of dropping out of medical school, and she was hiding her mental condition from the Medical Board so she could get licensed to practice medicine. KKW knowingly and intentionally failed to disclose to her board that she was suffering from mental medical conditions. At the time of the complaint made to the State Medical Board, the statute of limitation had run on this issue and she ran away from the State of Texas to the State of West Virginia, and also to be around her secretary whom she had secretly taken to France at the time of her marriage to Appellant.

Unknown to Appellant at the time of divorce, KKW who always had her friends fill up prescriptions for her instead of being under the care of a mental health care doctor, was taking certain over counter medication that her dad bought for her. Her father is not a doctor and should not buy medication for her daughter. This medication was contradicting the prescribed medication and causing problems.

The appellant accidentally walked on the conversation a little far away from the father and Mother of his now ex-wife to hear that they needed to make sure KKW would always need them because the money they were receiving from Social Security was not enough to live on. Her parents needed the job of being babysitters and how KKW if did not have a husband would have more money to spend on them and pay them for raising her kid. KKW's father suggested that KKW should buy a place and collect rent from the Appellant by telling him that she was renting instead of buying the place. There were many other instances of such communications such as brainwashing the child that there is only one real grandma and the other grandma is not his grandmother. These issues continued until the Appellant demanded limited visitation of the parents.

KKW had started to mix weight loss drugs with her mental medication before divorce which probably resulted in erratic behavior such as yelling, screaming, and pretending to be scared or truly being scared of Appellant. KKW had a history of honesty problems, such as cheating on the Appellant with a male named Scott, getting positive for STD test in Florida while she was pregnant with a minor subject of the litigation, paying out honeymoon money to her brother so he could get denture at age 29 after losing all his teeth due to smoking and other problems, and finally a mysterious jacket found in closet of Appellant that was too big to fit him and too small for any other male in House like her father. KKW stating any story to others contained many false statements that were always known to be false to the Appellant. KKW had habit of making stories up.

KKW was originally from Tennessee and KKW ancestor killed a person in Tennessee and ran away from there to Texas. Appellant unfortunately treated KKW erratic behavior as a sickness and tolerated her mental problems for about 18 years and attempted to create a nice and stable situation so she would be able to function properly. On at least 2 prior occasions, KKW hit,

slapped, and physically abused the Appellant while she was not taking her medications. KKW would go on and off her medication many times on her own without a consultation from a doctor. KKW and her family members are suffering from mental diseases such as anxiety and depression, while mixing drugs and suffering from delusional states, calling Appellant slave and many other improper names, and then they were relying on a movie that was more 45 years old and assumed Appellant will run away with the child to another Country. Appellant provided a nine month notice that he intent to travel with the child to see his parents who are US citizens living in a different Country and requested KKW to cooperate and locate a Social Security Card to obtain a passport so the child can travel to another Country and come back in July of 2021. KKW and her mother hid the social security card, refused to sign any forms to get new ones, and failed to sign forms to get an Iranian passport for the child. As a result, child has now been excluded from millions of dollars' worth of family trust fund in place for more than 50 years, and would not have any meaningful relationship with many cousins and family which appear to be all college graduates living in US, Canada, Australia, Austria, Germany and Iran.

KKW was also spanking the child, and the child complaint about getting spanked on a daily basis. The child claimed to be spanked after being stood with dogs and being spanked the same way.

The child complained about someone sneaking into his bed in the middle of the night. The child complained about the same, his behavior changed and at least on one occasion attempted to rob his penis on another person. The child had learned this behavior and attempted to rob his penis on another person. The appellant requested the bed sheet of a child to be saved to be sent to the lab so the child predator could be identified. KKW destroyed evidence that would lead to the identification of a child predator, at his own cost. The suspect per attempted explanation of the child was a male, and the only male that would fit that description may have been the brother of

KKW who lost all his teeth at the age of 29. He suffers from mental sickness and he is a college dropout, who smokes about 2 packs of cigarettes a day, not holding a job most of the time.

AA attorney for KKW in retaliation for a confidential complaint that was made to the Medical Board for KKW. AA also filed this complaint in retaliation of the Complaint of others against her, which she assumed was related to the appellant and said an additional complaint was in the petition but not tried and apparently dismissed after tainting the panel of the final hearing to create an unfair advantage for State Bar Prosecutor.

State Bar Prosecutor did not disclose certain information that was harmful to his case to Appellant and failed to bring witnesses that he talked about in the hearing because none of the witnesses thought it is even ethical for them to complaint against Appellant for asking for a copy of the providers' insurance.

Attorney for the Appellant failed to object and ask for cross-examination of witnesses who did not show up but State Bar presented exhibits and evidence against the Appellant on said matters. The appellant's attorney forgot to ask for the sentencing hearing, forgot to ask and submit 15 pages of responses of Appellant into the evidence, and failed to subpoena the file of KKW from her attorney because he thought that was improper. Appellant's attorney admitted after the hearing that this was the first case that he ever represented anyone in front of the Board and was not even familiar with the procedure. He withdrew from the case as he was not competent to represent or did not even know Motion for a New Trial could be filed. The first thing Mr. Clifford did was call and ask a colleague if he could take on the caseload from Appellant's office. Mr. Clifford throughout this case was very interested in meeting staff and familiarizing himself with them.

Appellant had sent some emails that were responses to acts of KKW, and were sent after she would make him upset and argue but hang up and not want to hear him out. These emails are responses to KKW after she would make comments such as "I hope to find you dead on side of

the road", "brown man is good for yard work" and many unprofessional and false reports made to the police on every occasion that Appellant had to see his child. KKW often made claims of gun in the vehicle before the Appellant would even arrive to pick up his child.

All of these conducts of KKW to harass the Appellant are consistent with her 17-18 years of improper behavior to abuse and mentally torture Appellant because she has mental problems and enjoys torturing the Appellant. KKW was also an award-winning acters and she would act to get herself out of situations, by pretending things. She has a history of pretending to be scared so others would sympathize with her. Appellant rightfully demanded another law enforcement agency to investigate certain issues that appeared improper to him.

There was no history of family violence against Appellant, and Appellant was not charged with any issues or crimes of moral turpitude. The Board member made the statement that she saw many crimes and therefore, Appellant should be suspended. This board also saw many crimes against the Attorney General of Texas which were dismissed. It appears this board member acted as the grand jury, jury, judge and prosecutor of Criminal Justice System while she was on board and heard this matter.

II. STANDARD OF REVIEW

The standard of review is more than just words. Standard of Review embodied principals regarding the amount of deference a reviewing tribunal accords the original tribunal's decision. *Quick v. City of Austin*, 7 S.W. 3d 109, 116 (Tex. 1998). In disciplinary cases, the substantial evidence standard of review applies. Tex. Gov't Code Ann. § 81.072(b)(7) (West 2011) (State Bar Act); *Comm'n for Lawyer Discipline v. Schaefer*, 364 S.W.3d 831, 835 (Tex. 2012). Under the substantial evidence test, the findings of an administrative body are presumed to be supported by substantial evidence, and the party challenging the findings bears the burden of proving otherwise. *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994). The

fact finder is the exclusive judge of credibility and may believe or disbelieve one witness and not others. *Miller v. Comm'n for Lawyer Discipline*, 2004 Tex. App. LEXIS 11725 * 2 (Tex. App.- San Antonio, 2004, no pet.). 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. v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995); *Tex. State Bd. of Dental Exam'rs v. Sizemore,* 759 S.W.2d 114, 116 (Tex. 1988). The substantial evidence standard focuses on whether there is any reasonable basis in the record for the administrative body's findings. *City of El Paso*, 883 S.W.2d at 185. Anything more than a scintilla of evidence is sufficient to support a finding. *Tex. Dep't of Pub. Safety v. Cuellar*, 58 S.W.3d 781, 783 (Tex. App. - San Antonio 2001, no pet.). The ultimate question is not whether a finding is correct, but only whether there is some reasonable basis for it. *City of El Paso*, 883 S.W.2d at 185, The amount of deference however is not the same in every case. This deference did not prevent courts from reviewing agency decisions to determine whether the agency was acting beyond its statutory authority. *R.R. Comm'n v. Shell Oil Co.,* 161 S.W.2d 1022, 1029 (Tex. 1942**).** Specifically, there are certain conditions that specifically no deference to a prior decision is proper. Agency rests decision on misinterpretation of Supreme Court precedent. The agency had no authority to act**.** *See Northern Plains Res. Council v. Fidelity Exploration and Dev. Co*., 325 F.3d 1155,) An agency interpretation of a relevant provision that conflicts with the agency 's earlier interpretation is entitled to considerably less deference than a consistently held view. *I.N.S. v. Cardoza-Fonseca,* 480 U.S. 421 (1987) Credibility determinations must be upheld unless they are "inherently or patently unreasonable," Agency interpretation conflicts with the agency's earlier interpretation. Therefore, for Issues # 1, Issue # 2, Issue # 3, Issue # 5 no deference to lower court is proper, therefore proper standard would be De Novo which is not to be confused with full trial de novo,

which is True De Novo. Many times, even the Supreme Court of Texas confuses this issue. Review by Trial De Novo is what is required to be in statute. The review of the question of law is De Novo's review of law with no deference to what the lower tribunal did or did not do. A question of law relates to legal standards and rules. In a trial de novo, the parties are permitted to present new facts in a new trial and are not limited to challenging only legal questions. In this case, De Novo relates to the question of law based on the same facts presented.

III. Arguments and Authorities

Issue # 1: Did the State Bar of Texas violate Tex. R. Disc. P. 2.02, 2.07, OR 2.17 which resulted in an evidentiary panel not satisfying the requirement of law and lack the capacity to act as a court?

Appellant replead all facts in Nature of the case and Facts. At the final hearing of this case, there were two members of the public and only two attorneys hearing this matter by ZOOM. This 4-member panel does not meet the standard and proper ratio of Member of the Public to the attorney as stated in the Texas Rules of Disciplinary Procedure. "Each Evidentiary Panel must have a ratio of two attorney members for every public member." Tex. R. Disc. P. 2.17. *See AC Interests, L.P. v. Tex. Comm'n on Envtl. Quality*, 543 S.W.3d 703, 709 (Tex. 2018), "The words 'shall' and 'must' in a statute are generally understood as mandatory terms that create a duty or condition. [Helena Chemical Co. v.] *Wilkins*, 47 S.W.3d 486, 495 (Tex. 2001)] [] (citing Tex. Gov't Code § 311.016(2), (3)). Also See Tex. Gov't Code § 311.016, "The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute: (1) "May" creates discretionary authority or grants permission or a power. (2) "Shall" imposes a duty. (3) "Must" creates or recognizes a condition precedent. *See TRAP* 33.1. This specific agency has interpreted the word must to mean: mandatory appearance. See State Bar's Brief in Cause Number 65757, Carol Donald

Hughes Jr. v. Commission for Lawyer Discipline, November 15, 2021. This interpretation of the Commission is against its interpretation now. Therefore, no deference to the panel interpretation is proper in this case. Appellant preserved this error by raising this issue in a motion for a new trial and has satisfied the test: (a) In General. As a prerequisite to presenting a complaint for appellate review, the record must show that: (1) the complaint was made to the trial court by a timely request, objection, or motion . . . ." *See* also *Gutierrez v. Hiatt*, 2006 Tex. App. LEXIS 1747 * 4 (Tex. App.-San Antonio 2006, pet. denied); *J.C. Penney Life Ins. Co. v. Heinrich*, 32 S.W.3d 280, 290 (Tex. App.- San Antonio 2000, pet. denied), (Points on appeal must comport with arguments asserted in the trial court,). Appellant raised all issues and defects by Motion for New Trial and has appealed this case. Motion for New preserved all errors raised in this motion if no objections were made. Appellant point of error was also ineffective assistance of Counsel which is discussed in the last issue or point of error. *See TRAP* 33.1 Preservation; How Shown. (a) In General. As a prerequisite to presenting a complaint for appellate review, the record must show that: (1) the complaint was made to the trial court by a timely request, objection, or motion . . . ." *See* also *Gutierrez v. Hiatt*, 2006 Tex. App. LEXIS 1747 * 4 (Tex. App.-San Antonio 2006, pet. denied); *J.C. Penney Life Ins. Co. v. Heinrich*, 32 S.W.3d 280, 290 (Tex. App.- San Antonio 2000, pet. denied), (Points on appeal must comport with arguments asserted in trial court,). This ratio **must be** followed in Evidentiary Quorum as well. In this case, the panel consisted of 4 members. Two members were public members and two members were attorneys. This seems to be 50% attorneys and 50% members of the public. The panel did not consist of a proper ratio of members and as such the panel was not a proper panel. The language of the code states MUST which is a very strict compliance word. Agency interpretation conflicts with the agency's earlier interpretation as CFLD has previously left no room to negotiate on a rule that states a lawyer must do something. In this case, as the agency is not following rules set by the Supreme Court as to the

ratio of members of the public to attorneys, the agency is not following its precedent set and therefore no deference should be given to the prior ruling of the panel. BODA found that the evidentiary panel lacked the proper ratio of members is not the proper and appropriate ratio of attorney members to public members and, reasoning that such error was fundamental, concluded that evidentiary panels not satisfying this requirement lack the capacity to act as a court. *Schaefer v. Comm'n for Lawyer Discipline of the State Bar of Tex*., Bd. Of Disciplinary Appeals Case No. 44292 (Jan. 28, 2011) at 8, 14. In *In re Allison,* we recently addressed the public- and attorney-member ratio requirements in disciplinary hearings. 288 S.W.3d 413 at 415-17. In ***Allison,*** which focused on the quorum requirements of *Rule 2.07*, the evidentiary panel was properly constituted with four attorney members and two public members, but the quorum hearing Allison's case consisted of three attorneys and one public member. *Id*. at 414. Under the wording of 2.07, different from 2.02 and 2.17, we held that the quorum that heard the disciplinary action satisfied the ratio requirement that it "'include one public member for each two attorney members.'" *Id*. at 417 (quoting Tex. Gov't Code §81.072(j)); *see also* Tex. R. Disciplinary P. 2.07. Schaefer's case is different from *Allison's* in that the evidentiary panel from which the quorum was drawn included only one public member and four attorney members, although the quorum satisfied *Allison'*s three-attorney-to-one-public-member ratio under 2.07. *See* 288 S.W.3d at 417. Schaefer challenges the composition of the evidentiary panel. BODA concluded in its opinion that two of our precedents, *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), "affirm that when a court rendering judgment cannot act as a court, the resulting judgment is void. In this case, the quorum at the hearing did not include the proper ratio of attorney to public and as such, any order made is VOID. The panel does not authority to sign the order as the Panel is not proper and as such not even a proper Court. Therefore, any action of this quorum without proper ratio is arbitrary and in violation of the Constitutional

rights of the Appellant as the ratio of attorney to public was not followed. As the number public to attorney ratio was incorrect, the order of Suspension is void. The panel included two public members which means where should have been at least 4 attorneys on the panel.

As Appellant was punished due to the fact that a motion to stay the suspension was filed and denied for a period of time without due process of law and without the existence of the Court, it is proper and appropriate to void the judgment and dismiss all claims against the Appellant. Any sentence if applicable to the Appellant has been satisfied.

Point of Error and Issue #2. Are Family Affairs of Attorneys subject to Rules of ethics?

Appellant replead all facts in Nature of the case and Facts. All facts stated above probably board the Appellate Panel beyond reasonable doubt and simply the question should be: Why a Family affair of a lawyer is subject of this rule of appeals? for the same exact reason, family issues are not the business of the State Bar because they are family issues and not personal affairs in the context of the rules. "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**." Family affairs are defined as: "a matter concerning a group of related people" Personal affairs suggest an extra-marital relationship with multiple partners or personal business suggests either a side business conflicting with the work of a lawyer, or else defecation. Law Dictionary defines personal matter to be:

"Personal affairs means decisions regarding the person of an adult, including but not limited to health care, food, shelter, clothing, or personal hygiene."

Family Affairs are defined as:

"Family affairs" are events and news that relate to a family. Most of the time, it's a benign way to quickly state what's going on with our relatives. But it can also be a polite or sarcastic way to discuss unpleasant happenings in the family circle. Family affairs can encompass a host of matters

and goings-on. They include things like weddings, funerals, baptisms, graduations, and holidays. But they can also indicate family feuds, arguments, or other complicated issues we don't wish to discuss in detail." *https://oneminuteenglish.org/en/family-affairs-meaning/*. The appellant sent series of texts to his ex-wife, who is a family member by definition and one who happens to be his doctor under the condition of trust. KKW shared that text with her lawyer under the condition of privilege to seek legal advice. KKW has not signed a waiver of privilege and AA breached that level of trust to gain advantage in a case. Marriage is a family affair. Divorce is a family affair. Raising a kid is a family affair. Disputes regarding how to raise a child are a family affair. The conversation between the ex-wife and ex-husband was still a family affair. All disputes are regarding a child who is a family member and this matter is a family affair. In the State of Texas once parties have a kid, or are dating, or are married are family as a matter of law and all problems related to such dispute are family affairs and <u>not subject to rules of ethics</u>. "He [LAWYER] should not be precluded from doing something that a non-lawyer could do under the same circumstances." *https://www.legalethicstexas.com/resources/opinions/opinion-457/. Tex. Comm. on Professional Ethics,* Op. 457, V. 51 Tex. B.J. 808 (1988). Texas has defined family and the meaning of family in *Sec. 71.003. FAMILY CODE*, "Family" includes individuals related by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, individuals who are former spouses of each other, individuals who are the parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together. Therefore, based on the law, in Texas, the following are considered to be family:

a current or former spouse

a child of a current or former spouse

a person with whom the offender has a child or children

a foster child or foster parent of the offender

a family member of the offender by blood, marriage, or adoption

someone with whom the offender lives, and

a person with whom the offender has or had an ongoing dating or romantic relationship.

All disputes regarding family issues are family affairs. Rules of ethics in its preamble define what scope of life of a lawyer is subject to the rules. As much as the rule states lawyers' personal affairs are subject to rules of ethics, it does not mention that Lawyer's family affair is any business of the State Bar of Texas. There is no provision, opinion, case, or anything that suggests the family affairs of a lawyer are the business of the State Bar. If the family affairs of a lawyer were the business of the State Bar, a lawyer must be on the clock 24/7 without pay which would be involuntarily servitude and unconstitutional. In the alternative, the State Bar of Texas would be the employer of every attorney and responsible for payroll taxes if not paid. Texas Constitution protection against arbitrary deprivation of life and liberty (Article I (19) of the Constitution); and In *Griswold*, the Supreme Court found a right to privacy, derived from penumbras of other explicitly stated constitutional protections. The Court used the personal protections expressly stated in the First, Third, Fourth, Fifth, and Ninth Amendments to find that there is an implied right to privacy in the Constitution. The Court found that when one takes the penumbras together, the Constitution creates a "zone of privacy." Family Affairs falls within the Constitutionally protected zone of privacy and is not subject to the control of the State Bar of Texas. No provision in any law or section of Chapter 81 or 82 of the government code would allow State Bar to be involved in the Family Affairs of licensed lawyers. It is an unjustifiable invasion of privacy in the conduct of the most intimate concerns of an individual's personal life to be subject to the scrutiny of Rules of Ethics that are only applicable to Lawyers who choose to be a member of an

organization. The State Bar of Texas cannot regulate family affairs and doing so would be a violation of Appellant to Liberty under the Due process Clause of the United States Constitution.

CFLD attempt to control what happens in the family affairs of the lawyer is one step below treating lawyers like property. CFLD wants to control its property 24/7. This mentality of interpretation of lawyers being the property of the State Bar of Texas is a violation of the Due Process Clause and Equal Protection Clause of the United States Constitution. State Bar of Texas has no right to claim lawyers are its property and subject to its control without pay with the mandatory annual membership fee, 24/7 and outside of the scope of approved rules. No employer may control the family affairs of its employees and the State Bar of Texas is not an exception to the United States Constitution.

CFLD has not shown any facts, law, case law, statute, or otherwise, that would show it has any jurisdiction, control, laws, or say over family affairs of lawyers. "He [LAWYER] should not be precluded from doing something that a non-lawyer could do under the same circumstances." *https://www.legalethicstexas.com/resources/opinions/opinion-457/. Tex. Comm. on Professional Ethics,* Op. 457, V. 51 Tex. B.J. 808 (1988). Therefore, as no provision of Rules of Ethics concerns family affairs, any evidence related to family affairs, texts and emails to the ex-wife of the Appellant is not considered in appellate records as evidence. As there is no other evidence to support any part of the Judgment, the Final Order of Panel is void and the grievance against Appellant should be dismissed. No deference to the lower panel is proper. The rules do not apply to family affairs of lawyers and therefore all evidence related to texts, emails, and communications related to family affairs and child issues are not relevant, admissible, or should be considered at all in the determination of whether Appellant violated Rule 4.04 (a) or (b) or any other rule as it appears in the final order.

Issue # 3: Is a pro-se person who is an attorney, representing himself, is an attorney in the case therefore subject to the same standard of an attorney representing the client, and entitled to legal fees, client-attorney privilege, client-attorney relationship, and client-attorney work-product privilege?

Appellant replead all facts in Nature of the case and Facts. The final order claims Appellant violated rule 4.04 (a). This rule does not apply to this case for the following reasons: The Texas Supreme Court has published a definition of Pro Se Person. Pro Se: Refers to persons who present their own cases in court without a lawyer; from the Latin for "on one's own behalf." Also referred to as "self-represented litigants." If you are the person filling out the Civil Case Information Sheet and you do not have a lawyer, check this box. *https://www.txcourts.gov/media/658799/SupplementalInstructionsForSRLs.pdf.*
"A lawyer (also called attorney, counsel, or counselor) is a licensed professional who advises and represents others in legal matters." *https://www.americanbar.org/groups/public_education/resources/public-information/what-is-a-lawyer-/ The d*efinition of Lawyer does not include a person that is representing himself and the definition of client does not include self-representation of a person whether that person is a lawyer or not. A lawyer is a public citizen having special responsibility for the quality of justice. 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. The key is lawyer is not required to conform to all laws ever passed or existed in his private life. The language of the rule clearly says "THE LAW". The law is Chapter 82 of the government code. The appellant did not violate any provision of Chapter 82. Appellee knowing and intentionally claims violation of any law is applicable to a lawyer. If that was the case, any lawyer who passed a red light, or got a speeding ticket, or committed any crime that was not a crime of moral turpitude was subject to violation of

the rules of ethics. This is exactly against what the law is. That interpretation of CFLD is simply a false, misleading, incorrect, and arbitrary interpretation of laws and rules of ethics and Chapter 82 of the Government Code.

In this case, the Appellant was not representing any client. There is nothing in this evidence and records that support the fact that the Appellant was representing a client. The committee has presented in its final order that: "***<u>In representing a client</u>*****, *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."*** This order is arbitrary and simply could have provided and asked for Appellant to pay restitution to himself from his left pocket to his right pocket, as the panel claims the lawyer was representing himself relying on Exhibit 34. This exhibit simply is an incorrect court docket sheet that contains a clerical error. Just because the clerk of the Court miscategorized Pro-Se person as a retained lawyer, that does not mean the Appellant paid a retainer to himself to represent himself. These types of random interpretations of hearsay documents without application of law to a situation that does not fit or expected is are not what rules of ethics meant to be. Rules of ethics are not designed to be anything but rules of reason. It is unclear how the panel has decided attorney not turning in a drug mixer, child abuser, and COVID spreader with intent to kill to increase respect of society for the legal profession or turning a person like KKW to her board to investigate is harmful to profession of law.

A client is defined as a person who engages the professional advice or services of another; or one that is under the protection of another. *https://www.merriam-webster.com/dictionary/client.* The client is dependent on another person. Client means consumer, purchaser, shopper, buyer, or patron. A person cannot be her customer, purchaser, or shopper. A person does not remove funds from one pocket to place them in another pocket to become his client. A person that represents

himself is not his client, the person is a pro se litigant. The Texas Courts have regularly held a lawyer who represents himself is a pro-se litigant and therefore not entitled to legal fees. In this case, there is nothing in the evidence that supports the Appellant was representing a client at the alleged time of misconduct.

Appellant simply asked for evidence of child abuse to be preserved. State Bar Hot Line never ever has advised anyone to destroy evidence no matter what that evidence may be. State Bar of Texas previously stated a bloody knife should be preserved when there is no laboratory testing to decide whether blood is the blood of a human or a pig, however KKW and AA destroyed evidence of potential sexual assault of a child and unfortunately abuser got away.

The appellant presents that prevention of sexual assault of a minor, stopping the child abuse or many other reasons are reasonable and sufficient to make a complaint to whoever can potentially stop the abuse and help the mentally sick person take her medication so she can be normal. The fact that Appellant after KKW took responsibility and accepted that she would not be going to not mix medication, and did not continue to ask for his complaint to be prosecuted, does not change the fact that he presented a good faith complaint to the medical board per expert that testified in this case.

If a pro-se person was the lawyer of himself, then the pro-se person would be entitled to legal fees for himself, which is not the law. Also, the pro-se person who represents the client would be subject to membership to the State Bar to be able to represent himself, which would be unconstitutional as a person has a fundamental right to self-representation.

Self-representation does not mean a person representing clients. As it is impossible to have multiple definitions for the simple words client and lawyer, then either the lawyer representing himself is not his client as defined by law or there is no need for State Bar to exist because now State Bar takes the position that a person being a pro-se must be licensed as well. The old

expression that a lawyer represents himself has a fool as the client was stated at a time that there were no requirements of State Bar existence and slavery was legal so any person could be a lawyer. As laws have changed now, a person cannot be his client just like slavery is illegal. State Bar of Texas has no right to mandate a lawyer to be bound to less than a person who is not a lawyer as far as society's rights are concerned. Therefore, the interpretation that a lawyer whose child has an ad litem attorney cannot talk to his child because he is a lawyer, is false, and misleading. If a lawyer was representing himself had himself as a client, going to the restroom was impossible because at that point the lawyer would be touching private parts of his client. Also, the lawyer could wipe himself because that would be improper and it would mean lawyers can touch private parts of their clients. This is not the law. If the position of state bar was correct, a lawyer could not have intimacy while he was pro-se, because that would be having sex with a client and it would be unethical. State Bar of Texas is misinterpreting the plain meaning of lawyer and client so it can proceed with its agenda. Exhibit 34 of the trial simply shows docket sheet is incorrect and the clerical error of the Court is not evidence that a person who is a pro-se is retained by multiple people called “Attorneys”. A docket sheet is not a court order.

It is well-established law that an attorney representing himself in Court is a pro-se litigant. It is well-established law that a pro-se person even if he is an attorney is not entitled to legal fees. The language of the rule is clear that it applies to a lawyer while he is representing a client. This rule does not apply to a pro-se person. Application of this rule to pro-se person is unconstitutional and violates equal protection of law rights of a person. A lawyer has every right a person who is not a lawyer has. United States and Texas Constitution does not support a lawyer not being a person as all human beings are a person. CFLD appears to be pro-slavery and suggests lawyers are property while CFLD suggests lawyers are not equal to a regular person. Therefore, rule 4.04 (a) is not applicable to the Appellant when he acted as a pro-se person. CFLD has not provided any

law that suggests otherwise. See *Iliff v. Iliff,* 339 S.W.3d 74, 79 (Tex. 2011), ("Where statutory language is unambiguous and only yields one reasonable interpretation, 'we will interpret the statute according to its plain meaning. *Id. see also City of Rockwall v. Hughes*, 246 S.W.3d 621, 625-26 (Tex. 2008) ("When applying the ordinary meaning, courts 'may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, and implications from any statutory passage or word are *forbidden* when the legislative intent may be gathered from a reasonable interpretation of the statute as it is written.'") (quoting *Sexton v. Mount Olivet Cemetery Ass'n*, 720 S.W.2d 129, 138 (Tex. App.—Austin 1986, writ ref'd n.r.e.) (emphasis in original)); see also *Jasek v. Tex. Dep't of Family & Protective Servs.*, 348 S.W.3d 523, 535 (Tex. App.—Austin 2011, no pet.) "A court may not judicially amend a statute and add words that are not implicitly contained in the language of the statute.") (citing *Lee v. City of Houston*, 807 S.W.2d 290, 295 (Tex. 1991))." The panel cannot do the same either.

The appellant was representing himself in this case. The appellant did not file a complaint against his wife to gain an advantage in this case. The appellant was not in violation of the plain language of the rule.

Issue #4. Did the Appellant have any reason to turn a family member to her board other than gaining an advantage in a civil proceeding?

Appellant replead all facts in Nature of the case and Facts. A lawyer has no less right than a regular person. "He [LAWYER] should not be precluded from doing something that a non-lawyer could do under the same circumstances." *https://www.legalethicstexas.com/resources/opinions/opinion-457/. Tex. Comm. on Professional Ethics,* Op. 457, V. 51 Tex. B.J. 808 (1988). A lawyer has a special responsibility to society. A lawyer must turn in potential child abuse. A lawyer must prevent, when possible, drug use and abuse. CFLD seems to interpret that a person if that person is licensed to practice law does not

have any right to file a complaint against a person if there is a potential civil litigation. If a regular person was allowed to do something, by virtue of being a lawyer, a person is not prohibited from acting in the same legal way. The United States Constitution does not have different provisions for lawyers. A lawyer is a person and will have the same protection of equal protection clause of the United States Constitution as any person who did not even go to school because "He [LAWYER] should not be precluded from doing something that a non-lawyer could do under the same circumstances." *https://www.legalethicstexas.com/resources/opinions/opinion-457/. Tex. Comm. on Professional Ethics,* Op. 457, V. 51 Tex. B.J. 808 (1988). A father is justified to turn a mother into authorities when the mother spanks the child for no known reason. A father is justified to turn in a mother who destroys evidence of potential sexual abuse of his child. A father is justified to turn in the drug abuse of a doctor's wife to her board to seek intervention and stop the misuse and abuse. A lawyer is not less of a person by virtue of having a license to practice law. If a lawyer's child is being abused, the child does not have less of a right to the justice system because her/his father is licensed. If anything, a lawyer must prevent child, drug, and alcohol abuse. Appellant correctly, properly, and **confidentially** turned in a person who mixed drugs to her medical board. *The Professional Ethics Committee Opinion 457, Tex. Comm. on Professional Ethics, Op*. 457, V.51 Tex. B.J. 808 (1988), has made it very clear, concise, and precise beyond reasonable doubt for more than 35 years that a "mere statement of turning someone into police, district attorney office or pressing criminal charges through district attorney's office is NOT THREAT OF CRIMINAL PROSECUTION", and IT IS NOT MERELY DONE TO GAIN ADVANTAGE IN A CIVIL CASE. Also *See Decato's Case*, 379 Atl. 2d 825, which states the same. Informing someone that their conduct is improper, illegal or criminal does not violate rules of ethics because "He [LAWYER] should not be precluded from doing something that a non-lawyer could do under the same circumstances."

https://www.legalethicstexas.com/resources/opinions/opinion-457/. Tex. Comm. on Professional Ethics, Op. 457, V. 51 Tex. B.J. 808 (1988). An Element of the offense is that there is proof that the person charged acted with the purpose solely of obtaining an advantage in civil matters. Absent this proof, a lawyer may not lawfully be found in violation of the rule. The mere mentioning of contacting the medical board to file a complaint does not in itself, suggest that the statement was made in an effort to gain leverage in the deed of trust issue. It is obvious beyond reasonable doubt that the statement was made after the dispute was resolved. How the statement was made after the fact that the case had been settled gave any advantage to the maker of the Statement is unknown. The statement made contains the word "les" which is not the same as "shall" or "must". The word "would" has less or equal force to "may" and suggests it is in the hands of a third party to do something. Regardless, the intention of the text was not to gain an advantage in the case but rather to inform KKW that her attorney is causing her child harm and causing her harm instead of good.

Another statement presented by the State Bar regarding Texas Rangers being called to investigate corruption also does not meet the standard needed to violate any rules of ethics. Calling police, law enforcement, or any part of the executive office to investigate a matter is not illegal or unethical. The State Bar of Texas has not authority to prevent its members from calling the police. Only a few of the reasons for the Appellant to ask the medical board to investigate are listed below: Exhibit 1, simply notifies the Court of family disputes and misconducts. The Purpose of the notice was for KKW to stop mixing drugs, and start behaving like an adult. Also, the purpose is for KKW and her attorney AA to resolve disputes and start to act properly at the time of the exchange of the child. So the child would have a father.

Exhibit 2, simply notifies the Court of family issues problems, and misconduct. The purpose is for the Court to evaluate the situation and appoint ad litem if needed. Also, the purpose

is for KKW and her attorney AA to resolve disputes and start to act properly at the time of the exchange of the child. So the child would have a father.

Exhibit 3, simply notifies the Court of family issues problems, and misconducts. The purpose is for the Court to evaluate the situation and appoint ad litem if needed. Also, the purpose is for KKW and her attorney AA to resolve disputes and start to act properly at the time of the exchange of the child. So, the child would have a father. He [LAWYER] should not be precluded from doing something that a non-lawyer could do under the same circumstances." *https://www.legalethicstexas.com/resources/opinions/opinion-457/. Tex. Comm. on Professional Ethics,* Op. 457, V. 51 Tex. B.J. 808 (1988).

Exhibit 4-9 is the same. These are a series of issues that are family issues and must be told to the Court so issues can be resolved. So, the child would have a father.

Exhibit 10. The appellant has asked AA to inform her client to be civil. There is nothing unethical about asking an attorney to advise her client to be Civil. So, the child would have a father.

Exhibit 11, email regarding discovery arrangement and discovery dispute. There is nothing unethical in this email.

Exhibit 12, Petition to enforce the Deed of Trust and Deed for property issues. There is nothing unethical about asking the property to be maintained in the deed of trust. Holders of the deed of trust can enter the property to inspect at any time. Regardless, the issue was resolved long before the medical board complaint was filed.

Exhibit 13, this is an offer and subject to Rule 408. Nothing unethical about sending an offer. AA admitted that she did not relay this offer to her client. AA was upset that she did not have enough time and therefore it was unethical to make that offer. All AA had to do was send an email that said, I need time to respond to your first offer, please keep the offer on the table.

However, AA filed a grievance instead of communicating with the Appellant. It appears AA filed a grievance to gain an advantage in the case and the Appellant was attempting to resolve disputes in good faith.

If KKW had agreed to put a camera above the child's bed, stop mixing medication, and make small donations, the funds that the Appellant was holding to pay for the college of the child would not have been wasted in litigation, the child would have father, and KKW would get the treatment she needed. Instead, the child lost his college fund, and he got excluded from the family trust fund. There is no doubt that the conduct of KKW and AA was harmful to the child. Bar changed their offer to Appellant from Public Reprimand to Suspension before the hearing. Changing offers is common, normal, and not unethical. If you assume it is unethical then, by all means, disbar all members of the state bar of Texas who approve a change of offer to Appellant. AA admitted that she did not relay this offer to her client and did nothing to get the offer back on the table. A regular person may change offers as well.

Exhibit 14, There is nothing unethical about asking for a Jury trial. The email that is copied on top of this email and sent to the Court was only sent to Court after notice of appeal was filed and the hearing was moot. AA only then sent this email to pass a hearing when she found out she could not even have a hearing as the matter has been appealed.

There is a copy of the text that was placed in the email. The disputes were resolved at the point of sending the text and asking KKW to take control of the situation. KKW knew the Appellant was COVID-19 positive and although she was agreeable that the hearing should be passed, she would inform Appellant that her lawyer says not to pass the hearing. Appellant informed KKW that her license requires her to not hurt others. The mere statement of stop doing something that would be a violation of her duty to the public is not a violation of any rules of ethics. Informing someone that their conduct is improper, illegal or criminal does not violate rules

of ethics. The text sent was also a private text and a family affair. Family affairs are not subject to rules of ethics. The language of the text does not suggest Appellant would put a leash on anyone, but simply suggests it would be a violation of some rules with the Medical Board which is likely to cause issues for KKW. Appellant uses the term "will" which suggests to his family member that what she is doing is improper. If Appellant would have continued prosecution of the case against KKW which was only stopped because of this grievance filed, KKW would most likely be in trouble with her board. Appellant is determined to fix the problem and not to be vindictive and try to destroy his ex-wife.

Exhibit 15 is a description of the narcissist problems of KKW. After living with her for 17 years, Appellant comfortably states that it is his opinion that KKW's character does not allow her to listen to any male. KKW was still fighting with a male doctor who died 10 years ago because the doctor suggested to her that she needed to lose weighty to be healthy. That is how vindictive she was. In this case, KKW did not take the child with a fever of 100 for 12 days, to any doctor to test, did not do a strep throat test and the child was covid positive and exposed to covid positive class and teacher, and was contagious and gave Appellant covid. Nothing in this email is unethical. Exhibit 16, heated discovery dispute. Appellant has seen heated disputes of others in discovery matters much worse than this email. A funny sarcastic email is not unethical. A dry sense of humor is not unethical either.

Exhibit 17, AA was again avoiding Court hearing. There were three attorneys from her firm that could have appeared in the case. The order of protection did not mention all 150 lawyers of the firm of AA are protected from hearing. AA did not provide curtsey to pass hearing when Appellant was COVID-19 positive. Appellant has no duty to assume additional words in the order. The Court in order to pass the hearing set by AA wanted AA to pass the hearing. However, for the hearing set by Appellant, the Court did not require Appellant to pass the hearing. The Court seems

to only hear AA and not Appellant. A hearing could have been held to determine why no other lawyers from her firm could cover the hearing.

Exhibit 18: There is nothing unethical about asking the Court to hold a hearing. It is not a violation of Rules.

Exhibit 19. AA forgot to re-notice her own hearing set on the day that Appellant's hearing was set. Although AA did not notice her own hearing, she decided she did not need to, but to hear the motions of Appellant she mandated new notice. Double standard is what this email describes. There is no violation of Rule 4.04 in this exhibit.

Exhibit 20. Appellant described the conduct of KKW. KKW kept calling the police before the arrival of Appellant to see his child. She would make false claims such as she saw the gun in the vehicle of Appellant when Appellant was at least 5 miles away from the pickup location. In any event, Police searched the car and never found any gun. There is nothing unethical to ask the attorney to talk to her client to figure out why she imagines seeing a gun so many times and no gun being around. The fact that she sees guns in a car without seeing the car in real life is enough to ask medical board to evaluate her mental status.

Exhibit 21, A Motion filed which details are explained in facts. Mental disease of family members of KKW has led to make assumption of international abduction. Simple lies, The Appellant was operating his law firm and lived in Houston for more than 25 years. Furthermore, This motion of KKW and her testimony that Appellant traveled 69 times to Iran, when he traveled three times to Iran in 29 years, was another indication and evidence that KKW medication was so off that she was hallucinating the number of times Appellant went to see his parents by 23 folds. These are all false allegations of KKW due to her mental medication being mixed with weight loss medication. This allegation by itself is evidence that KKW mental status was so bad that the Appellant for the safety of the public, asked the medical board to evaluate her mental status. The

fact that KKW does not allow Appellant with his kid to travel to see family members is enough to turn her in for mental health evaluation to her medical board. KKW for years avoided seeing mental health professionals but always had prescriptions filled by a couple of her friends.

There is an email that states "withdraw your motion or you will be sorry." Although the email is blank, because it was sent by accidental click on sent instead of save, the email by itself is not a threat of Criminal Prosecution and not a violation of Rule 4.04.

Exhibit 24. is a copy of the petition for defamation due to the fact that KKW claimed Appellant intention was to steal the child. Appellant has a right to petition to the Court and sending a petition to the Court is not unethical. It is obvious from the record that KKW did make claims of abduction without actual proof of intention to abduct and not come back. She could never show such a thing because 1. Appellant never did such a thing, 2. There was no evidence of the sale of any assets or transfer of any funds to any other Country, 3. The travel that the Appellant was asking for was according to the decree. Therefore, the Appellant exercising his constitutional right to travel is not unethical. There is no violation of Rule 4.04.

Exhibit 25 is an attempt to resolve disputes and settlement discussions subject to Rule of Evidence 408. This email is what was intended to be sent out when it was sent out blank. No violation of Rule 4.04.

Exhibit 26 AA was asked to submit her client to a drug test and counseling because her mental status was so bad that at that point on top of claiming to see a gun in the car of Appellant while Appellant was 10 miles away, she imagined or hallucinated in that regard to international abduction. KKW had to mix drug problems and after the Appellant attempted to resolve that mixing drug problem by contacting KKW's parent (he appeared to be the supplier of the drug) her aunt, her friends, and her attorney, the last resort was the Medical Board to intervene and stop the drug mixing. There was no intent to gain any advantage in any civil matter.

AA had a nondelegable duty to preserve all evidence requested and the laboratory could have determined if the evidence is evidence of rape, sexual abuse, or simply nothing. However, KKW knowingly and intentionally destroyed and failed to keep evidence or sheets that could potentially be evidence. Appellant presented an expert testimony and report that stated what he did was reasonable and correct. The conduct of KKW also confirmed that her irrational behavior was not proper. KKW admitted in an unrelated hearing, after she was turned in to her board that she did take mix medications and she stopped doing that. This reason is enough by itself to turn someone into her medical board.

Exhibit 27 is simply a demand letter and it is a proper demand letter for defamation. This is not a violation of Rule 4.04.

Exhibit 28. Appellant denied all of his claims and stopped seeing the child until Doctor Bevan said otherwise. Doctor Bevan who was a court-appointed doctor did not finish his evaluation. Doctor Bevan stated in writing that he did not finish his evaluation. Appellant stopped seeing the child altogether after the bar complaint was a child and after an allegation of intentional abduction was made. AA filed this grievance to gain an advantage in the case. Appellant's continuance was denied before trial because State Bar of Texas had contacted the Court and inquired about the trial going forward. The Judge refused to wait for Doctor Bevan to finish his evaluation. The end result was Appellant would not see his child at all by his choice. Appellant stated to the Court that he would not accept being a primary parent. Appellant waived his defense and legal standings on his own. Not seeing the child and being subject to police harassment every time he wanted to see the child was the reason for his personal choice.

Exhibit 29 asks for copy of the insurance policy of a person is not illegal or unethical. Many State Bars including the State Bar of Illinois publish whether a lawyer had malpractice coverage or not. This is not unethical. Appellant also presented documentation that South Texas of Law also

only works with insured companies. Why would anyone take their kid to a non-insured person is unknown.

Exhibit 34 is the Court Docket Sheet. The Court Docket Sheet top line states Attorneys. This does not mean a pro-se person is licensed to practice law. The docket sheet does not have a column for pro-se person. Therefore, this exhibit is not evidence of Pro-se Person is legally multiple people which would be called “Attorneys”. Interpretation of Exhibit 34 stating a person is an attorney when representing himself, is simply wrong. There is no violation of Rule 4.04.

“Anyone may register a complaint against a practitioner licensed by the Board. Complaints must be submitted in writing. The identity of complainants is protected and kept confidential by law, with the exception of complaints filed by insurance and pharmaceutical companies.” *https://www.tmb.state.tx.us/page/complaints#:~:text=Texas%20Medical%20Board&text=Anyone%20may%20register%20a%20complaint,by%20insurance%20and%20pharmaceutical%20companies*. *Occupational Code Sec. 160.006. BOARD CONFIDENTIALITY.* (a) A record, report, or other information received and maintained by the board under this subchapter or Subchapter B, including any material received or developed by the board during an investigation or hearing and the identity of, and reports made by, a physician performing or supervising compliance monitoring for the board, is confidential.” *Sec. 164.051. GROUNDS FOR DENIAL OR DISCIPLINARY ACTION*. (4) (A) illness; (D) a mental or physical condition and *Sec. 164.052. PROHIBITED PRACTICES BY PHYSICIAN OR LICENSE APPLICANT*. uses alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

If the Medical Board had properly redacted information, the Appellant’s identity would never be known and therefore it was impossible to even have any advantage in civil litigation. Appellant is not responsible for negligence redaction of a third party, the Texas Medical Board, a governmental administrative agency, similar to State Bar of Texas. Therefore, it is clear and

obvious that absent of error of the Texas Medical board KKW or AA or State Bar of Texas would not even have any evidence that the Appellant turned in KKW to her board, let alone a reason to be for advantage in a lawsuit. Therefore, any evidence related to the negligence of third party should be set aside and not even considered as admissible evidence against the Appellant.

Appellant presented evidence of attempts to reach out to family members of KKW at no luck in intervening and stopping the drug usage. *See* Exhibit 20. Furthermore, the Appellant, a father turned the mother of the child in to protect the child from spanking, being molested, and abused. All these reasons were for the well-being of the child. Appellant's intention was not to gain an advantage in the case and dismissed his case when Appellant found out that the Texas Medical Board made a mistake and did not redact properly and the identity of the complainant was known to KKW which was even before the State Bar send grievance copies to Appellant. A very few irrational behaviors of KKW out of thousands of irrational behaviors are:

Appellant was asked to show up to Court while he was COVID-19 positive, with a test, because KKW did not like what the Appellant had added as a provision in the Deed of Trust subject to divorce. KKW had also failed to execute a deed that she was supposed to exchange with a Deed of Trust. At that time, the Supreme Court of Texas, had issued many somewhere close to 26 Covid Orders prohibiting in-person hearings even if someone was sick and not known to have covid or not. The appellant had to file a Notice of Appeal of Hearing for the Court to pass on the hearing that if held with the Appellant was tested positive for COVID-19 would have likely and probably resulted in the death of at least one person. Instead of following the Supreme Court orders, the Court clerk who appeared to know AA, instead of asking the Judge to rule on the issue of not having a hearing in person, would refuse to provide Zoom or a similar remote hearing, and wanted in in-person hearing with Covid Positive person, Appellant whose oxygen level was at 90% (anything below 90% may cause brain damage) was unable to walk more than 20 ft. A Notice of

appeal had to be filed forcing the hearing to be passed. The appellant has litigated more than 500 cases; the Appellant has not even seen one situation when parties did not agree to move a hearing date when a person is sick. This is not because lawyers need to do so, because humanity mandates doing so. No hearing over a property deed is worth killing a person to Appellant to go to a hearing. Contrary, to the Appellant belief, KKW a doctor who has taken an oath not to hurt others, was attempting to take a Covid Positive person to Court which was harmful to at least 100 people and was likely based on the statistic to kill at least one person that day. This conduct alone is enough to satisfy that the sole reason to turn KKW to her board is not to gain an advantage in the case, but rather to save humanity.

KKW used to treat the Appellant as a doctor. This specific act of the doctor to ask his patient who was COVID POSTIVE to drive 15 miles to appear in Court and hurt others, is against the oath of the doctor and a violation of her rules of ethics. The appellant was justified when the Appellant used reasonable text after the hearing was passed and disputes were resolved to inform KKW that her medical board would be upset if she killed anyone or endangered the life of 100 people. KKW was following the orders of AA and meanwhile violating her own rules of ethics. The warning provided to KKW in the month of September was constructive information, which was text to her, as a family member, and after the disputes were resolved which was regarding the deed situation when KKW had not followed the order of the Court herself. KKW had agreed to refinance her house before the divorce was finalized. Her attorney tried to manipulate her and change that agreement. After AA was confronted again in Court that her demand was not what her client agreed to, in front of the Court, KKW told her that again that was the agreement. AA again stated that she could get the appellant to pay more because that agreement was not in writing. AA is an attorney who lies, and changes facts to gain an advantage in the case. However, that was not the agreement, and KKW by refinance would have saved 2% on interest rates alone and the

Appellant had offered to close her refinance transaction without any costs to her or her bank at the time at his offices. However, Appellant's intention was not to harm others but to help the public and ask for the medical board to explain to KKW that what she was doing was harmful to herself and other members of society.

KKW spread COVID-19 on purpose, knowingly, and intentionally with the intent to kill. The appellant caught covid from his child when the child was exposed in daycare to a positive teacher, and KKW failed to take the child to a doctor for testing or test covid at CVS when the child had a 102-degree fever for 5 days, failed to do strep test and told Appellant after Appellant spent a Thursday with the Child without masks and that child has had fevers since Monday and been told that was exposed to Covid for 10 days. This conduct of KKW was also against the oath she took however was consistent with her normal and usual pride of KKW in regard to the dirty blankets being sent out to Indians as part of US History. KKW response was eventually as to why COVID exposure was not explained. "I hope you would catch covid and die". The conduct of KKW was equal to bioterrorism and it was proper for the Appellant to ask her medical board for this conduct is correct and justified. Therefore, Appellant did not violate Rule 4.04(b)(1). Appellant sole reason for turning KKW to her board is not to gain an advantage in the case.

KKW spanked the child on a daily basis best on recorded video from the child. Hitting the child every day is not what a doctor should teach others to do. KKW physical harm and emotional harm to the child is harmful to the well-being of the child and against her oath. Appellant sole reason for turning KKW to her board is not to gain the advantage in the case but as a concerned father he did so.

KKW mixed drugs and thought Appellant was trying to run away with the child. During the same time, Appellant was starting to build an office building to move his office to located at 5309 McClough, and Appellant intention was to build a new house on 506 Woodbend after

finishing that first project, and stabilize it with tenants. Why would a person who intends to run away build an office, or house for himself? KKW's parents, specifically her mother based on an old movie assume whoever is from Iran, takes the child and runs away to Iran. KKW's parents suffer from paranoia, anxiety, and other mental health issues. KKW who suffers from mental health issues herself, due to her mixing of medication, although she knew there was no intention to take the child and run away, which was her intention, to begin with as time has shown, made these accusations so the child would be allowed to leave geographical restrictions.

KKW acts and pretend being scarred caused the child not to travel to Smokey Mountain, California, Australia, and many other locations where he has relatives. It is unclear based on medical publications the child should not have any relationship with any of his relatives who are college graduates. It is obvious that KKW is scared that the child outcry to others about spanking, crying not allowing to his father, and being touched inappreciably in bed. Appellant sole reason for turning KKW to her board is not to gain an advantage in the case but as a concerned father, he did so to help a minor child not be abused by a mentally sick person who occasionally without care of a doctor quit taking medications.

AA has made other allegations that the Appellant asking Texas Rangers to investigate a situation is the threat of Criminal prosecution. Calling the police or asking for authorities to investigate is not a threat of criminal prosecution. State Bar of Texas prosecutor knowingly and intentionally continued to prosecute this false and misleading interpretation of law which is inconsistent with prior interpretation of the agency. Therefore, no deference to the lower panel is proper as said panel also did not follow the known interpretation of the threat of criminal prosecution. The definition of Criminal threat has historically and from coast to coast has been:
"He [LAWYER] should not be precluded from doing something that a non-lawyer could do under the same circumstances." *https://www.legalethicstexas.com/resources/opinions/opinion-457/.*

Tex. Comm. on Professional Ethics, Op. 457, V. 51 Tex. B.J. 808 (1988). Anyone can ask Texas Rangers to investigate a crime. A lawyer has not waived his rights to ask law enforcement to enforce the law. State Bar of Texas seems to misunderstand this rule or knowingly and intentionally presents false information to the panel to gain an unethical advantage in this case. Further explained in prosecution misconducts. State Bar of Texas has taken the position that if an attorney's child was raped, he is not allowed to call police because that would be helping a civil matter. State Bar of Texas knowingly and intentionally misinterprets the law. The point of the law is explained in comments of Rule 4.04 Although in most cases a lawyer's responsibility to the interest of his client is paramount to the interest of other persons, a lawyer should avoid the infliction of needless harm. In this case, no harm was made to KKW, contrary, the fact that she was turned in to her board, saved her patients' lives as well as her freedom and not turning her to medical board would have likely resulted in death or serious bodily injury. An ethical person should prevent death or serious bodily injury to others. As it is clear from mandating a person who is COVID-19 positive at the time that even the first vaccines were not available, that would contaminated at least 40 people and likely would have resulted in the death of one person, making a medical board complaint was proper. KKW was never discharged of duty to his former patient Appellant.

Therefore, Appellant sole reason for filing a complaint was not to gain an advantage in this case. The appellant correctly demanded another agency such as Texas Rangers to investigate the relationships of the Court with others to see why a covid positive person should show up to the Court against the Order of the Supreme Court, and why should Appellant while having trouble breathing has to prepare a notice of appeal or face criminal contempt. This conduct of a doctor alone is justified to turn that doctor into her board for spreading disease which is against her oath.

Issue # 5: Did the panel make an error when the panel did not grant the post-trial motion of the Appellant?

The Motion for a New Trial should have been granted. Trial courts have traditionally been afforded broad discretion in granting new trials. See *Columbia*, 290 S.W.3d at 210 (citing Johnson v. Fourth Court of Appeals, 700 S.W.2d 916, 917 (Tex. 1985)). Our rules of civil procedure vest trial courts with broad authority to order new trials "for good cause" and "when the damages are manifestly too small or too large." *TEX.R.CIV. P. 320*. Historically, trial courts sometimes granted new trials with little or no explanation, and "[o]ur 6 decisions approved the practice of trial courts failing to specify reasons for setting aside jury verdicts." *Columbia*, 290 S.W.3d at 208. In that case, we held a trial court does not abuse its discretion in ordering a new trial "so long as its stated reason for granting a new trial (1) is a reason for which a new trial is legally appropriate (such as a well-defined legal standard or a defect that probably resulted in an improper verdict); and (2) is specific enough 7 to indicate that the trial court did not simply parrot a pro forma template, but rather derived the articulated reasons from the particular facts and circumstances of the case at hand." 377 S.W.3d at 688–89. Based on the motion for a new trial, pled provisions related to an incorrect number of panel and additional exhibits which the Court had requested from Respondent, and Respondent produced for the panel and considering the fact that panel itself recognizes that:

1. There was a wrong ratio of attorneys to public members;
2. Comments made by panel member regarding he may have not even signed the final order;

It would have been proper to sign the motion for a new trial.

3. Comments made by a panel member regarding crimes committed without any basis were harmful and defamatory. Furthermore, assuming the panel member was correct, then the accused of a crime is the Appellant who now has the right to Sixth Amendment protection to cross-examine the accusers in person and not by ZOOM. The Sixth Amendment

provides that a person accused of a crime has the right to confront a witness against him or her in a criminal action. This includes the right to be present at the trial (which is guaranteed by the Federal Rules of Criminal Procedure Rule 43). Justice Scalia has made comments before that Virtual Confrontation is good for Virtual Constitution. Real in-person confrontation is applicable to the real constitution. “A purpose of the confrontation clause is ordinarily to compel accusers to make their accusations *in the defendant’s presence* — which is not equivalent to making them in a room that contains a television set beaming electrons that portray the defendant’s image,” Justice Scalia stated in his 2002 objections to amending Federal Rules of Criminal Procedure and he further stated specifically: “There is no Zoom exception to the confrontation clause,” Therefore if the panel member was correct, case still needs to be overturn due to violation of Sixth Amendment Clause of Appellant. If a panel member was incorrect in making those comments, said the comment was prejudicial and without any basis and it was made to taint the panel. The panel member was a former prosecutor who indicted now exonerated Attorney General of Texas.

ISSUE NUMBER SIX:

Did the sentencing of the Appellant fit Chapter 15 guidelines?

“Purpose of Lawyer Discipline Proceedings. The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.” Texas Rules Of Disciplinary Procedure 15.1 (a). There is no evidence in this case that the Appellant did anything wrong to any client of his, the legal system's legal profession, or the public. The appellant had family issues and family issues are not part of sentencing guidelines.

Imposition of Sanctions In any Disciplinary Proceeding or Disciplinary Action where Professional Misconduct is found to have occurred, the district grievance committee or district court may, in its 50 discretions, conduct a separate hearing and receive evidence as to the appropriate Sanctions to be imposed. In this case, the Appellant states that the committee did not provide any finding of facts and conclusion of the law to support not having a sentencing. Appellant states that absent of reasoning the Evidentiary Committee Abused its discretion. Although having a bifurcate trial may be discretionary, in this case, the Appellant had no sentencing at all. The record is missing parts; however, it is clear the panel re-opened evidence again to hear attorney fees, however, the panel did not want to hear any evidence regarding sentencing. This is an abuse of discretion and unequal protection of law. The panel allowed the State Bar to Present evidence of legal fees, the panel should have allowed the sentencing to be heard.

The appellant was not even provided a chance to present his sentencing suggestion. Appellant's counsel made mistakes and many mistakes as described in the Motion for New Trial in more detail that amounts to ineffective assistance of counsel. Appellant as he was not provided to present any evidence that he is not a danger to his clients was suspended for four years. The sentencing was cruel and unusual and it did not fit the crime. No provision would suggest proper punishment for the family affair of an attorney. Even if somehow, we broadly interpret and manage to bypass the United States Constitution and allow the State Bar of Texas to be in control of the family affairs of lawyers, there is no punishment in law for said violation. Therefore, the Appellant cannot be punished under the current statute. It is also unclear how the suspension of the Appellant for four years stopped the KKW from mixing drugs and spanking the child.

If we somehow assume the Family is the same as the public and arbitrarily apply the same guidelines, and somehow would like to apply Section 15.06, although evidence does not support

that Appellant stated that appellant can influence a governmental agency improperly, even if Appellant did, which he did not, then, Private reprimand is generally appropriate when a Respondent negligently engages in any other conduct involving the failure to maintain personal integrity and causes little or no actual or potential injury to others or the legal system. The Appellant did not cause any harm to anyone by asking for the Medical Board to investigate. Therefore, if we assume the term family is the same as public, this is the maximum sentence that can be justified against the Appellant based on findings of facts and conclusion of law in final order. Therefore, this arbitrary punishment is improper and the appellant has preserved this error in his motion for a New Trial. The final order does not have proper facts and law to support four years of suspension.

SUMMARY OF ARGUMENTS

The Appellant was a pro-se person. The appellant was not acting as a lawyer for a client. Rule 4.04 (a) does not apply to a pro-se person. A lawyer does not have less of a right than a normal person. There is nothing in the evidence that shows the Appellant is an attorney for anyone. For purposes of applying the requirements of Rule 4.04(a) and Rule 4.04(b)(1), a lawyer's purpose or purposes must be evaluated on a case-by-case basis, taking into account all the circumstances. For example, if the lawyer had a history of participating in activities that assisted law enforcement authorities in enforcing laws of the type possibly violated by the adverse party or witness, then evidence of the lawyer's prior actions could be relevant to determining the lawyer's purpose in reporting the possibly illegal activity in the current circumstances. Opinion 589, September of 2009. Appellant has always preserved evidence. Appellant has always in his practice reported evidence of a crime to proper authorities. Therefore, the prior conduct of Appellant shows the intention of the Appellant was to help his son when he asked for sheets to be saved, and KW due to her mental status destroyed evidence with the aid and help of AA.

Comments on Rule 4.04 clearly state that a lawyer representing a client. It does not suggest a lawyer representing himself is subject to this rule. A demand made on behalf of the entity is a proper demand and it appears the statement of international abduction was baseless as the Appellant intent was to travel with his child during his possession time. No other evidence is present in the record that would indicate Appellant sold anything or transferred anything of value to Iran so he could go live there. There is no evidence of the intention of the Appellant to travel and not come back. The Court out of being worried about potential travel, decided to stop a child from leaving the Country. There is nothing in evidence that would suggest Rule 4.04(b) was violated. A Lawyer is allowed to call the police, authorities, Texas Rangers, or anyone else to report what he sees as a crime. A lawyer is allowed to turn in a doctor who destroys evidence, spank kid, mix drugs, spreads diseases, and mentally and physically abuse a person to her board because a non-lawyer is allowed to do the same. A person who becomes a lawyer does not waive his right to the protection of police and authorities. A Lawyer can have private citizen and public citizen roles. There is no rule of law that would even suggest a lawyer as a public citizen has waived his right to be a private citizen. A father is not a public citizen and therefore any action of the father regardless of his official role of being a public citizen at certain times does not deprive him of being a private citizen at times. A father whose child is potentially raped and whose evidence of potential sexual abuse was destroyed by a doctor who was the doctor of the child, to protect her own brother, is justified to do all Appellant did and probably more. The fact that the person who sneaked into the child's bed is alive is evidence that the Appellant acted reasonably and all complaints filed were reasonable and proper.

One must look at the simple fact that if the Appellant was not a lawyer, did he violate any rules? One is entitled to be represented by counsel of his/her selection. See *Swartz v. Swartz*, 76 S.W.2d 1071, 1072 (Tex. Civ. App. -- Dallas 1934, no writ). One must look at this case to see if

The Appellant violated Rule 4.04(a) when he sent a demand and asked for an apology. The answer is demand was not unethical and a violation of Rule 4.04(a).

The Appellant was not allowed to cross-examine the witness in person. The Appellant had requested an in-person hearing. The State Bar of Texas wrongfully denied such a request and stated that is the discretion of the State Bar. The investigative panel did not hold in personal hearing either and as the investigative panel considered items and exhibits without cross-examination and based on speculations that were not even presented in the evidentiary hearing, the Investigatory hearing was improper and was simply a trial by ambush. As such it is proper to quash the finding of the investigatory panel. The Grand Jury’s improper finding does not get cured in the final trial, and quash of indictment is a proper procedure for such misconduct. In this case, the quashing of the findings of the investigatory panel is proper.

Although certain emails may be not in conformance with the Texas Lawyers Creed, none violate Rules of Ethic 4.04(a) or (b). Therefore, the Appellant’s license should be reinstated and the Appellant's prayer should be granted.

PRAYER

The Appellant prays that the court review this appeal under the case shall be reviewed under the substantial evidence rule and, his license to practice law to be reinstated. The appellant prays that the grievance against him be dismissed, in the alternative, the sentence reduced to private reprimand, or in the alternative, the case be remanded to a lower panel. As the investigative panel was not held in person either, this matter is to be remanded to the investigative panel, and prior investigative panel findings are now quashed.

Respectfully Submitted,
/s/ Pejman Maadani

Certificate of Compliance

Pursuant to Texas Rules of Appellate Procedure, the enclosed brief of the Appellant contains 14993 words and it is less than 50 pages. Pro-Se Appellant relies on word count of Word Program.
/s/ Pejman Maadani

Certificate of Service

This is to notify that this Appellant Brief has been served on CFLD on this 12/20/2023 via email.
/s/ Pejman Maadani

FILED
Jan 18 2024
THE BOARD *of* DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

NO. 67358

FILED
May 31 2023
THE BOARD *of* DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

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

---

ANNETTE R. LOYD
STATE BAR OF TEXAS CARD NO. 16731100,
APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

On Appeal from an Evidentiary Panel
For the State Bar of Texas District 7
No. 202103038 [SBOT]

BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION

MICHAEL G. GRAHAM
APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY COUNSEL
COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS
P.O. BOX 12487
AUSTIN, TEXAS 78711-2487
Michael.Graham@texasbar.com
T: (512) 427-1350; (877) 953-5535
F: (512) 427-4167

Identity of Parties and Counsel

Appellant

ANNETTE R. LOYD
TEXAS BAR NO. 16731100

Appellate Counsel for Appellant

GAINES WEST
Texas Bar No. 21197500
C. ALFRED MACKENZIE
Texas Bar No. 12761550
HANNA LEE
Texas Bar No. 24122232
West, Webb, Allbritton & Gentry, P.C.
1515 Emerald Plaza
College Station, Texas 77845-1515
T: (979) 694-7000
F: (979) 694-8000
Email: Gaines.west@westwebb.law
Alfred.mackenzie@westwebb.law
Hanna.lee@westwebb.law

Trial Counsel for Appellant

FRANCISCO HERNANDEZ
The Law Office of Francisco Hernandez
800 West Weatherford Street
Fort Worth, Texas 76102

Appellee

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

Appellate Counsel for Appellee

SEANA WILLING
Chief Disciplinary Counsel

ROYCE LEMOINE
Deputy Counsel for Administration

MICHAEL G. GRAHAM
Appellate Counsel
STATE BAR CARD NO. 24113581
Email: Michael.Graham@texasbar.com
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
T: (512) 427-1350; (877) 953-5535
F: (512) 427-4167

TRIAL COUNSEL FOR APPELLEE

LAURIE GUERRA
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254

TABLE OF CONTENTS PAGE

IDENTITY OF PARTIES AND COUNSEL 1

INDEX OF AUTHORITIES 5

STATEMENT OF THE CASE 11

STATEMENT OF JURISDICTION 12

STATEMENT AS TO ORAL ARGUMENT 12

STATEMENT OF THE ISSUES 13

STATEMENT OF FACTS 14

SUMMARY OF THE ARGUMENT 20

ARGUMENT 22

I. The evidentiary panel did not abuse its discretion by denying Appellant's motion for new trial 22

(A) The panel acted within its discretion in rejecting Loyd's explanations for her failure to timely file a responsive pleading; thus, she did not satisfy the first element of the *Craddock* test 22

(1) Loyd's reliance on her request for attorney assistance in filing an answer is misplaced, where she did not engage counsel until long after the default occurred 25

(2) Loyd's purported mistaken "belief" that a non-timely filed Answer would insulate her from default lacks any credibility 26

(B) Loyd failed to establish any meritorious defense to her violations of TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 8.04(a)(7) or (8), to warrant a new hearing 30

(1) Loyd failed to establish a meritorious defense to the Commission's allegations she violated the terms of the 2019 Probated Suspension 31

(2) Loyd failed to establish any defense to the Commission's allegation she failed to timely furnish the CDC a response or other information as required by the TRDPs 33

II. The record supports the panel's conclusions that Loyd violated a disciplinary judgment and failed to timely furnish the CDC a response to the Complaint against her, in violation of TDRPC 8.04(a)(7) & (8) 34

III. The panel acted well within its discretion in denying Appellant's motion for continuance 36

IV. The panel acted well within its discretion in assessing a 3-year Active Suspension 38

CONCLUSION AND PRAYER 43

CERTIFICATE OF COMPLIANCE 44

CERTIFICATE OF SERVICE 45

APPENDIX 46

CASES **INDEX OF AUTHORITIES** PAGE

Bray v. Miller,
397 S.W.2d 103 (Tex.Civ.App. – Dallas 1965, no writ)...............................37

City of El Paso v. Pub. Util. Comm'n of Tex.,
883 S.W.2d 179 (Tex. 1994) 27, 28

Comanche Nation v. Fox,
128 S.W.3d 745 (Tex.App. – Austin 2004, no pet.)......................................30

Craddock v. Sunshine Bus Lines, Inc.,
133 S.W.2d 124 (Tex. 1939) ....*passim*

Dir., State Employees Workers' Comp. Div. v. Evans,
889 S.W.2d 266 (Tex. 1994) 23

Dolgencorp of Texas, Inc. v. Lerma,
288 S.W.3d 922 (Tex. 2009) 22, 30, 31, 36

Estate of Pollack v. McMurrey,
858 S.W.2d 388 (Tex. 1993) 23, 27, 30

Eureste v. Comm'n for Lawyer Discipline,
397 S.W.2d 103 (Tex.Civ.App. – Dallas 1965, no writ)...............................39

Ex parte Blackmon,
529 S.W.2d 570 (Tex.App. – Houston [1st Dist.] 1975, orig. proceeding) ...37

Fidelity and Guaranty Insurance Co. v. Drewery Construction Co.,
186 S.W.3d 571 (Tex. 2006) 22, 23

Gonzales v. Proctor & Gamble Mfg. Co.,
655 S.W.2d 243 (Tex.App. – Corpus Christi 1983, no writ) 37

Gotcher v. Barnett,
757 S.W.2d 398 (Tex.App. – Houston [14th Dist.] 1998, no writ).......... 30-31

Hawthorne v. Guenther,
917 S.W.2d 924 (Tex.App. – Beaumont 1996, writ denied).........................37

In re Marriage of Williams,
646 S.W.3d 542 (Tex. 2022) 34-35

In re R.R.,
209 S.W.3d 112 (Tex. 2006) 23, 27, 29

In re Sandoval,
619 S.W.3d 716 (Tex. 2021) 29

Ivy v. Carrell,
407 S.W.2d 212 (Tex. 1966) 31

J.G. v. Texas Dep't of Fam. & Protective Servs.,
592 S.W.3d 515 (Tex.App. – Austin 2019, no pet.)....................................37

Love v. State Bar of Texas,
982 S.W.2d 939 (Tex.App. – Houston [14th Dist.] 2002, no pet.) 39

Lynch v. Lynch,
540 S.W.3d 107 (Tex.App. – Houston [1st Dist.] 2017, pet. denied)...... 23-24

Nutter v. Abate Cotton Harvesting Co.,
430 S.W.2d 366 (Tex.Civ.App. – El Paso 1968, writ ref'd n.r.e.)................37

McIntyre v. Comm'n for Lawyer Discipline,
169 S.W.3d 803 (Tex.App. – Dallas 2005, no pet.) 38-39

Molina v. Comm'n for Lawyer Discipline,
BODA Case No. 35426, 2006 WL 6242393 (March 31, 2006) 39

R.R. Comm'n of Tex. v. Torch Operating Co.,
912 S.W.2d 790 (Tex. 1995) 27-28

State Bar of Texas v. Kilpatrick,
874 S.W.2d 656 (Tex. 1994) 39

Sutherland v. Spencer,
376 S.W.3d 752 (Tex. 2012) 23

Texas Health Facilities Comm'n v. Charter Medical – Dallas, Inc.,
665 S.W.2d 446 (Tex. 1984) 28

Texas State Bd. of Dental Examiners v. Sizemore,
759 S.W.2d 114 (Tex. 1988), *cert. denied*, 490 U.S. 1080 (1989) 27, 28

Villegas v. Carter,
711 S.W.2d 624 (Tex. 1986) 37, 38

Wilson v. Comm'n for Lawyer Discipline,
BODA Case No. 46432, 2011 WL 683809 (January 30, 2011) 28

Zeifman v. Nowlin,
322 S.W.3d 804 (Tex.App. – Austin 2010, no pet.)......................................37

<u>STATUTES</u> <u>PAGE</u>

TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.06 12

TEX. DISCIPLINARY R. PROF'L CONDUCT R. 1.01 ....41, 42
TEX. DISCIPLINARY R. PROF'L CONDUCT R. 1.03 ....41, 42
TEX. DISCIPLINARY R. PROF'L CONDUCT R. 8.04(a)(7)....................................*passim*
TEX. DISCIPLINARY R. PROF'L CONDUCT R. 8.04(a)(8)....................................*passim*
TEX. DISCIPLINARY R. PROF'L CONDUCT R. 8.04(a)(11)...41

TEX. FAM. CODE §6.701 35

TEX. GOV'T CODE ANN. §81.072(b)(7)..27

TEX. R. APP. P. 33.1(d).. 34-35

TEX. RULES DISCIPLINARY P. R. 2.10...34
TEX. RULES DISCIPLINARY P. R. 2.17... 24, 25, 26, 35-36
TEX. RULES DISCIPLINARY P. R. 2.23...12, 27
TEX. RULES DISCIPLINARY P. R. 7.08...12
TEX. RULES DISCIPLINARY P.R. 15.01 39
TEX. RULES DISCIPLINARY P.R. 15.02 39-40
TEX. RULES DISCIPLINARY P.R. 15.07(1-4)..40
TEX. RULES DISCIPLINARY P.R. 15.08(1-4)..40

TEX. RULES DISCIPLINARY P.R. 15.09 (A-C) 40
TEX. RULES DISCIPLINARY P. R. 17.05..24

No. 67358

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

---

Annette R. Loyd,

Appellant

V.

Commission for Lawyer Discipline,

Appellee

On Appeal from an Evidentiary Panel
For the State Bar of Texas District 7
No. 202103038 [SBOT]

Brief of Appellee
Commission for Lawyer Discipline

To The Honorable Board of Disciplinary Appeals:

Appellee, the Commission for Lawyer Discipline, submits this brief in response to the brief filed by Appellant, Annette R. Loyd. For clarity, this brief refers to Appellant as "Loyd" or "Appellant", and Appellee as "the Commission." References to the record are labeled CR (clerk's record), Supp CR (supplemental clerk's record), RR Vol. 1 (reporter's record of hearing held November 2, 2022), RR Vol. 2, Ex.__, (reporter's record exhibits from hearing held November 2, 2022), RR Vol. 3 (reporter's record of hearing held February 1, 2023), and App. (appendix to

this brief). References to Appellant's Brief are labeled Apt. Br. References to rules refer to the Texas Disciplinary Rules of Professional Conduct or the Texas Rules of Disciplinary Procedure, as appropriate[1].

[1] *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app A (West 2022), and TEX. GOV'T CODE ANN., tit. 2, subtit. G, app A-1 (West 2022), respectively.

STATEMENT OF THE CASE

Type of Proceeding:	Attorney Discipline
Petitioner/Appellee:	The Commission for Lawyer Discipline
Respondent/Appellant:	Annette R. Loyd
Evidentiary Panel:	7-1
Judgment:	Default Judgment of Active Suspension (36 mos.) [App. 1] [CR 151-159]
Violation found (Texas Disciplinary Rules of Professional Conduct):	**Rule 8.04(a)(7):** A lawyer shall not violate any disciplinary or disability order of judgment. **Rule 8.04(a)(8):** A lawyer shall not fail to furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so.

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

STATEMENT AS TO ORAL ARGUMENT

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

<u>STATEMENT OF THE ISSUES</u>

I. The evidentiary panel did not abuse its discretion by denying Appellant's motion for new trial.

A) The panel acted within its discretion in rejecting Loyd's explanations for her failure to file a responsive pleading; thus, she did not satisfy the first element of the *Craddock* test.

1) Loyd's reliance on her request for attorney assistance in filing an answer is misplaced, where she did not engage counsel until long after the default occurred.

2) Loyd's purported incorrect belief that a non-timely filed Answer would insulate her from default lacks any credibility.

B) Loyd failed to establish any meritorious defense to her violations of TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 8.04(a)(7) <u>or</u> (8), to warrant a new hearing.

1) Loyd failed to establish a meritorious defense to the Commission's allegations she violated the terms of the 2019 Probated Suspension.

2) Loyd failed to establish <u>any</u> defense to the Commission's allegation she failed to timely furnish to the CDC a response or other information as required by the TRDPs.

II. The record supports the Panel's conclusions that Loyd violated a disciplinary judgment and failed to timely furnish the CDC a response to the Complaint against her, in violation of Rules 8.04(a)(7) & (8).

III. The Panel acted well within its discretion in denying Appellant's motion for continuance.

IV. The panel acted well within its discretion in assessing a 3-year Active Suspension.

STATEMENT OF FACTS

On February 14, 2019, an evidentiary panel for the State Bar of Texas District 7 issued a Judgment of Fully Probated Suspension against Appellant, Annette R. Loyd (the "2019 Probated Suspension"). [App. 2] [CR 297-304]. The 2019 Probated Suspension was based on *that* panel's findings that Loyd had neglected her clients' legal matter by not responding to a summary judgment motion, failing to respond to the clients' reasonable requests for information, failing to adequately explain the legal matter to her clients, violating a prior disciplinary judgment, and failing to timely respond to the Office of the Chief Disciplinary Counsel (the "CDC") regarding the underlying complaint.[2] The 2019 Probated Suspension placed Loyd on a fully probated suspension for two (2) years, and required her to (amongst other things): (1) pay restitution in the amount of $1,000.00 to Vernon Bauer, on or before January 1, 2020; (2) pay reasonable and necessary attorney's fees in the amount of $3,300.00 to the State Bar of Texas on or before January 1, 2020; (3) pay direct expenses in the amount of $700.00 to the State Bar of Texas on or before January 1, 2020; and (4) complete six additional hours of Continuing Legal Education ("CLE") in the area of Law Office Management, on or before January 1, 2020. She was also

---

[2] Appellant refers to the 2019 Probated Suspension as a "Default" Judgment of Fully Probated Suspension. [Apt. Br. 1]. However, that judgment does not identify or refer to any instance of default; indeed, it indicates Loyd "appeared in person and announced ready," and that *that* evidentiary panel considered all "pleadings, evidence, stipulations, and argument," in determining she had committed professional misconduct, *and* that the panel "heard and considered additional evidence" and "argument" in determining the appropriate sanction. [App. 2].

required to verify her completion of that additional CLE with the CDC. [App. 2] [CR 297-304].

Beginning in April of 2020, the CDC attempted to communicate with Loyd regarding her failure to comply with the above-referenced requirements of her 2019 Probated Suspension. On April 8, 2020, the CDC e-mailed Loyd, notifying her of her failure to meet the requirements of the suspension and requesting compliance. [RR. Vol. 2, Ex. 6a, pdf p. 85]. On January 25, 2021, the CDC again e-mailed Loyd, notifying her she was out of compliance. [RR. Vol. 2, Ex. 6b, pdf pp. 86-87]. On February 2, 2021, the CDC sent Loyd basically the same correspondence, this time by both Certified and regular mail.[3] [RR. Vol. 2, Ex. 6c, pdf pp. 88-94]. On February 10, 2021, the CDC e-mailed Loyd one last time, again notifying her she was out of compliance and warning that such non-compliance would be the subject of potential additional discipline if it were not addressed. [RR. Vol. 2, Ex. 6d, pdf pp. 95-100]. The record is devoid of evidence Loyd responded to *any* of these communications from the CDC.

On December 10, 2021, the CDC e-mailed Loyd a Just Cause and Election letter regarding the Complaint predicated on her failures to comply with the 2019

[3] The CDC attempted delivery of this correspondence at Loyd's work address and a residential address. U.S. Postal Service online tracking indicated the correspondence to the work address was delivered, but the correspondence to the residential address was returned, unclaimed. [RR. Vol. 2, Ex. 6c, pdf pp. 88-94].

Probated Suspension (the "2022 Complaint"), and advising her she had twenty days from receipt thereof to elect to proceed before an evidentiary panel, or in District Court. [CR 7-10]. On January 12, 2022, the CDC e-mailed, and also sent by Certified and regular mail, a second Just Cause and Election letter. [CR 12-16]. A returned Green Card indicates the second Just Cause notice was received by "A. Loyd" on January 18, 2022. [CR 15]. The record does not include any response from Loyd to either of the aforementioned Just Cause and Election letters.

On February 15, 2022, the CDC sent a request for appointment of an evidentiary panel to the Chairperson of the District 7 Grievance Committee, to hear the case on the 2022 Complaint; Loyd was copied by email. [CR 18-21]. On March 10, 2022, the CDC sent Loyd copies, by email and Certified mail, of: (1) a letter regarding assignment of the evidentiary panel and the Order Assigning Evidentiary Panel; and (2) a letter regarding the Evidentiary Petition and Request for Disclosure filed with the Panel by the Commission for Lawyer Discipline (the "Commission"), along with the Evidentiary Petition. [CR 26-31 and CR 38-45, respectively]. On June 9, 2022, Loyd was personally served with the CDC's above-referenced March 10th transmittal letter along with the Commission's Evidentiary Petition and Request for Disclosure (the "Evidentiary Petition"). [CR 48-49].

The Evidentiary Petition alleged Loyd had failed to comply with the requirements of the 2019 Probated Suspension by failing to: (1) pay restitution in

the amount of $1,000.00 to Vernon Bauer, on or before January 1, 2020; (2) pay attorney's fees in the amount of $3,300.00 to the State Bar of Texas on or before January 1, 2020; (3) pay direct expenses in the amount of $700.00 to the State Bar of Texas on or before January 1, 2020; and (4) complete six additional hours of CLE in the area of Law Office Management, in addition to complying with the MCLE requirements of the State Bar of Texas, on or before January 1, 2020, and/or verify her completion of that additional CLE. [App. 3] [CR 33-36]. The Evidentiary Petition further alleged Loyd had failed to timely respond to the 2022 Complaint or to timely assert a privilege or other legal ground for her failure to do so. [App. 3] [CR 33-36].

On August 1, 2022, the CDC e-mailed Loyd a letter notifying her of a change in the makeup of the evidentiary panel. [CR 50-52]. And on September 14, 2022, the CDC sent Loyd copies, by email and Certified mail, of the Commission's Motion for Default Judgment, and Notice of Default Hearing set for November 2, 2022, at 1:30 P.M., via Zoom. [CR 75-97]. The Green Card for that Certified mail indicates that mail was signed for as received by someone at Loyd's business address, though it does not indicate the date of receipt. [CR 78].

Sometime at or after 11:57 A.M., on November 2, 2022, attorney Francisco Hernandez ("Hernandez"), filed an Original Answer on Loyd's behalf.[4] [CR 99-100

---

[4] The Answer was signed by Loyd, *pro se*, but was sent to the CDC by Hernandez.

& 102] [RR Vol. 1, pp. 10-14]. Further, at or after approximately 1:14 P.M., on November 2, 2022, Hernandez filed a Motion for Continuance. [CR 104-107 & 109-111]. Loyd then appeared at the Zoom hearing, with Hernandez as counsel, and after hearing argument the Chair of the evidentiary panel denied Loyd's Motion for Continuance. [RR Vol. 1, pp. 14-18]. The panel found Loyd in default. [RR Vol. 1, pp. 18-31]. The panel then heard additional arguments and evidence as to the appropriate sanction. At the completion of the hearing the panel assessed a three-year active suspension, along with $1,000.00 plus interest in restitution to Vernon Bauer, $3,300.00 plus interest to the State Bar for the prior attorney's fees award and $700.00 plus interest to the State Bar for the prior costs award (both in connection with the 2019 Probated Suspension), and $1,700.00 to the State Bar for attorney's fees and costs on the instant case. [RR Vol. 1, pp. 31-79].

Accordingly, on November 4, 2022, the evidentiary panel issued its Order on Petitioner's Motion for Default Judgment. [CR 130-131]. And, on November 18, 2022, the panel issued its Default Judgment of Active Suspension. [App. 1] [CR 151-159].

On December 6, 2022, Loyd filed her Notice of Appeal with the Board of Disciplinary Appeals ("BODA"). [CR 212]. On December 7, 2022, Loyd filed an Emergency Petition to Stay Default Judgment of Active Suspension in the panel proceeding. [CR 214-231]. Loyd's request to stay the judgment was denied after a

hearing held on January 4, 2023. [CR 876]. Loyd further requested findings of fact and conclusions of law regarding the evidentiary panel's order denying her request for stay, and the panel issued its Findings of Fact and Conclusions of Law on January 20, 2023. [CR 888 and Supp CR 104-106, respectively].

On December 16, 2022, Loyd filed a Motion to Set Aside Default Judgment and for New Trial or, in the Alternative, for Reconsideration in the panel proceeding. [CR 538-673]. The Commission filed its response to Loyd's motion to set aside the judgment on December 22, 2022. [CR 814-842]. After a hearing held on February 1, 2023, the evidentiary panel issued its Order denying Loyd's Motion to Set Aside Default Judgment and for New Trial or, in the Alternative, for Reconsideration. [RR Vol. 3, pp. 1-62] [Supp CR 123]. This appeal followed.

SUMMARY OF THE ARGUMENT

This case is based on Loyd's failures to comply with terms of the 2019 Probated Suspension, her failure to timely respond to the 2022 Complaint regarding the issues with her compliance with the 2019 Probated Suspension, and the subsequent Default Judgment issued against her related to those failures.

Loyd meets neither the first nor the second element of the *Craddock* test, and the panel acted well within its discretion in denying her motion to set aside its judgment or grant her a new trial. Under the first prong of *Craddock*, when the party opposing the motion for a new trial contests the defaulting party's explanation as to why she failed to timely file a responsive pleading, the matter is left for the trier of fact. Here, the panel had several reasons to disbelieve Loyd's assertion that she incorrectly believed her untimely answer served to render any default proceeding against her moot. Those reasons included Loyd's previous experience with the disciplinary system and the nature of defaults under the Texas Rules of Disciplinary Procedure (the "TRDPs" or "Rules"), and the fact that the cover letter contained with the disciplinary petition specifically advised her of her obligation to file an answer and that a default would be entered if she did not. Similarly, Loyd cannot rely on an error by counsel because she did not retain counsel until long after the default occurred pursuant to the TRDPs.

In addition, Loyd fails to set forth a meritorious defense to both disciplinary violations established by the instant Default Judgment of Active Suspension. Her own allegations and evidence demonstrate she failed to timely comply with the payments due under, or the additional CLE required by, the 2019 Probated Suspension. And she offered no defense in regard to her failure to respond to the 2022 Complaint regarding her violations of the 2019 Probated Suspension. The panel acted well within its discretion in denying Loyd's motion for a new trial, and the Board should affirm.

<u>ARGUMENT</u>

I. The evidentiary panel did not abuse its discretion by denying Appellant's Motion for New Trial.

The evidentiary panel acted well within its discretion in denying Loyd's motion for a new trial. Inquiries into a trial court's (or here, evidentiary panel's) denial of a motion for new trial following default are governed by the long-standing *Craddock* factors. *Craddock v. Sunshine Bus Lines, Inc.*, 133 S.W.2d 124, 126 (Tex. 1939). An evidentiary panel should grant a new trial only if the respondent attorney shows: (1) that the default was neither intentional nor the result of conscious indifference; (2) a meritorious defense; and (3) that a new trial would cause neither delay nor undue prejudice. *Id.; see also Fidelity and Guaranty Insurance Co. v. Drewery Construction Co.,* 186 S.W.3d 571, 574 (Tex. 2006). Appellate courts review a trial court's refusal to grant a motion for new trial for abuse of discretion. *Dolgencorp of Texas, Inc. v. Lerma*, 288 S.W.3d 922, 926 (Tex. 2009). When a defaulting party moving for a new trial meets all three elements of the *Craddock* test, then a trial court abuses its discretion if it fails to grant a new trial. *Id.* Here, Loyd fails to establish her entitlement to a new trial under the first and second *Craddock* factors, and the Board should affirm.

A. The panel acted within its discretion in rejecting Loyd's explanations for her failure to timely file a responsive pleading; thus, she did not satisfy the first element of the *Craddock* test.

The panel correctly denied Loyd's motion for new trial as she failed to establish that her failure to timely file an answer was neither intentional nor the result of conscious indifference. In general, courts view this factor with a significant degree of leniency: "Generally, some excuse, although not necessarily a good one, will suffice to show that a defendant's failure to file an answer was not because the defendant did not care." *Sutherland v. Spencer*, 376 S.W.3d 752, 755 (Tex. 2012) (quoting *In re R.R.*, 209 S.W.3d 112, 115 (Tex. 2006)).

This leniency, however, has its limits. A defendant satisfies her burden as to the first *Craddock* element when her factual assertions, if true, negate intentional or consciously indifferent conduct by the defendant ***and*** those factual assertions are not controverted by the plaintiff. *See Fidelity and Guar. Ins. Co.*, 186 S.W.3d at 576. In determining if the defendant's factual assertions are controverted, the court looks to all the evidence in the record. *In re R.R.*, 209 S.W.3d at 115 (citing *Dir., State Employees Workers' Comp. Div. v. Evans*, 889 S.W.2d 266, 269 (Tex. 1994)). When controverted, the question of whether the defendant's failure to act was intentional or the result of conscious indifference is a fact question to be resolved by the trial court (or here, the evidentiary panel). *Estate of Pollack v. McMurrey*, 858 S.W.2d 388, 391 (Tex. 1993). The trial court "may generally believe all, none, or part of a witness's testimony…[and] can reasonably believe, based on contradictory evidence, that there was intentional or consciously indifferent conduct on the part of

a defendant." *Lynch v. Lynch*, 540 S.W.3d 107, 122 (Tex.App. – Houston [1st Dist.] 2017, pet. denied) (internal citations omitted).

Attorney disciplinary proceedings before evidentiary panels have specific rules applicable to defaults. Rule 2.17(C) governs defaults in disciplinary proceedings before an evidentiary panel and does not afford discretion when a respondent attorney fails to timely answer:

> A failure to file an answer within the time permitted constitutes a default, and all facts alleged in the Evidentiary Petition shall be taken as true for the purposes of the Disciplinary Proceeding. Upon a showing of default, the Evidentiary Panel shall enter an order of default with a finding of Professional Misconduct and shall conduct a hearing to determine the Sanctions to be imposed.
> - TEX. RULES DISCIPLINARY P. R. 2.17(C).

Further, the Texas Supreme Court has explained in the Rules themselves that the time requirement imposed by Rule 2.17(C) is *mandatory*. TEX. RULES DISCIPLINARY P. R. 17.05.

Here, Loyd offers two arguments: (1) that she asked a lawyer to represent her, but her answer was not filed until the day of the default hearing because that lawyer was out of the country for several weeks leading up to the hearing; and (2) that she believed the Texas Rules of Civil Procedure foreclosed the Commission from taking a default judgment against her as long as she had an Answer on file prior to the default hearing. [Apt. Br. 8-9]. Neither explanation presents a viable argument.

1. Loyd's reliance on her request for attorney assistance in filing an answer is misplaced, where she did not engage counsel until long after the default occurred.

Loyd's argument regarding her reliance on counsel to file an answer on her behalf cannot be squared with the timeline of counsel's involvement in the case. Loyd was personally served with the disciplinary petition on June 9, 2022. [CR 48]. Per Rule 2.17(B), her answer was due on or before July 5, 2022.[5] The cover letter served along with the Evidentiary Petition alerted Loyd of her obligation to file an answer and the time in which such pleading must be filed. [CR 38-45 & 48]. During the default hearing, Loyd confirmed she was personally served with the Evidentiary Petition on June 9, 2022. [RR Vol. 1, p. 59]. And she provided <u>no</u> evidence establishing she hired attorney Hernandez to represent her in the underlying disciplinary matter at any time prior to her July 5, 2022, deadline to answer. [RR Vol. 1] [RR Vol. 3] [CR 102, 109-111 & 538-673].

Additionally, during the default hearing the Commission's trial counsel represented to the court that she had not heard from Loyd or Hernandez prior to *that* day. [RR Vol 1, p. 10]. Further, both Loyd and Hernandez conveyed to the panel that Hernandez was serving as her counsel only for the purpose of the default hearing that day. [RR Vol. 1, pp. 12-14].

[5] Monday, July 4, 2022, was a holiday.

Even though Hernandez filed an answer on Loyd's behalf on November 2, 2022, the panel was required to enter an order of default, pursuant to Rule 2.17(C), as Loyd's deadline to file her answer was July 5, 2022. Loyd's assertion that "[t]he timing of filing the Answer was under the control of Hernandez, not [Loyd]", is disingenuous at best. If anything, Loyd's failure to hire Hernandez (or any attorney) prior to July 5, 2022, supports the Commission's contention that she acted with conscious indifference with respect to her obligation to timely answer the Evidentiary Petition.[6] Thus, Loyd cannot rely on any alleged failure by Hernandez to satisfy the first element of the *Craddock* test.

2. Loyd's purported mistaken "belief" that a non-timely filed Answer would insulate her from default lacks any credibility.

Next, Loyd argues that her failure to timely file an answer should be excused because of her "mistaken belief" that her non-timely answer, filed the day of the default hearing, would preempt a default ruling against her pursuant to the Texas

[6] Loyd also seems to suggest that an "anxiety and depression disorder" contributed to her inability to timely file an answer in her disciplinary proceeding, though she does not assert this issue as a separate ground in support of her argument that her failure to timely answer was not intentional or the result of conscious indifference. [Apt. Br. 8]. Rather, she explained, in self-serving testimony, that her alleged "mental health disability" is what led her to ask Hernandez to represent her. [RR Vol. 1, p. 17]. Nevertheless, Loyd failed to present any medical evidence demonstrating this alleged "mental health disability" had *any* effect on her ability to participate in the disciplinary process. In fact, during the hearing on Loyd's motion to set aside the judgment, she offered the testimony of Dr. Harry F. Klinefelter, III, a psychologist that she was seeing pursuant to the terms of the 2019 Probated Suspension. But when asked by Loyd's counsel whether any mental health issues Loyd might have had affected her abilities to participate in the disciplinary process, Klinefelter answered "No." [RR. Vol. III, p. 13, lines 17-20].

Rules of Civil Procedure. [Apt. Br. 8-9]. The Commission contested this contention, during both the default hearing and the hearing on Loyd's motion for a new trial, and it became a fact question to be resolved by the panel. [RR. Vol. 1, pp. 61-63] [RR. Vol. 3, pp. 25-26]. *See In re R.R., and Estate of Pollack*, *supra*. Factual determinations by an evidentiary panel are subject to the substantial evidence standard of review. TEX. GOV'T CODE ANN. §81.072(b)(7); 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.

Here, there was ample evidence for the panel to disbelieve Loyd's explanation that she thought her non-timely filed Answer would prevent the Commission from obtaining a default judgment in the underlying disciplinary proceeding. At the hearing on her motion to set aside the default judgment, Loyd testified she had previously been defaulted in disciplinary proceeding(s) for failure to timely file an answer, and that she was aware that the TRDPs provide for such a default. [RR Vol.

III, p. 26]. Further, during the sanctions portion of the default hearing[7], the Commission admitted its Exhibit 6, consisting of six, prior disciplinary judgments against Loyd, three (3) of which were entered against her by default. [RR Vol. 1, 33-35] [RR. Vol. 2, Ex. 6, pdf pp. 45-84]. Indeed, one of *those* default judgments expressly noted that Loyd had "[a]ppeared pro se, and filed an untimely Answer" on the date of *that* default hearing, December 12, 2018. [RR. Vol. 2, Ex. 6, pdf p. 53] [CR 815-816]. This undercuts the notion that Loyd could have mistakenly believed that her untimely answer would prevent a default against her.

Moreover, the cover letters served along with the evidentiary panel appointment and Evidentiary Petition specifically informed Loyd of her obligation to *timely* file an answer, and the consequence if she failed to do so, by expressly pointing her to Rule 2.17(B). [CR 26-31, 38-45 & 47-48]. And, while a mistake of law *can* serve to demonstrate a lack of intent or conscious indifference, not all alleged mistakes of law *will*; rather, courts consider "the knowledge and acts of the particular defendant to determine whether a failure to answer was not intentional or the result of conscious indifference," but due to mistake or accident. *In re Sandoval*, 619 S.W.3d 716, 721 (Tex. 2021) (citing *In re R.R.*, 209 S.W.3d at 115). Here, there

[7] Loyd participated in the sanctions hearing, by and through counsel, as well as provided testimony. [RR Vol. 1].

was ample evidence for the panel to find Loyd's explanation for her failure to timely file an answer in this respect, was not credible.

B. Loyd failed to establish any meritorious defense to her violations of TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 8.04(a)(7) <u>or</u> (8), to warrant a new hearing.

Loyd also cannot satisfy the second prong of the *Craddock* test because her motion for a new trial did not set up a meritorious defense as to **either** of the alleged disciplinary violations. "The motion must allege facts which in law would constitute a defense to the cause of action asserted by the plaintiff and must be supported by affidavits or other evidence proving prima facie that the defendant has such meritorious defense." *Estate of Pollack*, 858 S.W.2d at 392. Setting up a meritorious defense does not require proof "in the accepted sense." *Dolgencorp of Tex.*, 288 S.W.3d at 927–28. Rather, the motion sets up a meritorious defense if it alleges facts which in law would constitute a defense to the plaintiff's cause(s) of action and is supported by affidavits or other evidence providing prima facie proof that the defendant has such a defense. *Id.* If proven, a meritorious defense would cause a different—although not necessarily opposite—result on retrial. *Comanche Nation v. Fox*, 128 S.W.3d 745, 751 (Tex.App. – Austin 2004, no pet.).

And, while controverting evidence should generally not be considered when a defendant has set up a meritorious defense to the plaintiff's cause(s) of action, the standard **does** allow the party who recovered the default judgment to "establish the

lack of legal sufficiency supporting the defaulting party's claimed defenses…" *Gotcher v. Barnett*, 757 S.W.2d 398, 403 (Tex.App. – Houston [14th Dist.] 1988, no writ); *see also*, *Dolgencorp of Tex.*, 288 S.W.3d at 927–28, "[t]he motion [for new trial] sets up a meritorious defense if it alleges facts *which in law* would constitute a defense to the plaintiff's cause of action…" (emphasis added) (citing *Ivy v. Carrell*, 407 S.W.2d 212, 214 (Tex. 1966).

1. Loyd failed to establish a meritorious defense to the Commission's allegations she violated the terms of the 2019 Probated Suspension.

The Commission alleged that Loyd violated Rule 8.04(a)(7) of the Texas Disciplinary Rules of Professional Conduct (the "TDRPCs") by: (1) failing to pay restitution of $1,000 to Vernon Bauer, on or before January 1, 2020; (2) failing to pay attorney's fees of $3,300 to the State Bar on or before January 1, 2020; (3) failing to pay direct expenses of $700 to the State Bar on or before January 1, 2020; and (4) failing to complete six additional hours of CLE in Law Office Management on or before January 1, 2020. [CR 34] [App. 3] [App. 2].

Here, as a defense to the Commission's Rule 8.04(a)(7) allegations, Loyd essentially offers her self-serving statements denying she failed to timely pay the amounts required, or that she failed to timely complete the required CLE and verify the completion of same. [Apt. Br. 10-12]. With respect to the restitution, attorney's fees, and direct expenses, the 2019 Probated Suspension required Loyd to pay those amounts on or before January 1, 2020. Loyd's defense is legally insufficient as to

these failures, as it does not allege any *actual* payment(s) by Loyd were *actually* received by the Bar. In fact, during the hearing on her motion to set aside the judgment, Loyd testified she did not provide any evidence that any payments she had allegedly timely made were successfully delivered to the Bar. [RR. Vol. III, pp. 28-30]. Moreover, Loyd also testified she *belatedly* paid at least the attorney's fees and direct expenses associated with the 2019 Probated Suspension, on or about December 6, 2022; well after the deadline imposed by the 2019 Probated Suspension. [RR. Vol. III, pp. 23-24 & 61-62].

Further, with respect to the requirement of timely completing six additional hours of CLE in Law Office Management, Loyd again offers her self-serving statement that she "completed the six (6) additional hours", as evidenced by the MCLE transcript she provided. [Apt. Br. 11]. But the transcript provided by Loyd demonstrates, to the contrary, that she only completed two classes in Law Practice Management, totaling 4.75 hours, and that even *those* classes were not timely completed, as they were not taken until nearly a month after the deadline. [CR 417-420].

In sum, Loyd is not alleging that she *actually* made *timely* payments to the State Bar as required by the 2019 Probated Suspension, or that she *timely* completed any of the additional CLE she was required to complete. Rather, she has alleged (at best) only that she *attempted* to send payments to the State Bar in a timely fashion,

and that she *partially* completed the additional CLE she was required to complete – and that, untimely. As a result, Loyd's assertions do not set up meritorious defenses to her violations of the 2019 Probated Suspension established by the Default Judgment of Active Suspension.

2. Loyd failed to establish <u>any</u> defense to the Commission's allegation she failed to timely furnish to the CDC a response or other information as required by the TRDPs.

The Commission's Evidentiary Petition also alleged Loyd violated TDRPC 8.04(a)(8) by failing to timely respond to the 2022 Complaint regarding her failure to comply with the 2019 Probated Suspension. [CR 34-35] [App. 3]. As is set forth more fully below in response to her arguments regarding the propriety of the evidentiary panel's sanction decision in the underlying matter, that failure by Loyd is part of a persistent pattern of such failures on her part over many years.

Loyd mistakenly conflates the Commission's Rule 8.04(a)(8) allegations with its Rule 8.04(a)(7) allegations, stating they are predicated "solely on allegations that [Loyd] failed to comply with," the 2019 Probated Suspension. [Apt. Br. 10-12] [CR 404-405]. But, as is made clear by: (1) the Evidentiary Petition; (2) the Commission's Motion for Default Judgment; and (3) the evidentiary panel's Default Judgment of Active Suspension, the Rule 8.04(a)(8) violation arises from Loyd's failure to timely respond to the 2022 Complaint related to her failures to comply

with the 2019 Probated Suspension, which was first sent to her on June 7, 2021. [App. 3] [CR 34-35]; [CR 54-56]; [App. 1] [CR 152-153].

A respondent attorney who is given notice of a Complaint is required to deliver a response to the allegations in such Complaint to the CDC within thirty days after receipt of such notice. TEX. RULES DISCIPLINARY P. R. 2.10(B). Here, notice of the 2022 Complaint was sent to Loyd via email on June 7, 2021, and September 14, 2021, and via certified mail served on September 16, 2021, but she failed to respond in accordance with the Rules. [App. 3] [CR 34]; [App. 1] [CR 152-153]. Loyd has set up no defense to this violation, meritorious or otherwise. Having failed to set up a meritorious defense to **either** disciplinary violation set forth in the Evidentiary Petition, Loyd cannot meet the second prong of the *Craddock* test, and the panel acted well within its discretion in denying her motion for a new trial.

II. The record supports the panel's conclusions that Loyd violated a disciplinary judgment and failed to timely furnish the CDC a response to the Complaint against her, in violation of TDRPC 8.04(a)(7) & (8).

In her brief, Loyd seems to argue that the evidentiary panel's findings of fact related to her default "must be set aside," simply because she has announced a challenge to the legal and factual sufficiency of the evidence. [Apt. Br. 13-14 (citing *In re Marriage of Williams*, 646 S.W.3d 542, 544-45 (Tex. 2022) and TEX. R. APP. P. 33.1(d))]. Of course, neither *Williams* nor TEX. R. APP. P. 33.1(d) remotely suggests that a sufficiency challenge of a default judgment works essentially by *fiat*

in this manner. Rather, read together in the context of a typical civil default judgment, *Williams* and TEX. R. APP. P. 33.1(d) simply explain that a defendant challenging a default judgment *may* do so both by making a *Craddock* challenge and by challenging the legal and/or factual sufficiency of the judgment actually rendered.

In *Williams*, a divorce case in which the division of the community estate was at issue, the defaulting party's *sufficiency* challenge had to do with whether the trial court had received sufficient evidence to render a just and fair judgment as to that property division. The Texas Supreme Court reversed the Texarkana Court of Appeals' *procedural* decision that the defaulting party had waived her sufficiency challenge and remanded for further proceedings. But in doing so, the Court noted an important facet of the *Williams* default in the context of that divorce case: "In a suit for divorce, the pleadings are not deemed admitted by the defendant's failure to appear, so the plaintiff must present sufficient evidence to support the material allegations in the petition." *Id.*, at 545 (citing TEX. FAM. CODE §6.701). In that respect, *Williams* is clearly distinguishable from this attorney disciplinary case.

As is set forth at length above, attorney disciplinary proceedings before evidentiary panels have specific rules applicable to defaults, and a failure to timely answer leads to all facts alleged in the evidentiary petition being taken as true for the purposes of the disciplinary proceeding. *See I(A), above;* TEX. RULES DISCIPLINARY

P. R. 2.17(C).[8] Here, the Commission alleged in its Evidentiary Petition that Loyd: (1) violated TDRPC 8.04(a)(7) by failing to comply with her 2019 Probated Suspension in several respects; and (2) violated TDRPC 8.04(a)(8) by failing to respond to the 2022 Complaint arising therefrom. [CR 33-36]. When presented with indisputable proof of Loyd's failure to timely answer the Evidentiary Petition, the panel correctly found her in default. [CR 54-70 & 130-131] [RR Vol. 1, pp. 8-31] [RR. Vol. 2, Exs. 1-5, pdf pp. 4-42]. The facts alleged in the Evidentiary Petition, taken as true for the purposes of the Disciplinary Proceeding as a result of Loyd's failure to timely answer the petition, supplied substantial evidence both legally and factually sufficient to support the panel's Default Judgment of Active Suspension in this matter.

III. The panel acted well within its discretion in denying Appellant's motion for continuance.

In an attorney disciplinary proceeding, "[a] hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent." TEX. RULES DISCIPLINARY P. R. 2.17(O). Here, the default hearing was set nearly four (4) months after the answer date. *See I(A)(1), above.* Loyd was given well over a month's notice of the default hearing, by e-mail and certified mail,

---

[8] Indeed, even in a typical civil case involving a no-answer default, the defaulting defendant admits (by her default) all facts properly pled in the petition, excepting any amount for unliquidated damages. *Dolgencorp of Tex.*, 288 S.W.3d at 930.

when no such notice was even required. [CR 72-73 & 75-97]. Yet neither Loyd, nor her purported trial counsel, Hernandez, contacted or made any attempt to contact the CDC or the evidentiary panel, prior to (at best) 2-3 hours in advance of the default hearing. [RR Vol. 1, pp. 11-16]. And Loyd's motion for continuance was submitted, at the earliest, approximately 15 minutes prior to the default hearing. [CR 104-107].

Further, the motion for continuance was arguably not properly sworn or verified, as Hernandez's attached affidavit merely attested that the facts stated therein were "to the best of [Hernandez's] information and belief…true and correct," and not that the statements were based on his personal knowledge. *See e.g., Bray v. Miller*, 397 S.W.2d 103, 106 (Tex.Civ.App. – Dallas 1965 no writ,); *Nutter v. Abate Cotton Harvesting Co.*, 430 S.W.2d 366, 368 (Tex.Civ.App. – El Paso 1968, writ ref'd n.r.e.; *Ex parte Blackmon*, 529 S.W.2d 570, 572 (Tex.App. – Houston [1st Dist.] 1975, orig. proceeding); *Gonzales v. Proctor & Gamble Mfg. Co.*, 655 S.W.2d 243, 244 (Tex.App. – Corpus Christi 1983, no writ); *Hawthorne v. Guenther*, 917 S.W.2d 924, 929-30 (Tex.App. – Beaumont 1996, writ denied). Where a continuance movant fails to properly comply with the affidavit requirement, "[r]eviewing courts generally presume the trial court did not abuse its discretion by denying the motion." *J.G. v. Texas Dep't of Fam. & Protective Servs.*, 592 S.W.3d 515, 521 (Tex.App. – Austin 2019, no pet.) (citing *Villegas v. Carter*, 711 S.W.2d 624, 626 (Tex. 1986), and *Zeifman v. Nowlin*, 322 S.W.3d 804, 812 (Tex.App. – Austin 2010, no pet.)).

Moreover, the granting or denial of a continuance is generally within the sound discretion of the trial court (here, the evidentiary panel) and will not be disturbed absent a clear abuse of discretion demonstrated on the record. *Villegas*, 711 S.W.2d at 626. Here, Loyd offers no authority in support of her assertion that the panel abused its discretion by denying her request for a continuance. Rather, she simply declares it to be so. [Apt. Br. 13.] But her self-serving declaration that a continuance was "necessary in the interests of justice" fails to demonstrate any such abuse.

IV. The panel acted well within its discretion in assessing a 3-year Active Suspension.

Finally, Loyd argues the panel abused its discretion by imposing a three-year active suspension as a result of her violations of the TDRPCs. [Apt. Br. 14-17]. But again, her arguments in this respect are nothing more than her own declaration that the panel abused its discretion, without reference to any authority supporting said declaration, and accompanied by misrepresentations of the record, where the record is referenced at all. Loyd's requested relief includes, alternatively, a request that the Board modify the sanction issued by the panel, though she offers no specific suggestion as to what she believes an appropriate sanction would be. That request should be rejected.

Evidentiary panels are afforded discretion in assessing sanctions. The Board reviews the sanction imposed for professional misconduct for abuse of

discretion. *McIntyre v. Commission for Lawyer Discipline*, 169 S.W.3d 803, 807 (Tex. App.—Dallas 2005, no pet.). Trial courts (and, as in this case, evidentiary panels) have broad discretion to impose discipline, but a sanction may be so light or heavy as to constitute an abuse of discretion. *Molina v. Commission 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)). A court abuses its discretion when it acts in an unreasonable and arbitrary manner, without reference to any guiding principles. *McIntyre*, 169 S.W.3d at 807. The court or evidentiary panel must consider the factors set out in the Texas Rules of Disciplinary Procedure. *Eureste v. Comm'n for Lawyer Discipline*, 75 S.W.3d 184, 202 (Tex. App.—Houston [14th Dist.] 2002, no pet.). 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 v. State Bar of Texas*, 982 S.W.2d 939, 944 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

Part 15 of the TRDPs provides guidelines to consider in determining appropriate sanctions for professional misconduct, though 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). General factors to be considered include the duty violated, the respondent attorney's level of culpability,

the potential or actual injury caused by the misconduct, and the existence of aggravating or mitigating factors. TEX. RULES DISCIPLINARY P. R. 15.02.

More specifically, Rules 15.07(1-4) and 15.08(1-4) set forth guidelines for determining appropriate sanctions in circumstances involving an attorney failing to respond to a disciplinary agency, and circumstances involving an attorney violating the terms of a prior disciplinary order, respectively, that span the gamut from private reprimand to disbarment. TEX. RULES DISCIPLINARY P. R. 15.07(1-4) and 15.08(1-4). Additionally, Rule 15.09 provides aggravating and mitigating factors the panel may consider in deciding an appropriate sanction once professional misconduct is established, including a respondent's prior disciplinary record. TEX. RULES DISCIPLINARY P. R. 15.09(A-C).

Here, Loyd inexplicably asserts that the findings of professional misconduct against her in the Default Judgment of Active Suspension were "limited to her failure to timely submit her Answer…" [Apt. Br. 15-16]. But the judgment clearly and concisely sets forth the factual allegations made in the Commission's Evidentiary Petition, which were deemed true due to Loyd's default. Those deemed facts include facts regarding her failure to comply with the 2019 Probated Suspension, the several ways in which she failed to comply with the 2019 Probated Suspension, and her failure to respond to the 2022 Complaint against her regarding lack of compliance with the 2019 Probated Suspension. [App. 1] [CR 151-159].

Further, the panel was presented evidence of Loyd's extensive disciplinary history, which is rife with persistent findings of failures to do work as hired by her clients, failure to communicate with her clients, failure to respond to disciplinary complaints, failure to comply with the terms of disciplinary judgments, and defaults in disciplinary proceedings:

1) *Default Judgment of Fully Probated Suspension (1 yr.)*; issued 8/17/04; Complainant – former client; violations of TDRPC 1.01(b)(1) (neglecting legal matter entrusted to lawyer), 1.03(a) (failure to communicate with client), and 8.04(a)(8) (failure to timely respond to a disciplinary complaint). [App. 4] [CR 331-336] [RR. Vol. 2, Ex. 6, pdf. pp. 79-84].

2) *Default Judgment of Partially Probated Suspension (37 mos., 1 mo. active)*; issued 3/23/11; Complainant – former client; violations of TDRPC 1.01(b)(2) (frequently failing to carry out obligations to client), 1.03(a) (failure to communicate with client), and 8.04(a)(8) (failure to timely respond to a disciplinary complaint). [App. 4] [CR 317-324] [RR. Vol. 2, Ex. 6, pdf. pp. 65-72].

3) *Judgment Revoking Probation and Actively Suspending Respondent from the Practice of Law (revoking probation from (2), above, 36 mos. active)*; issued 7/6/11; violations of terms of disciplinary judgment from (2), above. [App. 4] [CR 312-316] [RR. Vol. 2, Ex. 6, pdf. pp. 60-64].

4) *Agreed Judgment of Active Suspension (1 yr.)*[9]; issued 9/13/12; violations of TDRPC 8.04(a)(1) (violating the disciplinary rules), 8.04(a)(7) (violating a disciplinary judgment), 8.04(a)(8) (failure to timely respond to a disciplinary complaint), and 8.04(a)(11) (improperly engaging in the practice of law when inactive). [App. 4] [CR 325-330] [RR. Vol. 2, Ex. 6, pdf. pp. 73-78].

---

[9] By its terms, this suspension ran concurrently with the active suspension arising from the prior *Judgment Revoking Probation and Actively Suspending Respondent from the Practice of Law*, issued on 7/6/11.

5) *Default Judgment of Fully Probated Suspension (1 yr.)*; issued 1/16/19; Complainant – former client; violations of TDRPC 1.01(b)(1) (neglecting legal matter entrusted to lawyer), 1.03(a) (failure to communicate with client), and 8.04(a)(8) (failure to timely respond to a disciplinary complaint). [App. 4] [CR 305-311] [RR. Vol. 2, Ex. 6, pdf. pp. 53-59].

6) *Judgment of Fully Probated Suspension (2 yrs.)*; issued 2/14/19; Complainant – former client; violations of TDRPC 1.01(b)(1) (neglecting legal matter entrusted to lawyer), 1.03(a) (failure to communicate with client), 1.03(b) (failure to explain legal matter to client), 8.04(a)(7) (violating a disciplinary judgment), and 8.04(a)(8) (failure to timely respond to a disciplinary complaint). [App. 4] [CR 297-304] [RR. Vol. 2, Ex. 6, pdf. pp. 45-52].

Loyd implies that the panel did not consider any mitigating circumstances she may have presented, but the record does not support that implication. [Apt. Br. pp. 16-17]. The Commission sought disbarment in this case. [RR. Vol. 1, pp. 52-55]. The evidence presented would arguably support such a sanction under these circumstances. Notwithstanding that request and the evidence presented by the Commission, the panel also considered the argument and evidence presented by Loyd and ultimately arrived at the three-year Active Suspension at issue. [CR 151-159].

Further, Loyd offers no authority for the proposition that her subsequent compliance with the terms of the instant Default Judgment of Active Suspension (some of which amounts to, again, nothing more than *belated* compliance with terms from the 2019 Probated Suspension) should somehow serve as grounds for modification of the instant judgment. [Apt. Br. 17]. In truth, her compliance here

offers no such support; it simply demonstrates the exceedingly rare occasion on which Loyd has not **wholly failed** to treat a disciplinary judgment issued against her with the due attention and sober reflection any attorney should.

The panel's sanction of a three-year Active Suspension is supported by ample evidence demonstrating Loyd's failures to timely comply with the 2019 Probated Suspension and her failure to respond to the 2022 Complaint, especially in light of the pattern of misconduct and disregard for the import of the attorney disciplinary process she has exhibited over several years and several disciplinary judgments. The panel acted within its discretion in issuing a three-year Active Suspension and the Board should affirm that sanction without modification.

CONCLUSION AND PRAYER

For these reasons, the Commission prays that the Board affirm the judgment of the District 7-1 Evidentiary Panel of the State Bar of Texas.

RESPECTFULLY SUBMITTED,

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION

MICHAEL G. GRAHAM
APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY
COUNSEL

STATE BAR OF TEXAS
P.O. BOX 12487
AUSTIN, TEXAS 78711
Michael.Graham@texasbar.com
T: (512) 427-1350; (877) 953-5535
F: (512) 427-4167

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 7,326 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, Annette R. Loyd, by and through her counsel of record, Mr. Gaines West, West, Webb, Allbritton & Gentry, P.C., 1515 Emerald Plaza, College Station, Texas 77845, by email to Gaines.west@westwebb.law on the 31st day of May, 2023.

MICHAEL G. GRAHAM
APPELLATE COUNSEL
STATE BAR OF TEXAS

NO. 67358

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

---

ANNETTE R. LOYD,

APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

On Appeal from an Evidentiary Panel
For the State Bar of Texas District 7
No. 202103038 [SBOT]

APPENDIX TO BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR
ADMINISTRATION

MICHAEL G. GRAHAM
APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY
COUNSEL
COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS
P.O. BOX 12487
AUSTIN, TEXAS 78711-2487
Michael.Graham@texasbar.com
T: (512) 427-1350; (877) 953-5535
F: (512) 427-4167

NO. 67358

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

ANNETTE R. LOYD

APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

On Appeal from an Evidentiary Panel
For the State Bar of Texas District 7
No. 202103038 [SBOT]

APPENDIX TO BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

The Commission for Lawyer Discipline attaches the following documents in support of the foregoing brief:

APP. 1: Default Judgment of Active Suspension, 11/18/22 [CR 151-159]

APP. 2: Judgment of Fully Probated Suspension, 2/14/19 [CR 297-304]

APP. 3: Commission's Evidentiary Petition, 3/10/22 [CR 33-36]

APP. 4: Loyd's Prior Disciplinary Judgments [CR 296-336]

App. 1

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-1
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, Petitioner	§ § §	
V.	§ § §	**CASE NO. 202103038**
ANNETTE R. LOYD, Respondent	§ §	

DEFAULT JUDGMENT OF ACTIVE SUSPENSION

Parties and Appearance

On November 2, 2022, came to be heard the above styled and numbered cause. Petitioner, Commission for Lawyer Discipline ("Petitioner"), appeared by and through its attorney of record and announced ready. Respondent, **ANNETTE R. LOYD**, Texas Bar Number **16731100** ("Respondent"), appeared by and through her attorney of record, Francisco Hernandez. Respondent was duly served with the Evidentiary Petition and with notice of this default and sanctions hearing. Respondent filed an untimely Answer on date of said hearing.

Jurisdiction and Venue

The Evidentiary Panel 7-1, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 7, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Default

The Evidentiary Panel finds Respondent was properly served with the Evidentiary Petition and that Respondent failed to timely file a responsive pleading to the Evidentiary Petition as required by Rule 2.17(B) of the Texas Rules of Disciplinary Procedure.

Accordingly, the Evidentiary Panel finds Respondent in default and further finds that all facts alleged in the Evidentiary Petition are deemed true pursuant to Rule 2.17(C) of the Texas Rules of Disciplinary Procedure.

Professional Misconduct

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

Findings of Fact

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

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

2. Respondent resides in and maintains her principal place of practice in Tarrant County, Texas.

3. Annette R. Loyd (Respondent), also known as Annette Vanicek, failed to comply with a Judgment of Fully Probated Suspension that was entered against her on February 14, 2019, in Case Number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd.*

4. Respondent failed to pay restitution of $1,000 to Complainant, Vernon Bauer, on or before January 1, 2020; failed to pay attorney's fees of $3,300 to the State Bar of Texas on or before January 1, 2020; failed to pay direct expenses of $700 to the State Bar of Texas on or before January 1, 2020; and failed to complete six (6) additional hours of Continuing Legal Education (CLE) in Law Office Management on or before January 1, 2020, which were ordered in addition to the Minimum Continuing Legal Education requirements, and failed to verify completion of these additional CLE hours to the State Bar of Texas.

5. Notice and copy of the complaint were sent to Respondent via email on June 7, 2021 and September 14, 2021. Notice and copy of the complaint were also sent to Respondent via certified mail, return receipt requested, on September 14, 2021, and was served on September 16, 2021. Respondent failed to timely

respond to the complaint and failed in good faith to timely assert a privilege or other legal ground for her failure to do so.

6. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney's fees and direct expenses associated with this Disciplinary Proceeding in the amount of One Thousand Seven Hundred Dollars ($1,700.00).

Conclusions of Law

The Evidentiary Panel concludes that, based upon the foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: 8.04(a)(7) and 8.04(a)(8).

Sanction

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

Accordingly, it is **ORDERED**, **ADJUDGED** and **DECREED** that Respondent be shall be actively suspended from the practice of law for a period of Thirty-Six (36) months beginning November 2, 2022 and ending October 31, 2025 with the following terms and conditions:

1. It is further **ORDERED** Respondent shall pay restitution on or before December 7, 2022, to Vernon Bauer in the amount of One Thousand Fifty Dollars ($1,050.00), which includes interest, in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd*. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Vernon Bauer and deliver to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

2. It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand Four

Hundred Sixty-Five Dollars ($3,465.00), which includes interest, in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd.* The payment shall be due and payable on or before January 7, 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 Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

3. It is further **ORDERED** Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Seven Hundred Thirty-Five Dollars ($735.00), which includes interest, in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd.* The payment shall be due and payable on or before February 7, 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 Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

4. It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of One Thousand Seven Hundred Dollars ($1,700.00), in connection with the present case. The payment shall be due and payable on or before February 7, 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 Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

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 herself 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 herself 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 December 9, 2022, Respondent shall notify each of Respondent's current clients and opposing counsel in writing of this suspension.

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

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before December 9, 2022, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein. If it is Respondent's assertion that at the time of suspension she possessed no current clients and/or Respondent was not in possession of any files, papers, monies or other property belonging to clients, Respondent shall submit an affidavit attesting that, at the time of suspension, Respondent had no current clients and did not possess any files, papers monies and other property belonging to clients.

It is further **ORDERED** Respondent shall, on or before December 9, 2022, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before December 9, 2022, an affidavit stating Respondent has

notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court. If it is Respondent's assertion that at the time of suspension she 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 December 9, 2022, Respondent shall surrender her law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) to be forwarded to the Supreme Court of Texas.

Restitution, Attorney's Fees and Expenses

It is further **ORDERED** Respondent shall pay restitution on or before December 7, 2022, to Vernon Bauer in the amount of One Thousand Fifty Dollars ($1,050.00), in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd*. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Vernon Bauer and deliver to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all reasonable and necessary

attorney's fees to the State Bar of Texas in the amount of Three Thousand Four Hundred Sixty-Five Dollars ($3,465.00), in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd*. The payment shall be due and payable on or before January 7, 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 Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Seven Hundred Thirty-Five Dollars ($735.00), in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd*. The payment shall be due and payable on or before February 7, 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 Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of One Thousand Seven Hundred Dollars ($1,700.00), in connection with the present case. The payment shall be due and payable on or before February 7, 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 Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(FF) of

the Texas Rules of Disciplinary Procedure. Any amount not paid shall accrue interest at the maximum legal rate per annum until paid and the State Bar of Texas shall have all writs and other post-judgment remedies against Respondent in order to collect all unpaid amounts.

It is further **ORDERED** that Respondent shall remain actively suspended from the practice of law as set out above until such time as Respondent has completely paid restitution to Vernon Bauer in the amount of One Thousand Fifty Dollars ($1,050.00), in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd.*

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 all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand Four Hundred Sixty-Five Dollars ($3,465.00), in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd.*

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 all direct expenses to the State Bar of Texas in the amount of Seven Hundred Thirty-Five Dollars ($735.00), in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd.*

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's fees and direct expenses in the amount of One Thousand Seven Hundred Dollars ($1,700.00) to the State Bar of Texas, in connection with the present case.

Publication

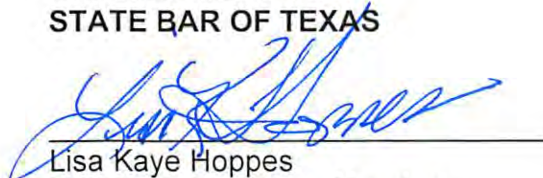
This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 18th day of November, 2022.

EVIDENTIARY PANEL 7-1
DISTRICT NO. 7-1
STATE BAR OF TEXAS



Lisa Kaye Hoppes
District 7 Presiding Member

App. 2

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, Petitioner	§	
V.	§	**CASE NO. 201505595**
ANNETTE R. LOYD, Respondent	§	

JUDGMENT OF FULLY PROBATED SUSPENSION

Parties and Appearance

On December 12, 2018, December 21, 2018, and February 4, 2019, came to be heard the above-styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, **ANNETTE R. LOYD** (Respondent), Texas Bar Number **16731100**, appeared in person and announced ready.

Jurisdiction and Venue

The Evidentiary Panel 7-2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 7, 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(W) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

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

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

2. Respondent resides in and maintains her principal place of practice in Tarrant County, Texas.

3. Complainant Vernon Bauer (Bauer) and Joella Jacobson (Jacobson) hired Respondent to serve as legal counsel regarding a civil matter. Respondent filed suit on behalf of Bauer and Jacobson on August 1, 2014 in a District Court in Tarrant County, Texas.

4. In representing Bauer and Jacobson, Respondent neglected the legal matter entrusted to her by failing to respond to Defendant's Motion for Summary Judgment.

5. Respondent failed to promptly comply with reasonable requests for information from Bauer and Jacobson about their civil matter.

6. Respondent failed to explain the legal matter to the extent reasonably necessary to permit Bauer and Jacobson to make informed decisions regarding the representation.

7. Respondent violated a disciplinary judgment.

8. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure. Respondent did not in good faith timely assert a privilege or other legal ground for failure to do so.

9. Respondent owes restitution in the amount of One Thousand Dollars and No Cents ($1,000.00) payable to Vernon Bauer.

10. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney's fees associated with this Disciplinary Proceeding in the amount of Three Thousand Three Hundred Dollars and No Cents ($3,300.00).

11. The Chief Disciplinary Counsel of the State Bar of Texas has incurred direct expenses associated with this Disciplinary Proceeding in the amount of Seven Hundred Dollars and No Cents ($700.00).

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: Rules: 1.01(b)(1), 1.03(a), 1.03(b), 8.04(a)(7), and 8.04(a)(8).

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 and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is a Probated Suspension.

Accordingly, it is **ORDERED, ADJUDGED** and **DECREED** that Respondent be suspended from the practice of law for a period of two (2) years with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on February 4, 2019, and shall end on February 3, 2021.

Terms of Probation

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

1. Respondent shall not violate any term of this judgment.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep State Bar of Texas membership department notified of current mailing, residence and business addresses and telephone numbers.

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

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

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

8. Respondent shall pay restitution on or before January 1, 2020, to Vernon Bauer in the amount of One Thousand Dollars and No Cents ($1,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Vernon Bauer and delivered to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

9. Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand Three Hundred Dollars and No Cents ($3,300.00). The payment shall be due and payable on or before January 1, 2020, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

10. Respondent shall pay direct expenses to the State Bar of Texas in the amount of Seven Hundred Dollars and No Cents ($700.00). The payment shall be due and payable on or before January 1, 2020, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

11. Respondent shall submit to counseling sessions for the two (2) year duration of this judgment, with a minimum of one (1) session per month, by a mental health professional licensed in Texas as a psychiatrist, a psychologist, a master's level social worker (LCSW), or a licensed professional counselor (LPC). The mental health professional shall provide written monthly reports to the State Bar of Texas verifying Respondent's attendance at the sessions and the general issue(s) addressed during the sessions. The initial report shall be due no later than March 3, 2019, documenting the session(s) that occur(s) during February 2019. Each subsequent report shall be due on the 3rd day of each month, documenting the session(s) that occur(s) during the previous month. The final report will be due no later than February 3, 2021.

12. Respondent shall take all necessary action, including the execution of a valid release of information, to permit any treating mental health professional to provide written or oral reports for the duration of the supervision period.

13. Respondent shall be responsible for all costs and expenses incurred, directly or indirectly, by compliance with these terms and shall pay all such costs and expenses as required by the provider, but in no event later than the final day of the supervision period.

14. Any and all reports and evaluations required by these terms of probation shall be sent to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Suite 200, Austin, TX 78701).

15. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete six (6) additional hours of continuing legal education in the area of Law Office Management. These additional hours of CLE are to be completed on or before January 1, 2020. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course(s) to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

16. Respondent must maintain financial records on each client, including written receipts of funds, written accounting of time billed, client funds applied, and written contracts with each client.

17. Law Office Management Consultation: No later than March 5, 2019, Respondent shall engage the services of a law office management consultant, approved by the Office of the Chief Disciplinary Counsel, and qualified by training and experience to conduct reviews of law office management systems for solo practitioners. Respondent shall participate in good faith one (1) hour per month for the two (2) year duration of this judgment. The consultant will produce a written report on the adequacy of the systems currently in place to manage Respondent's law practice, to adequately supervise the office staff and to insure effective communication with clients no later than ten (10) days after each consultation. Said reports shall be delivered to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

18. Respondent shall make contact with the Chief Disciplinary Counsel's Offices' Compliance Monitor at 877-953-5535, ext. 1334 and Special

Programs Coordinator at 877-953-5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

Probation Revocation

Upon information that Respondent has violated a term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals (BODA) and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

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

It is further **ORDERED** that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Restitution, Attorney's Fees and Expenses

It is further **ORDERED** Respondent shall pay restitution on or before January 1, 2020, to Vernon Bauer in amount of One Thousand Dollars and No Cents ($1,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Vernon Bauer and delivered to the State Bar of Texas, Chief Disciplinary

Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand Three Hundred Dollars and No Cents ($3,300.00). The payment shall be due and payable on or before January 1, 2020, shall be made by certified or cashier's check or money order, and made payable to the State Bar of Texas. Respondent shall forward the funds to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Seven Hundred Dollars and No Cents ($700.00). The payment shall be due and payable on or before January 1, 2020, shall be made by certified or cashier's check or money order, and made payable to the State Bar of Texas. Respondent shall forward the funds to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(Z) 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.

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 February, 2019.

EVIDENTIARY PANEL 7-2
DISTRICT NO. 7
STATE BAR OF TEXAS

CHRIS NICKELSON
District 7, Panel 7-2 Presiding Member

App. 3

FILED

March 10, 2022

Dallas Office

Chief Disciplinary Counsel

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-1
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE,	§	
Petitioner	§	
	§	
V.	§	**CASE NO. 202103038**
	§	
ANNETTE R. LOYD,	§	
Respondent	§	

EVIDENTIARY PETITION AND REQUEST FOR DISCLOSURE

COMES NOW, the Commission for Lawyer Discipline (Petitioner), and would respectfully show the following:

I. Parties

Petitioner is a committee of the State Bar of Texas. **ANNETTE R. LOYD**, State Bar No. **16731100** (Respondent), is an attorney licensed to practice law in the State of Texas. Respondent may be served with process at 4528 W. Vickery Blvd., Ste 202, Fort Worth, Texas 76107-6262, or wherever she may be found.

II. Jurisdiction & Venue

This Disciplinary Proceeding is brought pursuant to the State Bar Act, TEX. GOV'T. CODE ANN. Sec. 81.001, *et seq.*, the Texas Disciplinary Rules of Professional Conduct, and the Texas Rules of Disciplinary Procedure. The complaint that forms the basis of this Disciplinary Proceeding was filed by the State Bar of Texas on or after June 1, 2018. Venue is proper in Tarrant County, Texas, pursuant to Rule 2.11(C) of the Texas Rules of Disciplinary Procedure, because Tarrant County is the county of Respondent's principal place of practice.

III. Professional Misconduct

The acts and omissions of Respondent as alleged below, constitute professional misconduct.

IV. Factual Allegations

Annette R. Loyd (Respondent), also known as Annette Vanicek, failed to comply with a Judgment of Fully Probated Suspension that was entered against her on February 14, 2019 in case number 201505595, styled Commission for Lawyer Discipline v. Annette R. Loyd, as follows:

> Failing to pay restitution of $1,000 to Complainant, Vernon Bauer, on or before January 1, 2020;
>
> Failing to pay attorney's fees of $3,300 to the State Bar of Texas on or before January 1, 2020;
>
> Failing to pay direct expenses of $700 to the State Bar of Texas on or before January 1, 2020; and
>
> Failing to complete six (6) additional hours of Continuing Legal Education (CLE) in Law Office Management on or before January 1, 2020, which were ordered in addition to the Minimum Continuing Legal Education requirements, and failing to verify completion of these additional CLE hours to the State Bar of Texas.

Notice and copy of the complaint was sent to Respondent via email on June 7, 2021 and September 14, 2021. Notice and copy of the complaint was also sent to Respondent via certified mail, return receipt requested, on September 14, 2021, and was served on September 16, 2021. Respondent failed to timely respond to the complaint and failed in good faith to timely assert a privilege or other legal ground for her failure to do so.

V. Disciplinary Rules of Professional Conduct

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

8.04(a)(7) **A lawyer shall not violate any disciplinary order or judgment.**

8.04(a)(8) **A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's Office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so.**

VI. Complaint

The complaint that forms the basis of the cause of action set forth above was brought to the attention of the Office of the Chief Disciplinary Counsel of the State Bar of Texas by the State Bar of Texas filing a complaint on or about May 19, 2021.

VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent and that this Evidentiary Panel impose an appropriate sanction against Respondent as warranted by the facts. Petitioner further prays to recover all reasonable and necessary attorneys' fees and all costs associated with this proceeding. Petitioner further prays for such other and additional relief, general or specific, at law or in equity, to which it may show itself entitled.

VIII. Request for Disclosure

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

1. The correct name of the parties to the Disciplinary Proceeding.

2. In general, the factual bases of Respondent's claims or defenses.

3. The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the disciplinary matter.

4. For any testifying expert, the expert's name, address, and telephone number; subject matter on which the expert will testify, and the general substance of the expert's mental impressions and opinions and a brief summary of the basis of them.

5. Any witness statements.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Laurie Guerra
Assistant Disciplinary Counsel

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

Laurie Guerra
State Bar No. 24050696

ATTORNEYS FOR PETITIONER

App. 4

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-1
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE,	§	
Petitioner	§	
	§	
V.	§	**CASE NO. 202103038**
	§	
ANNETTE R. LOYD,	§	
Respondent	§	

BUSINESS RECORDS AFFIDAVIT

Before me, the undersigned authority, personally appeared Tonya L. Harlan, who, being by me duly sworn, deposed as follows:

1. My name is Tonya L. Harlan. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated.

2. I am employed as Deputy Counsel for Litigation of the State Bar of Texas, Dallas/Fort Worth Regional Office.

3. I am the custodian of disciplinary records of the Dallas/Fort Worth Regional Office of the State Bar of Texas and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities.

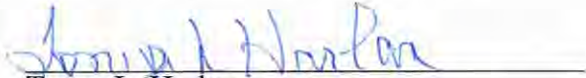
4. Attached are forty (40) pages of records. These are the original records or exact duplicates of the original records.

5. It is the regular practice of the State Bar of Texas to make this type of record at or near the time of each act, event, condition, opinion, or diagnosis set forth in the record.

6. It is the regular practice of the State Bar of Texas for this type of record to be made by or from information transmitted by persons with knowledge of the matters set forth in them.

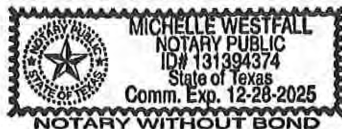
7. It is the regular practice of the State Bar of Texas to keep this type of record in the course of regularly conducted business activity.

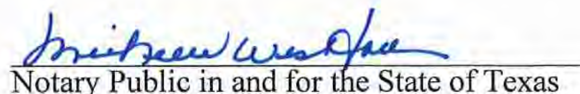
8. It is the regular practice of the business activity to make the records.



Tonya L. Harlan
Deputy Counsel for Litigation, Custodian of Records

SWORN TO AND SUBSCRIBED before me on the 22nd day of March, 2022.





Notary Public in and for the State of Texas

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, Petitioner	§	
V.	§	**CASE NO. 201505595**
ANNETTE R. LOYD, Respondent	§	

JUDGMENT OF FULLY PROBATED SUSPENSION

Parties and Appearance

On December 12, 2018, December 21, 2018, and February 4, 2019, came to be heard the above-styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, **ANNETTE R. LOYD** (Respondent), Texas Bar Number **16731100**, appeared in person and announced ready.

Jurisdiction and Venue

The Evidentiary Panel 7-2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 7, 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(W) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

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

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

2. Respondent resides in and maintains her principal place of practice in Tarrant County, Texas.

3. Complainant Vernon Bauer (Bauer) and Joella Jacobson (Jacobson) hired Respondent to serve as legal counsel regarding a civil matter. Respondent filed suit on behalf of Bauer and Jacobson on August 1, 2014 in a District Court in Tarrant County, Texas.

4. In representing Bauer and Jacobson, Respondent neglected the legal matter entrusted to her by failing to respond to Defendant's Motion for Summary Judgment.

5. Respondent failed to promptly comply with reasonable requests for information from Bauer and Jacobson about their civil matter.

6. Respondent failed to explain the legal matter to the extent reasonably necessary to permit Bauer and Jacobson to make informed decisions regarding the representation.

7. Respondent violated a disciplinary judgment.

8. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure. Respondent did not in good faith timely assert a privilege or other legal ground for failure to do so.

9. Respondent owes restitution in the amount of One Thousand Dollars and No Cents ($1,000.00) payable to Vernon Bauer.

10. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney's fees associated with this Disciplinary Proceeding in the amount of Three Thousand Three Hundred Dollars and No Cents ($3,300.00).

11. The Chief Disciplinary Counsel of the State Bar of Texas has incurred direct expenses associated with this Disciplinary Proceeding in the amount of Seven Hundred Dollars and No Cents ($700.00).

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: Rules: 1.01(b)(1), 1.03(a), 1.03(b), 8.04(a)(7), and 8.04(a)(8).

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 and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is a Probated Suspension.

Accordingly, it is **ORDERED, ADJUDGED** and **DECREED** that Respondent be suspended from the practice of law for a period of two (2) years with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on February 4, 2019, and shall end on February 3, 2021.

Terms of Probation

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

1. Respondent shall not violate any term of this judgment.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep State Bar of Texas membership department notified of current mailing, residence and business addresses and telephone numbers.

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

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

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

8. Respondent shall pay restitution on or before January 1, 2020, to Vernon Bauer in the amount of One Thousand Dollars and No Cents ($1,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Vernon Bauer and delivered to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

9. Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand Three Hundred Dollars and No Cents ($3,300.00). The payment shall be due and payable on or before January 1, 2020, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

10. Respondent shall pay direct expenses to the State Bar of Texas in the amount of Seven Hundred Dollars and No Cents ($700.00). The payment shall be due and payable on or before January 1, 2020, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

11. Respondent shall submit to counseling sessions for the two (2) year duration of this judgment, with a minimum of one (1) session per month, by a mental health professional licensed in Texas as a psychiatrist, a psychologist, a master's level social worker (LCSW), or a licensed professional counselor (LPC). The mental health professional shall provide written monthly reports to the State Bar of Texas verifying Respondent's attendance at the sessions and the general issue(s) addressed during the sessions. The initial report shall be due no later than March 3, 2019, documenting the session(s) that occur(s) during February 2019. Each subsequent report shall be due on the 3rd day of each month, documenting the session(s) that occur(s) during the previous month. The final report will be due no later than February 3, 2021.

12. Respondent shall take all necessary action, including the execution of a valid release of information, to permit any treating mental health professional to provide written or oral reports for the duration of the supervision period.

13. Respondent shall be responsible for all costs and expenses incurred, directly or indirectly, by compliance with these terms and shall pay all such costs and expenses as required by the provider, but in no event later than the final day of the supervision period.

14. Any and all reports and evaluations required by these terms of probation shall be sent to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Suite 200, Austin, TX 78701).

15. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete six (6) additional hours of continuing legal education in the area of Law Office Management. These additional hours of CLE are to be completed on or before January 1, 2020. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course(s) to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

16. Respondent must maintain financial records on each client, including written receipts of funds, written accounting of time billed, client funds applied, and written contracts with each client.

17. Law Office Management Consultation: No later than March 5, 2019, Respondent shall engage the services of a law office management consultant, approved by the Office of the Chief Disciplinary Counsel, and qualified by training and experience to conduct reviews of law office management systems for solo practitioners. Respondent shall participate in good faith one (1) hour per month for the two (2) year duration of this judgment. The consultant will produce a written report on the adequacy of the systems currently in place to manage Respondent's law practice, to adequately supervise the office staff and to insure effective communication with clients no later than ten (10) days after each consultation. Said reports shall be delivered to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

18. Respondent shall make contact with the Chief Disciplinary Counsel's Offices' Compliance Monitor at 877-953-5535, ext. 1334 and Special

Programs Coordinator at 877-953-5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

Probation Revocation

Upon information that Respondent has violated a term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals (BODA) and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

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

It is further **ORDERED** that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Restitution, Attorney's Fees and Expenses

It is further **ORDERED** Respondent shall pay restitution on or before January 1, 2020, to Vernon Bauer in amount of One Thousand Dollars and No Cents ($1,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Vernon Bauer and delivered to the State Bar of Texas, Chief Disciplinary

Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand Three Hundred Dollars and No Cents ($3,300.00). The payment shall be due and payable on or before January 1, 2020, shall be made by certified or cashier's check or money order, and made payable to the State Bar of Texas. Respondent shall forward the funds to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Seven Hundred Dollars and No Cents ($700.00). The payment shall be due and payable on or before January 1, 2020, shall be made by certified or cashier's check or money order, and made payable to the State Bar of Texas. Respondent shall forward the funds to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(Z) 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.

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 February, 2019.

EVIDENTIARY PANEL 7-2
DISTRICT NO. 7
STATE BAR OF TEXAS

CHRIS NICKELSON
District 7, Panel 7-2 Presiding Member

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, Petitioner	§	
V.	§	**CASE NO. 201706886**
ANNETTE R. LOYD, Respondent	§	

DEFAULT JUDGMENT OF FULLY PROBATED SUSPENSION

Parties and Appearance

On December 12, 2018, came to be heard the above-styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, **ANNETTE R. LOYD** (Respondent), Texas Bar Number **16731100**, was duly served with the Evidentiary Petition and notice of this default and sanctions hearing. Respondent appeared pro se, and filed an untimely Answer on date of said hearing.

Jurisdiction and Venue

The Evidentiary Panel 7-2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 7, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Default

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

facts alleged in the Evidentiary Petition are deemed true pursuant to Rule 2.17(C) of the Texas Rules of Disciplinary Procedure.

Professional Misconduct

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

Findings of Fact

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

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

2. Respondent resides in and maintains her principal place of practice in Tarrant County, Texas.

3. On February 14, 2017, Complainant, Tommy H. Watley (Watley), hired Respondent to represent him regarding a matter involving his Last Will and Testament.

4. In representing Watley, Respondent neglected the legal matter entrusted to her.

5. Respondent failed to keep Watley reasonably informed about the status of his legal matter and failed to promptly comply with reasonable requests for information from Watley.

6. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure. Respondent did not in good faith timely assert a privilege or other legal ground for failure to do so.

7. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney's fees associated with this Disciplinary Proceeding in the amount of Seven Hundred Fifty Dollars and No Cents ($750.00).

8. The Chief Disciplinary Counsel of the State Bar of Texas has incurred direct expenses associated with this Disciplinary Proceeding in the amount of Two Hundred Fifty Dollars and No Cents ($250.00).

Conclusions of Law

The Evidentiary Panel concludes that, based upon the foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 1.01(b)(1), 1.03(a), and 8.04(a)(8).

Sanction

The Evidentiary Panel, having found Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is a Probated Suspension.

Accordingly, it is **ORDERED, ADJUDGED** and **DECREED** that Respondent be suspended from the practice of law for a period of twelve (12) months, with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on January 7, 2019, and shall end on January 6, 2020.

Terms of Probation

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

1. Respondent shall not violate any term of this judgment.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.
3. Respondent shall not violate any state or federal criminal statutes.

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

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

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

7. Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Seven Hundred Fifty Dollars and No Cents ($750.00). The payment shall be due and payable on or before February 6, 2019, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

8. Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Two Hundred Fifty Dollars and No Cents ($250.00). The payment shall be due and payable on or before February 6, 2019, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

9. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete two (2) additional hours of continuing legal education in the area of Law Practice Management and an additional three (3) hours of continuing legal education in the area of Ethics. These additional hours of CLE are to be completed by January 6, 2020. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course(s) to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

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

11. Respondent shall submit to counseling sessions for the twelve (12) month duration of this judgment, with a minimum of one (1) session per month, by a mental health professional licensed in Texas as a psychiatrist, a psychologist, a master's level social worker (LCSW), or a licensed professional counselor (LPC). The mental health professional shall provide written monthly reports to the State Bar of Texas verifying Respondent's attendance at the sessions and the general issue(s) addressed during the sessions. The initial report shall be due no later than February 6, 2019, documenting the session(s) that occur(s) during January 2019. Each subsequent report shall be due on the 6th day of each month, documenting the session(s) that occur(s) during the previous month. The final report will be due no later than January 6, 2020.

12. Respondent shall take all necessary action, including the execution of a valid release of information, to permit any treating mental health professional to provide written or oral reports for the duration of the supervision period.

13. Respondent shall be responsible for all costs and expenses incurred, directly or indirectly, by compliance with these terms and shall pay all such costs and expenses as required by the provider, but in no event later than the final day of the supervision period.

14. Any and all reports and evaluations required by these terms of probation shall be sent to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Suite 200, Austin, TX 78701).

Probation Revocation

Upon information that Respondent has violated a term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals (BODA) and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

BODA shall conduct an evidentiary hearing. At the hearing, BODA shall determine by a preponderance of the evidence whether Respondent has violated any term of this Judgment. If BODA finds grounds for revocation, BODA shall enter an order revoking

probation and placing Respondent on active suspension from the date of such revocation order. Respondent shall not be given credit for any term of probation served prior to revocation.

It is further **ORDERED** that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Attorney's Fees and Expenses

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Seven Hundred Fifty Dollars and No Cents ($750.00). The payment shall be due and payable on or before February 6, 2019, shall be made by certified or cashier's check or money order, and made payable to the State Bar of Texas. Respondent shall forward the funds to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Two Hundred Fifty Dollars and No Cents ($250.00). The payment shall be due and payable on or before February 6, 2019, shall be made by certified or cashier's check or money order, and made payable to the State Bar of Texas. Respondent shall forward the funds to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(Z) 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.

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 16th day of ~~December, 2018~~ January 2019.

EVIDENTIARY PANEL 7-2
DISTRICT NO. 7
STATE BAR OF TEXAS

CHRIS NICKELSON
District 7, Panel 7-2 Presiding Member

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

IN THE MATTER OF	§	
	§	
ANNETTE R. LOYD	§	**CAUSE NO. 48710**
	§	
STATE BAR CARD NO. 16731100	§	

JUDGMENT REVOKING PROBATION AND ACTIVELY SUSPENDING RESPONDENT FROM THE PRACTICE OF LAW

On July 1, 2011, the Board of Disciplinary Appeals heard the Petition for Revocation of Probation filed by the Commission for Lawyer Discipline of the State Bar of Texas against Respondent, Annette R. Loyd, State Bar No. 16731100. Petitioner appeared by counsel from the Office of the Chief Disciplinary Counsel and announced ready. Respondent, Annette R. Loyd, appeared pro se and announced ready. All issues of fact and questions of law were submitted to the Board.

Having considered the pleadings, and having heard the evidence and the argument of counsel, the Board finds as follows:

(1) Respondent, Annette R. Loyd, whose State Bar Card number is 16731100, is currently licensed and authorized by the Supreme Court of Texas to practice law.

(2) Respondent was personally served with the Petition for Revocation of Probation and hearing notice in this cause by a duly authorized process server on June 15, 2011, in accordance with the Texas Rules of Disciplinary Procedure 2.23 ("TRDP"). The affidavit of service was filed with the Board on June 21, 2011.

(3) On March 23, 2011, in a case styled, *Commission for Lawyer Discipline, Petitioner, v. Annette R. Loyd, Respondent*, Case No. D0031039673, an Evidentiary Panel of the State Bar of Texas District 7-2 Grievance Committee signed a judgment imposing a thirty-seven month partially probated suspension against Respondent beginning April 1, 2011, and ending April 30,

2014, with one month active suspension starting April 1, 2011, and ending April 30, 2011, and thirty-six months probated suspension beginning May 1, 2011, and ending April 30, 2014.

(4) The Evidentiary Panel found that Respondent had committed violations of Texas Disciplinary Rules of Professional Conduct 1.01(b)(2), 1.03(a) and 8.04(a)(8).

(5) Respondent received a copy of the judgment by certified mail on March 28, 2011.

(6) The judgment clearly prohibited Respondent from practicing law for the period beginning April 1, 2011 and ending April 30, 2011.

(7) Respondent read and understood the judgment.

(8) Respondent did not contact the Office of Chief Disciplinary Counsel after receiving the judgment, file any post-judgment motions, appeal the judgment, or otherwise attempt to delay the effect of the sanction imposed.

(9) Respondent was ordered by the judgment signed March 23, 2011 to notify in writing, on or before April 1, 2011, 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 had any matter pending of the terms of the judgment, the style and cause number of the pending matter(s), and the name, address, and telephone number of the client(s) Respondent was representing.

(10) The judgment further ordered Respondent to file with the Statewide Compliance Monitor, State Bar of Texas Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, Texas 78711-2487 (1414 Colorado Street, Austin, Texas 78701) on or before April 1, 2011, an affidavit stating that she had notified in writing every court or tribunal in which Respondent had any matter pending of the terms of the judgment, the style and cause number of the pending matter(s), and the name, address, and telephone number of the client(s) Respondent was representing.

(11) In addition to the requirements noted above, the judgment ordered Respondent, as specific requirements of her probation, not to violate any term of the judgment, not to engage in professional misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure, not to violate any state or federal criminal statutes, to keep the State Bar of Texas membership department notified of current mailing, residence, and business addresses, and telephone numbers, to comply with Minimum Continuing Legal Education requirements, to comply with Interest on Lawyers Trust Account (IOLTA)

requirements, and to promptly respond to any request for information from the Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.

(12) Respondent knowingly practiced law during the period that her license was actively suspended beginning April 1, 2011 and April 30, 2011 by filing pleadings and/or appearing in court in multiple cases.

(13) Respondent materially violated the Default Judgment of Partially Probated Suspension by practicing law while her license was suspended, failing to notify Judges and Courts of her suspension, and by failing to file an affidavit with the State Bar of Texas stating that she had notified Judges and Courts of her suspension.

(14) Respondent, Annette R. Loyd, is the same person as the Annette R. Loyd who is the subject of the Evidentiary Judgment described above.

Based on these undisputed facts, the Board concludes that:

(1) This Board has exclusive jurisdiction to hear a petition to revoke a probated suspension from the practice of law imposed by an evidentiary panel of the State Bar of Texas grievance committee during the full term of suspension, including and probationary period. TRDP 2.23; *In re State Bar of Texas*, 113 S.W.3d 730,733 (Tex.2003).

(2) Respondent has materially violated the terms and conditions of the Default Judgment of Partially Probated Suspension signed on March 23, 2011, in Cause No. D0031039672.

(2) Respondent should be actively suspended from practicing law for the full term of the suspension as originally imposed by the Default Judgment of Partially Probated Suspension without credit for any probationary time served. TRDP 2.23.

It is therefore, ORDERED, ADJUDGED, and DECREED that Respondent, Annette R. Loyd, State Bar No. 16731100, be, and hereby is, actively SUSPENDED from the practice of law in the State of Texas for a period of thirty-six months effective immediately on the date this judgment is signed and ending on July 6, 2014.

It is further ORDERED, ADJUDGED and DECREED that Respondent, Annette R. Loyd, during said suspension is prohibited from practicing law in Texas, holding herself out as an attorney

at law, performing any legal service for others, accepting any fee directly or indirectly for legal services, appearing as counsel in any proceeding in any Texas court or before any Texas administrative body, or holding herself out to others or using her name, in any manner, in conjunction with the words "attorney," "counselor," or "lawyer."

It is further ORDERED that Respondent, Annette R. Loyd, not later than thirty (30) days shall notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court, if any, in which Respondent, Annette R. Loyd, has any legal matter pending, if any, of her suspension, of the style and cause number of the pending matter(s), and of the name, address, and telephone number of the client(s) Respondent is representing in that court. Respondent is also ORDERED to mail copies of all such notifications to the Statewide Compliance Monitor, Office of the Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further ORDERED that Respondent, Annette R. Loyd, shall immediately notify each of her current clients, if any, in writing, of her suspension. In addition to such notification, Respondent is ORDERED to return all files, papers, unearned fees paid in advance, and all other monies and properties which are in her possession but which belong to current or former clients, if any, to those respective clients or former clients within thirty (30) days after the date on which this Judgment is signed by the Board. Respondent is further ORDERED to file with the Statewide Compliance Monitor, within the same thirty (30) days, an affidavit stating that all current clients have been notified of her suspension and that all files, papers, unearned fees paid in advance, and all other monies and properties belonging to clients and former clients have been returned as ordered herein. If Respondent should be unable to return any file, papers, money or other property to any client or former client, Respondent's affidavit shall state with particularity the efforts made by Respondent with respect to each particular client and the cause of her inability to return to said client any file,

paper, money or other property. Respondent is also ORDERED to mail a copy of said affidavit and copies of all notification letters to clients, to the Statewide Compliance Monitor, Office of Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further ORDERED that Respondent, Annette R. Loyd, immediately surrender her Texas law license and permanent State Bar Card to the Office of Chief Disciplinary Counsel, State Bar of Texas, for transmittal to the Clerk of the Supreme Court of Texas.

Signed this 6th day of July 2011.

CHAIR PRESIDING

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, Petitioner	§	
	§	
V.	§	**CASE NO. D0031039672**
	§	
ANNETTE R. LOYD, Respondent	§	

DEFAULT JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On March 9, 2011, came to be heard the above-styled and numbered cause. Petitioner, Commission for Lawyer Discipline ("Petitioner"), appeared by and through its attorney of record, William R. Garrett, Assistant Disciplinary Counsel, and announced ready. Respondent, **ANNETTE R. LOYD,** Texas Bar Number **16731100** ("Respondent"), although duly served with the Evidentiary Petition and notice of this default and sanctions hearing, failed to appear.

Jurisdiction and Venue

The Evidentiary Panel 7-2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 7, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Default

The Evidentiary Panel finds Respondent was properly served with the Evidentiary Petition and that Respondent failed to timely file a responsive pleading to the Evidentiary Petition as required by Rule 2.17(B) of the Texas Rules of Disciplinary Procedure.

Accordingly, the Evidentiary Panel finds Respondent in default and further finds that all facts alleged in the Evidentiary Petition are deemed true pursuant to Rule 2.17(C) of the Texas Rules of Disciplinary Procedure.

Professional Misconduct

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

Findings of Fact

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

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

2. Respondent resides in and maintains her principal place of practice in Tarrant County, Texas.

3. In representing Tommie Whitaker ("Whitaker"), Respondent frequently failed to carry out completely the obligations owed to Whitaker.

4. Respondent failed to keep Whitaker reasonably informed about the status of her civil matter.

5. Respondent failed to promptly comply with reasonable requests for information from Whitaker about her civil matter.

6. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure.

7. Respondent did not in good faith timely assert a privilege or other legal ground for failure to do so.

8. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees associated with this Disciplinary Proceeding in the

amount of One Thousand Two Hundred Twenty-Five and no/100 Dollars ($1,225.00).

9. The Chief Disciplinary Counsel of the State Bar of Texas has incurred direct expenses associated with this Disciplinary Proceeding in the amount of Three Hundred Thirty-One and 97/100 Dollars ($331.97).

Conclusions of Law

The Evidentiary Panel concludes that, based upon the foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 1.01(b)(2), 1.03(a) and 8.04(a)(8).

Sanction

The Evidentiary Panel, having found Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds said findings and conclusions support a judgment of Partially Probated Suspension.

Accordingly, it is **ORDERED**, **ADJUDGED** and **DECREED** that Respondent be suspended from the practice of law for a period of thirty-seven (37) months, beginning April 1, 2011, and ending April 30, 2014, provided Respondent complies with the following terms and conditions. Respondent shall be actively suspended from the practice of law for a period of one (1) month, beginning April 1, 2011, and ending April 30, 2011. If Respondent complies with all of the following terms and conditions timely, the thirty-six (36) month period of probated suspension shall begin on May 1, 2011, and shall end on April 30, 2014:

1. Respondent shall pay all reasonable and necessary attorneys' fees to the State Bar of Texas in the amount of One Thousand Two Hundred Twenty-Five and no/100 Dollars ($1,225.00). The payment shall be due and payable on or before

April 30, 2011, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

2. Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Three Hundred Thirty-One and 97/100 Dollars ($331.97). The payment shall be due and payable on or before April 30, 2011, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

Should Respondent fail to comply with all of the above terms and conditions timely, Respondent shall remain actively suspended until the date of compliance or until April 30, 2014, whichever occurs first.

Terms of Active Suspension

It is further **ORDERED** that during the term of active suspension ordered herein, or that may be imposed upon Respondent by the Board of Disciplinary Appeals as a result of a probation revocation proceeding, Respondent shall be prohibited from practicing law in Texas; holding herself 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 herself out to others or using her name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

It is further **ORDERED** that, or before April 1, 2011, Respondent shall notify each of Respondent's current clients in writing of this suspension.

In addition to such notification, it is further **ORDERED** Respondent shall return any files, papers, unearned monies and other property belonging to current clients in

Respondent's possession to the respective clients or to another attorney at the client's request.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before April 1, 2011, an affidavit stating all current clients have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein.

It is further **ORDERED** Respondent shall, on or before April 1, 2011, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), on or before April 1, 2011, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court.

It is further **ORDERED** that, on or before April 1, 2011, Respondent shall surrender her law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary

Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of Texas.

Terms of Probation

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

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

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

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

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

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

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

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

8. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete nine (9) additional hours of continuing legal education in the area of Ethics, to be completed as follows: three (3) additional hours of CLE are to be completed no later than May 1, 2012; three (3) additional hours of CLE are to be completed no later than May 1, 2013, and three (3) additional hours of CLE are to be completed no later than May 1, 2014. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701.

Probation Revocation

Upon determination that Respondent has violated any term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to

revoke probation pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals ("BODA") and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

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

It is further **ORDERED** that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Attorneys' Fees and Expenses

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorneys' fees to the State Bar of Texas in the amount of One Thousand Two Hundred Twenty-Five and no/100 Dollars ($1,225.00). The payment shall be due and payable on or before April 30, 2011, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Three Hundred Thirty-One and 97/100 Dollars ($331.97). The

payment shall be due and payable on or before April 30, 2011, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(Y) 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.

Publication

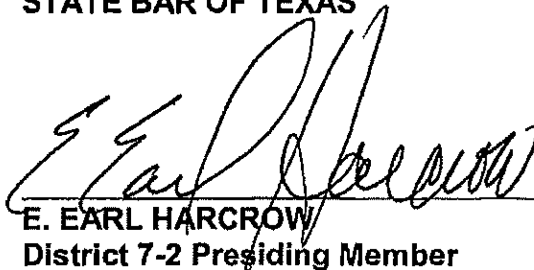
This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 23rd day of March, 2011.

EVIDENTIARY PANEL 7-2
DISTRICT NO. 7
STATE BAR OF TEXAS



E. EARL HARCROW
District 7-2 Presiding Member

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, Petitioner	§	
	§	
V.	§	**CASE NO. D0051143118**
	§	
ANNETTE R. LOYD, Respondent	§	

AGREED JUDGMENT OF ACTIVE SUSPENSION

Parties and Appearance

On this day, came to be heard the above-styled and numbered cause. Petitioner, Commission for Lawyer Discipline ("Petitioner"), and Respondent, **ANNETTE R. LOYD** ("Respondent"), Texas Bar Number **16731100**, announce that an agreement has been reached on all matters including the imposition of an Active Suspension.

Jurisdiction and Venue

The Evidentiary Panel 7-2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 7, 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 the pleadings, admissions, stipulations and agreements of the parties, finds Respondent has committed Professional Misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

Petitioner and Respondent agree to the following findings of fact. Accordingly, the Evidentiary Panel finds:

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
2. Respondent resides in and maintains her principal place of practice in Tarrant County, Texas.
3. Respondent violated the Texas Rules of Professional Conduct.
4. Respondent engaged in the practice of law when her right to practice had been suspended.
5. Respondent violated a disciplinary judgment by practicing law while actively suspended.
6. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure. Respondent did not in good faith timely assert a privilege or other legal ground for failure to do so.
7. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees and direct expenses associated with this Disciplinary Proceeding in the amount of Eight Hundred Ninety-Five and no/100 Dollars ($895.00).

Conclusions of Law

Petitioner and Respondent agree that, based on the foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated. Accordingly, the Evidentiary Panel concludes that the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 8.04(a)(1), 8.04(a)(7), 8.04(a)(8) and 8.04(a)(11).

Sanction

It is **AGREED** and **ORDERED** that the sanction of an Active Suspension shall be imposed against Respondent in accordance with the Texas Rules of Disciplinary Procedure.

Accordingly, it is **ORDERED, ADJUDGED** and **DECREED** that Respondent shall be actively suspended from the practice of law for a period of one (1) year, beginning October 1, 2012, and ending September 30, 2013.

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 herself 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 herself out to others or using her 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 October 1, 2012, Respondent shall notify each of Respondent's current clients and opposing counsel in writing of this suspension.

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

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado

Street, Austin, TX 78701) on or before October 1, 2012, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein.

It is further **ORDERED** Respondent shall, on or before October 1, 2012, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado Street, Austin, TX 78701) on or before October 1, 2012, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court.

It is further **ORDERED** that, on or before October 1, 2012, Respondent shall surrender her law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado Street, Austin, TX 78701), to be forwarded to the Supreme Court of Texas.

Attorneys' Fees and Expenses

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorneys' fees and direct expenses to the State Bar of Texas in the amount of Eight Hundred Ninety-Five and no/100 Dollars ($895.00). The payment of attorneys' fees and direct expenses shall be made by certified or cashier's check or money order and made payable to the State Bar of Texas. The payment shall be submitted to the State Bar of Texas, Chief Disciplinary Counsel's Office, 14651 Dallas Parkway, Suite 925, Dallas, Texas 75254, on or before the date this judgment is presented to the Evidentiary Panel for execution.

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(Y) 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.

Publication

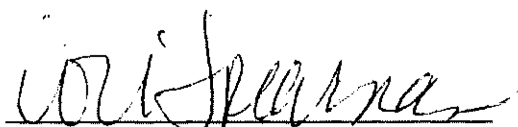
This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

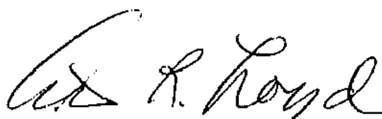
SIGNED this 13 day of Sept., 2012.

EVIDENTIARY PANEL 7-2
DISTRICT NO. 7
STATE BAR OF TEXAS

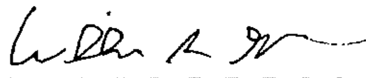


Lori Spearman
District 7-2 Presiding Member

AGREED AS TO BOTH FORM AND SUBSTANCE:



Annette R. Loyd
State Bar No. 16731100
Respondent



William R. Garrett
State Bar No. 07700200
Counsel for Petitioner

Avery McDaniel
State Bar No. 24000121
Counsel for Respondent

NO. F0010313527

COMMISSION FOR LAWYER DISCIPLINE	§	EVIDENTIARY PANEL
	§	
v.	§	OF DISTRICT 07A
	§	
ANNETTE R. LOYD	§	GRIEVANCE COMMITTEE

DEFAULT JUDGMENT OF FULLY PROBATED SUSPENSION

On August 3, 2004, came on to be heard the Motion for Default Judgment in the above-styled complaint. The Commission for Lawyer Discipline appeared by and through their attorney, William R. Garrett, Assistant Disciplinary Counsel. The Respondent **ANNETTE R. LOYD**, State Bar Number 16731100 (hereinafter referred to as "Respondent"), although duly and properly notified, failed to appear. Complainant **KAREN REMMERS** did not appear.

An investigatory panel of the Grievance Committee for State Bar District 07A heard the complaint of Karen Remmers and found just cause to believe that the Respondent has committed professional misconduct.

Respondent was served via certified mail, return receipt requested, with an Evidentiary Panel Charge and Chief Disciplinary Counsel's Proposed Hearing Order pursuant to Rule 2.16(A) of the Texas Rules of Disciplinary Procedure. Respondent failed to timely file a Responsive Pleading and Proposed Hearing Order pursuant to Rule 2.16(B) of the Texas Rules of Disciplinary Procedure. Respondent was served via certified mail, return receipt requested, with a Notice of Default and Respondent failed to timely file a verified motion reflecting good cause for failing to timely file a responsive pleading and proposed hearing order. Respondent was served via certified mail, return receipt requested, with a Motion for Default Judgment and Order Setting Hearing Date.

The Evidentiary Panel has conducted a hearing and has found the Respondent in default; therefore, all facts alleged in the charging document are taken as true, pursuant to Rule 2.16(B) of the Texas Rules of Disciplinary Procedure.

JURISDICTION AND VENUE

The Evidentiary Panel finds that Respondent is an attorney licensed to practice law in Texas and further finds that Respondent failed to timely file an election to have the complaint heard in a district court. Therefore, the Evidentiary Panel finds it has jurisdiction over the parties and subject matters of this action, and that venue is proper before the Evidentiary Panel of the District 07A Grievance Committee, Tarrant County, Texas.

PROFESSIONAL MISCONDUCT

The Evidentiary Panel finds that the acts and conduct of Respondent as set forth hereinafter constitute professional misconduct.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent was retained on or about June 8, 2001, to draft a demand letter to a real estate management company on behalf of Complainant Karen Remmers (hereinafter referred to as "Complainant"). Respondent failed to provide any meaningful legal services on Complainant's behalf.

During the representation, Complainant requested the status of the matter on numerous occasions by telephone and by certified mail, but Respondent failed to respond to Complainant's requests.

On or about January 24, 2003, Respondent received notice of this complaint by certified mail, return receipt requested. Respondent was requested to reply, in writing, within thirty (30) days of receipt, but failed to do so and asserted no grounds for her failure to respond.

The foregoing facts support a violation of Rules 1.01(b)(1), 1.03(a) and 8.04(a)(8) of the Texas Disciplinary Rules of Professional Conduct.

FULLY PROBATED SUSPENSION

The Evidentiary Panel has issued a Findings of Fact and Conclusions of Law on file herein, and said findings and conclusions support a Judgment of Fully Probated Suspension and by reason of said findings and conclusions, the Panel is of the opinion that Respondent is guilty of professional misconduct and should be suspended for a period of one (1) year with such suspension being probated for one (1) year.

IT IS THEREFORE AGREED and **ORDERED** that Respondent be and is hereby suspended from the practice of law for a period of one (1) year with the imposition of such suspension being suspended and Respondent being placed on probation for a period of one (1) year beginning September 1, 2004, and ending August 31, 2005, under the following terms and conditions:

1. Respondent shall not violate any of the provisions of the Texas Disciplinary Rules of Professional Conduct nor any provision of the State Bar Rules.

2. Respondent shall not violate the laws of the United States or any other state other than minor traffic violations.

3. Respondent shall and specifically agrees to maintain a current status regarding membership fees and occupational tax.

4. Respondent shall comply with Interest on Lawyers Trust Account requirements in accordance with Article XI of the State Bar Rules.

5. Respondent shall keep the State Bar membership department notified of her current business and home addresses, and telephone numbers, and shall immediately notify the State Bar membership department and the Chief Disciplinary Counsel's Office of the State Bar of Texas, One Lincoln Centre, 5400 LBJ Freeway, Suite 1280, Dallas, Texas 75240, of any change in her addresses or phone numbers.

6. Respondent shall not, during the period of probation, violate any term of this judgment.

7. Respondent shall cooperate fully with the Chief Disciplinary Counsel's Office of the State Bar of Texas in their efforts to monitor compliance with this judgment.

8. Respondent shall pay State Bar attorneys' fees in the amount of One Thousand Seven Hundred Five and no/100 Dollars ($1,705.00). Said attorneys' fees shall be paid no later than August 31, 2005, shall be paid by cashier's check or money order, made payable to the State Bar of Texas and delivered to the Office of the Chief Disciplinary Counsel, State Bar of Texas at One Lincoln Centre, 5400 LBJ Freeway, Suite 1280, Dallas, Texas 75240.

9. Respondent shall pay costs to the State Bar of Texas in the amount of Three Hundred Nineteen and 68/100 Dollars ($319.68). Said costs shall be paid no later than August 31, 2005, shall be paid by cashier's check or money order, made payable to the State Bar of Texas and delivered to the Office of the Chief Disciplinary Counsel, State Bar of Texas at One Lincoln Centre, 5400 LBJ Freeway, Suite 1280, Dallas, Texas 75240.

10. Respondent shall complete eighteen (18) hours of Continuing Legal Education (CLE) in the areas of Law Office Management (ten (10) hours) and Ethics (eight (8) hours) no later than August 31, 2005. Verification of the completion of these courses shall be sent to the Chief Disciplinary Counsel's Office of the State Bar of Texas, at One Lincoln Centre, 5400 LBJ Freeway, Suite 1280, Dallas, Texas 75240, no later than September 5, 2005.

PROBATION REVOCATION

IT IS FURTHER AGREED and **ORDERED** that upon determination by the Board of Disciplinary Appeals that Respondent has violated any of the terms or conditions of this probation, the Board shall enter an order revoking the probation and imposing the active suspension of the

Respondent from the practice of law for a period of one (1) year, commencing on or after the date of revocation, with no credit given for any period of probation successfully served, upon the following conditions:

1. Any grievance committee of the State Bar of Texas or the Chief Disciplinary Counsel of the State Bar of Texas may apply for revocation to the Board of Disciplinary Appeals, by filing a written motion to revoke probation;

2. A copy of the Motion to Revoke Probation and Notice of Hearing on such Motion shall be delivered to Respondent pursuant to Rule 2.20, Texas Rules of Disciplinary Procedure, at Respondent's last known address on the membership rolls for the Supreme Court of Texas; and

3. The Board shall hear the Motion to Revoke Probation within thirty (30) days of service upon Respondent, and shall determine whether Respondent has violated any of the terms or conditions of probation by a preponderance of the evidence.

IT IS FURTHER AGREED and **ORDERED** that during any term of active suspension that may be imposed upon Respondent by the Board of Disciplinary Appeals by reason of Respondent's failure to adhere to the terms of this Judgment, Respondent shall be prohibited from practicing law in Texas, holding herself 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 court or before any administrative body, or holding herself out to others or using her name, in any manner, in conjunction with the words "attorney at law", "attorney", "counselor at law", or "lawyer".

All attorneys' fees and costs amounts ordered herein are due to the misconduct of the Respondent and are assessed as a part of the sanction in accordance with Rule 1.06(T) of the Texas Rules of Disciplinary Procedure and are intended by the parties to be non-dischargeable in

bankruptcy. Interest shall accrue on the attorneys' fees and costs from the date due as stated in this judgment at the rate of five percent (5%) per annum until paid.

SIGNED this 17th day of August, 2004.

EVIDENTIARY PANEL
DISTRICT NO. 07A
STATE BAR OF TEXAS

BY:
Luis A. Galindo
Evidentiary Panel Chair

FILED
23-0684
1/12/2024 1:24 PM
tex-83375570
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

FILED
Jan 18 2024
THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

No. 23-0684

In The Supreme Court of Texas

ANNETTE R. LOYD,
APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

On Appeal from the Board of Disciplinary Appeals
of the Supreme Court of Texas
BODA No. 67358

BRIEF OF APPELLEE COMMISSION FOR LAWYER DISCIPLINE

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION

MICHAEL G. GRAHAM
APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY COUNSEL

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

Identity of Parties and Counsel

Appellant

ANNETTE R. LOYD
TEXAS BAR NO. 16731100

Appellate Counsel for Appellant

GAINES WEST
Texas Bar No. 21197500
HANNA LEE
Texas Bar No. 24122232
West, Webb, Allbritton & Gentry, P.C.
1515 Emerald Plaza
College Station, Texas 77845-1515
T: (979) 694-7000
F: (979) 694-8000
Email: Gaines.west@westwebb.law
Hanna.lee@westwebb.law

Trial Counsel for Appellant

FRANCISCO HERNANDEZ
The Law Office of Francisco Hernandez
800 West Weatherford Street
Fort Worth, Texas 76102

Appellee

COMMISSION FOR LAWYER DISCIPLINE

Appellate Counsel for Appellee

SEANA WILLING
Chief Disciplinary Counsel

ROYCE LEMOINE
Deputy Counsel for Administration

MICHAEL G. GRAHAM
Appellate Counsel
TEXAS BAR NO. 24113581

Email: Michael.Graham@texasbar.com
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
T: (512) 427-1350; (877) 953-5535
F: (512) 427-4253

TRIAL COUNSEL FOR APPELLEE

LAURIE GUERRA
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254

TABLE OF CONTENTS PAGE

IDENTITY OF PARTIES AND COUNSEL 1

INDEX OF AUTHORITIES 5

STATEMENT OF THE CASE 10

STATEMENT AS TO ORAL ARGUMENT 11

ISSUES PRESENTED 12

STATEMENT OF FACTS 13

I. The 2022 Judgment 13

A. Loyd receives a Fully Probated Suspension in February 2019 13

B. The State Bar initiates a complaint against Loyd for her failures to comply with the 2019 Probated Suspension, and the Commission files a disciplinary proceeding against her 15

C. Loyd's default and the sanction hearing 17

II. Loyd's Motion for New Trial and appeal to BODA 20

SUMMARY OF THE ARGUMENT 24

ARGUMENT 26

I. Preliminary Statement 26

II. The evidentiary panel acted within its discretion in assessing a 3-year Active Suspension 26

A. Guidelines for imposing sanctions in attorney discipline proceedings 28

B. The record supports the panel's sanction against Loyd as to either of her violations of TDRPC 8.04(a)(7) or (8), or both 32

C. Loyd's reliance on *Furr's Supermarkets, Inc. v. Bethune* is misplaced 35

III. The evidentiary panel did not abuse its discretion by denying Loyd's motion for new trial/reconsideration 38

IV. Loyd's "Disability" arguments 40

A. "Disability" in the TRDPs 40

B. Loyd has not preserved error on her claim that her "Disability" prevented the evidentiary panel from issuing a sanction against her, and the record does not support Loyd's arguments that the Commission, the evidentiary panel, or BODA failed to appropriately consider "Disability" 43

1. Loyd did not preserve any error on this issue 43

2. Even if Loyd preserved error as to this issue, the record does not support her arguments 45

3. Ultimately, the evidentiary panel did not have discretion to refer the matter to BODA for a potential "Disability" 50

CONCLUSION 51

PRAYER 53

CERTIFICATE OF COMPLIANCE 54

CERTIFICATE OF SERVICE 55

APPENDIX 56

CASES **INDEX OF AUTHORITIES** PAGE

Beaumont Bank, N.A. v. Fuller,
806 S.W.2d 223 (Tex. 1991) 52

Bennett v. Comm'n for Lawyer Discipline,
No. 01-18-01115-CV, 2020 WL 4983246 (Tex.App. – Houston [1st Dist.] Aug. 25, 2020, no pet.) (mem. op.) 33

Bishop v. Comm'n for Lawyer Discipline,
No. 14-17-00521-CV, 2018 WL 6722344 (Tex.App. – Houston [14th Dist.] Dec. 21, 2018, pet. denied) (mem. op.) 27

Burbage v. Burbage,
447 S.W.3d 249 (Tex. 2014) 44

Craddock v. Sunshine Bus Lines, Inc.,
133 S.W.2d 124 (Tex. 1939) 50, 51

Davis v. Huey,
571 S.W.2d 859 (Tex. 1978) 27

Furr's Supermarkets, Inc. v. Bethune,
53 S.W.3d 375 (Tex. 2001) 35-36, 37, 38

Iliff v. Iliff,
339 S.W.3d 75 (Tex. 2011) 27

Love v. State Bar of Texas,
982 S.W.2d 939 (Tex.App. – Houston [14th Dist.] 2002, no pet.) 27, 29, 40

McIntyre v. Comm'n for Lawyer Discipline,
169 S.W.3d 803 (Tex.App. – Dallas 2005, no pet.) 27

Molina v. Comm'n for Lawyer Discipline,
BODA Case No. 35426, 2006 WL 6242393 (March 31, 2006) 26-27, 33

Montgomery Indep. Sch. Dist. v. Davis,
34 S.W.3d 559 (Tex. 2000) 27

Olsen v. Comm'n for Lawyer Discipline,
347 S.W.3d 876 (Tex.App. – Dallas 2011, pet. denied) 29

Ponce v. Comm'n for Lawyer Discipline,
No. 04-20-00267-CV, 2022 WL 1652147 (Tex.App. – San Antonio May 25, 2022, no pet.) (mem. op.) 29

Rangel v. State Bar of Texas,
898 S.W.2d 1 (Tex.App. – San Antonio 1995, no writ) 33

Shields Limited Partnership v. Bradberry,
523 S.W.3d 471 (Tex. 2017) 28

Sixth RMA Partners, L.P. v. Sibley,
111 S.W.3d 46 (Tex. 2003) 28

State Bar of Texas v. Kilpatrick,
874 S.W.2d 656 (Tex. 1994) 27, 29

Thawer v. Comm'n for Lawyer Discipline,
523 S.W.3d 177 (Tex.App. – Dallas 2017, no pet.) 29

Vickery v. Comm'n for Lawyer Discipline,
5 S.W.3d 241 (Tex.App. – Houston [14th Dist.] 1999, pet. denied) 28

Walker v. Packer,
827 S.W.2d 833 (Tex. 1992) 52

Waste Mgmt. of Tex., Inc. v. Tex. Disposal Sys. Landfill, Inc.,
434 S.W.3d 142 (Tex. 2014) 28

STATUTES PAGE

TEX. GOV'T CODE §81.083 29

TEX. DISCIPLINARY R. PROF'L CONDUCT 1.01(b)(1) 18, 19
TEX. DISCIPLINARY R. PROF'L CONDUCT 1.01(b)(2) 18
TEX. DISCIPLINARY R. PROF'L CONDUCT 1.03(a) 18, 19
TEX. DISCIPLINARY R. PROF'L CONDUCT 1.03(b) 19

TEX. DISCIPLINARY R. PROF'L CONDUCT 8.04(a)(1) 19
TEX. DISCIPLINARY R. PROF'L CONDUCT 8.04(a)(7) .... *passim*
TEX. DISCIPLINARY R. PROF'L CONDUCT 8.04(a)(8) .... *passim*
TEX. DISCIPLINARY R. PROF'L CONDUCT 8.04(a)(11) 19

TEX. R. APP. P. 33.1(a), (d) 43-44

TEX. R. CIV. P. 131 36
TEX. R. CIV. P. 141 .... 36, 37

TEX. RULES DISCIPLINARY P. R. 1.06(I) 40-41
TEX. RULES DISCIPLINARY P. R. 1.06(FF) 31
TEX. RULES DISCIPLINARY P. R. 2.14(C) 41, 42
TEX. RULES DISCIPLINARY P. R. 2.17(C) 32, 40, 50
TEX. RULES DISCIPLINARY P. R. 2.17(P) 28, 42, 43, 50-51, 52
TEX. RULES DISCIPLINARY P. R. 2.18 .... 28, 29
TEX. RULES DISCIPLINARY P. R. 2.19 28
TEX. RULES DISCIPLINARY P. R. 3.10 29
TEX. RULES DISCIPLINARY P. R. 4.06(I) 42
TEX. RULES DISCIPLINARY P. R. 5.03 41
TEX. RULES DISCIPLINARY P. R. 7.08(I) 43
TEX. RULES DISCIPLINARY P. R. 12.02 .... 41-42, 43
TEX. RULES DISCIPLINARY P. R. 12.03 43
TEX. RULES DISCIPLINARY P. R. 12.04 .... 43, 51
TEX. RULES DISCIPLINARY P. R. 12.06 43
TEX. RULES DISCIPLINARY P. R. 15.01(B) 29-30, 30-31
TEX. RULES DISCIPLINARY P. R. 15.02 .... 30, 33-34
TEX. RULES DISCIPLINARY P. R. 15.04 30
TEX. RULES DISCIPLINARY P. R. 15.05 30
TEX. RULES DISCIPLINARY P. R. 15.06 30
TEX. RULES DISCIPLINARY P. R. 15.07 .... 30, 31
TEX. RULES DISCIPLINARY P. R. 15.08 .... 30, 31
TEX. RULES DISCIPLINARY P. R. 15.09 .... 31-32, 33-34
TEX. RULES DISCIPLINARY P. R., PART XII 41-42, 51
TEX. RULES DISCIPLINARY P. R., PART XV 27, 28-29, 30, 31

No. 23-0684

In The
Supreme Court of Texas

ANNETTE R. LOYD,
APPELLANT
V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

On Appeal from the Board of Disciplinary Appeals
of the Supreme Court of Texas
BODA No. 67358

BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE SUPREME COURT OF TEXAS:

Appellee, the Commission for Lawyer Discipline, submits this brief in response to the brief filed by Appellant, Annette R. Loyd. For clarity, this brief refers to Appellant as "Loyd," Appellee as the "Commission," and the Board of Disciplinary Appeals as "BODA." References to the clerk's record that was filed in this Court by BODA are labeled BODA CR. References to the oral argument before BODA are labeled BODA RR (reporter's record of hearing held July 28, 2023). References to the record before the evidentiary panel are labeled Panel CR (clerk's

record from evidentiary proceeding); Supp Panel CR (supplemental clerk's record from evidentiary proceeding); Panel RR Vol. 1 (reporter's record of hearing held November 2, 2022), Panel RR Vol. 2, Ex.__, (reporter's record exhibits from hearing held November 2, 2022), Panel RR Vol. 3 (reporter's record of hearing held February 1, 2023). References to the Appellant's brief or appendix are labeled Apt. Br., followed by the relevant page number(s) and/or Tab. References to the appendix to this brief are labeled App, followed by the relevant appendix item. References to rules are references 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:	Annette R. Loyd
Evidentiary Panel:	State Bar of Texas District 7-1
Appellate Court:	Board of Disciplinary Appeals (BODA)
Nature of the Case:	The Commission brought a disciplinary action against Loyd regarding professional misconduct in violation of TDRPCs 8.04(a)(7) and 8.04(a)(8).
Violations Found:	**TDRPC 8.04(a)(7):** A lawyer shall not violate any disciplinary or disability order or judgment. **TDRPC 8.04(a)(8):** A lawyer shall not fail to furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so.
Disposition:	A Default Judgment of Active Suspension was issued by Evidentiary Panel 7-1 of the District 7 Grievance Committee on November 18, 2022. [App 1] [Panel CR 151-59]. BODA affirmed the Default Judgment of Active Suspension on August 14, 2023, with two members dissenting. [App 2] [BODA CR 583-97].

STATEMENT AS TO ORAL ARGUMENT

Appellant has requested the opportunity to conduct oral argument. Appellee does not believe oral argument is necessary in this case as the dispositive issue(s) have been authoritatively decided, the facts and legal arguments are adequately presented in the briefs and record, and/or the Court's decisional process would not be significantly aided by oral argument. However, should the Court grant oral argument to Appellant, Appellee requests that opportunity as well.

ISSUES PRESENTED

1. The evidentiary panel acted within its discretion in assessing a three-year active suspension for Loyd's Professional Misconduct arising from her failures to comply with a prior disciplinary judgment and to respond to the disciplinary inquiry regarding same, in violation of TDRPCs 8.04(a)(7) & (8).

2. The evidentiary panel acted within its discretion in denying Loyd's motion for new trial/reconsideration.

3. Loyd failed to preserve error with respect to her arguments regarding an alleged "Disability." To the extent that she did preserve any such error, the record demonstrates that her arguments in this respect do not raise any issue that is subject to appellate review and are not substantively supported by the record.

STATEMENT OF FACTS

On November 18, 2022, an evidentiary panel for the State Bar of Texas District 7 issued a Default Judgment of Active Suspension against Appellant, Annette R. Loyd (the "2022 Judgment"). [App 1]. The 2022 Judgment is the subject of this appeal. As is set forth more fully below, the 2022 Judgment was the **seventh** disciplinary sanction issued against Loyd since 2004.

I. The 2022 Judgment

The 2022 Judgment arose from Loyd's failures to comply with the provisions of one of the above-referenced prior disciplinary judgments, which had been issued against her in 2019.

A. Loyd receives a Fully Probated Suspension in February 2019

On February 14, 2019, an evidentiary panel for the State Bar of Texas District 7 issued a Judgment of Fully Probated Suspension against Loyd (the "2019 Probated Suspension"). [App 3] [Panel CR 297-304]. The 2019 Probated Suspension found that Loyd had neglected her clients' legal matter by not responding to a summary judgment motion, failing to respond to the clients' reasonable requests for information, failing to adequately explain the legal matter, violating a prior disciplinary judgment, and failing to timely respond to the Office of the Chief Disciplinary Counsel (the "CDC") regarding the underlying complaint. [Id.].

Loyd refers to the 2019 Probated Suspension as a "Default Judgment of Fully Probated Suspension." [Apt. Br. 5]. That is inaccurate, as that judgment indicates: (1) Loyd "appeared in person and announced ready"; (2) that the evidentiary panel considered all "pleadings, evidence, stipulations, and argument," in determining she had committed professional misconduct; and (3) the panel "heard and considered additional evidence" and "argument" in determining the sanction issued. [App. 3]. Further, that judgment does not indicate in any way that Loyd defaulted. [Id.].

The 2019 Probated Suspension placed Loyd on a fully probated suspension for two (2) years, and required her to (amongst other things): (1) pay restitution in the amount of $1,000.00 to Vernon Bauer, on or before January 1, 2020; (2) pay reasonable and necessary attorney's fees in the amount of $3,300.00 to the State Bar of Texas on or before January 1, 2020; (3) pay direct expenses in the amount of $700.00 to the State Bar of Texas on or before January 1, 2020; and (4) complete six additional hours of Continuing Legal Education ("CLE") in the area of Law Office Management, on or before January 1, 2020. [Id.]. Loyd was also required to verify her completion of that additional CLE with the CDC. [Id.].

Beginning in April of 2020, the CDC attempted to communicate with Loyd regarding her failure to comply with the above-referenced requirements of her 2019 Probated Suspension. On April 8, 2020, the CDC e-mailed Loyd, notifying her of her failure to meet the requirements of the suspension and requesting compliance.

[Panel RR Vol. 2, Ex. 6a, pdf p. 85]. On January 25, 2021, the CDC again e-mailed Loyd, notifying her she was out of compliance. [Panel RR Vol. 2, Ex. 6b, pdf pp. 86-87]. On February 2, 2021, the CDC sent Loyd basically the same correspondence, this time by both certified and regular mail.[2] [Panel RR Vol. 2, Ex. 6c, pdf pp. 88-94]. Per the terms of the 2019 Probated Suspension, the period of Loyd's probated suspension ended on February 3, 2021. [App. 3]. On February 10, 2021, the CDC e-mailed Loyd one last time, again notifying her she was out of compliance and warning that such non-compliance could result in additional discipline if it were not addressed. [Panel RR Vol. 2, Ex. 6d, pdf pp. 95-100].

B. The State Bar initiates a complaint against Loyd for her failures to comply with the 2019 Probated Suspension, and the Commission files a disciplinary proceeding against her

On December 10, 2021, the CDC e-mailed Loyd a Just Cause and Election letter regarding a State Bar-initiated complaint predicated on her failures to comply with the 2019 Probated Suspension (the "2022 Complaint").[3] [Panel CR 7-10]. The 2022 Complaint advised Loyd that she had twenty days from receipt thereof to elect to proceed before an evidentiary panel or in District Court. [Id.]. On January 12,

---

[2] The CDC attempted delivery of this correspondence at Loyd's work address and a residential address. U.S. Postal Service online tracking indicated the correspondence to the work address was delivered, but the correspondence to the residential address was returned, unclaimed. [Panel RR Vol. 2, Ex. 6c, pdf pp. 88-94].

[3] By its terms, the 2019 Probated Suspension expressly authorized same, "It is further ORDERED that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Profession Conduct and Texas Rules of Disciplinary Procedure." [App. 3].

2022, the CDC e-mailed, and also sent by certified and regular mail, a second Just Cause and Election letter. [Panel CR 12-16]. A returned green card indicates the second Just Cause notice was received by "A. Loyd" on January 18, 2022. [Panel CR 15].

On February 15, 2022, the CDC sent a request for appointment of an evidentiary panel to the Chairperson of the District 7 Grievance Committee, to hear the case on the 2022 Complaint; Loyd was copied by email. [Panel CR 18-21]. On March 10, 2022, the CDC filed its Evidentiary Petition and Request for Disclosure based on the 2022 Complaint (the "Evidentiary Petition"). [App 4] [Panel CR 33-36]. That same day the CDC sent Loyd copies, by email and Certified mail, of: (1) a letter regarding assignment of the evidentiary panel and the Order Assigning Evidentiary Panel; and (2) a letter regarding the Evidentiary Petition filed with the Panel by the Commission, along with the petition. [Panel CR 26-31 and 38-45, respectively]. On June 9, 2022, Loyd was personally served with the CDC's above-referenced March 10th transmittal letter along with the Evidentiary Petition. [Panel CR 48-49].

The Evidentiary Petition alleged Loyd had failed to comply with the requirements of the 2019 Probated Suspension by failing to: (1) pay restitution in the amount of $1,000.00 to Vernon Bauer, on or before January 1, 2020; (2) pay attorney's fees in the amount of $3,300.00 to the State Bar on or before January 1,

2020; (3) pay direct expenses in the amount of $700.00 to the State Bar on or before January 1, 2020; and (4) complete six additional hours of CLE in the area of Law Office Management, in addition to complying with the State Bar's MCLE requirements, on or before January 1, 2020, and/or to verify her completion of that additional CLE. [App 4]. The Evidentiary Petition further alleged Loyd had failed to timely respond to the 2022 Complaint or to timely assert a privilege or other legal ground for her failure to do so. [Id.].

C. Loyd's default and the sanction hearing

On August 1, 2022, the CDC e-mailed Loyd a letter notifying her of a change in the makeup of the evidentiary panel. [Panel CR 50-52]. And on September 14, 2022, the CDC sent Loyd copies, by email and certified mail, of the Commission's Motion for Default Judgment, and Notice of Default Hearing set for November 2, 2022, at 1:30 P.M., via Zoom. [Panel CR 75-97]. The green card for that certified mail indicates it was signed for as received by someone at Loyd's business address, though it does not indicate the date of receipt. [Panel CR 78].

Sometime at or after 11:57 A.M., on November 2, 2022, attorney Francisco Hernandez ("Hernandez"), emailed to the CDC Loyd's *pro se* answer to the Evidentiary Petition.[4] [Panel CR 99-100 & 102] [Panel RR Vol. 1, pp. 10-14]. At or after approximately 1:14 P.M., on November 2, 2022, Hernandez filed a Motion for

[4] The Answer was signed by Loyd, *pro se*, but was emailed to the CDC by Hernandez.

Continuance on Loyd's behalf. [Panel CR 104-107 & 109-111]. Loyd then personally appeared at the Zoom hearing, with Hernandez as counsel, and after hearing argument the Chair of the evidentiary panel denied Loyd's motion for continuance. [Panel RR Vol. 1, pp. 10-18].

The panel ultimately found Loyd in default as her Answer was not filed until the morning of the default hearing, well after her deadline of July 5, 2022, thus establishing Loyd's Professional Misconduct as alleged in the Commission's Evidentiary Petition. [Panel RR Vol. 1, pp. 18-31]. The panel then heard additional arguments and evidence, including from Loyd, as to the appropriate disciplinary sanction. [Panel RR Vol. 1, pp. 31-77].

In this regard, the Commission presented evidence of Loyd's extensive disciplinary history. [Panel RR Vol. 1, pp. 35-44]; [App 5] [Panel RR Vol. 2, Ex. 6]. Loyd's prior disciplinary history includes:

1) *Default Judgment of Fully Probated Suspension (1 yr.)*; a default judgment issued on 8/17/04, in which Loyd wholly failed to appear; Complainant – former client; violations of TDRPC 1.01(b)(1) (neglecting legal matter entrusted to lawyer), 1.03(a) (failure to communicate with client), and 8.04(a)(8) (failure to timely respond to a disciplinary complaint). [App 5, pdf pp. 37-42].

2) *Default Judgment of Partially Probated Suspension (37 mos., 1 mo. active)*; a default judgment issued on 3/23/11, in which Loyd wholly failed to appear; Complainant – former client; violations of TDRPC 1.01(b)(2) (frequently failing to carry out obligations to client), 1.03(a) (failure to communicate with client), and 8.04(a)(8) (failure to timely respond to a disciplinary complaint). [App 5, pdf pp. 23-30].

3) *Judgment Revoking Probation and Actively Suspending Respondent from the Practice of Law (revoking probation from (2), above, 36 mos. active)*; a judgment issued on 7/6/11, in which Loyd appeared *pro se*; violations of terms of disciplinary judgment from (2), above. [App 5, pdf pp. 18-22].

4) *Agreed Judgment of Active Suspension (1 yr.)*[5]; Loyd appeared in this case and reached an agreement with the Commission resulting in an **agreed** judgment issued on 9/13/12; violations of TDRPC 8.04(a)(1) (violating the disciplinary rules), 8.04(a)(7) (violating a disciplinary judgment), 8.04(a)(8) (failure to timely respond to a disciplinary complaint), and 8.04(a)(11) (improperly engaging in the practice of law when inactive). [App 5, pdf pp. 31-36].

5) *Default Judgment of Fully Probated Suspension (1 yr.)*; a default judgment issued on 1/16/19, in which Loyd appeared *pro se* and **filed an untimely answer on the date of the default hearing**, leading to a default as to Professional Misconduct; Complainant – former client; violations of TDRPC 1.01(b)(1) (neglecting legal matter entrusted to lawyer), 1.03(a) (failure to communicate with client), and 8.04(a)(8) (failure to timely respond to a disciplinary complaint). [App 5, pdf pp. 11-17].

6) The 2019 Probated Suspension; *Judgment of Fully Probated Suspension (2 yrs.)*; a judgment issued on 2/14/19, in which Loyd appeared *pro se*; Complainant – former client; violations of TDRPC 1.01(b)(1) (neglecting legal matter entrusted to lawyer), 1.03(a) (failure to communicate with client), 1.03(b) (failure to explain legal matter to client), 8.04(a)(7) (violating a disciplinary judgment), and 8.04(a)(8) (failure to timely respond to a disciplinary complaint). [App 5, pdf pp. 3-10].

For her part, in the underlying sanction hearing Loyd offered only her own testimony that: (1) she had, in fact, made efforts to comply with the 2019 Probated Suspension; and (2) she has "anxiety issues [that] make it somewhat difficult…" for her to deal with disciplinary matters when she "believed she was in compliance,"

[5] By its terms, this suspension ran concurrently with the active suspension arising from the prior judgment, described in (3), above, issued on 7/6/11.

and she “struggle[s]” with “attempting to focus” on disciplinary proceedings. [Panel RR Vol. 1, pp. 56-60 & 63-66].

At the completion of the sanction hearing, the panel assessed a three-year active suspension, keeping Loyd’s obligation to pay the previously ordered $1,000.00 plus interest in restitution to Vernon Bauer, $3,300.00 plus interest to the State Bar for the prior attorney’s fees award and $700.00 plus interest to the State Bar for the prior costs award (in connection with the 2019 Probated Suspension), and adding a requirement that Loyd pay a further $1,700.00 to the State Bar for attorney’s fees and costs incurred in the instant case. [Panel RR Vol. 1, pp. 77-79]. Accordingly, on November 4, 2022, the evidentiary panel issued its Order on Petitioner’s Motion for Default Judgment. [Panel CR 130-131]. And, on November 18, 2022, the panel issued its Default Judgment of Active Suspension. [App 1].

II. Loyd’s Motion for New Trial and appeal to BODA

On November 22, 2022, Loyd’s new attorney, Gaines West (“West”), made an appearance in the underlying matter. [Panel CR 173-74]. On December 6, 2022, West filed Loyd’s Notice of Appeal to BODA. [Panel CR 212]. On December 7, 2022, Loyd filed an Emergency Petition to Stay Default Judgment of Active Suspension in the panel proceeding. [Panel CR 214-31]. Amongst other things, Loyd’s request to stay the judgment included her attached affidavit in which she stated that her “continued practice of law does not pose a continuing threat to the

welfare of [her] clients or the public," and that since 2019 she has "continued practicing law without issue." [Panel CR 219-20]. Loyd's request to stay the judgment was denied after a hearing held on January 4, 2023. [Panel CR 876]. Loyd then requested findings of fact and conclusions of law regarding only the evidentiary panel's order denying her request for stay, and the panel issued its Findings of Fact and Conclusions of Law as to that order on January 20, 2023. [Panel CR 888 and Supp Panel CR 104-06, respectively].

On December 16, 2022, Loyd filed a Motion to Set Aside Default Judgment and for New Trial or, in the Alternative, for Reconsideration in the panel proceeding. [Panel CR 538-673]. In her motion for new trial, Loyd argued: (1) her failure to timely answer the Evidentiary Petition was due to an accident or mistake; (2) she had in fact complied with the provisions of the 2019 Probated Suspension; and (3) a new trial would not result in an undue delay or other injury to the Commission. [Id.]. The Commission filed its response contesting the assertions in Loyd's motion for new trial on December 22, 2022. [Panel CR 814-842].

On February 1, 2023, the evidentiary panel held a hearing on Loyd's motion for a new trial. [Panel RR Vol. 3]. In support of her motion for new trial Loyd offered the following:

1) <u>Testimony of Harry F. Klinefelter, III, PhD</u>: Dr. Klinefelter testified that he is a psychologist who had been treating Loyd since February 23, 2021, pursuant to the terms of a disciplinary judgment. [Panel RR Vol. 3, p. 11]. He further testified, in pertinent part, that: (i) he had been treating Loyd for anxiety and

depression issues; (ii) he had seen improvement in Loyd while he was treating her; and (iii) Loyd's issues did not interfere with her ability to help others, including her clients, nor had it affected her abilities to participate in the disciplinary process – at least, "Not that I knew of until this came up." [Panel RR Vol. 3, pp. 11-14].

2) Loyd's Testimony: Loyd testified that she filed an answer to the Evidentiary Petition on the day of the evidentiary panel's November 2, 2022, default and sanction hearing. [Panel RR Vol. 3, p. 16]. She also testified she hired Hernandez to assist her with the answer and that hearing. [Id.]. Additionally, Loyd testified in pertinent part, that: (i) she believed the late filing of her answer would prevent the default judgment against her; (ii) she timely complied with the provisions of the 2019 Probated Suspension; (iii) she did not have an opportunity at the November 2, 2022, hearing to explain that she had made payments in compliance with the 2019 Probated Suspension; (iv) her "struggles with anxiety and depression make it difficult" to defend herself; and (v) she had disciplinary defaults before, "but this particular issue on timing has not come up." [Panel RR Vol. 3, pp. 16-26].

3) Documentary Exhibits: (i) copies of a letter, a cashier's check, two money orders, and an envelope, Loyd alleged she sent to the CDC's compliance monitor in March 2019; and (ii) copies of a letter and three checks she sent to the CDC in December 2022, per the evidentiary panel's Default Judgment of Active Suspension. [Panel RR Vol. 3, Exs. 1 & 2, respectively].

Loyd did not present any medical documents and/or records regarding any alleged mental health issues. At the conclusion of the hearing on Loyd's motion for new trial, the evidentiary panel denied her motion in its entirety. [Panel RR Vol. 3, pp. 43-45] [Supp Panel CR 123]. Loyd's appeal to BODA followed. And, after

briefing and oral argument, BODA affirmed the evidentiary panel's judgment without issuing a written opinion.[6] [App 2]. Loyd then appealed to this Court.

---

[6] Board member, the Honorable Jason Boatright, dissented from BODA's affirmance by written opinion and was joined by Board member, the Honorable Courtney Schmitz (the "BODA Dissent"). [App 2].

SUMMARY OF THE ARGUMENT

This case arises from Loyd's failures to comply with terms of the 2019 Probated Suspension and her failure to timely respond to the 2022 Complaint regarding the issues with her compliance with the 2019 Probated Suspension. Loyd then failed to timely answer the Commission's Evidentiary Petition related to those matters, and an evidentiary panel of the District 7 Grievance Committee correctly found her in default as to the Commission's charges – finding that Loyd had committed Professional Misconduct by violating TDRPC's 8.04(a)(7) & (8). The panel then determined after the ensuing disciplinary sanctions hearing that the appropriate sanction for Loyd's Professional Misconduct was a three year active suspension and issued its judgment in accordance with those findings. BODA affirmed the panel's Default Judgment of Active Suspension without written opinion but was accompanied by a written dissent joined by two board members.

Loyd argues that the panel abused its discretion by issuing a sanction that was excessive and denying her motion for reconsideration as to that sanction. Loyd's arguments in this respect ignore and/or misconstrue the evidence presented both in the sanctions hearing and in the hearing on her motion for new trial/reconsideration. The Commission presented ample evidence of the duties Loyd violated, the nature of those violations, and her extensive prior disciplinary history – including instances of similar failures to abide by disciplinary judgments and to respond to disciplinary

inquiries. The record demonstrates that the panel's decisions as to both the appropriate disciplinary sanction and Loyd's motion for reconsideration were supported by sufficient evidence and were within the panel's discretion.

Additionally, Loyd argued for the first time on appeal to BODA, and continues to argue in this appeal, that the CDC, the Commission, the panel, and BODA, did not appropriately consider an alleged "Disability." Loyd argues that the panel should have referred her case to BODA for potential Disability proceedings pursuant to the TRDPs. However, Loyd failed to preserve any error related to this new argument, and the record does not demonstrate any "Disability" on her part within the meaning of the TRDPs. The panel acted as it was required to act under the TRDPs when it found Loyd in default as to Professional Misconduct and also acted within its discretion both in assessing an active suspension for that Professional Misconduct and in denying Loyd's motion for new trial/reconsideration. BODA correctly affirmed the panel's judgment, and this Court should affirm.

ARGUMENT

I. Preliminary Statement

Loyd abandons many of the issues she raised in her initial appeal of the evidentiary panel's decision to BODA. Most notably, she does away with her arguments that: (1) the panel abused its discretion by denying her motion for new trial; (2) the panel abused its discretion by denying her motion for continuance; and (3) there was insufficient evidence to support the default judgment against her as to Professional Misconduct. *Cf.* Apt.'s Br., with Appellant's Brief on the Merits in the BODA appeal. [BODA CR 11-36]. Loyd's discarding of certain of her arguments is understandable in light of the acknowledgment by the BODA Dissent that she failed to demonstrate her entitlement to a new trial. [App 2]. For the additional reasons set forth below, Loyd's further reliance on the rationale expressed in the BODA Dissent is misplaced.

II. The evidentiary panel acted within its discretion in assessing a 3-year Active Suspension.

First, Loyd argues the panel abused its discretion by imposing a three-year active suspension as a result of her violations of TDRPCs 8.04(a)(7) and (8). [Apt. Br. 11-20]. BODA correctly affirmed the evidentiary panel's sanction as the record provides ample support for same.

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, 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. *Iliff v. Iliff*, 339 S.W.3d 74, 83 (Tex. 2011) (citing *Montgomery Indep. Sch. Dist. v. Davis*, 34 S.W.3d 559, 562 (Tex. 2000)).

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; *Bishop v. Comm'n for Lawyer Discipline*, No. 01-18-01115-CV, 2020 WL 4983246, at *18 (Tex.App. – Houston [1st Dist.] Aug. 25, 2020, no pet.) (mem. op.). 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 v. State Bar of Texas*, 982 S.W.2d 939, 944 (Tex.App. – Houston [14th Dist.] 2002, no pet.).

The TRDPs do not mandate consideration by an evidentiary panel or district court of *any* of the factors described in TRDP Part XV when determining an

appropriate disciplinary sanction in a particular case. 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 v. Comm'n for Lawyer Discipline*, 5 S.W.3d 241, 251-52 (Tex.App. – Houston [14th Dist.] 1999, pet. denied). While such presumed findings may be challenged on appeal when a reporter's record is filed, this Court only has jurisdiction over legal-sufficiency challenges of such findings. *Id*. 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)).

A. Guidelines for imposing sanctions in attorney discipline proceedings

For attorney discipline cases involving grievances filed prior to June 1, 2018, former TRDP 2.18 set forth the factors that an evidentiary panel was *required* to

consider when determining appropriate disciplinary sanctions.[7] *See* former TEX. RULES DISCIPLINARY P. R. 2.18; *Love*, 982 S.W.2d at 944; *Kilpatrick*, 874 S.W.2d at 659. But even under those rules, a court was not required to find that *every* such factor was satisfied before imposing a sanction. *Thawer v. Comm'n for Lawyer Discipline*, 523 S.W.3d 177, 188 (Tex.App. – Dallas 2017, no pet.) (citing *Olsen v. Comm'n for Lawyer Discipline*, 347 S.W.3d 876, 882-83 (Tex.App. – Dallas 2011, pet. denied)).

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.[8] 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

---

[7] Former TRDP 3.10 was an analogous sanctions rule for cases in which the respondent attorney elected to proceed before a district court.

[8] 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.

> 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 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. [Id.]; *see also*, 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, TRDPs 15.07(1-4) and 15.08(1-4) set forth guidelines for determining appropriate sanctions in circumstances involving an attorney failing to respond to a disciplinary agency, and circumstances involving an attorney violating the terms of a prior disciplinary order, respectively, that span the gamut from private reprimand to disbarment. TEX. RULES DISCIPLINARY P. R. 15.07(1-4) and 15.08(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, including a respondent's prior disciplinary record. TEX. RULES DISCIPLINARY P. R. 15.09(A-C).

B. The record supports the panel's sanction against Loyd as to either of her violations of TDRPC 8.04(a)(7) or (8), or both

Regarding the disciplinary sanction the evidentiary panel chose to impose, the panel explained, "[h]aving found [Loyd] has committed Professional Misconduct, [we] heard and considered additional evidence regarding the appropriate sanction to be imposed against [Loyd]. After hearing all evidence and argument, the Evidentiary Panel finds that the proper discipline of [Loyd] for each act of Professional Misconduct is an Active Suspension." [App 1]. The evidentiary panel's judgment clearly and concisely sets forth the factual allegations made in the Commission's Evidentiary Petition, which were taken as true due to Loyd's default. [Id.]; TEX. RULES DISCIPLINARY P. R. 2.17(C). Those facts included the several ways in which Loyd failed to comply with the 2019 Probated Suspension, and her failure to provide a response to the 2022 Complaint regarding those failures to comply with the 2019 Probated Suspension, which led to the panel's determination Loyd had violated TDRPCs 8.04(a)(7) & (8). [Id.]. Further, the Commission presented additional evidence as to Loyd's failures to comply with the 2019 Probated Suspension during the sanction hearing, through the testimony of the CDC's statewide compliance monitor. [Panel RR Vol. 1, pp. 31-47 & Panel RR Vol. 2, Exs. 6a-6d].

Allowing a lawyer to fail to respond to disciplinary proceedings "without any serious consequence to the attorney could seriously damage the credibility of the profession and its ability to police itself," and such a failure to respond warrants "serious discipline to maintain respect for the profession." *Rangel v. State Bar of Texas*, 898 S.W.2d 1, 3-4 (Tex.App. – San Antonio 1995, no writ); see also, *Molina*, 2006 WL 6242393, at *5. Likewise, a lawyer's violation of her duty to comply with a prior disciplinary judgment could potentially merit significant discipline. The panel could reasonably have considered the duties Loyd violated, and the damage those violations cause to the credibility of the profession, in determining that an active suspension was the appropriate disciplinary sanction. TEX. RULES DISCIPLINARY P. R. 15.02(a), (b) and/or (c); *Bennett v. Comm'n for Lawyer Discipline*, No. 14-17-00521-CV, 2018 WL 6722344, at *2-3 (Tex.App. – Houston [14th Dist.] Dec. 21, 2018, pet. denied) (mem. op.).

Further, as noted herein, the panel was also presented evidence of Loyd's extensive disciplinary history, which includes persistent findings of failures to do work as hired by her clients, to communicate with her clients, to respond to disciplinary complaints, to comply with the terms of disciplinary judgments, and of additional prior defaults in disciplinary proceedings. See *Statement of Facts, I(C), supra*. The panel also could reasonably have considered Loyd's prior disciplinary history, and the context of that disciplinary history, as evidence of aggravating

circumstances in several respects. TEX. RULES DISCIPLINARY P. R. 15.02(d) and 15.09(A), (B)(1) & (2)(a), (c), (d), and/or (g). For example, contrary to Loyd's conclusory assertion that the Commission did not allege her conduct in this instance was "the same or similar misconduct for which she has been previously reprimanded," her disciplinary history offered by the Commission at trial demonstrated: (1) five instances of prior discipline based, at least in part, on Loyd's failure to respond to disciplinary inquiries; and (2) three instances of prior discipline based, at least in part, on Loyd's violations of prior disciplinary judgments. [Apt. Br. 16]; [App 5].

Loyd also suggests that had the panel considered any mitigating circumstances she may have presented, such circumstances would have justified "a reduction in the degree of discipline to be imposed." [Apt. Br. 14-17]. But again, the record is clear that the panel considered "all" arguments and evidence presented when arriving at its decision as to the appropriate sanction. [App 1]. Further, the record does not support Loyd's contention in this regard, nor does it demonstrate the panel failed to consider any such circumstances. Here, the evidence presented could have arguably supported a higher sanction than the three-year Active Suspension at issue. [App 1].

Loyd also asserts that the panel's sanction was excessive as to her violation of a prior disciplinary judgment as she "presented evidence demonstrating that she

had made" a payment to the Bar, thereby addressing at least one of her instances of non-compliance with the 2019 Probated Suspension. [Apt. Br. 12-13]. Loyd's assertion in this respect potentially addresses only <u>one</u> of her failures to comply with the 2019 Probated Suspension. Further, at most, the testimony and documentary evidence offered by Loyd as to this issue, both at the sanction hearing and for her motion for new trial, reflect only that she attempted to *send* payment to the Bar in March of 2019. [Panel CR 538-53]; [Panel RR Vol. 1, pp. 56-57 & 59-60]; [Panel RR Vol. 2, pp. 18-22 & 26-30]. And that, in the face of the facts alleged in the Commission's Evidentiary Petition (again, taken as true as a result of Loyd's default) that Loyd failed to timely make the required payments, as well as the testimony of the CDC's statewide compliance monitor that Loyd failed to timely make the required payments. [Panel RR Vol. 1, pp. 35-47]; [Panel RR Vol. 2, pp. 33-40]. Thus, the record does not support Loyd's assertions, even in this limited respect.

C. Loyd's reliance on *Furr's Supermarkets, Inc. v. Bethune* is misplaced

Finally, Loyd predicates much of her argument that the panel's sanction demonstrates an abuse of discretion, as did the BODA Dissent, on the "application" of the "criteria from *Bethune*" to Loyd's disciplinary case. [Apt. Br. 18-20]; [App 2; BODA CR pp. 594-96]. Loyd cites *Bethune* for the proposition that "tribunals abuse their discretion when they act in an unreasonable or arbitrary manner or when they act without reference to guiding principles." [Apt. Br. 18 (citing *Furr's*

Supermarkets, Inc. v. Bethune, 53 S.W.3d 375, 379 (Tex. 2001)]. As noted herein, this description of the abuse of discretion standard is axiomatic. But to be clear, the portion of *Bethune* that Loyd cites does not come from the majority's authoritative decision in that case, but rather from the dissent. *Bethune*, 53 S.W.3d at 379 (in dissent).

In point of fact, a full reading of *Bethune* reveals that the facts of that case do not lend themselves well to a direct application in Loyd's disciplinary case, nor does it seem likely that the dissent in *Bethune* (relied on by Loyd and the BODA Dissent) would be supportive of her position in this case. *Bethune* involved a trial court's decision to assess each party's costs to that party, as opposed to assessing them against the losing party pursuant to Tex. R. Civ. P. 131. The trial court made its assessment pursuant to the "good cause" exception contained in Tex. R. Civ. P. 141. The El Paso Court of Appeals affirmed the trial court's judgment. On appeal to this Court, the majority reversed, finding an abuse of discretion.

The *Bethune* majority noted that Tex. R. Civ. P. 141 had two requirements – "that there be good cause and that it be stated on the record." *Bethune*, 53 S.W.3d at 376. The trial court had made its assessment (evident from the reporter's record on the trial court's hearing to determine assessment of costs) "to avoid its causing Bethune emotional harm." *Id.*, at 377. Ultimately, the *Bethune* majority determined that the trial court had abused its discretion because, as a matter of law, neither

potential emotional harm to a litigant, nor that litigant's inability to pay court costs (which was the only other potential basis for the trial court's decision apparent from that record) could constitute "good cause" for assessing costs against someone other than the losing party. *Id.*, at 377-78.

The dissent in *Bethune* then applied the abuse of discretion standard in support of *its* argument that the majority had overstepped by reversing the trial court's judgment. *Id.*, at 378-82 (in dissent). That is, the *Bethune* dissent noted there was some evidence in the record that supported the trial court's decision, and as a result, the Court could not substitute its judgment for the trial court's, "even if it would have reached a contrary conclusion." *Id.*, at 380 (in dissent).

Unlike the case in *Bethune*, where Tex. R. Civ. P. 141 required the trial court to state on the record its "good cause" for varying the assessment of costs, in Loyd's case there is **no** requirement that the panel make any specific findings on the record with regard to its sanction. Moreover, unless the Court were to decide that evidence demonstrating that: (1) Loyd failed to comply with a prior disciplinary judgment; (2) she failed to respond to a disciplinary inquiry regarding such a failure; and (3) she has extensive disciplinary history, including similar instances of non-compliance with disciplinary judgments and failures to respond to disciplinary inquiries, is ***as a matter of law***, insufficient to support the active suspension imposed by the panel,

then it is difficult to see how *Bethune* has any direct application to Loyd's disciplinary proceeding.

In short, the panel's sanction of a three-year Active Suspension is supported by ample evidence demonstrating Loyd's failures to timely comply with the 2019 Probated Suspension and her failure to respond to the 2022 Complaint, especially in light of the pattern of misconduct and disregard for the import of the attorney disciplinary process she has exhibited over several years and several disciplinary judgments. The panel acted within its discretion in issuing a three-year Active Suspension, BODA correctly affirmed the panel's decision, and likewise this Court should affirm BODA's judgment in all respects.

III. The evidentiary panel did not abuse its discretion by denying Loyd's motion for new trial/reconsideration

Again, Loyd has eschewed any challenge to the panel's determination that she committed Professional Misconduct and its denial of her motion for new trial in that respect. Instead, with respect to her motion for reconsideration, she also challenged the sanction ultimately issued by the panel and its denial of her request for reconsideration as to that sanction. [Panel CR 543]; [Apt. Br. 20-21]. And, as noted above, the panel held a hearing as to the appropriate disciplinary sanction, in which Loyd appeared and participated by and through counsel, *after* it found her in default as to Professional Misconduct. [Panel RR Vol. 1, pp. 30-79]. In this respect, the

briefing on Loyd's second issue offers virtually no different arguments or authority than what is asserted throughout her first issue. [Apt. Br. 20-21].

At the hearing on Loyd's motion for reconsideration as to the appropriate sanction, the Commission presented additional argument and evidence detailing Loyd's failures to comply with the 2019 Probated Suspension. [Panel RR Vol. 3, pp. 22-32 & 33-40]. This was in addition to: (1) the panel's prior determination that Loyd had violated TDRPC 8.04(a)(7) by failing to comply with the 2019 Probated Suspension, and TDRPC 8.04(a)(8) by failing to respond to the 2022 Complaint; and (2) the argument and evidence the Commission had previously presented as to Loyd's disciplinary history. [App 1]; and [Panel RR Vol. 1, pp. 35-44], [App 5] & [Panel RR Vol. 2, Ex. 6], respectively.

At the conclusion of the hearing on Loyd's motion for reconsideration, the panel chair explained the panel's decision:

> "The panel has deliberated and considered the respondent's motion to set aside default judgment and for a new trial or in the – in the alternative for reconsideration. After consideration of the petition, the response that was filed to the respondent's motion to set aside the default judgment, after hearing the plea – reviewing *the pleadings* and hearing *all the evidence and arguments of counsel*, the evidentiary panel is of the opinion that Respondent's motion to set aside default judgment for new trial or in the alternative for reconsideration should be and is hereby denied."
> --[Panel RR Vol. 3, pp. 43-44] (emphasis added).

Similarly, the panel's written order denying Loyd's motion for reconsideration reflected the panel's consideration of "[R]espondent's petition, *Petitioner's*

Response to Respondent's Motion to Set Aside Default Judgment and for New Trial or, in the alternative, for Reconsideration filed in the above styled and numbered cause, the pleadings and all evidence and arguments submitted," in reaching its decision. [Panel Supp CR 123] (underlined emphasis added). Taking into consideration the nature of Loyd's misconduct, the bad light in which such misconduct cast the legal profession, and Loyd's prior professional misconduct, it is clear that the panel did not abuse its discretion in imposing an active suspension. See *Love*, 982 S.W.2d at 945.

Loyd also argues that "Any tribunal with an introductory understanding of equity should know that an individual should be afforded at least one opportunity to argue their case on the merits before they are deprived of their ability to make a living for three years." [Apt. Br. 21]. That is, Loyd essentially argues that the panel's default against her as to Professional Misconduct, which is **mandated** by TRDP 2.17(C), was somehow improper and/or inequitable. However, Loyd offers no authority in support of this argument.

IV. Loyd's "Disability" arguments

A. "Disability" in the TRDPs

In the context of disciplinary proceedings, Disability means "any physical, mental, or emotional condition that, with or without a substantive rule violation, results in the attorney's **inability** to practice law, provide client services, complete

contracts of employment, or otherwise carry out his or her professional responsibilities to clients, courts, the profession, or the public." TEX. RULES DISCIPLINARY P. R. 1.06(I) (emphasis added). The TRDPs address potential attorney Disabilities in several ways.

In the first instance, potential attorney Disability is directly addressed by the TRDPs when a Complaint has reached the Just Cause stage of the administrative/investigatory process:

> In any instance in which the Chief Disciplinary Counsel reasonably believes based upon investigation of the Complaint that the Respondent is suffering from a Disability to such an extent that either (a) the Respondent's continued practice of law poses a substantial threat of irreparable harm to client or prospective clients; or (b) the Respondent is so impaired as to be **unable** to meaningfully participate in the preparation of a defense, the Chief Disciplinary Counsel shall seek and obtain client authority to refer the Complaint to the Board of Disciplinary Appeals pursuant to Part XII of these rules.
> -- TEX. RULES DISCIPLINARY P. R. 2.14(C) (emphasis added)

The CDC's discretionary, administrative determination to refer a potential attorney Disability matter pursuant to TRDP 2.14(C) and Part XII is not subject to appellate review. TEX. RULES DISCIPLINARY P. R. 5.03 ("On disciplinary and disability matters, the Chief Disciplinary Counsel is accountable only to the Commission.")

Should the CDC reasonably believe during its investigation that a respondent attorney suffers from a Disability as outlined in TRDP 2.14(C), she must request authorization from the Commission to proceed with the Disability Suspension procedures provided in Part XII. TEX. RULES DISCIPLINARY P. R. 2.14(C) & 12.02.

In such a case, the CDC presents this information to the Commission, for *its* determination whether such information indicates the respondent attorney suffers from a "Disability" such that it should authorize the institution of Disability Suspension proceedings. TEX. RULES DISCIPLINARY P. R. 2.14(C), 4.06(I) & 12.02.

In this respect, a simple search of BODA's online database utilizing its case search tool reveals several examples of the entry of Indefinite Disability Suspensions, where such were appropriate. *See* https://www.txboda.org/search-cases. Such cases demonstrate that when the Commission is presented with such information it routinely seeks an agreement with the respondent attorney to enter an agreed Disability Suspension, attaching the documentation needed to satisfy the requirements for same under Part XII. The vast majority of such cases are **agreed** between the Commission and the respondent attorney.

If the CDC and/or the Commission, do not possess evidence showing a respondent attorney has a Disability within the meaning of the TRDPs and/or the Commission decides in its discretion to not pursue potential Disability through Part XII's Disability Suspension proceedings, the TRDPs also allow an evidentiary panel, after an Evidentiary Hearing, to find that a respondent suffers from a Disability and forward the matter to BODA for proceedings in accordance with Part XII. TEX. RULES DISCIPLINARY P. R. 2.17(P)(2).

BODA does not have any *independent* authority to initiate and/or refer matters to a district disability committee for a determination as to whether a respondent attorney has a Disability. Rather, BODA's express authority in this respect is to forward information it receives, either from the Commission or an evidentiary panel, indicating a potential Disability, to a district disability committee for a Disability determination. TEX. RULES DISCIPLINARY P. R. 2.17(P)(2) & 12.02. Such procedure requires the CDC, once authorized by the Commission, to forward "the Complaint and any other documents or statements which support a finding that the attorney is suffering from a Disability," to BODA. TEX. RULES DISCIPLINARY P. R. 12.02. BODA's only other roles in the Indefinite Disability Suspension process are to: (1) enter an order of suspension if a district disability committee certifies a finding of Disability; and (2) preside over a reinstatement proceeding if a respondent attorney chooses to file same before BODA (a petition for reinstatement may also be filed in district court). TEX. RULES DISCIPLINARY P. R. 7.08(I), 12.03, 12.04 & 12.06.

B. Loyd has not preserved error on her claim that her "Disability" prevented the evidentiary panel from issuing a sanction against her, and the record does not support Loyd's arguments that the Commission, the evidentiary panel, or BODA failed to appropriately consider "Disability"

1. Loyd did not preserve any error on this issue

Generally, to preserve error for appellate review the record must show that the complaint was timely made to the trial court, with sufficient specificity for the trial

court to rule, and a ruling was obtained from the trial court either expressly or implicitly. TEX. R. APP. P. 33.1(a); *Burbage v. Burbage*, 447 S.W.3d 249, 256 (Tex. 2014). However, the TRAPs also provide that a complaint may be made for the first time on appeal if it arises from a civil nonjury case, regarding the legal or factual "insufficiency of the evidence." TEX. R. APP. P. 33.1(d).

Here, Loyd *is* complaining regarding the legal sufficiency of the panel's sanction decision, by asserting that same was "excessive" given the evidence presented. But that is different than complaining that the panel had no discretion to impose a sanction at all, and instead should have referred Loyd's case to BODA as a potential "Disability" matter. Especially in light of the fact that **at no time prior to filing her appeal** had Loyd ever suggested to the panel (or the Commission or CDC for that matter) that she suffered from a Disability within the meaning of the TRDPs. To wit:

1) Loyd provided no response at all to the 2022 Complaint, which the CDC and/or Commission could have reviewed during the ***investigative phase*** of the disciplinary process. [App 1].

2) Neither Loyd's untimely *pro se* Answer nor her Motion for Continuance, filed the day of the default and sanctions hearing, alleged any "Disability," or any personal, mental, or emotional problems of any kind that rendered her incapable of participating in the disciplinary process. [Panel CR 102].

3) During the sanctions hearing, Loyd did not testify or present any argument asserting a "Disability" within the meaning of the TRDPs. That is, she did not assert an inability to participate in the disciplinary process at all – indeed, she was able to retain counsel for and appeared and provided testimony at the hearing itself. [Panel RR Vol. 1]. Further, as is set forth in more detail below,

Loyd did not present any evidence that she was incapable of dealing with the disciplinary process.

4) Loyd's Emergency Petition to Stay Default Judgment of Active Suspension made no mention of any "Disability," or any personal, mental, or emotional problems of any kind that rendered her incapable of participating in the disciplinary process. [Panel CR 214-17]. And attached to that petition were the affidavits of Loyd, and three colleagues (including Hernandez), ***all attesting to Loyd's competence and diligence in representing her clients, and her ability to continue the practice of law without posing a threat to the welfare of her clients or to the public***. [Panel CR 219-29].

5) Loyd's Motion to Set Aside Default Judgment and for New Trial or, in the Alternative, for Reconsideration made no mention of any "Disability," or any personal, mental, or emotional problems of any kind that rendered her incapable of participating in the disciplinary process. [Panel CR 538-44].

6) During the hearing on her motion for new trial, as set forth in more detail below, Loyd again did not present evidence or argument asserting an inability to participate in the disciplinary process at all. [Panel RR Vol. 3].

For all of the foregoing reasons, Loyd failed to preserve error as to any issue regarding whether the panel abused its discretion by not referring Loyd's case to BODA as a potential Disability matter.

2. Even if Loyd preserved error as to this issue, the record does not support her arguments

As alluded to above, even if Loyd preserved error on the issue of whether the panel should have referred her case to BODA as a potential Disability matter, the record does not support her arguments. Here is all of the evidence in the record regarding Loyd's alleged "Disability."

1) Testimony from Loyd at the default and sanctions hearing.

Q (from panel Chair): Ms. Loyd, this has been – this has been pending for quite some time. What is the – what took so long for you to respond to this?

A: Yes, part of my original compliance issues was to have psychological counseling, due to anxiety and depression disorders. I'm continuing in that counseling. In part of the compliance, there were reports provided by the – my counselor, throughout the time period of the order. Because I suffer from those two issues, this is a proceeding that's very difficult for me to – very difficult for me to deal with, and I had – I had sought help from Mr. Hernandez and thought this was being taken care of; and due to his trial schedule and travel, I believe that did not happen. But I – I'm prepared to proceed in short order, with only asking for 30 days to obtain banking – banking records regarding that compliance.
-- [Panel RR Vol. 1, p. 17].

Q (from panel member Allen): I have a question. I'd like to know from Ms. Loyd – she mentioned earlier that part of the issue here were some mental health issues she was having, and I'd like to know what help Ms. Loyd is seeking to address those mental health issues, and if that help she's seeking, does she believe it's going to resolve the issues that she's had in the past?

A: May I answer? I'm hearing an echo, so. I have been counseling with Dr. Klinefelter. His first name – nickname is Hap. He is a counselor here in Fort Worth. And initially, when I was directed to seek counseling, through the judgment that was entered in 2019, the diagnosis was depression and anxiety. I have improved on the depression issues and am no longer on that medication, but I am struggling and continue to seek counseling for anxiety issues, similar to the – similar to addressing these types of confrontations; and I have found Dr. Klinefelter to be helpful in allowing me to work through those issues. It – I – without addressing family-related issues, that the anxiety issues are still part of why I seek that counseling.

Q (Allen): And, ma'am, I think you talked earlier about your inability to respond to the request for information that was filed. Can you explain how your mental health issues prevented you from being able to respond, you know, certainly in terms of when this petition – when it was filed by the State Bar and then, subsequently, when the – when you had notice of the default? And I believe that there had been, like, 45 – at least 45 days from the time you were given notice. Can you explain how your issues prevented you from being able to make a response?

…

A: Okay. Mr. Allen, the anxiety issues I have make it somewhat difficult for me to focus on what is required, particularly when – when these confrontations occur; and I have believed I was in compliance. So I had contacted some attorneys to represent me in these last – since I received the information regarding the affidavit, and I struggle, as – I don't know if you can tell or not. I struggle with the – with – again, attempting to focus on these – these proceedings. I am addressing them, as I thought I had addressed in the judgment of compliance, and I had periodically spoken to a Linzy Hill, in Ms. White's office, as well.
-- [Panel RR Vol. 1, pp. 63-66].

Loyd's testimony during the default and sanctions hearing was that she had anxiety and depression issues that made it ***somewhat difficult*** for her to deal with the disciplinary process…<u>not</u> that she was incapable of dealing with that process.

2) Testimony from Dr. Klinefelter at the hearing on Loyd's motion for new trial.

Q (Loyd's Counsel): Dr. Klinefelter, what is your occupation?

A: I'm a psychologist.

Q: And how do you know the respondent in this matter, Ms. Annette Vanicek?[9]

A: She's one of my clients.

Q: Okay. How long have you been treating Ms. Vanicek?

A: Since February 23rd, 2021.
-- [Panel RR Vol. 3, p. 11].

Q: And what are you treating Ms. Vanicek for?

[9] Annette Vanicek is the same person as the Respondent, Annette Loyd.

A: Anxiety and depression.

Q: Can you kind of elaborate on how Ms. Vanicek's anxiety or depression affect her day to day?

A: Well, it's – it's – it's – it's deeper than that in that a lot of people have this issue where they're really good at taking care of other people and they have a hard time taking care of themselves.

Q: And – and you – is that something that you're saying Ms. Vanicek struggles with?

A: Yes.

Q: And that's a product of the anxiety and depression?

A: No. It goes – it goes way back. It goes way back.

Q: Okay. As you've been treating Ms. Vanicek have you seen an improvement?

A: Yes.

Q: Does Ms. Vanicek's anxiety and depression – and if one affects differently than the other, please tell me – affect matters related specifically to her or more outwards to the world?
A: Well, more – more her. I'm – I'm not sure I understand your question.

Q: I think what I'm trying to say is – is – let me reword that. Does Ms. Vanicek – the mental health problems – issues that Ms. Vanicek has, does that affect her personally or in her interactions with others? In confrontations with herself or helping others?

A: No, it doesn't interfere with her helping others. As a matter of fact, she's –

Q: Okay.

A: -- you know, superconscientious about helping others.

Q: In the past have you seen that Ms. Vanicek's anxiety and depression have affected her abilities to participate in the disciplinary process?

A: No.

Q: Do you believe that Ms. Vanicek's anxiety and depression has negatively affected her ability to represent clients?

A: No, not at all. Absolutely not.
-- [Panel RR Vol. 3, pp. 12-13].

Q (Commission Counsel): Mr. Klinefelter, did I understand you correctly when you said that Ms. Vanicek – or Ms. Loyd, the respondent – her anxiety and depression has not hurt her ability to participate in these disciplinary proceedings?

A: Not that I knew of until this came up.
-- [Panel RR Vol. 3, p. 14].

Dr. Klinefelter did not affirmatively testify that Loyd suffered from any "Disability" that rendered her unable to participate in the disciplinary process at all.

3) Testimony from Loyd at the hearing on her motion for new trial.

Q (Loyd's Counsel): Earlier in the hearing we heard from Dr. Klinefelter about some anxiety and depression that you've been dealing with. How has that affected you in this disciplinary process?

A: My struggles with anxiety and depression make it difficult for me to defend myself. I'm – I become hesitant. And I'll say it's almost like a freeze, if you will, when – when it strikes. And I am – I find it very difficult to come forward and – as I would for an ordinary client. But to do that on behalf of myself, that essentially is why I retained Mr. Hernandez and then your firm to try to move through this process.
-- [Panel RR Vol. 3, p. 14].

Loyd's testimony during the hearing on her motion for new trial was only that she had anxiety and depression issues that made it difficult for her to deal with the

disciplinary process. It is important to remember the context of Loyd's motion for new trial hearing. Loyd was not seeking an indefinite disability suspension – rather, she was attempting to obtain a new trial in the face of default. The evidence she presented, such as it was, was offered as evidence of her alleged fulfillment of the first *Craddock* factor, required to demonstrate the right to a new trial after a default judgment. See *Craddock v. Sunshine Bus Lines, Inc.*, 133 S.W.2d 124, 126 (Tex. 1939). That is, Loyd was attempting to demonstrate with that evidence that her failure to timely file an answer was neither intentional nor the result of conscious indifference – **not** that the panel should refer her for potential Disability proceedings.

3) *Ultimately, the evidentiary panel* ***did not have discretion*** *to refer the matter to BODA for a potential "Disability"*

Finally, the panel did not even have discretion to refer Loyd's case to BODA for a potential "Disability" in this matter, given the procedural posture of the case. It is undisputed that Loyd failed to file an answer to the Commission's Evidentiary Petition within the time permitted under the TRDPs. As such, the panel was required to enter an order of default with a finding of Professional Misconduct, and then to conduct a sanctions hearing. TEX. RULES DISCIPLINARY P. R. 2.17(C).

The discretion afforded a panel to refer a potential Disability matter to BODA is not available once Professional Misconduct has been found. TEX. RULES DISCIPLINARY P. R. 2.17(P). Having found Loyd in default and that Professional Misconduct had occurred (as required) the panel was bound to impose the

sanction(s) it ultimately determined were appropriate. TEX. RULES DISCIPLINARY P. R. 2.17(P)(3). And, while the definition of "Sanction" in the TRDPs includes "Indefinite Disability suspension," the only body with the authority to issue such suspensions under the Rules is BODA – and then, only after proceedings under Part XII. TEX. RULES DISCIPLINARY P. R. 12.04.

CONCLUSION

It was only *after* all other efforts to stave off or reverse default and/or reduce or eliminate the corresponding disciplinary sanction against her had failed, that Loyd in her initial appeal to BODA, for the first time argued she should be referred for potential Disability proceedings. And even then, Loyd did not make that argument in her initial brief, which mentioned her alleged mental health issues only in the context of attempting to address the *Craddock* factors. [BODA CR 11-38]. It was not until Loyd later filed her Request for Leave to file Appellant's Supplemental Brief, with the supplemental brief attached (and after the Commission had filed its response brief), that she first argued BODA should refer the matter "to a district disability committee pursuant to Rule 2.17(P)(2)." [BODA CR 315-27].

Of course, as is explained at length above, TRDP 2.17(P)(2) speaks only to the discretion given to evidentiary panels in deciding the matters that come before them, not to any authority given to BODA. In situations such as Loyd's, where the panel has found Professional Misconduct, the option provided by TRDP 2.17(P)(2)

is not available. Notwithstanding the procedural hurdles created by her default, Loyd argues for an entirely new procedure that would authorize a panel (or perhaps BODA) to refer such a matter even after Professional Misconduct has been found. Such a procedure is not available in the TRDPs.

Further, on this record – threadbare as it is with respect to **any** evidence demonstrating Loyd has or had a "Disability" within the meaning of the TRDPs – Loyd (as well as the BODA Dissent) urges the substitution of an appellate tribunal's view of that evidence for that of the panel that actually heard the evidence. Such a result would be contrary to the well-established proposition that a reviewing court should not substitute its judgment for that of the trial court in matters committed to the trial court's discretion, even if it would have reached a different result. *Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992); *Beaumont Bank, N.A., v. Fuller*, 806 S.W.2d 223, 226 (Tex. 1991).

At best, Loyd's arguments demonstrate a fundamental misunderstanding of: (1) what it takes to timely comply with a disciplinary judgment; (2) an attorney's obligation to respond to disciplinary inquiries; (3) the TRDP's procedures related to default; and/or (4) the roles assigned to different entities and the procedures set forth by the TRDPs to address potential issues of attorney disability. At worst, on this record, Loyd's inflammatory charges that the CDC, the Commission, this panel, or

BODA do not take the subject of attorney mental health seriously are unfounded, unhelpful, and inappropriate.

The record demonstrates that Loyd defaulted as to the Commission's 2022 Complaint, and the evidentiary panel was required to find she committed Professional Misconduct, in violation of TDRPCs 8.04(a)(7) & (8). The record also shows that the evidentiary panel's decision as to the appropriate sanction – a three-year active suspension – was supported by ample evidence and within the panel's discretion. The record further demonstrates that BODA correctly affirmed the panel's Default Judgment of Active Suspension as it was well-supported. The Court should affirm BODA's judgment.

PRAYER

Wherefore, premises, arguments, and authorities considered, the Commission prays that the Court affirm the Board of Disciplinary Appeals' judgment affirming the evidentiary panel's Default Judgment of Active Suspension in this matter in all respects.

RESPECTFULLY SUBMITTED,

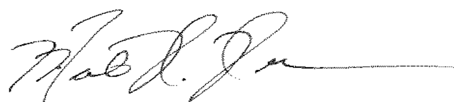
SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION

MICHAEL G. GRAHAM

APPELLATE COUNSEL

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



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

CERTIFICATE OF COMPLIANCE

Pursuant to the Texas Rules of Appellate Procedure, the foregoing brief on the merits contains approximately 10,324 words (total for all sections of brief that are required to be counted), which is less than the total words permitted by the TRAPs. Counsel relies on the word count of the computer program used to prepare this brief.

MICHAEL G. GRAHAM

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, Annette R. Loyd, by and through her attorney of record, Mr. Gaines West, West, Webb, Allbritton & Gentry, P.C., 1515 Emerald Plaza, College Station, Texas 77845, by electronic service through this Court's electronic filing service provider on the 12th day of January, 2024.

MICHAEL G. GRAHAM
APPELLATE COUNSEL
STATE BAR OF TEXAS

No. 23-0684

In The
Supreme Court of Texas

ANNETTE R. LOYD,
APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

On Appeal from the Board of Disciplinary Appeals
of the Supreme Court of Texas
BODA No. 67358

APPENDIX TO BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

APP 1: Default Judgment of Active Suspension, 11/18/22 (Panel CR 151-59)

APP 2: BODA Judgment (BODA CR 583-97)

APP 3: 2019 Probated Suspension (Panel CR 297-304)

APP 4: 2022 Complaint (Panel CR 33-36)

APP 5: Loyd Disciplinary History (Panel RR Vol. 2, Ex. 6)

App. 1

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-1
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, **Petitioner**	§ § § §	
V.	§	**CASE NO. 202103038**
ANNETTE R. LOYD, **Respondent**	§ § § §	

DEFAULT JUDGMENT OF ACTIVE SUSPENSION

Parties and Appearance

On November 2, 2022, came to be heard the above styled and numbered cause. Petitioner, Commission for Lawyer Discipline ("Petitioner"), appeared by and through its attorney of record and announced ready. Respondent, **ANNETTE R. LOYD**, Texas Bar Number **16731100** ("Respondent"), appeared by and through her attorney of record, Francisco Hernandez. Respondent was duly served with the Evidentiary Petition and with notice of this default and sanctions hearing. Respondent filed an untimely Answer on date of said hearing.

Jurisdiction and Venue

The Evidentiary Panel 7-1, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 7, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Default

The Evidentiary Panel finds Respondent was properly served with the Evidentiary Petition and that Respondent failed to timely file a responsive pleading to the Evidentiary Petition as required by Rule 2.17(B) of the Texas Rules of Disciplinary Procedure.

Accordingly, the Evidentiary Panel finds Respondent in default and further finds that all facts alleged in the Evidentiary Petition are deemed true pursuant to Rule 2.17(C) of the Texas Rules of Disciplinary Procedure.

Professional Misconduct

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

Findings of Fact

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

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

2. Respondent resides in and maintains her principal place of practice in Tarrant County, Texas.

3. Annette R. Loyd (Respondent), also known as Annette Vanicek, failed to comply with a Judgment of Fully Probated Suspension that was entered against her on February 14, 2019, in Case Number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd.*

4. Respondent failed to pay restitution of $1,000 to Complainant, Vernon Bauer, on or before January 1, 2020; failed to pay attorney's fees of $3,300 to the State Bar of Texas on or before January 1, 2020; failed to pay direct expenses of $700 to the State Bar of Texas on or before January 1, 2020; and failed to complete six (6) additional hours of Continuing Legal Education (CLE) in Law Office Management on or before January 1, 2020, which were ordered in addition to the Minimum Continuing Legal Education requirements, and failed to verify completion of these additional CLE hours to the State Bar of Texas.

5. Notice and copy of the complaint were sent to Respondent via email on June 7, 2021 and September 14, 2021. Notice and copy of the complaint were also sent to Respondent via certified mail, return receipt requested, on September 14, 2021, and was served on September 16, 2021. Respondent failed to timely

respond to the complaint and failed in good faith to timely assert a privilege or other legal ground for her failure to do so.

6. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney's fees and direct expenses associated with this Disciplinary Proceeding in the amount of One Thousand Seven Hundred Dollars ($1,700.00).

Conclusions of Law

The Evidentiary Panel concludes that, based upon the foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: 8.04(a)(7) and 8.04(a)(8).

Sanction

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

Accordingly, it is **ORDERED**, **ADJUDGED** and **DECREED** that Respondent be shall be actively suspended from the practice of law for a period of Thirty-Six (36) months beginning November 2, 2022 and ending October 31, 2025 with the following terms and conditions:

1. It is further **ORDERED** Respondent shall pay restitution on or before December 7, 2022, to Vernon Bauer in the amount of One Thousand Fifty Dollars ($1,050.00), which includes interest, in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd*. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Vernon Bauer and deliver to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

2. It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand Four

Hundred Sixty-Five Dollars ($3,465.00), which includes interest, in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd*. The payment shall be due and payable on or before January 7, 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 Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

3. It is further **ORDERED** Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Seven Hundred Thirty-Five Dollars ($735.00), which includes interest, in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd*. The payment shall be due and payable on or before February 7, 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 Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

4. It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of One Thousand Seven Hundred Dollars ($1,700.00), in connection with the present case. The payment shall be due and payable on or before February 7, 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 Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

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 herself 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 herself 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 December 9, 2022, Respondent shall notify each of Respondent's current clients and opposing counsel in writing of this suspension.

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

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before December 9, 2022, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein. If it is Respondent's assertion that at the time of suspension she possessed no current clients and/or Respondent was not in possession of any files, papers, monies or other property belonging to clients, Respondent shall submit an affidavit attesting that, at the time of suspension, Respondent had no current clients and did not possess any files, papers monies and other property belonging to clients.

It is further **ORDERED** Respondent shall, on or before December 9, 2022, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before December 9, 2022, an affidavit stating Respondent has

notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court. If it is Respondent's assertion that at the time of suspension she 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 December 9, 2022, Respondent shall surrender her law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) to be forwarded to the Supreme Court of Texas.

Restitution, Attorney's Fees and Expenses

It is further **ORDERED** Respondent shall pay restitution on or before December 7, 2022, to Vernon Bauer in the amount of One Thousand Fifty Dollars ($1,050.00), in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd.* Respondent shall pay the restitution by certified or cashier's check or money order made payable to Vernon Bauer and deliver to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all reasonable and necessary

attorney's fees to the State Bar of Texas in the amount of Three Thousand Four Hundred Sixty-Five Dollars ($3,465.00), in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd.* The payment shall be due and payable on or before January 7, 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 Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Seven Hundred Thirty-Five Dollars ($735.00), in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd.* The payment shall be due and payable on or before February 7, 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 Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of One Thousand Seven Hundred Dollars ($1,700.00), in connection with the present case. The payment shall be due and payable on or before February 7, 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 Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(FF) of

the Texas Rules of Disciplinary Procedure. Any amount not paid shall accrue interest at the maximum legal rate per annum until paid and the State Bar of Texas shall have all writs and other post-judgment remedies against Respondent in order to collect all unpaid amounts.

It is further **ORDERED** that Respondent shall remain actively suspended from the practice of law as set out above until such time as Respondent has completely paid restitution to Vernon Bauer in the amount of One Thousand Fifty Dollars ($1,050.00), in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd.*

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 all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand Four Hundred Sixty-Five Dollars ($3,465.00), in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd.*

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 all direct expenses to the State Bar of Texas in the amount of Seven Hundred Thirty-Five Dollars ($735.00), in connection with underlying case number 201505595, styled *Commission for Lawyer Discipline v. Annette R. Loyd.*

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's fees and direct expenses in the amount of One Thousand Seven Hundred Dollars ($1,700.00) to the State Bar of Texas, in connection with the present case.

Publication

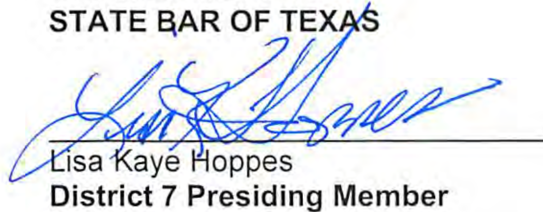
This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 18th day of November, 2022.

EVIDENTIARY PANEL 7-1
DISTRICT NO. 7-1
STATE BAR OF TEXAS



Lisa Kaye Hoppes
District 7 Presiding Member

App. 2

BEFORE THE BOARD OF DISCIPLINARY APPEALS
Appointed By
THE SUPREME COURT OF TEXAS

ANNETTE R. LOYD	§	
State Bar of Texas Card No. 16731100	§	
	§	
v.	§	**CAUSE NO. 67358**
	§	
COMMISSION FOR	§	
LAWYER DISCIPLINE	§	

JUDGMENT

On the 28th day of July 2023, the Board of Disciplinary Appeals heard oral argument in Annette R. Loyd's appeal from a Default Judgment of Active Suspension issued by Evidentiary Panel 7-1 of the State Bar of Texas District 7 Grievance Committee on November 18, 2022. Appellant appeared through counsel. Appellee, the Commission for Lawyer Discipline, appeared though counsel. During the hearing, the Board's Chair announced that the Board **GRANTED** Appellee's Motion to Strike Extra-Record Exhibit. Appellant then made a motion requesting that the Board reconsider its ruling on Appellee's Motion to Strike Extra-Record Exhibit. Appellant's motion for reconsideration is **DENIED.** Exhibit A to Appellant's Supplement Brief is struck from the record in this appeal and was not considered in deciding this appeal.

Having considered the record, the briefs, and the parties' arguments, the Board finds that the judgment should be affirmed. It is therefore **ORDERED**, **ADJUDGED**, and **DECREED** that the Default Judgment of Active Suspension issued November 18, 2022, in Case No. 202103038, is hereby, in all respects, **AFFIRMED**.

SIGNED this 14th day of August 2023.

CHAIR PRESIDING

Board members Jennifer Caughey, Arthur D'Andrea, and Nancy Stone
did not participate in this decision.

Jason Boatright, joined by Courtney Schmitz, dissenting:

When the government decides to take away someone's ability to earn a living, it needs to explain why. But an evidentiary panel suspended Loyd from practicing law for three years without pointing to any rule, evidence, finding of fact, or conclusion of law in support of its decision. The panel did not have discretion to do that, so I would reverse its judgment of suspension.

A. Background

Loyd has a long history of disciplinary problems. She has been put on probation or suspended many times over the past twenty years. Before this proceeding, her last run-in with the bar was in 2019, when she got a two-year probated suspension for neglecting her duties to a client, disobeying a prior disciplinary order, and failing to respond to a disciplinary complaint.

Her probation had three conditions. First, she had to pay $5,000 in restitution, fees, and costs. Second, she had to go to mental health counseling. And third, she had to take six extra hours of continuing legal education in law practice management.

When her probation ended, the Commission for Lawyer Discipline filed a new complaint against her, alleging that she failed to make the $5,000 payment and take the extra CLE. She did not respond to the complaint, so her case was assigned to an evidentiary panel. Then the office of

the Chief Disciplinary Counsel filed an evidentiary petition. Loyd had twenty days to file an answer, but she missed her deadline, so the CDC filed a motion for default.

On the day of the default hearing, Loyd finally filed her answer. She also filed a motion for continuance. The chair of the evidentiary panel denied her motion, then the CDC entered evidence in support of its motion for default.

At the close of its presentation, the CDC moved to bifurcate the hearing so that the panel could consider the issues of default and professional misconduct first, then hear evidence regarding sanctions in a separate hearing.

When it was time to present Loyd's case regarding default, her attorney tried to offer evidence against the facts alleged in the CDC's evidentiary petition, but the rules required the panel to take those allegations as true, so the CDC objected and the chair sustained the objections. The panel went into recess to deliberate and, when it returned, it found Loyd in default and sustained the allegations in the CDC's motion.

Then the panel opened the hearing on sanctions. The CDC provided evidence that Loyd had not completed the extra CLE or paid the $5,000 required by her 2019 probation. The CDC also cited evidence that Loyd failed to respond to warnings that she could face additional discipline unless she complied with her probation. The CDC argued that Loyd should be disbarred.

For her part, Loyd testified that she did comply with the terms of her probation. She also said she had mental health problems that prevented her from focusing on the proceedings. Her counsel argued that Loyd should undergo a psychological examination before the evidentiary panel imposed any sanctions.

At the end of the sanctions hearing, the panel went into recess to deliberate. When it returned, the panel voted to suspend Loyd for three years beginning immediately. The panel also ordered her to pay $6,700 in restitution, fees, and costs.

A couple of weeks later, the panel entered a default judgment of active suspension that was generally consistent with the decisions it had announced at the default and sanctions hearings.

Loyd then filed a motion to set aside default judgment and for new trial or, alternatively, for reconsideration of suspension. Her motion was denied and this appeal followed.

I agree with the panel's decision to deny the motion to set aside and for new trial, but I disagree with its decision to deny the motion to reconsider her suspension.

B. Loyd did not satisfy the test for a new trial

On appeal, Loyd says she is entitled to a new trial under the Supreme Court's opinion in *Craddock v. Sunshine Bus. Lines, Inc.*, 133 S.W.2d 124 (Tex. 1939), where the Court held that a defendant in default is entitled to a new trial if (1) the failure to file an answer was neither intentional nor the result of conscious indifference, (2) the defendant has a meritorious defense, and (3) a new trial would not injure the plaintiff. *Id*. at 126. Loyd had to satisfy all three elements to be entitled to a new trial. *Id*.

1. Loyd did satisfy the first element of the test

In her appellate brief, Loyd cites evidence that her attorney was out of the country for several weeks leading up to the default hearing. She also says her attorney thought the rules of civil procedure prohibited a default judgment against a party who makes an appearance prior to the entry of the judgment. She understands that this is not actually the case in disciplinary proceedings, but she says her attorney's reliance on the rules of civil procedure was just a mistake, and that the failure to file a timely answer was not intentional or the result of conscious indifference.

In response, the CDC cites evidence that Loyd was personally served with documents that warned her she had to file a timely answer. It also notes that she hired her lawyer after the deadline for filing an answer had already passed. Then the CDC cites evidence showing that Loyd had defaulted for failing to file a timely answer in previous disciplinary proceedings. It argues that this

is plenty of evidence to support the conclusion that Loyd's failure to file a timely was not just a mistake.

The CDC's evidentiary burden is governed by the substantial evidence rule. TEX. RULES DISCIPLINARY P. R. 2.23, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A-1. "Substantial evidence requires only more than a mere scintilla, and the evidence on the record may amount to substantial evidence even if it preponderates against the tribunal's decision." *R.R. Comm'n of Tex. v. Torch Operating Co.*, 912 S.W.2d 790, 792-93 (Tex. 1995). The test under the substantial evidence rule is not whether the tribunal was correct, but whether some reasonable basis exists in the record for its action. *See City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994). Thus, we have to sustain the panel's decision if there is any reasonable basis for it in the record.

The record does contain evidence that Loyd was familiar with the rules governing the disciplinary process. Usually, this evidence would provide a reasonable basis to conclude that Loyd's failure to file a timely answer was intentional or the result of conscious indifference. But this case is unusual because there is evidence that Loyd had a disorder that hindered her ability to act on her knowledge of the rules.

Loyd testified that she suffers from an anxiety and depression disorder that made it difficult for her to deal with this proceeding. She also said her condition made her hesitant and almost freeze during this process. And she testified that her anxiety and depression issues made it somewhat difficult for her to focus on what is required of her when confronted.

She argues that her failure to file a timely answer was not intentional or the result of conscious indifference, but the result of her mental health problems. She says she hired an attorney in this disciplinary proceeding because of her condition.

The CDC acknowledges that Loyd testified that a mental health disorder contributed to her inability to file a timely answer in this proceeding, but it dismisses her testimony as "self-serving." The CDC also says she failed to present medical evidence that a disorder affected her ability to participate in the disciplinary process.

Then the CDC goes a step further. It suggests that Dr. Harry Klinefelter III, the psychologist who treated Loyd pursuant to the terms of her probation, testified that her participation in the disciplinary process was not affected by mental health issues. The CDC writes that, "when asked by Loyd's counsel whether any mental health issues Loyd might have had affected her abilities to participate in the disciplinary process, Klinefelter answered 'No.'" But that is not quite what happened.

The question that Loyd's counsel actually asked Dr. Klinefelter was, "In the past, have you seen that [Loyd's] anxiety and depression have affected her abilities to participate in the disciplinary process?" Dr. Klinefelter answered "No" to *that* question—a question about what he had seen "In the past."

Similarly, after the CDC's attorney asked Dr. Klinefelter, "did I understand you correctly when you said that [Loyd's] anxiety and depression has not hurt her ability to participate in these disciplinary proceedings?" Dr. Klinefelter answered, "Not that I knew of until this came up."

The natural interpretation of Dr. Klinefelter's testimony is that he had not known of Loyd's anxiety and depression hurting her ability to participate in these disciplinary proceedings—meaning these sorts of disciplinary proceedings—before now, but he does know that her anxiety and depression have hurt her ability to participate in this particular proceeding. If, as the CDC appears to think, Dr. Klinefelter was saying that Loyd's disorder has not affected her in this proceeding, the phrases "In the past" and "until this came up" would not make any sense.

Dr. Klinefelter's other testimony supports that conclusion. He testified that he started treating Loyd in 2021, which is after Loyd's prior proceedings. He also testified that people who suffer from Loyd's variety of anxiety or depression are "really good at taking care of other people and they have a hard time taking care of themselves." Then, when asked whether Loyd's mental health problems "affect her personally or in her interactions with others," or in "confrontations with herself or helping others," Dr. Klinefelter said "it doesn't interfere with her helping others" and "she's superconscientious about helping others." When read in the context of his testimony that he had not seen Loyd's mental health problems affect her ability to participate in disciplinary proceedings "In the past" and "until this came up," this testimony is evidence that Loyd has mental health issues that make it difficult to participate in this proceeding.

The CDC has not cited evidence to the contrary and there is none. Thus, the evidence shows that Loyd's failure to file a timely answer was the result of her mental health issues, not conscious indifference.

Loyd's excuse for failing to file a timely answer—that she has a mental health disorder making it difficult for her to participate in this proceeding—is a good one, but it did not have to be any good in order to suffice. *Fidelity & Guar. Inc. Co. v. Drewer Const. Co., Inc.*, 186 S.W.3d 571, 576 (Tex. 2006). And because there is no evidence—not even a scintilla—indicating that her failure to file a timely answer was the result of anything other than her mental health disorder, there is no reasonable basis to conclude that Loyd's failure to file a timely answer was intentional or the result of conscious indifference. *See City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994). Therefore, Loyd satisfied the first prong of the *Craddock* test. 133 S.W.d at 126.

2. Loyd failed the second element of the test

The second prong of the *Craddock* test required Loyd to set up a meritorious defense. *Id*. Her defense would be meritorious if it alleged facts that are supported by evidence providing prima

facie proof of the allegations in her defense. *Dolgencorp of Tex., Inc. v. Lerma*, 288 S.W.3d 922, 928 (Tex. 2009).

The petition alleged that Loyd did not satisfy the conditions of her probation and that she did not assert a legal ground for her failure to respond to the disciplinary complaint. Accordingly, Loyd would satisfy the second prong of *Craddock* if she pointed to evidence providing prima facie proof that she met the conditions of her probation and asserted a legal ground for her untimely response to the complaint. *Id*.

Loyd cited record evidence of her mental health disorder, which is a legal ground for her untimely response to the complaint. She also presented evidence that she completed the mental health counseling and made the $5,000 payment required by the terms of her probation. Her evidence was prima facie proof that she made the payment in compliance with the terms of her 2019 probation. *Id*.

But her probation also required her to take six hours of CLE in law office management by January 1, 2020, and there is no evidence that she satisfied that requirement. Instead, the record shows that she completed 4.75 extra hours in law office management, and that she did so after the deadline. She never asserted that her mental health disorder contributed to this violation of her probation.

Because Loyd did not allege facts supported by evidence providing prima facie proof that she completed the CLE, she failed to set up a meritorious defense and cannot satisfy the second element of the *Craddock* test. *Lerma*, 288 S.W.3d at 929-30.

The panel's decision to deny a motion for new trial is reviewed for abuse of discretion. *Id*. at 926. Loyd did not satisfy all elements of the *Craddock* test, so the panel did not abuse its discretion. *See id*. at 930. Now the question is whether the panel's decision to impose sanctions was an abuse of discretion.

C. Suspension was excessive and an abuse of discretion

The panel suspended Loyd for violating two disciplinary rules of professional conduct. The first is rule 8.04(a)(7), which prohibits lawyers from violating a disciplinary order or judgment. The second is rule 8.04(a)(8), which prohibits a lawyer from failing to furnish a response to the CDC unless he or she in good faith timely asserts a legal ground for failure to do so. Sanctions for violating an order are different from those for failing to respond, so I will discuss them separately.

1. Suspension for violating the disciplinary order was excessive

Three rules of disciplinary procedure govern sanctions for violating prior disciplinary orders. First, there is rule 15.02, which lists the general factors that a disciplinary tribunal is to consider when imposing sanctions. Rule 15.02 provides that, in imposing a sanction after a finding of professional misconduct, a disciplinary tribunal should consider the duty violated, the respondent's level of culpability, the potential or actual injury caused by the misconduct, and the existence of aggravating or mitigating factors. Most of those considerations counsel against suspension here.

The panel found that Loyd violated her duty by not completing the required CLE on time and by failing to make the $5,000 payment. There can be no question that Loyd violated the duty to complete the CLE, but she presented evidence in her motion for new trial that she did make the $5,000 payment. Thus, the duty Loyd violated was possibly more limited—and certainly no more expansive—than the one the panel had in mind when it sanctioned her.

As for the level of Loyd's culpability, the record shows that she had a mental health disorder that made it difficult for her to participate in disciplinary proceedings. Loyd's condition likely reduced her culpability, but the panel's findings of fact do not mention it. Accordingly, the record suggests that Loyd had a lower level of culpability than the panel's decision presumed.

Turning to the potential or actual injury her misconduct caused, there is no allegation anywhere in the record that Loyd injured anyone. Her failure to complete the additional hours of CLE on time would not injure anyone, of course. And although it is possible to conceive of ways in which failing to make the $5,000 payment could injure someone, Loyd submitted evidence that she did make that payment. Besides, the findings of fact do not mention injury in any way.

Finally, there are both aggravating and mitigating factors here, but it stands to reason that the mitigating factors would have more force than the aggravating ones. That is because the aggravating factors—mainly Loyd's disciplinary history and pattern of misconduct—would be aggravating only to the extent that they indicate a high level of culpability, like intentionality or conscious indifference. And because the main mitigating factor—Loyd's mental health disorder—suggests that her misconduct could not be intentional or the result of conscious indifference, her disciplinary history and pattern of misconduct have less force here than they would absent the evidence of Loyd's mental health disorder.

Thus, the rule 15.02 factors tend to weigh in favor of a lighter sanction.

The second rule of disciplinary procedure that governs the imposition of sanctions is rule 15.09, which, like rule 15.02, allows a disciplinary body to consider aggravating and mitigating factors in deciding what sanction to impose.

And then there is rule 15.08, which provides that, "Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02," six different sanctions may be appropriate in cases involving prior discipline. One of these sanctions is suspension, which "is generally appropriate," according to rule 15.08, "when a Respondent has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession."

The CDC has never alleged that the misconduct Loyd committed—failing to complete the required CLE and, perhaps, the $5,000 payment—is the same or similar misconduct for which she was reprimanded before. And there is no allegation or finding that there was any injury or potential injury. Therefore, suspension would generally not be appropriate in Loyd's case under rule 15.08.

Above all, there is evidence that Loyd has a mental health disorder that made it difficult for her to participate in this proceeding. In fact, the 2019 probation order required her to see a mental health counselor. This suggests that any consideration of her violation of the 2019 order should take her mental health into account.

Somehow, though, the findings did not say a word about Loyd's mental health issues. Several members of the evidentiary panel did ask Loyd about her mental health during the sanctions hearing, so it is possible that the panel considered those issues before it decided to suspend her. But if the panel did consider her mental health, such consideration was omitted from the findings.

Because there is no record of any allegation or finding that Loyd's violation of the 2019 order could injure anyone or that it was similar to her violation of a prior order, suspension is not an appropriate sanction under rule 15.08. Furthermore, the factors the panel should have applied under rule 15.02 counsel against a sanction as severe as suspension. And the mitigating factors under rule 15.09 outweigh the aggravating factors. Thus, the sanction the panel imposed was not appropriate—it was excessive.

2. Suspension for failing to respond was excessive

"Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02," four different sanctions could be appropriate when an attorney fails to respond to a disciplinary agency. TEX. RULES DISCIPLINARY P. R. 15.07(2), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A-1. Suspension is generally appropriate when an attorney knowingly

engaged in conduct that is a violation of a duty owed as a professional and caused injury or potential injury to a client, the public, or the legal system. *Id*.

Once again, there is no allegation or finding of injury in the record, so suspension would generally not be an appropriate sanction. Nor do the findings of fact mention the effect that Loyd's mental health issues might have had on her ability to "knowingly" fail to respond. Therefore, the suspension was inappropriate under rule 15.07 and excessive under the factors listed in rules 15.02 and 15.09.

3. Suspension was an abuse of discretion

Sanctions are reviewed for abuse of discretion. *State Bar of Tex. v. Kilpatrick*, 874 S.W.2d 656, 659 (Tex. 1994). Under this lenient standard of review, evidentiary panels have discretion to impose sanctions that others might find inappropriate. In fact, the Legislature has made it clear that the sanctions guidelines in the rules of disciplinary procedure "do not limit the authority of a district grievance committee or of a district judge to make a finding or issue a decision." TEX. GOV'T CODE § 81.083(c). Consequently, the guidelines sometimes use words like "should" and "may" and "generally appropriate" rather than shall, must, and required.

Even so, an evidentiary panel does not have unfettered discretion when it imposes sancions. In *Furr's Supermarkets, Inc. v. Bethune*, the Supreme Court held that tribunals abuse their discretion when they act in an unreasonable or arbitrary manner, or when they act without reference to any guiding principles. 53 SW.3d 375, 379 (Tex. 2001). Applying those criteria to this case reveals an abuse of discretion. To see how, consider the default judgment of active suspension.

The judgment cites several rules regarding default and professional misconduct, but none regarding sanctions. Similarly, it cites evidence that supports its decision on misconduct and default, but none in support of its decision to impose suspension.

And then there are the findings of fact. The judgment says the findings are the basis of the panel's only conclusion of law, which was that Loyd violated disciplinary rules of professional conduct 8.04(a)(7) and 8.04(a)(8). Loyd's violation of those rules was the subject of the CDC's evidentiary petition and the default hearing that addressed it. Under rule of disciplinary procedure 2.17(C), the panel was required to deem all of the allegations in the evidentiary petition as true. Consequently, the panel did not admit any evidence or allow any argument about anything else during the default hearing. It decided that Loyd defaulted and committed professional misconduct based solely on facts in the CDC's petition that it had to take as true.

Thus, the only findings in the judgment were based on deemed facts regarding misconduct and default. None of the findings involved—or could have involved—any of the testimony, documentary evidence, or legal argument the panel heard during the hearing on sanctions.

The judgment does say the panel imposed sanctions after considering evidence, but rule of civil procedure 299 provides that findings of fact form the basis of the judgment on all grounds. The rule also says that judgments may not be supported on appeal by a presumed finding on any ground of recovery or defense, no element of which has been included in the findings of fact. But the findings in this case are nothing more than deemed facts regarding misconduct and default, so there is no basis or support in the judgment for imposing a suspension.

That is a particular problem when suspension is generally not appropriate under the guidelines. The panel did have discretion to follow or deviate from the guidelines upon consideration of the general factors listed in rule 15.02 and the mitigating and aggravating factors in rule 15.09, but the findings say nothing about anything related to those factors—or to the guidelines themselves.

The panel's decision cites no finding of fact, evidence, or rule regarding sanctions. It relies entirely on the CDC's allegations. Those allegations were automatically deemed true and they

relate to misconduct and default, not sanctions. Thus, the panel suspended Loyd without reference to guiding principles. In doing so, the panel abused its discretion. *Bethune*, 53 SW.3d at 379.

D. Disciplinary proceedings need to take mental illness seriously

Regardless of whether one thinks the panel abused its discretion, it may be tempting to assume that Loyd invented or exaggerated her mental health issues to avoid the consequences of her actions. After all, it does seem convenient to be too ill to deal with the bar and get punished, but well enough to deal with the courts and get paid.

However, if Loyd is faking her issues, there is no evidence of it. In fact, all of the evidence regarding Loyd's mental health suggests that she suffers from a disorder that has made it difficult for her to participate in this disciplinary proceeding. I think the evidence of her mental health issues is important.

Today, lawyers are inundated with messages from various bar groups about the importance of mental health. Meanwhile, the Supreme Court and Court of Criminal Appeals have created the Judicial Commission on Mental Health, and the Legislature has established mental health courts. These efforts suggest that we should take mental health issues very seriously.

But in this proceeding, the CDC does not appear to have taken Loyd's mental health seriously at all. The CDC's brief did not address whether her mental health problems could be a mitigating factor or a relevant consideration of any kind. Instead, it relegated her mental health to a footnote, where it called Loyd's testimony regarding her anxiety and depression "self-serving" and dismissed her mental health problems as merely "alleged." And the CDC did so even though a psychologist—who counseled Loyd pursuant to a prior disciplinary order—testified that he was treating her for anxiety and depression. The CDC continued to try to get Loyd disbarred even after it was confronted with evidence of her mental health disorder.

It seems to me that the CDC's aggressive prosecution in this case is not only inappropriate under the sanctions guidelines, it is out of step with the efforts of the Legislature and courts to get all of us to take attorney mental health seriously.

E. Conclusion

In the future, the CDC should seek sanctions that are appropriate under the guidelines and factors listed in the rules of disciplinary procedure. Evidentiary panels need to impose appropriate sanctions supported by findings, evidence, and rules. And when mental health is an issue, everybody ought to act like it matters.

App. 3

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, Petitioner	§	
V.	§	**CASE NO. 201505595**
ANNETTE R. LOYD, Respondent	§	

JUDGMENT OF FULLY PROBATED SUSPENSION

Parties and Appearance

On December 12, 2018, December 21, 2018, and February 4, 2019, came to be heard the above-styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, **ANNETTE R. LOYD** (Respondent), Texas Bar Number **16731100**, appeared in person and announced ready.

Jurisdiction and Venue

The Evidentiary Panel 7-2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 7, 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(W) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

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

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

2. Respondent resides in and maintains her principal place of practice in Tarrant County, Texas.

3. Complainant Vernon Bauer (Bauer) and Joella Jacobson (Jacobson) hired Respondent to serve as legal counsel regarding a civil matter. Respondent filed suit on behalf of Bauer and Jacobson on August 1, 2014 in a District Court in Tarrant County, Texas.

4. In representing Bauer and Jacobson, Respondent neglected the legal matter entrusted to her by failing to respond to Defendant's Motion for Summary Judgment.

5. Respondent failed to promptly comply with reasonable requests for information from Bauer and Jacobson about their civil matter.

6. Respondent failed to explain the legal matter to the extent reasonably necessary to permit Bauer and Jacobson to make informed decisions regarding the representation.

7. Respondent violated a disciplinary judgment.

8. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure. Respondent did not in good faith timely assert a privilege or other legal ground for failure to do so.

9. Respondent owes restitution in the amount of One Thousand Dollars and No Cents ($1,000.00) payable to Vernon Bauer.

10. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney's fees associated with this Disciplinary Proceeding in the amount of Three Thousand Three Hundred Dollars and No Cents ($3,300.00).

11. The Chief Disciplinary Counsel of the State Bar of Texas has incurred direct expenses associated with this Disciplinary Proceeding in the amount of Seven Hundred Dollars and No Cents ($700.00).

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: Rules: 1.01(b)(1), 1.03(a), 1.03(b), 8.04(a)(7), and 8.04(a)(8).

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 and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is a Probated Suspension.

Accordingly, it is **ORDERED, ADJUDGED** and **DECREED** that Respondent be suspended from the practice of law for a period of two (2) years with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on February 4, 2019, and shall end on February 3, 2021.

Terms of Probation

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

1. Respondent shall not violate any term of this judgment.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep State Bar of Texas membership department notified of current mailing, residence and business addresses and telephone numbers.

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

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

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

8. Respondent shall pay restitution on or before January 1, 2020, to Vernon Bauer in the amount of One Thousand Dollars and No Cents ($1,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Vernon Bauer and delivered to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

9. Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand Three Hundred Dollars and No Cents ($3,300.00). The payment shall be due and payable on or before January 1, 2020, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

10. Respondent shall pay direct expenses to the State Bar of Texas in the amount of Seven Hundred Dollars and No Cents ($700.00). The payment shall be due and payable on or before January 1, 2020, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

11. Respondent shall submit to counseling sessions for the two (2) year duration of this judgment, with a minimum of one (1) session per month, by a mental health professional licensed in Texas as a psychiatrist, a psychologist, a master's level social worker (LCSW), or a licensed professional counselor (LPC). The mental health professional shall provide written monthly reports to the State Bar of Texas verifying Respondent's attendance at the sessions and the general issue(s) addressed during the sessions. The initial report shall be due no later than March 3, 2019, documenting the session(s) that occur(s) during February 2019. Each subsequent report shall be due on the 3rd day of each month, documenting the session(s) that occur(s) during the previous month. The final report will be due no later than February 3, 2021.

12. Respondent shall take all necessary action, including the execution of a valid release of information, to permit any treating mental health professional to provide written or oral reports for the duration of the supervision period.

13. Respondent shall be responsible for all costs and expenses incurred, directly or indirectly, by compliance with these terms and shall pay all such costs and expenses as required by the provider, but in no event later than the final day of the supervision period.

14. Any and all reports and evaluations required by these terms of probation shall be sent to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Suite 200, Austin, TX 78701).

15. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete six (6) additional hours of continuing legal education in the area of Law Office Management. These additional hours of CLE are to be completed on or before January 1, 2020. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course(s) to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

16. Respondent must maintain financial records on each client, including written receipts of funds, written accounting of time billed, client funds applied, and written contracts with each client.

17. Law Office Management Consultation: No later than March 5, 2019, Respondent shall engage the services of a law office management consultant, approved by the Office of the Chief Disciplinary Counsel, and qualified by training and experience to conduct reviews of law office management systems for solo practitioners. Respondent shall participate in good faith one (1) hour per month for the two (2) year duration of this judgment. The consultant will produce a written report on the adequacy of the systems currently in place to manage Respondent's law practice, to adequately supervise the office staff and to insure effective communication with clients no later than ten (10) days after each consultation. Said reports shall be delivered to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

18. Respondent shall make contact with the Chief Disciplinary Counsel's Offices' Compliance Monitor at 877-953-5535, ext. 1334 and Special

Programs Coordinator at 877-953-5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

Probation Revocation

Upon information that Respondent has violated a term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals (BODA) and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

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

It is further **ORDERED** that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Restitution, Attorney's Fees and Expenses

It is further **ORDERED** Respondent shall pay restitution on or before January 1, 2020, to Vernon Bauer in amount of One Thousand Dollars and No Cents ($1,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Vernon Bauer and delivered to the State Bar of Texas, Chief Disciplinary

Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand Three Hundred Dollars and No Cents ($3,300.00). The payment shall be due and payable on or before January 1, 2020, shall be made by certified or cashier's check or money order, and made payable to the State Bar of Texas. Respondent shall forward the funds to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Seven Hundred Dollars and No Cents ($700.00). The payment shall be due and payable on or before January 1, 2020, shall be made by certified or cashier's check or money order, and made payable to the State Bar of Texas. Respondent shall forward the funds to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(Z) 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.

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 February, 2019.

EVIDENTIARY PANEL 7-2
DISTRICT NO. 7
STATE BAR OF TEXAS

CHRIS NICKELSON
District 7, Panel 7-2 Presiding Member

App. 4

FILED

March 10, 2022

Dallas Office
Chief Disciplinary Counsel

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-1
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, Petitioner	§	
V.	§	**CASE NO. 202103038**
ANNETTE R. LOYD, Respondent	§	

EVIDENTIARY PETITION AND REQUEST FOR DISCLOSURE

COMES NOW, the Commission for Lawyer Discipline (Petitioner), and would respectfully show the following:

I. Parties

Petitioner is a committee of the State Bar of Texas. **ANNETTE R. LOYD**, State Bar No. **16731100** (Respondent), is an attorney licensed to practice law in the State of Texas. Respondent may be served with process at 4528 W. Vickery Blvd., Ste 202, Fort Worth, Texas 76107-6262, or wherever she may be found.

II. Jurisdiction & Venue

This Disciplinary Proceeding is brought pursuant to the State Bar Act, TEX. GOV'T. CODE ANN. Sec. 81.001, *et seq.*, the Texas Disciplinary Rules of Professional Conduct, and the Texas Rules of Disciplinary Procedure. The complaint that forms the basis of this Disciplinary Proceeding was filed by the State Bar of Texas on or after June 1, 2018. Venue is proper in Tarrant County, Texas, pursuant to Rule 2.11(C) of the Texas Rules of Disciplinary Procedure, because Tarrant County is the county of Respondent's principal place of practice.

III. Professional Misconduct

The acts and omissions of Respondent as alleged below, constitute professional misconduct.

IV. Factual Allegations

Annette R. Loyd (Respondent), also known as Annette Vanicek, failed to comply with a Judgment of Fully Probated Suspension that was entered against her on February 14, 2019 in case number 201505595, styled Commission for Lawyer Discipline v. Annette R. Loyd, as follows:

> Failing to pay restitution of $1,000 to Complainant, Vernon Bauer, on or before January 1, 2020;
>
> Failing to pay attorney's fees of $3,300 to the State Bar of Texas on or before January 1, 2020;
>
> Failing to pay direct expenses of $700 to the State Bar of Texas on or before January 1, 2020; and
>
> Failing to complete six (6) additional hours of Continuing Legal Education (CLE) in Law Office Management on or before January 1, 2020, which were ordered in addition to the Minimum Continuing Legal Education requirements, and failing to verify completion of these additional CLE hours to the State Bar of Texas.

Notice and copy of the complaint was sent to Respondent via email on June 7, 2021 and September 14, 2021. Notice and copy of the complaint was also sent to Respondent via certified mail, return receipt requested, on September 14, 2021, and was served on September 16, 2021. Respondent failed to timely respond to the complaint and failed in good faith to timely assert a privilege or other legal ground for her failure to do so.

V. Disciplinary Rules of Professional Conduct

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

8.04(a)(7) **A lawyer shall not violate any disciplinary order or judgment.**

8.04(a)(8) **A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's Office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so.**

VI. Complaint

The complaint that forms the basis of the cause of action set forth above was brought to the attention of the Office of the Chief Disciplinary Counsel of the State Bar of Texas by the State Bar of Texas filing a complaint on or about May 19, 2021.

VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent and that this Evidentiary Panel impose an appropriate sanction against Respondent as warranted by the facts. Petitioner further prays to recover all reasonable and necessary attorneys' fees and all costs associated with this proceeding. Petitioner further prays for such other and additional relief, general or specific, at law or in equity, to which it may show itself entitled.

VIII. Request for Disclosure

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

1. The correct name of the parties to the Disciplinary Proceeding.

2. In general, the factual bases of Respondent's claims or defenses.

3. The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the disciplinary matter.

4. For any testifying expert, the expert's name, address, and telephone number; subject matter on which the expert will testify, and the general substance of the expert's mental impressions and opinions and a brief summary of the basis of them.

5. Any witness statements.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Laurie Guerra
Assistant Disciplinary Counsel

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

Laurie Guerra
State Bar No. 24050696

ATTORNEYS FOR PETITIONER

App 5

From: Brittany Paynton
To: annette@vaniceklaw.com
Cc: Laurie Guerra
Subject: Case No. 202103038 - Commission for Lawyer Discipline v. Annette R. Loyd
Date: Friday, October 14, 2022 10:08:21 AM
Attachments: Loyd.BRA to R.pdf

Dear Ms. Loyd:

Enclosed please find a *Business Records Affidavit* with a copy of your disciplinary records.

If you have any questions, please let me know.

Brittany Paynton
Office of the Chief Disciplinary Counsel
State Bar of Texas
14651 Dallas Parkway, Suite 925
Dallas, TX 75254
972-383-2900- Office
972-383-2912 - Direct Dial
972-383-2935-Fax
Brittany.Paynton@texasbar.com

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

EXHIBIT
CFLD Exh. 6

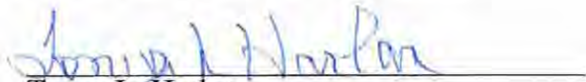
BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-1
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, Petitioner	§	
V.	§	**CASE NO. 202103038**
ANNETTE R. LOYD, Respondent	§	

BUSINESS RECORDS AFFIDAVIT

Before me, the undersigned authority, personally appeared Tonya L. Harlan, who, being by me duly sworn, deposed as follows:

1. My name is Tonya L. Harlan. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated.
2. I am employed as Deputy Counsel for Litigation of the State Bar of Texas, Dallas/Fort Worth Regional Office.
3. I am the custodian of disciplinary records of the Dallas/Fort Worth Regional Office of the State Bar of Texas and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities.
4. Attached are forty (40) pages of records. These are the original records or exact duplicates of the original records.
5. It is the regular practice of the State Bar of Texas to make this type of record at or near the time of each act, event, condition, opinion, or diagnosis set forth in the record.
6. It is the regular practice of the State Bar of Texas for this type of record to be made by or from information transmitted by persons with knowledge of the matters set forth in them.
7. It is the regular practice of the State Bar of Texas to keep this type of record in the course of regularly conducted business activity.
8. It is the regular practice of the business activity to make the records.



Tonya L. Harlan
Deputy Counsel for Litigation, Custodian of Records

SWORN TO AND SUBSCRIBED before me on the 22nd day of March, 2022.

Notary Public in and for the State of Texas

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, Petitioner	§	
V.	§	**CASE NO. 201505595**
ANNETTE R. LOYD, Respondent	§	

JUDGMENT OF FULLY PROBATED SUSPENSION

Parties and Appearance

On December 12, 2018, December 21, 2018, and February 4, 2019, came to be heard the above-styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, **ANNETTE R. LOYD** (Respondent), Texas Bar Number **16731100**, appeared in person and announced ready.

Jurisdiction and Venue

The Evidentiary Panel 7-2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 7, 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(W) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

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

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

2. Respondent resides in and maintains her principal place of practice in Tarrant County, Texas.

3. Complainant Vernon Bauer (Bauer) and Joella Jacobson (Jacobson) hired Respondent to serve as legal counsel regarding a civil matter. Respondent filed suit on behalf of Bauer and Jacobson on August 1, 2014 in a District Court in Tarrant County, Texas.

4. In representing Bauer and Jacobson, Respondent neglected the legal matter entrusted to her by failing to respond to Defendant's Motion for Summary Judgment.

5. Respondent failed to promptly comply with reasonable requests for information from Bauer and Jacobson about their civil matter.

6. Respondent failed to explain the legal matter to the extent reasonably necessary to permit Bauer and Jacobson to make informed decisions regarding the representation.

7. Respondent violated a disciplinary judgment.

8. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure. Respondent did not in good faith timely assert a privilege or other legal ground for failure to do so.

9. Respondent owes restitution in the amount of One Thousand Dollars and No Cents ($1,000.00) payable to Vernon Bauer.

10. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney's fees associated with this Disciplinary Proceeding in the amount of Three Thousand Three Hundred Dollars and No Cents ($3,300.00).

11. The Chief Disciplinary Counsel of the State Bar of Texas has incurred direct expenses associated with this Disciplinary Proceeding in the amount of Seven Hundred Dollars and No Cents ($700.00).

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: Rules: 1.01(b)(1), 1.03(a), 1.03(b), 8.04(a)(7), and 8.04(a)(8).

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 and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is a Probated Suspension.

Accordingly, it is **ORDERED, ADJUDGED** and **DECREED** that Respondent be suspended from the practice of law for a period of two (2) years with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on February 4, 2019, and shall end on February 3, 2021.

Terms of Probation

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

1. Respondent shall not violate any term of this judgment.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep State Bar of Texas membership department notified of current mailing, residence and business addresses and telephone numbers.

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

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

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

8. Respondent shall pay restitution on or before January 1, 2020, to Vernon Bauer in the amount of One Thousand Dollars and No Cents ($1,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Vernon Bauer and delivered to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

9. Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand Three Hundred Dollars and No Cents ($3,300.00). The payment shall be due and payable on or before January 1, 2020, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

10. Respondent shall pay direct expenses to the State Bar of Texas in the amount of Seven Hundred Dollars and No Cents ($700.00). The payment shall be due and payable on or before January 1, 2020, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

11. Respondent shall submit to counseling sessions for the two (2) year duration of this judgment, with a minimum of one (1) session per month, by a mental health professional licensed in Texas as a psychiatrist, a psychologist, a master's level social worker (LCSW), or a licensed professional counselor (LPC). The mental health professional shall provide written monthly reports to the State Bar of Texas verifying Respondent's attendance at the sessions and the general issue(s) addressed during the sessions. The initial report shall be due no later than March 3, 2019, documenting the session(s) that occur(s) during February 2019. Each subsequent report shall be due on the 3rd day of each month, documenting the session(s) that occur(s) during the previous month. The final report will be due no later than February 3, 2021.

12. Respondent shall take all necessary action, including the execution of a valid release of information, to permit any treating mental health professional to provide written or oral reports for the duration of the supervision period.

13. Respondent shall be responsible for all costs and expenses incurred, directly or indirectly, by compliance with these terms and shall pay all such costs and expenses as required by the provider, but in no event later than the final day of the supervision period.

14. Any and all reports and evaluations required by these terms of probation shall be sent to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Suite 200, Austin, TX 78701).

15. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete six (6) additional hours of continuing legal education in the area of Law Office Management. These additional hours of CLE are to be completed on or before January 1, 2020. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course(s) to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

16. Respondent must maintain financial records on each client, including written receipts of funds, written accounting of time billed, client funds applied, and written contracts with each client.

17. Law Office Management Consultation: No later than March 5, 2019, Respondent shall engage the services of a law office management consultant, approved by the Office of the Chief Disciplinary Counsel, and qualified by training and experience to conduct reviews of law office management systems for solo practitioners. Respondent shall participate in good faith one (1) hour per month for the two (2) year duration of this judgment. The consultant will produce a written report on the adequacy of the systems currently in place to manage Respondent's law practice, to adequately supervise the office staff and to insure effective communication with clients no later than ten (10) days after each consultation. Said reports shall be delivered to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

18. Respondent shall make contact with the Chief Disciplinary Counsel's Offices' Compliance Monitor at 877-953-5535, ext. 1334 and Special

Programs Coordinator at 877-953-5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

Probation Revocation

Upon information that Respondent has violated a term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals (BODA) and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

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

It is further **ORDERED** that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Restitution, Attorney's Fees and Expenses

It is further **ORDERED** Respondent shall pay restitution on or before January 1, 2020, to Vernon Bauer in amount of One Thousand Dollars and No Cents ($1,000.00). Respondent shall pay the restitution by certified or cashier's check or money order made payable to Vernon Bauer and delivered to the State Bar of Texas, Chief Disciplinary

Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand Three Hundred Dollars and No Cents ($3,300.00). The payment shall be due and payable on or before January 1, 2020, shall be made by certified or cashier's check or money order, and made payable to the State Bar of Texas. Respondent shall forward the funds to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Seven Hundred Dollars and No Cents ($700.00). The payment shall be due and payable on or before January 1, 2020, shall be made by certified or cashier's check or money order, and made payable to the State Bar of Texas. Respondent shall forward the funds to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(Z) 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.

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 February, 2019.

EVIDENTIARY PANEL 7-2
DISTRICT NO. 7
STATE BAR OF TEXAS

CHRIS NICKELSON
District 7, Panel 7-2 Presiding Member

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, Petitioner	§	
V.	§	**CASE NO. 201706886**
ANNETTE R. LOYD, Respondent	§	

DEFAULT JUDGMENT OF FULLY PROBATED SUSPENSION

Parties and Appearance

On December 12, 2018, came to be heard the above-styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, **ANNETTE R. LOYD** (Respondent), Texas Bar Number **16731100**, was duly served with the Evidentiary Petition and notice of this default and sanctions hearing. Respondent appeared pro se, and filed an untimely Answer on date of said hearing.

Jurisdiction and Venue

The Evidentiary Panel 7-2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 7, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Default

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

facts alleged in the Evidentiary Petition are deemed true pursuant to Rule 2.17(C) of the Texas Rules of Disciplinary Procedure.

Professional Misconduct

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

Findings of Fact

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

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

2. Respondent resides in and maintains her principal place of practice in Tarrant County, Texas.

3. On February 14, 2017, Complainant, Tommy H. Watley (Watley), hired Respondent to represent him regarding a matter involving his Last Will and Testament.

4. In representing Watley, Respondent neglected the legal matter entrusted to her.

5. Respondent failed to keep Watley reasonably informed about the status of his legal matter and failed to promptly comply with reasonable requests for information from Watley.

6. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure. Respondent did not in good faith timely assert a privilege or other legal ground for failure to do so.

7. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney's fees associated with this Disciplinary Proceeding in the amount of Seven Hundred Fifty Dollars and No Cents ($750.00).

8. The Chief Disciplinary Counsel of the State Bar of Texas has incurred direct expenses associated with this Disciplinary Proceeding in the amount of Two Hundred Fifty Dollars and No Cents ($250.00).

Conclusions of Law

The Evidentiary Panel concludes that, based upon the foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 1.01(b)(1), 1.03(a), and 8.04(a)(8).

Sanction

The Evidentiary Panel, having found Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is a Probated Suspension.

Accordingly, it is **ORDERED, ADJUDGED** and **DECREED** that Respondent be suspended from the practice of law for a period of twelve (12) months, with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on January 7, 2019, and shall end on January 6, 2020.

Terms of Probation

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

1. Respondent shall not violate any term of this judgment.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.
3. Respondent shall not violate any state or federal criminal statutes.

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

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

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

7. Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Seven Hundred Fifty Dollars and No Cents ($750.00). The payment shall be due and payable on or before February 6, 2019, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

8. Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Two Hundred Fifty Dollars and No Cents ($250.00). The payment shall be due and payable on or before February 6, 2019, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

9. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete two (2) additional hours of continuing legal education in the area of Law Practice Management and an additional three (3) hours of continuing legal education in the area of Ethics. These additional hours of CLE are to be completed by January 6, 2020. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course(s) to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

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

11. Respondent shall submit to counseling sessions for the twelve (12) month duration of this judgment, with a minimum of one (1) session per month, by a mental health professional licensed in Texas as a psychiatrist, a psychologist, a master's level social worker (LCSW), or a licensed professional counselor (LPC). The mental health professional shall provide written monthly reports to the State Bar of Texas verifying Respondent's attendance at the sessions and the general issue(s) addressed during the sessions. The initial report shall be due no later than February 6, 2019, documenting the session(s) that occur(s) during January 2019. Each subsequent report shall be due on the 6th day of each month, documenting the session(s) that occur(s) during the previous month. The final report will be due no later than January 6, 2020.

12. Respondent shall take all necessary action, including the execution of a valid release of information, to permit any treating mental health professional to provide written or oral reports for the duration of the supervision period.

13. Respondent shall be responsible for all costs and expenses incurred, directly or indirectly, by compliance with these terms and shall pay all such costs and expenses as required by the provider, but in no event later than the final day of the supervision period.

14. Any and all reports and evaluations required by these terms of probation shall be sent to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Suite 200, Austin, TX 78701).

Probation Revocation

Upon information that Respondent has violated a term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals (BODA) and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

BODA shall conduct an evidentiary hearing. At the hearing, BODA shall determine by a preponderance of the evidence whether Respondent has violated any term of this Judgment. If BODA finds grounds for revocation, BODA shall enter an order revoking

probation and placing Respondent on active suspension from the date of such revocation order. Respondent shall not be given credit for any term of probation served prior to revocation.

It is further **ORDERED** that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Attorney's Fees and Expenses

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Seven Hundred Fifty Dollars and No Cents ($750.00). The payment shall be due and payable on or before February 6, 2019, shall be made by certified or cashier's check or money order, and made payable to the State Bar of Texas. Respondent shall forward the funds to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Two Hundred Fifty Dollars and No Cents ($250.00). The payment shall be due and payable on or before February 6, 2019, shall be made by certified or cashier's check or money order, and made payable to the State Bar of Texas. Respondent shall forward the funds to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(Z) 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.

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 16th day of ~~December, 2018~~ January 2019.

EVIDENTIARY PANEL 7-2
DISTRICT NO. 7
STATE BAR OF TEXAS

CHRIS NICKELSON
District 7, Panel 7-2 Presiding Member

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

IN THE MATTER OF	§	
	§	
ANNETTE R. LOYD	§	**CAUSE NO. 48710**
	§	
STATE BAR CARD NO. 16731100	§	

JUDGMENT REVOKING PROBATION AND ACTIVELY SUSPENDING RESPONDENT FROM THE PRACTICE OF LAW

On July 1, 2011, the Board of Disciplinary Appeals heard the Petition for Revocation of Probation filed by the Commission for Lawyer Discipline of the State Bar of Texas against Respondent, Annette R. Loyd, State Bar No. 16731100. Petitioner appeared by counsel from the Office of the Chief Disciplinary Counsel and announced ready. Respondent, Annette R. Loyd, appeared pro se and announced ready. All issues of fact and questions of law were submitted to the Board.

Having considered the pleadings, and having heard the evidence and the argument of counsel, the Board finds as follows:

(1) Respondent, Annette R. Loyd, whose State Bar Card number is 16731100, is currently licensed and authorized by the Supreme Court of Texas to practice law.

(2) Respondent was personally served with the Petition for Revocation of Probation and hearing notice in this cause by a duly authorized process server on June 15, 2011, in accordance with the Texas Rules of Disciplinary Procedure 2.23 ("TRDP"). The affidavit of service was filed with the Board on June 21, 2011.

(3) On March 23, 2011, in a case styled, *Commission for Lawyer Discipline, Petitioner, v. Annette R. Loyd, Respondent*, Case No. D0031039673, an Evidentiary Panel of the State Bar of Texas District 7-2 Grievance Committee signed a judgment imposing a thirty-seven month partially probated suspension against Respondent beginning April 1, 2011, and ending April 30,

2014, with one month active suspension starting April 1, 2011, and ending April 30, 2011, and thirty-six months probated suspension beginning May 1, 2011, and ending April 30, 2014.

(4) The Evidentiary Panel found that Respondent had committed violations of Texas Disciplinary Rules of Professional Conduct 1.01(b)(2), 1.03(a) and 8.04(a)(8).

(5) Respondent received a copy of the judgment by certified mail on March 28, 2011.

(6) The judgment clearly prohibited Respondent from practicing law for the period beginning April 1, 2011 and ending April 30, 2011.

(7) Respondent read and understood the judgment.

(8) Respondent did not contact the Office of Chief Disciplinary Counsel after receiving the judgment, file any post-judgment motions, appeal the judgment, or otherwise attempt to delay the effect of the sanction imposed.

(9) Respondent was ordered by the judgment signed March 23, 2011 to notify in writing, on or before April 1, 2011, 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 had any matter pending of the terms of the judgment, the style and cause number of the pending matter(s), and the name, address, and telephone number of the client(s) Respondent was representing.

(10) The judgment further ordered Respondent to file with the Statewide Compliance Monitor, State Bar of Texas Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, Texas 78711-2487 (1414 Colorado Street, Austin, Texas 78701) on or before April 1, 2011, an affidavit stating that she had notified in writing every court or tribunal in which Respondent had any matter pending of the terms of the judgment, the style and cause number of the pending matter(s), and the name, address, and telephone number of the client(s) Respondent was representing.

(11) In addition to the requirements noted above, the judgment ordered Respondent, as specific requirements of her probation, not to violate any term of the judgment, not to engage in professional misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure, not to violate any state or federal criminal statutes, to keep the State Bar of Texas membership department notified of current mailing, residence, and business addresses, and telephone numbers, to comply with Minimum Continuing Legal Education requirements, to comply with Interest on Lawyers Trust Account (IOLTA)

requirements, and to promptly respond to any request for information from the Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.

(12) Respondent knowingly practiced law during the period that her license was actively suspended beginning April 1, 2011 and April 30, 2011 by filing pleadings and/or appearing in court in multiple cases.

(13) Respondent materially violated the Default Judgment of Partially Probated Suspension by practicing law while her license was suspended, failing to notify Judges and Courts of her suspension, and by failing to file an affidavit with the State Bar of Texas stating that she had notified Judges and Courts of her suspension.

(14) Respondent, Annette R. Loyd, is the same person as the Annette R. Loyd who is the subject of the Evidentiary Judgment described above.

Based on these undisputed facts, the Board concludes that:

(1) This Board has exclusive jurisdiction to hear a petition to revoke a probated suspension from the practice of law imposed by an evidentiary panel of the State Bar of Texas grievance committee during the full term of suspension, including and probationary period. TRDP 2.23; *In re State Bar of Texas*, 113 S.W.3d 730,733 (Tex.2003).

(2) Respondent has materially violated the terms and conditions of the Default Judgment of Partially Probated Suspension signed on March 23, 2011, in Cause No. D0031039672.

(2) Respondent should be actively suspended from practicing law for the full term of the suspension as originally imposed by the Default Judgment of Partially Probated Suspension without credit for any probationary time served. TRDP 2.23.

It is therefore, ORDERED, ADJUDGED, and DECREED that Respondent, Annette R. Loyd, State Bar No. 16731100, be, and hereby is, actively SUSPENDED from the practice of law in the State of Texas for a period of thirty-six months effective immediately on the date this judgment is signed and ending on July 6, 2014.

It is further ORDERED, ADJUDGED and DECREED that Respondent, Annette R. Loyd, during said suspension is prohibited from practicing law in Texas, holding herself out as an attorney

at law, performing any legal service for others, accepting any fee directly or indirectly for legal services, appearing as counsel in any proceeding in any Texas court or before any Texas administrative body, or holding herself out to others or using her name, in any manner, in conjunction with the words "attorney," "counselor," or "lawyer."

It is further ORDERED that Respondent, Annette R. Loyd, not later than thirty (30) days shall notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court, if any, in which Respondent, Annette R. Loyd, has any legal matter pending, if any, of her suspension, of the style and cause number of the pending matter(s), and of the name, address, and telephone number of the client(s) Respondent is representing in that court. Respondent is also ORDERED to mail copies of all such notifications to the Statewide Compliance Monitor, Office of the Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further ORDERED that Respondent, Annette R. Loyd, shall immediately notify each of her current clients, if any, in writing, of her suspension. In addition to such notification, Respondent is ORDERED to return all files, papers, unearned fees paid in advance, and all other monies and properties which are in her possession but which belong to current or former clients, if any, to those respective clients or former clients within thirty (30) days after the date on which this Judgment is signed by the Board. Respondent is further ORDERED to file with the Statewide Compliance Monitor, within the same thirty (30) days, an affidavit stating that all current clients have been notified of her suspension and that all files, papers, unearned fees paid in advance, and all other monies and properties belonging to clients and former clients have been returned as ordered herein. If Respondent should be unable to return any file, papers, money or other property to any client or former client, Respondent's affidavit shall state with particularity the efforts made by Respondent with respect to each particular client and the cause of her inability to return to said client any file,

paper, money or other property. Respondent is also ORDERED to mail a copy of said affidavit and copies of all notification letters to clients, to the Statewide Compliance Monitor, Office of Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further ORDERED that Respondent, Annette R. Loyd, immediately surrender her Texas law license and permanent State Bar Card to the Office of Chief Disciplinary Counsel, State Bar of Texas, for transmittal to the Clerk of the Supreme Court of Texas.

Signed this 6th day of July 2011.

CHAIR PRESIDING

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, Petitioner	§	
V.	§	**CASE NO. D0031039672**
ANNETTE R. LOYD, Respondent	§	

DEFAULT JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On March 9, 2011, came to be heard the above-styled and numbered cause. Petitioner, Commission for Lawyer Discipline ("Petitioner"), appeared by and through its attorney of record, William R. Garrett, Assistant Disciplinary Counsel, and announced ready. Respondent, **ANNETTE R. LOYD,** Texas Bar Number **16731100** ("Respondent"), although duly served with the Evidentiary Petition and notice of this default and sanctions hearing, failed to appear.

Jurisdiction and Venue

The Evidentiary Panel 7-2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 7, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Default

The Evidentiary Panel finds Respondent was properly served with the Evidentiary Petition and that Respondent failed to timely file a responsive pleading to the Evidentiary Petition as required by Rule 2.17(B) of the Texas Rules of Disciplinary Procedure.

Accordingly, the Evidentiary Panel finds Respondent in default and further finds that all facts alleged in the Evidentiary Petition are deemed true pursuant to Rule 2.17(C) of the Texas Rules of Disciplinary Procedure.

Professional Misconduct

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

Findings of Fact

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

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
2. Respondent resides in and maintains her principal place of practice in Tarrant County, Texas.
3. In representing Tommie Whitaker ("Whitaker"), Respondent frequently failed to carry out completely the obligations owed to Whitaker.
4. Respondent failed to keep Whitaker reasonably informed about the status of her civil matter.
5. Respondent failed to promptly comply with reasonable requests for information from Whitaker about her civil matter.
6. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure.
7. Respondent did not in good faith timely assert a privilege or other legal ground for failure to do so.
8. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees associated with this Disciplinary Proceeding in the

amount of One Thousand Two Hundred Twenty-Five and no/100 Dollars ($1,225.00).

9. The Chief Disciplinary Counsel of the State Bar of Texas has incurred direct expenses associated with this Disciplinary Proceeding in the amount of Three Hundred Thirty-One and 97/100 Dollars ($331.97).

Conclusions of Law

The Evidentiary Panel concludes that, based upon the foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 1.01(b)(2), 1.03(a) and 8.04(a)(8).

Sanction

The Evidentiary Panel, having found Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds said findings and conclusions support a judgment of Partially Probated Suspension.

Accordingly, it is **ORDERED**, **ADJUDGED** and **DECREED** that Respondent be suspended from the practice of law for a period of thirty-seven (37) months, beginning April 1, 2011, and ending April 30, 2014, provided Respondent complies with the following terms and conditions. Respondent shall be actively suspended from the practice of law for a period of one (1) month, beginning April 1, 2011, and ending April 30, 2011. If Respondent complies with all of the following terms and conditions timely, the thirty-six (36) month period of probated suspension shall begin on May 1, 2011, and shall end on April 30, 2014:

1. Respondent shall pay all reasonable and necessary attorneys' fees to the State Bar of Texas in the amount of One Thousand Two Hundred Twenty-Five and no/100 Dollars ($1,225.00). The payment shall be due and payable on or before

April 30, 2011, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

2. Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Three Hundred Thirty-One and 97/100 Dollars ($331.97). The payment shall be due and payable on or before April 30, 2011, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

Should Respondent fail to comply with all of the above terms and conditions timely, Respondent shall remain actively suspended until the date of compliance or until April 30, 2014, whichever occurs first.

Terms of Active Suspension

It is further **ORDERED** that during the term of active suspension ordered herein, or that may be imposed upon Respondent by the Board of Disciplinary Appeals as a result of a probation revocation proceeding, Respondent shall be prohibited from practicing law in Texas; holding herself 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 herself out to others or using her name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

It is further **ORDERED** that, or before April 1, 2011, Respondent shall notify each of Respondent's current clients in writing of this suspension.

In addition to such notification, it is further **ORDERED** Respondent shall return any files, papers, unearned monies and other property belonging to current clients in

Respondent's possession to the respective clients or to another attorney at the client's request.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before April 1, 2011, an affidavit stating all current clients have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein.

It is further **ORDERED** Respondent shall, on or before April 1, 2011, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), on or before April 1, 2011, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court.

It is further **ORDERED** that, on or before April 1, 2011, Respondent shall surrender her law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary

Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of Texas.

Terms of Probation

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

1. Respondent shall not violate any term of this judgment.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep State Bar of Texas membership department notified of current mailing, residence and business addresses and telephone numbers.
5. Respondent shall comply with Minimum Continuing Legal Education requirements.
6. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.
7. Respondent shall promptly respond to any request for information from the Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.
8. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete nine (9) additional hours of continuing legal education in the area of Ethics, to be completed as follows: three (3) additional hours of CLE are to be completed no later than May 1, 2012; three (3) additional hours of CLE are to be completed no later than May 1, 2013, and three (3) additional hours of CLE are to be completed no later than May 1, 2014. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701.

Probation Revocation

Upon determination that Respondent has violated any term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to

revoke probation pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals ("BODA") and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

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

It is further **ORDERED** that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Attorneys' Fees and Expenses

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorneys' fees to the State Bar of Texas in the amount of One Thousand Two Hundred Twenty-Five and no/100 Dollars ($1,225.00). The payment shall be due and payable on or before April 30, 2011, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** Respondent shall pay all direct expenses to the State Bar of Texas in the amount of Three Hundred Thirty-One and 97/100 Dollars ($331.97). The

payment shall be due and payable on or before April 30, 2011, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further **ORDERED** that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(Y) 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.

Publication

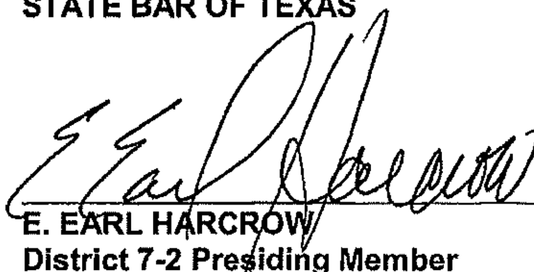
This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 23rd day of March, 2011.

EVIDENTIARY PANEL 7-2
DISTRICT NO. 7
STATE BAR OF TEXAS



E. EARL HARCROW
District 7-2 Presiding Member

BEFORE THE DISTRICT 7 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 7-2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER DISCIPLINE, Petitioner	§	
V.	§	**CASE NO. D0051143118**
ANNETTE R. LOYD, Respondent	§	

AGREED JUDGMENT OF ACTIVE SUSPENSION

Parties and Appearance

On this day, came to be heard the above-styled and numbered cause. Petitioner, Commission for Lawyer Discipline ("Petitioner"), and Respondent, **ANNETTE R. LOYD** ("Respondent"), Texas Bar Number **16731100**, announce that an agreement has been reached on all matters including the imposition of an Active Suspension.

Jurisdiction and Venue

The Evidentiary Panel 7-2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 7, 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 the pleadings, admissions, stipulations and agreements of the parties, finds Respondent has committed Professional Misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

Petitioner and Respondent agree to the following findings of fact. Accordingly, the Evidentiary Panel finds:

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

2. Respondent resides in and maintains her principal place of practice in Tarrant County, Texas.

3. Respondent violated the Texas Rules of Professional Conduct.

4. Respondent engaged in the practice of law when her right to practice had been suspended.

5. Respondent violated a disciplinary judgment by practicing law while actively suspended.

6. Respondent failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure. Respondent did not in good faith timely assert a privilege or other legal ground for failure to do so.

7. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees and direct expenses associated with this Disciplinary Proceeding in the amount of Eight Hundred Ninety-Five and no/100 Dollars ($895.00).

Conclusions of Law

Petitioner and Respondent agree that, based on the foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated. Accordingly, the Evidentiary Panel concludes that the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 8.04(a)(1), 8.04(a)(7), 8.04(a)(8) and 8.04(a)(11).

Sanction

It is **AGREED** and **ORDERED** that the sanction of an Active Suspension shall be imposed against Respondent in accordance with the Texas Rules of Disciplinary Procedure.

Accordingly, it is **ORDERED, ADJUDGED** and **DECREED** that Respondent shall be actively suspended from the practice of law for a period of one (1) year, beginning October 1, 2012, and ending September 30, 2013.

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 herself 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 herself out to others or using her 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 October 1, 2012, Respondent shall notify each of Respondent's current clients and opposing counsel in writing of this suspension.

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

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado

Street, Austin, TX 78701) on or before October 1, 2012, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein.

It is further **ORDERED** Respondent shall, on or before October 1, 2012, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado Street, Austin, TX 78701) on or before October 1, 2012, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court.

It is further **ORDERED** that, on or before October 1, 2012, Respondent shall surrender her law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado Street, Austin, TX 78701), to be forwarded to the Supreme Court of Texas.

Attorneys' Fees and Expenses

It is further **ORDERED** Respondent shall pay all reasonable and necessary attorneys' fees and direct expenses to the State Bar of Texas in the amount of Eight Hundred Ninety-Five and no/100 Dollars ($895.00). The payment of attorneys' fees and direct expenses shall be made by certified or cashier's check or money order and made payable to the State Bar of Texas. The payment shall be submitted to the State Bar of Texas, Chief Disciplinary Counsel's Office, 14651 Dallas Parkway, Suite 925, Dallas, Texas 75254, on or before the date this judgment is presented to the Evidentiary Panel for execution.

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(Y) 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.

Publication

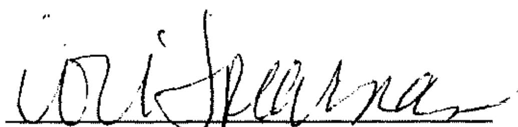
This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

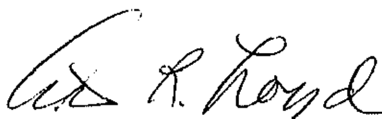
SIGNED this 13 day of Sept., 2012.

EVIDENTIARY PANEL 7-2
DISTRICT NO. 7
STATE BAR OF TEXAS

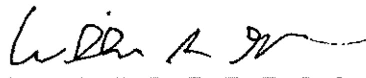


Lori Spearman
District 7-2 Presiding Member

AGREED AS TO BOTH FORM AND SUBSTANCE:



Annette R. Loyd
State Bar No. 16731100
Respondent



William R. Garrett
State Bar No. 07700200
Counsel for Petitioner

Avery McDaniel
State Bar No. 24000121
Counsel for Respondent

NO. F0010313527

COMMISSION FOR LAWYER DISCIPLINE	§ § §	**EVIDENTIARY PANEL**
v.	§ §	**OF DISTRICT 07A**
ANNETTE R. LOYD	§	**GRIEVANCE COMMITTEE**

DEFAULT JUDGMENT OF FULLY PROBATED SUSPENSION

On August 3, 2004, came on to be heard the Motion for Default Judgment in the above-styled complaint. The Commission for Lawyer Discipline appeared by and through their attorney, William R. Garrett, Assistant Disciplinary Counsel. The Respondent **ANNETTE R. LOYD**, State Bar Number 16731100 (hereinafter referred to as "Respondent"), although duly and properly notified, failed to appear. Complainant **KAREN REMMERS** did not appear.

An investigatory panel of the Grievance Committee for State Bar District 07A heard the complaint of Karen Remmers and found just cause to believe that the Respondent has committed professional misconduct.

Respondent was served via certified mail, return receipt requested, with an Evidentiary Panel Charge and Chief Disciplinary Counsel's Proposed Hearing Order pursuant to Rule 2.16(A) of the Texas Rules of Disciplinary Procedure. Respondent failed to timely file a Responsive Pleading and Proposed Hearing Order pursuant to Rule 2.16(B) of the Texas Rules of Disciplinary Procedure. Respondent was served via certified mail, return receipt requested, with a Notice of Default and Respondent failed to timely file a verified motion reflecting good cause for failing to timely file a responsive pleading and proposed hearing order. Respondent was served via certified mail, return receipt requested, with a Motion for Default Judgment and Order Setting Hearing Date.

The Evidentiary Panel has conducted a hearing and has found the Respondent in default; therefore, all facts alleged in the charging document are taken as true, pursuant to Rule 2.16(B) of the Texas Rules of Disciplinary Procedure.

JURISDICTION AND VENUE

The Evidentiary Panel finds that Respondent is an attorney licensed to practice law in Texas and further finds that Respondent failed to timely file an election to have the complaint heard in a district court. Therefore, the Evidentiary Panel finds it has jurisdiction over the parties and subject matters of this action, and that venue is proper before the Evidentiary Panel of the District 07A Grievance Committee, Tarrant County, Texas.

PROFESSIONAL MISCONDUCT

The Evidentiary Panel finds that the acts and conduct of Respondent as set forth hereinafter constitute professional misconduct.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent was retained on or about June 8, 2001, to draft a demand letter to a real estate management company on behalf of Complainant Karen Remmers (hereinafter referred to as "Complainant"). Respondent failed to provide any meaningful legal services on Complainant's behalf.

During the representation, Complainant requested the status of the matter on numerous occasions by telephone and by certified mail, but Respondent failed to respond to Complainant's requests.

On or about January 24, 2003, Respondent received notice of this complaint by certified mail, return receipt requested. Respondent was requested to reply, in writing, within thirty (30) days of receipt, but failed to do so and asserted no grounds for her failure to respond.

The foregoing facts support a violation of Rules 1.01(b)(1), 1.03(a) and 8.04(a)(8) of the Texas Disciplinary Rules of Professional Conduct.

FULLY PROBATED SUSPENSION

The Evidentiary Panel has issued a Findings of Fact and Conclusions of Law on file herein, and said findings and conclusions support a Judgment of Fully Probated Suspension and by reason of said findings and conclusions, the Panel is of the opinion that Respondent is guilty of professional misconduct and should be suspended for a period of one (1) year with such suspension being probated for one (1) year.

IT IS THEREFORE AGREED and **ORDERED** that Respondent be and is hereby suspended from the practice of law for a period of one (1) year with the imposition of such suspension being suspended and Respondent being placed on probation for a period of one (1) year beginning September 1, 2004, and ending August 31, 2005, under the following terms and conditions:

1. Respondent shall not violate any of the provisions of the Texas Disciplinary Rules of Professional Conduct nor any provision of the State Bar Rules.

2. Respondent shall not violate the laws of the United States or any other state other than minor traffic violations.

3. Respondent shall and specifically agrees to maintain a current status regarding membership fees and occupational tax.

4. Respondent shall comply with Interest on Lawyers Trust Account requirements in accordance with Article XI of the State Bar Rules.

5. Respondent shall keep the State Bar membership department notified of her current business and home addresses, and telephone numbers, and shall immediately notify the State Bar membership department and the Chief Disciplinary Counsel's Office of the State Bar of Texas, One Lincoln Centre, 5400 LBJ Freeway, Suite 1280, Dallas, Texas 75240, of any change in her addresses or phone numbers.

6. Respondent shall not, during the period of probation, violate any term of this judgment.

7. Respondent shall cooperate fully with the Chief Disciplinary Counsel's Office of the State Bar of Texas in their efforts to monitor compliance with this judgment.

8. Respondent shall pay State Bar attorneys' fees in the amount of One Thousand Seven Hundred Five and no/100 Dollars ($1,705.00). Said attorneys' fees shall be paid no later than August 31, 2005, shall be paid by cashier's check or money order, made payable to the State Bar of Texas and delivered to the Office of the Chief Disciplinary Counsel, State Bar of Texas at One Lincoln Centre, 5400 LBJ Freeway, Suite 1280, Dallas, Texas 75240.

9. Respondent shall pay costs to the State Bar of Texas in the amount of Three Hundred Nineteen and 68/100 Dollars ($319.68). Said costs shall be paid no later than August 31, 2005, shall be paid by cashier's check or money order, made payable to the State Bar of Texas and delivered to the Office of the Chief Disciplinary Counsel, State Bar of Texas at One Lincoln Centre, 5400 LBJ Freeway, Suite 1280, Dallas, Texas 75240.

10. Respondent shall complete eighteen (18) hours of Continuing Legal Education (CLE) in the areas of Law Office Management (ten (10) hours) and Ethics (eight (8) hours) no later than August 31, 2005. Verification of the completion of these courses shall be sent to the Chief Disciplinary Counsel's Office of the State Bar of Texas, at One Lincoln Centre, 5400 LBJ Freeway, Suite 1280, Dallas, Texas 75240, no later than September 5, 2005.

PROBATION REVOCATION

IT IS FURTHER AGREED and **ORDERED** that upon determination by the Board of Disciplinary Appeals that Respondent has violated any of the terms or conditions of this probation, the Board shall enter an order revoking the probation and imposing the active suspension of the

Respondent from the practice of law for a period of one (1) year, commencing on or after the date of revocation, with no credit given for any period of probation successfully served, upon the following conditions:

1. Any grievance committee of the State Bar of Texas or the Chief Disciplinary Counsel of the State Bar of Texas may apply for revocation to the Board of Disciplinary Appeals, by filing a written motion to revoke probation;

2. A copy of the Motion to Revoke Probation and Notice of Hearing on such Motion shall be delivered to Respondent pursuant to Rule 2.20, Texas Rules of Disciplinary Procedure, at Respondent's last known address on the membership rolls for the Supreme Court of Texas; and

3. The Board shall hear the Motion to Revoke Probation within thirty (30) days of service upon Respondent, and shall determine whether Respondent has violated any of the terms or conditions of probation by a preponderance of the evidence.

IT IS FURTHER AGREED and **ORDERED** that during any term of active suspension that may be imposed upon Respondent by the Board of Disciplinary Appeals by reason of Respondent's failure to adhere to the terms of this Judgment, Respondent shall be prohibited from practicing law in Texas, holding herself 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 court or before any administrative body, or holding herself out to others or using her name, in any manner, in conjunction with the words "attorney at law", "attorney", "counselor at law", or "lawyer".

All attorneys' fees and costs amounts ordered herein are due to the misconduct of the Respondent and are assessed as a part of the sanction in accordance with Rule 1.06(T) of the Texas Rules of Disciplinary Procedure and are intended by the parties to be non-dischargeable in

bankruptcy. Interest shall accrue on the attorneys' fees and costs from the date due as stated in this judgment at the rate of five percent (5%) per annum until paid.

SIGNED this 17th day of August, 2004.

EVIDENTIARY PANEL
DISTRICT NO. 07A
STATE BAR OF TEXAS

BY:

Luis A. Galindo
Evidentiary Panel Chair

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below:

Lauren Baisdon on behalf of Michael Graham
Bar No. 24113581
lbaisdon@texasbar.com
Envelope ID: 83375570
Filing Code Description: Brief on the Merits (all briefs)
Filing Description: Brief on the Merits (all briefs)
Status as of 1/12/2024 1:27 PM CST

Associated Case Party: AnnetteR.Loyd

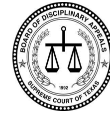
Name	BarNumber	Email	TimestampSubmitted	Status
Gaines West		gaines.west@westwebblaw.com	1/12/2024 1:24:41 PM	SENT
Billy SHart		billy.hart@westwebblaw.com	1/12/2024 1:24:41 PM	SENT
Hanna Lee		hanna.lee@westwebblaw.com	1/12/2024 1:24:41 PM	SENT

Associated Case Party: Commission for Lawyer Discipline

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Graham	24113581	Michael.Graham@TEXASBAR.COM	1/12/2024 1:24:41 PM	SENT
Laurie Guerra		laurie.guerra@texasbar.com	1/12/2024 1:24:41 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Royce Lemoine	24026421	royce.lemoine@texasbar.com	1/12/2024 1:24:41 PM	SENT



FILED
Jan 18 2024
THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

Case:

14-23-00646-CV

Date Filed:

08/31/2023

Case Type:

Miscellaneous/other civil

Style:

In the Matter of Kennitra M. Foote

v.:

Orig Proc:

No

Transfer From:

Transfer In:

Transfer Case:

Transfer To:

Transfer Out:

Pub Service:

APPELLATE BRIEFS

Date	Event Type	Description	Document
12/28/2023	Brief filed - oral argument requested	Appellant	[PDF/7.60 MB] Brief [PDF/105 KB] Notice

CASE EVENTS

Date	Event Type	Disposition	Document
12/28/2023	Brief filed - oral argument requested		[PDF/7.60 MB] Brief [PDF/105 KB] Notice
12/28/2023	Appellants brief due		
12/19/2023	Motion for extension of time to file brief disposed	GRANTED	[PDF/137 KB] Notice
12/19/2023	Motion for extension of time to file brief filed		[PDF/231 KB] Motion
12/19/2023	Appellants brief due		
11/29/2023	Appellants brief due		
11/28/2023	Motion for extension of time to file brief disposed	GRANTED	[PDF/137 KB] Notice
11/27/2023	Motion for extension of time to file brief filed		[PDF/231 KB] Motion
10/30/2023	Motion for extension of time to file brief disposed	GRANTED	[PDF/138 KB] Notice
10/30/2023	Motion for extension of time to file brief filed		[PDF/230 KB] Motion
10/30/2023	Appellants brief due		
10/05/2023	Motion for extension of time to file notice of appeal disposed	GRANTED	[PDF/136 KB] Notice
10/04/2023	Response due		
09/28/2023	Reporters record filed		[PDF/105 KB] Notice
09/28/2023	Reporters record received not filed	REFUSED	[PDF/101 KB] Notice
09/28/2023	Reporters record due		
09/28/2023	Record due		
09/19/2023	No payment arrangements made with court reporter for record		[PDF/92 KB] Notice
09/19/2023	Court reporters notice to court regarding status of record		[PDF/189 KB] Information Sheet
09/15/2023	Docketing statement filed		
09/15/2023	Mediation docketing statement due		
09/15/2023	Docketing statement due		
09/11/2023	Clerks record filed		[PDF/120 KB] Notice
09/11/2023	Fee paid		[PDF/253 KB] Fee Paid
09/11/2023	Court fee due		

Date	Event Type	Disposition	Document
09/07/2023	Motion for extension of time to file notice of appeal filed		[PDF/215 KB] Motion
09/06/2023	Mediation docketing statement returned		[PDF/206 KB] Mediation Docketing State
09/06/2023	Appearance of counsel		[PDF/182 KB] Notice of Appearance
08/31/2023	Letter issued by the court		[PDF/95 KB] Notice
08/31/2023	Letter issued by the court		[PDF/98 KB] Notice
08/31/2023	Case began in court of appeals		[PDF/322 KB] Letter of Assignment
08/30/2023	Notice of appeal filed in trial court		
06/19/2023	Request for findings of fact and conclusions of law		
05/31/2023	Judgment signed by trial court judge		

CALENDARS

Set Date	Calendar Type	Reason Set
01/29/2024	Status	Appellee brief due

PARTIES

Party	PartyType	Representative
Commission for Lawyer Discipline	Appellee	Michael Graham
Foote, Kennitra M.	Appellant	Jeffrey Ray Vaughan
The State Bar of Texas	Appellee	Khadija Roberts

TRIAL COURT INFORMATION

Court

412th District Court

County

Brazoria

Court Judge

Honorable Judge, 412th District Court

Court Case

114076-CV

Reporter

Punishment

To view or print PDF files you must have the Adobe Acrobat® reader. This software may be obtained without charge from Adobe. Download the reader from the Adobe Web site

ACCEPTED
05-23-00497-CV
FIFTH COURT OF APPEALS
DALLAS, TEXAS
7/21/2023 4:47 PM
RUBEN MORIN
CLERK

FILED
Jan 18 2024
THE BOARD *of* DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

No. 05-23-00497-CV

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
7/21/2023 4:47:32 PM
Ruben Morin
Clerk

In The Court of Appeals
Fifth District of Texas
Dallas, Texas

COMMISSION FOR LAWYER DISCIPLINE,
APPELLANT

V.

SIDNEY POWELL,
APPELLEE

Appealed from the 116th Judicial District Court
of Dallas County, Texas
Honorable Andrea K. Bouressa, Sitting by Assignment

BRIEF OF APPELLANT COMMISSION FOR LAWYER DISCIPLINE

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION

MICHAEL G. GRAHAM
APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY COUNSEL

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

Identity of Parties and Counsel

Appellant

Commission for Lawyer Discipline

Counsel for Appellant

Seana Willing
Chief Disciplinary Counsel

Royce LeMoine
Deputy Counsel for Administration

Michael G. Graham
Appellate Counsel
Texas Bar No. 24113581
Email: Michael.Graham@texasbar.com

State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
T: (512) 427-1350; (877) 953-5535
F: (512) 427-4253

Appellee

Sidney Powell

Counsel for Appellee

Robert H. Holmes
Holmes Lawyer, PLLC
Email: rhholmes@swbell.net
19 St. Laurent Place
Dallas, Texas 75225

S. Michael McColloch
S. Michael McColloch, PLLC
Email: smm@mccolloch-law.com

6060 N. Central Expressway, Suite 500
Dallas, Texas 75206

KAREN COOK
Karen Cook, PLLC
Email: karen@karencooklaw.com
6060 N. Central Expressway, Suite 500
Dallas, Texas 75206

Trial Judge

HON. ANDREA K. BOURESSA (SITTING BY ASSIGNMENT)
471st Judicial District Court, Collin County
Russell A. Steindam Courts Building
2100 Bloomdale Rd.
McKinney, Texas 75071

TABLE OF CONTENTS PAGE

IDENTITY OF PARTIES AND COUNSEL 1

INDEX OF AUTHORITIES 5

STATEMENT OF THE CASE 11

ISSUES PRESENTED 12

STATEMENT OF FACTS 13

I. Powell's alleged professional misconduct 13

II. Procedural history 15

SUMMARY OF THE ARGUMENTS 19

ARGUMENTS 20

I. Standard of Review 20

A. No-evidence summary judgment 20

B. Traditional summary judgment 21

II. The trial court erred in granting both of Powell's summary judgment motions as to the Commission's claims that she violated TDRPCs 3.03(a)(1), 3.03(a)(5) and/or 8.04(a)(3) 22

A. The trial court erred in granting Powell's no-evidence motion 22

1. Powell sought no-evidence summary judgment as to the Commission's claims she violated TDRPCs 3.03(a)(1), 3.03(a)(5) and 8.04(a)(3) 22

2. The summary judgment evidence identified in, referenced in, and/or attached to the Commission's 2nd Amended MSJ Response should be considered (and should have been considered by the trial court) 23

3. The Commission's summary judgment evidence presented more than a scintilla of evidence as to each element of its claims 28

4. Powell's objections to the exhibits attached to the 2nd Amended MSJ Response are without merit 32

B. The trial court erred in granting Powell's traditional motion 35

1. Powell also sought traditional summary judgment as to the Commission's claims she violated TDRPCs 3.03(a)(1), 3.03(a)(5) and 8.04(a)(3) 35

2. Powell's traditional motion failed to carry her burden 36

3. Even if Powell's traditional motion **had** carried her burden, the summary judgment evidence in the record created a genuine issue of material fact as to each element of the Commission's claims 39

CONCLUSION AND PRAYER 40

CERTIFICATE OF COMPLIANCE 41

CERTIFICATE OF SERVICE 42

APPENDIX 43

CASES **INDEX OF AUTHORITIES** PAGE

Brown v. Comm'n for Lawyer Discipline,
980 S.W.2d 675 (Tex.App. – San Antonio 1998, no pet.) 31

Casso v. Brand,
776 S.W.2d 551 (Tex. 1989) 20, 21, 36

City of Houston v. Clear Creek Basin Authority,
589 S.W.2d 671 (Tex. 1979) 20, 21, 36

City of Keller v. Wilson,
168 S.W.3d 802 (Tex. 2005) 21

Cohn v. Comm'n for Lawyer Discipline,
979 S.W.2d 694 (Tex.App. – Houston [14th Dist.]1998, no pet.) 30

Diaz v. Comm'n for Lawyer Discipline,
953 S.W.2d 435 (Tex.App. – Austin 1997, no pet.).....................................30

Dixie Dock Enters. v. Overhead Door Corp.,
No. 05-01-00639-CV, 2002 WL 244324 (Tex.App. – Dallas
Feb. 21, 2002, no pet.) 27

Dousson v. Disch,
629 S.W.2d 111 (Tex.App. – Dallas 1981, writ dism'd.) 27

Evans v. First Nat'l Bank of Bellville,
946 S.W.2d 367 (Tex.App. – Houston [14th Dist.] 1997, writ denied).........27

Forbes Inc. v. Granada Biosciences, Inc.,
124 S.W.3d 167 (Tex. 2003) 21

Gulbenkian v. Penn,
252 S.W.2d 929 (Tex. 1952) 20

King Ranch, Inc. v. Chapman,
118 S.W.3d 742 (Tex. 2003) 20, 21

Laidlaw Waste Sys. v. City of Wilmer,
904 S.W.2d 656 (Tex. 1995) 33, 34, 35

Lance v. Robinson,
543 S.W.3d 723 (Tex. 2018) 26-27

Limestone Prods. Distrib., Inc. v. McNamara,
71 S.W.3d 308 (Tex. 2002) 22

Lujan v. Navistar, Inc.,
555 S.W.3d 79 (Tex. 2018) 20

Mack Trucks, Inc. v. Tamez,
206 S.W.3d 572 (Tex. 2006) 20-21

McCurry v. Aetna Cas. & Sur. Co.,
742 S.W.2d 863 (Tex.App. – Corpus Christi 1987, writ denied)..................27

McIntyre v. Comm'n for Lawyer Discipline,
169 S.W.3d 803 (Tex.App. – Dallas 2005, pet. denied) 34

Merrell Dow Pharms., Inc. v. Havner,
953 S.W.2d 706 (Tex. 1997) 21

Merriman v. XTO Energy, Inc.,
407 S.W.3d 244 (Tex. 2013) 20, 21

Nixon v. Mr. Prop. Mgmt. Co.,
690 S.W.2d 546 (Tex. 1985) 22

Olsen v. Comm'n for Lawyer Discipline,
347 S.W.3d 876 (Tex.App. - Dallas 2011, pet. denied) 31, 34

R.I.O. Systems, Inc. v. Union Carbide Corp.,
780 S.W.2d 489 (Tex.App. – Corpus Christi 1989, writ denied)..................27

Republic Nat'l Leasing Corp. v. Schindler,
717 S.W.2d 606 (Tex. 1986) 36

Rhóne-Poulenc, Inc. v. Steel,
997 S.W.2d 217 (Tex. 1999) 22

Richards v. Allen,
402 S.W.2d 158 (Tex. 1966) 27

Robins v. Comm'n for Lawyer Discipline,
No. 01-19-00011-CV, 2020 WL 101921 (Tex.App. – Houston [1st Dist.]
Jan. 9, 2020, pet. denied) 31

Rosas v. Comm'n for Lawyer Discipline,
335 S.W.3d 311 (Tex.App. – San Antonio 2010, no pet.) 31

Trico Technologies Corp. v. Montiel,
949 S.W.2d 308 (Tex. 1997) 36

Valence Operating Co. v. Dorsett,
164 S.W.3d 656 (Tex. 2005) 21-22

Vaughn v. Burroughs Corp.,
705 S.W.2d 246 (Tex.App. – Houston [14th Dist.] 1986, no writ)................27

Weiss v. Comm'n for Lawyer Discipline,
981 S.W.2d 8 (Tex.App. – San Antonio 1998, pet. denied) 30

Whitaker v. Huffaker,
790 S.W.2d 761 (Tex.App. – El Paso 1990, writ denied).............................27

Willie v. Comm'n for Lawyer Discipline,
No. 14-13-00872-CV, 2015 WL 1245965 (Tex.App. – Houston
[14th Dist.] March 17, 2015, pet. denied) (mem. op.).............................. 34-35

Yarbrough v. ELC Energy, LLC,
No. 12-15-00303-CV, 2017 WL 2351357 (Tex.App. – Tyler
May 31, 2017, no pet.) (mem. op.) 27

STATUTES | PAGE

TEX. DISCIPLINARY R. PROF'L CONDUCT 3.01 35

TEX. DISCIPLINARY R. PROF'L CONDUCT 3.03(a)(1), (5) .... *passim*
TEX. DISCIPLINARY R. PROF'L CONDUCT 8.04(a)(3) .... *passim*
TEX. DISCIPLINARY R. PROF'L CONDUCT, TERMINOLOGY 30

TEX. R. CIV. P. 166a 36

TEX. RULES DISCIPLINARY P. R. 3.02 11
TEX. RULES DISCIPLINARY P. R. 3.03 15
TEX. RULES DISCIPLINARY P. R. 3.15 20
TEX. RULES DISCIPLINARY P. R. 15.05 32

No. 05-23-00497-CV

In The Court of Appeals
Fifth District of Texas
Dallas, Texas

COMMISSION FOR LAWYER DISCIPLINE,
APPELLANT
V.

SIDNEY POWELL,
APPELLEE

Appealed from the 116th Judicial District Court
of Dallas County, Texas
Honorable Andrea K. Bouressa, Sitting by Assignment

BRIEF OF APPELLANT
COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE FIFTH COURT OF APPEALS:

Appellant, the Commission for Lawyer Discipline, submits this opening brief. For clarity, this brief refers to Appellant as the "Commission" and Appellee will be referred to as "Powell". This brief designates record references as CR Vol. _, ___ (clerk's record); and App. (appendix). References to rules are references to the

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

[1] *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G. app. A (West 2022).
[2] *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G. app. A-1 (West 2022).

STATEMENT OF THE CASE

Type of Proceeding:	Attorney Discipline
Petitioner/Appellant:	The Commission for Lawyer Discipline
Respondent/Appellee:	Sidney Powell
Trial Judge:	Honorable Andrea K. Bouressa (sitting by assignment pursuant to Rule 3.02 of the Texas Rules of Disciplinary Procedure)
Judgment or Order Appealed:	Final Summary Judgment granting Respondent's Traditional and No-Evidence Motions for Summary Judgment as to the Commission's claims against Powell for violations of TDRPCs 3.03(a)(1), 3.03(a)(5) and 8.04(a)(3). [CR Vol. 2, 3905-3909] [App. 1]. Further, to the extent (if any) that it clarifies the trial court's above-referenced judgment, the court's Order Denying Motion for Reconsideration or New Trial. [CR Vol. 2, 5284-5286] [App. 2].

ISSUES PRESENTED

1. Texas lawyers are prohibited from knowingly making false statements of material fact or law to a tribunal, or offering or using evidence that they know to be false, pursuant to TDRPC 3.03(a)(1) and (a)(5), respectively. [App. 3]. Texas lawyers are also prohibited from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, pursuant to TDRPC 8.04(a)(3). [App. 4].

Did the trial court err in granting Powell's summary judgment motions based on the evidence presented, which demonstrated (at least) the existence of a genuine issue of material fact as to whether Respondent violated TDRPCs 3.03(a)(1), 3.03(a)(5), and/or 8.04(a)(3)?

2. Did the trial court err in failing to consider all of the Commission's summary judgment evidence?

3. Did the trial court err in sustaining, in part, Powell's objection to the Commission's summary judgment evidence consisting of the Complaint for Declaratory, Emergency, and Permanent Injunctive Relief, and the Certificate of Compliance and test report attached thereto as Exhibits 5 & 6, filed by Powell as an attorney of record for multiple plaintiffs in Case No. 20-cv-04809, in the U.S. District Court for the Northern District of Georgia, styled *Coreco Ja'Qan Person, et. al., v. Brian Kemp, in his official capacity as Governor of Georgia, et. al.* (the "Georgia Case")?

STATEMENT OF FACTS

I. Powell's alleged professional misconduct.

Between November 25, 2020 and December 5, 2020, after Arizona, Georgia, Michigan, and Wisconsin (the "Battleground States") had certified their election results of the November 3, 2020 presidential election, Powell filed multiple federal lawsuits on behalf of her clients against multiple agencies and/or officials in the Battleground States - whose election results ended up adverse to Donald J. Trump - in an attempt to decertify their election results and/or enjoin them from sending their results to the Electoral College. [App. 7; CR Vol. 1, 1300-1403] [App. 8; CR Vol. 1, 1251-67]. The lawsuits that Powell signed and filed on behalf of her client(s), alleged that election fraud had occurred in these Battleground States by way of a vast conspiracy involving U.S. Dominion Inc. (a company that manufactures voting machines), foreign actors, state officials, and county election workers to inflate (or cause to be "switched") the vote count in favor of presidential candidate Joseph R. Biden through the "unlawful use of the Dominion Democracy Suite software and devices". [App. 7; CR Vol. 1, 1375-77].

In the lawsuits filed in the Battleground States, Powell made representations that an outcome-determinative number of: individuals voted twice; votes were cast by out-of-state residents; illegal votes were counted; and absentee ballots were not scanned into the system. [App. 7; CR Vol. 1, 1300-1403] [App. 8; CR Vol. 1, 1251-

67]. She also made claims that "voting machines and the software were breached, and machines were connected to the internet in violation of professional standards and state and federal laws." [App. 7; CR Vol. 1, 1305-06].

More specifically, in the Complaint for Declaratory, Emergency, and Permanent Injunctive Relief filed in the Georgia Case (the "Georgia Complaint"), Powell represented that Defendants, Brian Kemp and Brad Raffensperger (the Georgia Governor and Secretary of State, respectively) had "rushed through the purchase of Dominion voting machines and software," for the 2020 Presidential Election, in support of their request for emergency injunctive relief. [App. 7; CR Vol. 1, 1306-07].

In support of her argument, Powell attached to the Georgia Complaint what she represented to be a true copy of the *Certificate of Compliance* that was executed by Raffensperger to memorialize his findings that the Dominion Voting System was in compliance with the Georgia Election Code and Rules. [App. 7; CR Vol. 1, 1306-07] [App. 5; CR Vol. 1, 1270-71]. Powell also attached to the Georgia Complaint what she represented to be a true copy of the *Test Report* of the Dominion Voting System that was signed by Michael Walker, VSTL Project Manager. [App. 7; CR Vol. 1, 1306-07] [App. 6; CR Vol. 1, 1272-99]. She further represented in the Georgia Complaint that the certificate and test report were "undated." [App. 7; CR Vol. 1, 1306-07].

II. Procedural history

The Commission filed this disciplinary action on March 1, 2022, pursuant to TRDP Rule 3.03, in accordance with Respondent's election. [CR Vol. 1, 17-22]. On July 20, 2022, Powell filed her initial Motion for Summary Judgment, Rules §§ 3.03(a)(1); 3.03(a)(5); and; 8.03(a)(3) (sic), and requested it be set on the court's submission docket (the "traditional motion"). [CR Vol. 1, 69-115]. On July 15, 2022, the court set this disciplinary action for a bench trial on October 17, 2022, and set a deadline for all pretrial motions to be set no later than October 3, 2022. [CR Vol. 1, 68].

On August 9, 2022, the Commission filed its initial response to Powell's traditional motion. [CR Vol. 1, 220-457]. That same day, the Commission filed its Motion to Compel. [CR Vol. 1, 121-219]. On August 17, 2022, the Commission filed its Motion for Continuance of Trial, which was set for a hearing on August 29, 2022. [CR Vol. 1, 458-475]. That same day, the parties agreed to a continuance of the trial date and to confer on a new scheduling order for the court's approval. [Id.]

On September 13, 2022, the Commission filed its Third Amended Disciplinary Petition, asserting that Powell had committed professional misconduct through her misrepresentations and/or dishonest conduct in litigation before several federal courts in suits related to the 2020 presidential election. [CR Vol.1 480-489]. In its pleadings the Commission specifically identified those suits as: (i) the Georgia

Case; (ii) *King, et. al., v. Whitmer, et. al.*, in the U.S. District Court for the Eastern District of Michigan, Case No. 2:20-cv-13134-LVP-RSW (the "Michigan Case"); (iii) *Feehan v. Wisc. Elections Comm'n*, in the U.S. District Court for the Eastern District of Wisconsin, Case No. 2:20-cv-01771-PP (the "Wisconsin Case"); and (iv) *Bowyer v. Ducey*, in the U.S. District Court for the District of Arizona, Case No. 1:20-cv-02321-DJH (the "Arizona Case"). [CR Vol. 1, 483-486].

On November 4, 2022, the court entered its Agreed Scheduling Order setting trial for April 24, 2023. [CR Vol. 1, 648-650]. On November 21, 2022, the Commission filed its Amended Response to Respondent's Motion for Summary Judgment, containing 8 exhibits labeled Exhibit A through Exhibit H (the "Nov. 21st Amended MSJ Response"). [CR Vol. 1, 678-920]. Additionally, the Commission filed its Second Motion for Continuance of MSJ Hearing Date arguing that Powell had failed to comply with the court's October 12, 2022 "letter ruling" granting, in part, the Commission's prior motion to compel. [CR Vol. 1, 921-923].

On December 28, 2022, Respondent filed her second summary judgment motion entitled, Sidney Powell's No-Evidence Motion for Summary Judgment (the "no-evidence motion") and set it to be heard the same day as her traditional motion, January 18, 2023. [CR Vol. 1, 978-996]. In her no-evidence motion, Powell acknowledged that she "and others" filed the Georgia Case as well as similar cases in Michigan, Wisconsin, and Arizona. [CR Vol. 1, 979-980].

On January 5, 2023, the Commission filed another amended summary judgment response (the "Jan. 5th Amended MSJ Response"). [CR Vol. 1, 1000-1203]. On January 9, 2023, Powell filed her Reply to Bar's Response to Sidney Powell's Motion for Partial Summary Judgment, Rules §§ 3.03(a)(1); 3.03(a)(5); and 8.03(a)(3) (sic). [CR Vol. 1, 1204-1220].

On January 11, 2023, the Commission filed its Second Amended Response to Respondent's Hybrid Motion for Summary Judgment and Respondent's No Evidence Motion (the Commission's "2nd Amended MSJ Response"). [CR Vol. 1, 1221-1464]. That response reiterated the Commission's request for a continuance as set forth in their pending Second Motion for Continuance of MSJ Hearing Date. [CR Vol. 1, 921-927].

On January 27, 2023, Powell filed her Motion for Continuance of Hearing on the Commission's Second Motion to Compel, referencing the Commission's Second Motion to Compel, which had been filed on January 12, 2023. [CR Vol. 1, 1498-2148]. On January 30, 2023, Powell filed her Opposition to the Commission's Second Motion to Compel, noting, amongst other things, discovery items she had not yet produced, but that she would subsequently produce (albeit, after the Commission's deadline to respond to her summary judgment motions). [CR Vol. 1, 2149-2828].

On February 17, 2023, Powell filed her Supplement to her Opposition to the Commission's Second Motion to Compel. [CR Vol. 2, 2892-2910]. In an attached declaration, Powell represented that she produced additional text messages to the Commission on February 17, 2023. [CR Vol. 2, 2892-2910]. On February 21, 2023, the Commission filed its reply and provided exhibits showing Powell had supplemented her discovery responses by identifying 102 new potential fact witnesses on January 20, 2023, and by producing a 599-page privilege log on February 8, 2023. [CR Vol. 2, 2911-3893].

Five days later, on February 22, 2023, the trial court granted both Powell's summary judgment motions. [App. 1]. On March 24, 2023, the Commission filed its Motion for Reconsideration and/or for New Trial. [CR Vol. 2, 3912-5216]. On May 4, 2023, the trial court entered its Order Denying Motion for Reconsideration or New Trial. [App. 2]. This appeal follows.

SUMMARY OF THE ARGUMENTS

This Court should reverse the trial court's granting of Powell's summary judgment motions and remand this disciplinary action to the trial court for further proceedings because the summary judgment evidence shows there exists a genuine issue of material fact as to whether Powell violated Rules 3.03(a)(1), 3.03(a)(5), and/or 8.04(a)(3).

ARGUMENTS

I. Standard of Review

A final judgment of a district court in an attorney disciplinary proceeding may be appealed as in civil cases generally. TEX. RULES DISCIPLINARY P.R. 3.15. Both traditional summary judgment motions and no-evidence summary judgment motions are reviewed *de novo*. *Lujan v. Navistar, Inc.*, 555 S.W.3d 79, 84 (Tex. 2018); *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013). Importantly, the underlying purpose of summary judgment in Texas is to "eliminate *patently unmeritorious* claims or untenable defenses…" *Lujan,* 555 S.W.3d at 87 (emphasis added) (quoting *Gulbenkian v. Penn*, 252 S.W.2d 929, 931 (Tex. 1952)); *see also*, *Casso v. Brand*, 776 S.W.2d 551, 556 (Tex. 1989); *City of Houston v. Clear Creek Basin Authority*, 589 S.W.2d 671, 678 n. 5 (Tex. 1979).

A. No-evidence summary judgment

"No-evidence summary judgments are reviewed under the same legal sufficiency standard as directed verdicts." *Merriman*, 407 S.W.3d at 248 (citing *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 750 (Tex. 2003). The reviewing court reviews the evidence presented in the light most favorable to the nonmovant, "crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not." *Mack Trucks,*

Inc. v. Tamez, 206 S.W.3d 572, 582 (Tex. 2006); *Merriman*, 407 S.W.3d at 248. A no-evidence summary judgment is appropriate only when:

> "(a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence conclusively establishes the opposite of the vital fact."
> --*King Ranch*, 118 S.W.3d at 751 (quoting *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997)); *Merriman*, 407 S.W.3d at 248.

More than a scintilla of evidence is found when the evidence would allow "reasonable and fair-minded people to differ in their conclusions." *Forbes Inc. v. Granada Biosciences, Inc.*, 124 S.W.3d 167, 172 (Tex. 2003). Summary judgment is improper when the nonmovant presents more than a scintilla of evidence in support of the challenged element(s) of its claim(s). *Id.*

B. Traditional summary judgment

The burden of proof is not shifted to the nonmovant in a traditional summary judgment proceeding, unless and until the movant conclusively establishes it is entitled to summary judgment as a matter of law. *Brand*, 776 S.W.2d at 556 (citing *Clear Creek Basin Authority*, 589 S.W.2d at 678).

In reviewing a traditional summary judgment motion, the reviewing court "examine[s] the entire record in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion." *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005); *Valence Operating Co. v.*

Dorsett, 164 S.W.3d 656, 661 (Tex. 2005). In deciding whether there is a genuine issue of material fact that precludes summary judgment, the court takes as true all evidence favorable to the nonmovant. *Limestone Prods. Distrib., Inc. v. McNamara*, 71 S.W.3d 308, 311 (Tex. 2002); *Rhône-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999); *Nixon v. Mr. Prop. Mgmt. Co.,* 690 S.W.2d 546, 548-49 (Tex. 1985).

II. The trial court erred in granting both of Powell's summary judgment motions as to the Commission's claims that she violated TDRPCs 3.03(a)(1), 3.03(a)(5) and/or 8.04(a)(3).

As is set forth more fully below, in response to Powell's no-evidence motion for summary judgment, the Commission presented more than a scintilla of evidence in support of the challenged elements of each of its claims against Powell under TDRPCs 3.03(a)(1), 3.03(a)(5), and/or 8.04(a)(3). Likewise, Powell failed to conclusively establish that she was entitled to traditional summary judgment on those same claims. In fact, the summary judgment evidence in the record (including Powell's ***own*** summary judgment evidence) demonstrates the existence of (at least) a genuine issue of material fact as to each of the Commission's claims against her for violations of TDRPCs 3.03(a)(1), 3.03(a)(5), and/or 8.04(a)(3). Thus, this Court should reverse the trial court's Final Summary Judgment granting Powell's motions in those respects and remand this case to the trial court for further proceedings.

A. The trial court erred in granting Powell's no-evidence motion.

1. Powell sought no-evidence summary judgment as to the Commission's claims she violated TDRPCs 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3).

Powell's no-evidence motion for summary judgment sought judgment as to the Commission's claims she violated TDRPCs 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3). [CR Vol. 1, 979-996]. Those ethical rules prohibit attorneys from, respectively: (1) knowingly making a false statement of material fact or law to a tribunal; (2) knowingly offering or using evidence that the lawyer knows to be false; and (3) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. [App. 3] [App. 4]. Powell's no-evidence motion contended that the Commission could not prove *any* element of *any* of the above-referenced violations. [CR Vol. 1, 987-990].

In the trial court, Powell asserted the Commission could not demonstrate she had: "knowingly" made a false statement that was "material"; "knowingly" offered or used evidence she knew to false; or "intentionally" engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. As shown below, the Commission's summary judgment evidence presented more than a scintilla of evidence as to each element of its claims, as well as to the issue of whether Powell *intended* to engage in dishonesty, fraud, deceit or misrepresentation, in violation of TDRPC 8.04(a)(3).

2. *The summary judgment evidence identified in, referenced in, and/or attached to the Commission's 2nd Amended MSJ Response, should be considered (and should have been considered by the trial court).*

The Commission identified as exhibits to its 2nd Amended MSJ Response the following [CR Vol. 1, 1222]:

Exhibit A: Order on Petitioner's Motion to Compel signed November 18, 2022. This document was identified in, but not actually attached to the 2nd Amended MSJ Response. However, it *was* attached to the Commission's Jan. 5th Amended MSJ Response. [CR Vol. 1, 1011-12].

Exhibit B: A true and correct copy of the *Certificate of Compliance* attached to the Georgia Complaint, as Exhibit 5 thereto. This document was mis-identified as Exhibit B but was *actually attached and marked* as Exhibit D, and referenced on pages 2, 7 and 9. [CR Vol. 1, 1222, 1227, 1229 & 1270-71] [App. 5].

Exhibit C: A true and correct copy of the *Test Report* attached to the Georgia Complaint, as Exhibit 6 thereto. This document was mis-identified as Exhibit C but was *actually attached and marked* as Exhibit E, and referenced on pages 2, 7 and 9. [CR Vol. 1, 1222, 1227, 1229 & 1272-99] [App. 6].

Exhibit D: A true and correct copy of the Georgia Complaint that was signed and filed by Powell as counsel of record. This document was mis-identified as Exhibit D but was *actually attached and marked* as Exhibit F, and referenced on pages 2, 7 and 9. [CR Vol. 1, 1222, 1227, 1229 & 1300-1403] [App. 7].

Exhibit E: A true and correct copy of Defendants' Consolidated Brief in Support of their Motion to Dismiss and Response in Opposition to Plaintiffs' Motion for Injunctive Relief (without exhibits) filed in the Georgia Case. This document was mis-identified as Exhibit E but was *actually attached and marked* as Exhibit G, and referenced on pages 2 and 8. [CR Vol. 1, 1222, 1228 & 1404-56].

However, the Commission *actually* attached as *additional* exhibits to its 2nd Amended MSJ Response the following:

Exhibit A: A true and correct copy of Powell's Response to First Requests for Production of Documents and Rule 196.4 First Request of Production of Electronic Documents, filed of record and served by Powell on July 14, 2022. [CR Vol. 1, 1232-48]. This document was generally referenced on pages 8 and 9 of the 2nd Amended MSJ

Response. [CR Vol. 1, 1228-29]. It was also attached as Exhibit A to the Commission's Nov. 21st Amended MSJ Response, and generally referenced on pages 5, 7 and 9 thereof. [CR Vol. 1, 678-704].

Exhibit B: A true and correct copy of Powell's Response to Interrogatories, filed of record and served by Powell on July 14, 2022. [CR Vol. 1, 1249-67]. This document was generally referenced on pages 8 and 9 of the 2nd Amended MSJ Response. [CR Vol. 1, 1228-29]. It was also attached as Exhibit B to the Commission's Nov. 21st Amended MSJ Response, and generally referenced on pages 5, 7 and 9 thereof. [CR Vol. 1, 678-87 & 705-23] [App. 8].

Exhibit C: The trial court's letter ruling dated October 12, 2022. [CR Vol. 1, 1268-69]. This document was also attached as Exhibit C to the Commission's Nov. 21st Amended MSJ Response, and generally referenced on pages 4, 7 and 9 thereof. [CR Vol. 1, 678-87 & 724-25.]

Exhibit H: E-mail from Powell's counsel with Powell's Categorization of Documents Responsive to Requests, which was signed on November 16, 2022. [CR Vol. 1, 1457-63]. This document was also attached as Exhibit H to the Commission's Nov. 21st Amended MSJ Response, and generally referenced on pages 5, 7 and 9 thereof. [CR Vol. 1, 678-87 & 913-19].

The Commission also generally referenced in its 2nd Amended MSJ Response as summary judgment evidence the Declarations of Harry MacDougald and Sidney Powell, which were on file with the court as Exhibits 1 and 2, respectively, to Powell's traditional motion. [CR Vol. 1, 1228-29 (reference in the 2nd Amended MSJ Response)] [CR Vol. 1, 69-98] [App. 9] [App. 10]. In fact, the Commission also referenced those Declarations as summary judgment evidence in both its Nov. 21st

Amended MSJ Response and its Jan. 5th Amended MSJ Response. [CR Vol. 1, 678-87 & 1000-1010].

The Commission admittedly mislabeled and mis-referenced the exhibits attached to its 2nd Amended MSJ Response. And the trial court, in its Final Summary Judgment, stated the only "exhibits **considered**…as summary judgment evidence," were the exhibits marked "F" and "G" to the 2nd Amended MSJ Response. [App. 1] (emphasis added). Those exhibits consisted **only** of the Complaint for Declaratory, Emergency, and Permanent Injunctive Relief that was signed and filed by Powell as counsel of record in the Georgia Case, and the Defendants' Consolidated Brief in Support of their Motion to Dismiss and Response in Opposition to Plaintiffs' Motion for Injunctive Relief (without exhibits) filed in the Georgia Case. [CR Vol. 1, 1221-31 & 1300-1456]. Further, the trial court sustained in part Powell's objection to Exhibit F, and sustained Powell's objection to Exhibit G. [App. 1].

The Commission subsequently clarified its mislabeling of the exhibits in the 2nd Amended MSJ Response in its Motion for Reconsideration and/or for New Trial. [CR Vol. 2, 3912-32]. Notwithstanding this clarification, the trial court denied reconsideration, without expressly addressing the summary judgment evidence further. [App. 2].

The Commission's above-described documentary evidence qualified as proper summary judgment evidence, as all such evidence was on file with the court,

and the trial court should have considered all such evidence. *Lance v. Robinson*, 543 S.W.3d 723, 732-33 (Tex. 2018); *see also, R.I.O. Systems, Inc. v. Union Carbide Corp.*, 780 S.W.2d 489, 492 (Tex.App. – Corpus Christi 1989, writ denied) (holding evidence "on file prior to the summary judgment hearing," including documents attached to earlier summary-judgment motions, was "proper summary judgment evidence"); *Vaughn v. Burroughs Corp.*, 705 S.W.2d 246, 248 (Tex.App. – Houston [14th Dist.] 1986, no writ; *Dousson v. Disch*, 629 S.W.2d 111 (Tex.App. – Dallas 1981, writ dism'd.). Further, this Court has expressly held that while an amended response to a summary judgment motion supersedes a previous response, that "does not preclude the consideration of the summary judgment evidence attached to the original pleading." *Dixie Dock Enters. v. Overhead Door Corp.*, No. 05-01-00639-CV, 2002 WL 244324, *3 (Tex.App. – Dallas Feb. 21, 2002, no pet.).[3] "Moreover, the Texas Supreme Court has held that the only requirement for summary judgment proof was that it 'be on file, either independently or as part of the motion for summary judgment, the reply thereto, or some other properly filed instrument.'" *Evans*, 946 S.W.2d at 376, citing *Richards v. Allen*, 402 S.W.2d 158, 161 (Tex. 1966).

---

[3] Citing *Evans v. First Nat'l Bank of Bellville*, 946 S.W.2d 367, 376 (Tex.App. – Houston [14th Dist.] 1997, writ denied); *Whitaker v. Huffaker*, 790 S.W.2d 761, 763 (Tex.App. – El Paso 1990, writ denied); and *McCurry v. Aetna Cas. & Sur. Co.*, 742 S.W.2d 863, 867 (Tex.App. – Corpus Christi 1987, writ denied); See also, *Yarbrough v. ELC Energy, LLC*, No. 12-15-00303-CV, 2017 WL 2351357, *7 (Tex.App. – Tyler May 31, 2017, no pet.) (mem. op.).

Here, all of the above-described summary judgment evidence was either attached to the Commission's Nov. 21st Amended MSJ Response, its Jan. 5th Amended MSJ Response, and/or its 2nd Amended MSJ Response, **or**, in the case of Powell's Responses to Interrogatories and the Declarations of herself and MacDougald, were independently filed or filed with her traditional motion by Powell. Additionally, Powell made no objections to the use of either her Responses to Interrogatories, or the Declarations of herself or MacDougald, as summary judgment evidence. Indeed, Powell contended (mistakenly, in the Commission's view) that those items *supported* both her no-evidence and traditional summary judgment motions. [CR Vol. 1, 69-115; 978-96; 1204-20; 1465-79; and 1484-95].

3. The Commission's summary judgment evidence presented more than a scintilla of evidence as to each element of its claims.

The undisputed summary judgment evidence demonstrates (at least) the following:

(i) Powell filed a Complaint for Declaratory, Emergency, and Permanent Injunctive Relief in the Georgia Case, as lead counsel and/or counsel of record. [App. 7] [App. 8, Int. Nos. 12 & 18(v & vi)] [App. 9, ¶3] [App. 10, ¶s 4, 5, 11 & 13].

(ii) Powell represented in the Georgia Case that:

> "Defendants Kemp and Raffensperger rushed through the purchase of Dominion voting machines and software in 2019 for the 2020 Presidential Election. A certificate from the Secretary of State was awarded to Dominion Voting Systems but is undated. (*See* attached hereto Exh. 5, copy Certification for Dominion Voting Systems from Secretary of State). Similarly a test report is signed by Michael

Walker as Project Manager but is also undated. (See Exh. 6, Test Report for Dominion Voting Systems, Democracy Suite 5-4-A)." [App. 7, ¶12] [App. 5] [App. 6].

(iii) Powell "reviewed and made corrections to" the Georgia complaint, and "made a reasonable inquiry as to the exhibits attached." [App. 10, ¶s 11 & 13].

(iv) The *actual* certificate and test report identified in Powell's above-referenced representations in the Georgia Case were not undated, as Powell represented. In fact, both MacDougald and Powell confirmed in their Declarations that the dates of those events, were "undisputed" or "indisputable" facts. [App. 9, ¶s14 & 15] [App. 10, ¶6].

(v) Because the dates of the certification and testing identified in Powell's above-referenced representations in the Georgia Case were "undisputed" or "indisputable" facts, the inclusion of those exhibits in that complaint was not necessary. [App. 9, ¶s14 & 15] [App. 10, ¶6].[4]

In (at least) those respects, the undisputed summary judgment evidence presented more than a scintilla of evidence as to each element of the Commission's claims that Powell violated TDRPCs 3.03(a)(1), 3.03(a)(2) and/or 8.04(a)(3). That is, the summary judgment evidence would allow reasonable and fair-minded people to differ in their conclusions, as to whether, in making the above-referenced representations in the Georgia Case, Powell had:

[4] A reasonable and fair-minded person could infer from the facts that; (i) the representations that the certificate and test report were "undated", as part of the named defendants' "rush[ing] through the purchase of Dominion voting machines and software"; and (ii) that Powell knew the dates of the certification and testing (as they were "indisputable" facts) and that the inclusion of the exhibits was not necessary, that Powell intentionally made the misrepresentation for the purpose of supporting her emergency request for injunctive relief.

(1) Knowingly made a false statement of material fact or law to a tribunal, in violation of TDRPC 3.03(a)(1);

(2) Knowingly offered or used evidence that she knew to be false, in violation of TDRPC 3.03(a)(5); and/or,

(3) Engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of TDRPC 8.04(a)(3).

With respect to attorney disciplinary matters, "knowingly," "known," or "knows," "[d]enotes actual knowledge of the fact in question…A person's knowledge may be inferred from circumstances." TEX. DISCIPLINARY R. PROF'L CONDUCT, TERMINOLOGY; *Cohn v. Comm'n for Lawyer Discipline*, 979 S.W.2d 694, 699 (Tex.App. – Houston [14th Dist.] 1998, no pet.). Further, evidence that an attorney knew "what the true facts were" would support a jury's conclusion that misrepresentation regarding such facts were made "knowingly." *Weiss v. Comm'n for Lawyer Discipline*, 981 S.W.2d 8, 18 (Tex.App. – San Antonio 1998, pet. denied).

Regarding the materiality requirement of TDRPC 3.03(a)(1), "materiality encompasses matters represented to a tribunal that the judge would attach importance to and would be induced to act on in making a ruling." *Cohn*, 979 S.W.2d at 698. Indeed, "'Rule 3.03(a)(1) encompasses false statements by a lawyer that *might* corrupt the course of litigation.'" *Id.*, quoting *Diaz v. Comm'n for Lawyer Discipline*, 953 S.W.2d 435, 438 (Tex.App. – Austin 1997, no writ) (emphasis in original).

Additionally, as to the alleged violation of TDRPC 8.04(a)(3), Powell's no-evidence motion misapprehended the elements of such a claim in at least one important respect. Powell contended that a violation of TDRPC 8.04(a)(3) required proof of "intentional" conduct. [CR Vol. 1, 989-990]. But the language of Rule 8.04(a)(3) contains no such express intent requirement. In fact, this Court and others have repeatedly analyzed Rule 8.04(a)(3) outside the context of allegations of "fraud" with reference to the general meanings of "dishonesty," "deceit," and "misrepresentation".

That is, the disciplinary rules do not define the terms "dishonesty," "deceit," and "misrepresentation." However, courts have concluded that, consistent with their ordinary meanings, the terms "dishonesty," "deceit," or "misrepresentation" denote "a lack of honesty, probity, or integrity in principle" and a "lack of straightforwardness." *Olsen v. Comm'n for Lawyer Discipline*, 347 S.W.3d 876, 882-83 (Tex.App. – Dallas 2011, pet. denied); *Rosas v. Comm'n for Lawyer Discipline*, 335 S.W.3d 311, 319 (Tex.App. – San Antonio 2010, no pet.); *Brown v. Comm'n for Lawyer Discipline*, 980 S.W.2d 675, 680 (Tex.App. – San Antonio 1998, no pet.); see also, *Robins v. Comm'n for Lawyer Discipline*, No. 01-19-00011-CV, 2020 WL 101921 (Tex.App. – Houston [1st Dist.] Jan. 9, 2020, pet. denied) (mem. op.).

Further, Part 15 of the Texas Rules of Disciplinary Procedure provides guidelines for appropriate sanctions when professional misconduct is found to have occurred in this context, which contemplates distinct levels of sanction for (amongst other things) conduct that involves dishonesty, fraud, deceit, or misrepresentations to a court or another, depending on the attorney's level of *culpability*:

> In cases where a lawyer's conduct involves dishonesty, fraud, deceit or misrepresentation to a court or another, disbarment or suspension may be appropriate when an attorney *intentionally or knowingly* deceives the court or another and causes serious or potentially serious injury to a party, or adverse legal effect on a legal proceeding, whereas a public or private reprimand may be appropriate when an attorney *is negligent* in determining whether information provided to a court or another is false and causes injury, potential injury, or little or no potential injury to a party, or adverse, potentially adverse or little or no adverse or potentially adverse effect on a legal proceeding.
> -- TEX. RULES DISCIPLINARY P.R. 15.05(A)(1-4). (emphasis added)

When reviewing all appropriate summary judgment evidence in the light most favorable to the Commission, such evidence demonstrates more than a scintilla of evidence as to each element of the Commission's claims against Powell for violations of TDRPCs 3.03(a)(1), 3.03(a)(3) and/or 8.04(a)(3).

4. Powell's objections to the exhibits attached to the 2nd Amended MSJ Response are without merit.

As noted above, the trial court's Final Summary Judgment stated it only considered the documents actually marked and attached as "Exhibits F and G"[5] to

[5] Again, the Complaint filed by Powell in the Georgia Case [App. 7], and the Defendants' pleading filed in the Georgia Case, which were mis-identified as Exhibits D & E.

the 2nd Amended MSJ Response and did "not consider any document attached by the Commission that the Commission failed to cite or identify." [App. 1]. And in considering those exhibits, the trial court sustained in part Powell's objection to Exhibit F and sustained Powell's objection to Exhibit G. [Id.] Further, the trial court also sustained Powell's objections to the documents mis-identified as Exhibits B and C, but actually attached to the 2nd Amended MSJ Response as Exhibits D & E.[6]

However, Powell's objections to each of the above-referenced documents were predicated on the argument that a party "cannot rely on other pleadings attached as exhibits to its own motion or response as summary-judgment evidence, even if the pleadings are verified". [CR Vol. 1, 1480-83]. Powell's objection relied on the Texas Supreme Court's opinion in *Laidlaw Waste Sys. v. City of Wilmer,* 904 S.W2d 656, 660-61 (Tex. 1995). But the authority Powell relied on from *Laidlaw* is inapposite. *Laidlaw* did not concern a disciplinary action against a Texas licensed attorney based on allegations that she made misrepresentations in her pleadings to a court of law, or otherwise engaged in conduct involving dishonesty, deceit or misrepresentation.[7] And an attorney disciplinary action such as the instant case, where the alleged misrepresentations made by an attorney are *at the center* of

---

[6] Again, the Certificate and test report. [App. 5] [App. 6].

[7] *Laidlaw* involved a declaratory action against the City of Wilmer challenging the annexation of property it had purchased to construct and operate a solid waste landfill. Laidlaw attempted to use his verified pleadings to defeat the city's evidence showing that the metes and bounds description of the property in question was proper and that the City did not comply with the Opens Meeting Act related to the annexation.

allegations of professional misconduct, is not a typical civil lawsuit such as that concerned in *Laidlaw*.

Indeed, in disciplinary actions regarding the truth or falsity of representations made to a court by an attorney in pleadings or other writings, and the honesty (or lack thereof) of the attorney's conduct related thereto, courts *do* typically review the pleadings containing alleged misrepresentations filed by such attorneys (amongst other evidence) to determine whether such professional misconduct occurred, **as they must**. *See e.g., Olsen*, 347 S.W.3d at 882-84 (partial summary judgment granted finding attorney violated TDRPC 8.04(a)(3) by filing an incomplete and improperly notarized version of a purported will, based on, amongst other things, the will actually filed by the attorney, was proper); *McIntyre v. Commission for Lawyer Discipline,* 169 S.W.3d 803, 811-14 (Tex.App. – Dallas 2005, pet. denied) (judge's findings in bench trial that attorney violated TDRPCs 3.03(a)(3) and 8.04(a)(3) by filing a motion for injunctive relief in state court and filing related pleadings in bankruptcy court that misrepresented both that he represented a bankruptcy trustee and that he had authority to represent a creditor in the bankruptcy proceeding, were supported by legally and factually sufficient evidence, including, amongst other things, the pleadings containing the alleged misrepresentations); *Willie v. Comm'n for Lawyer Discipline*, No. 14-13-00872-CV, 2015 WL 1245965, at *12-14 (Tex.App. – Houston [14th Dist.] March 17, 2015, pet. denied) (mem. op.)

(jury's findings that attorney violated TDRPCs 3.01, 3.03(a)(1) and 8.04(a)(3) by filing a brief with an appellate court containing omissions and misrepresentations of fact were supported by legally and factually sufficient evidence, including, amongst other things, the brief containing the alleged omissions/misrepresentations).

In short, *Laidlaw* presents a situation where a corporation tried to use its own verified pleadings to support its summary judgment response and provides **no** guidance whatsoever on the type of evidence needed to support an attorney disciplinary action brought to enforce TDRPCs 3.03(a)(1), 3.03(a)(5), and/or 8.04(a)(3). Powell's objections to the Commission's summary judgment evidence in this respect were without merit and the trial court should have considered the pleadings from the Georgia Case in light of the actual allegations of professional misconduct against Powell.

B. The trial court erred in granting Powell's traditional motion.

1. Powell also sought traditional summary judgment as to the Commission's claims she violated TDRPCs 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3).

Powell's traditional motion for summary judgment sought judgment as to the Commission's claims she violated TDRPCs 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3). [CR Vol. 1, 69-115]. Powell's traditional motion contended she had "disproved, as a matter of law, at least one element of each of the [Commission's] claims." [CR Vol. 1, 80-81]. More specifically, Powell contended she had conclusively

disproven; (i) the "knowing," "falsity," and "materiality," elements of the TDRPC 3.03(a)(1) allegation; (ii) the "knowing," and "falsity," elements of the TDRPC 3.03(a)(5) allegation; and (iii) the "knowing," element of the TDRPC 8.04(a)(3) allegation, based **solely** on the Declarations of herself and MacDougald.[8] [Id.]

2. *Powell's traditional motion failed to carry her burden.*

As explained in I(B), *supra*, the burden does not shift from the movant to the nonmovant in a traditional summary judgment, unless and until the movant conclusively establishes she is entitled to judgment as a matter of law. *Brand*, 776 S.W.2d at 556 (citing *Clear Creek Basin Authority*, 589 S.W.2d at 678). Importantly, the affidavit of an interested witness may support a summary judgment **only** if it is uncontroverted, clear, positive and direct, otherwise credible, free from contradictions and inconsistencies, and could have been readily controverted. *Trico Technologies Corp. v. Montiel*, 949 S.W.2d 308, 311 (Tex. 1997) (citing *Republic Nat'l Leasing Corp. v. Schindler*, 717 S.W.2d 606, 607 (Tex. 1986); TEX. R. CIV. P. 166a(c).

[8] Powell's traditional motion also offered as evidence a portion of a transcript from a hearing in another election fraud case out of Michigan, and the Commission's Second Amended Disciplinary Petition. However, the motion does not identify any way in which those items support her argument vis-à-vis the Commission's specific allegations related to the Georgia Case. Rather, Powell seemed to view those items as dispositive towards only one particular factual allegation, regarding an affidavit from an individual identified as "Spyder," which was attached to (apparently) several of her election fraud suits, and which *may* have supported the Commission's broader allegation of violations of TDRPCs 3.03(a)(1), 3.03(a)(5) and 8.04(a)(3), but did not constitute **all** of the potential underlying facts in support of the broader misconduct allegations.

Here, neither Declaration on which Powell relied passes muster. As to MacDougald's Declaration, he acknowledged that Powell engaged him to be local counsel for the Georgia Case that she and others were going to file. [App. 9, ¶3]. Additionally, MacDougald's Declaration supports, rather than controverts, the "falsity" and "materiality" elements of the Commission's claims. That is, MacDougald states that the dates of the certification and testing of Georgia's Dominion system were "undisputed facts in the public record" and "were not in question," while also asserting they were not "material" for the same reason. [App. 9, ¶s 14 & 15]. But those **facts** stand in sharp contrast to the representations made by Powell in the Georgia complaint that the certification and testing of Georgia's Dominion system was "rushed through", which were ostensibly supported by the "undated" certificate and test report attached to the complaint. [App. 7, ¶12] [App. 5] [App. 6]. Further, the trial court abused its discretion in overruling the Commission's objection to MacDougald's statement, "To my knowledge, Ms. Powell had no knowledge of the exhibits I attached to the complaint until sometime after the complaint and exhibits were filed." [CR Vol. 1, 1222-23 (Commission's objection)] [App. 9, ¶ 12].

As to Powell's Declaration, she confirmed that she was "part of a team of lawyers that filed four lawsuits alleging massive election fraud," including in Georgia. [App. 10, ¶4]. Powell stated she "accept[ed] full responsibility," for the Georgia filing, but "played no role in compiling or filing and had no actual knowledge of the exhibits" attached to the Georgia complaint. [App. 10, ¶s 5 & 6]. Yet, simultaneously, Powell stated she "reviewed and made corrections to" the Georgia complaint, and "made a reasonable inquiry as to the exhibits attached." [App. 10, ¶s 11 & 13].[9] In those respects, Powell's affidavit did not factually disprove any of the elements of the Commission's claims, nor was it clear, positive and direct, otherwise credible, or free from contradictions and inconsistencies.

Far from conclusively disproving **any** of the elements of the Commission's claims against Powell, the MacDougald and Powell Declarations (again, the only meaningful summary judgment evidence Powell's traditional motion relied upon) - certainly when viewed in the light most favorable to the Commission and indulging every reasonable inference and resolving any doubts against the motion - actually *support* each element of the Commission's claims. Thus, Powell's traditional motion did not carry her burden, and the burden should never have shifted to the Commission at all.

[9] The trial court overruled all of the Commission's objections to Powell's affidavit. [App. 1].

3. *Even if Powell's traditional motion **had** carried her burden, the summary judgment evidence in the record created a genuine issue of material fact as to each element of the Commission's claims.*

The same summary judgment evidence set forth in II(A)(2) & (3), *supra*, incorporated herein by reference, also demonstrates (at least) a genuine issue of material fact as to each element of the Commission's claims against Powell. Moreover, while Powell's Declaration is rife with the internal contradictions and inconsistencies noted above, it (as well as MacDougald's Declaration) is also controverted by her own responses to the Commission's interrogatories. That is, Powell swore in her interrogatory responses that she "attached affidavits and exhibits to the complaints supporting the allegations in each of the Election Fraud Suits," including "29 to the Petition in the Georgia Case." [App. 8, Int. No. 18(v & vi)].[10] That representation is in direct contrast to the above-referenced representation in her Declaration that she "played no role in compiling or filing and had no actual knowledge of the exhibits" attached to the Georgia Complaint. [App. 10, ¶6].

Powell's shifting, inconsistent and contradictory statements in her Declaration and her responses to the Commission's interrogatories, at best, leave more questions as to her involvement and participation in, and knowledge of the misrepresentations made in the Georgia Case. And again, when viewed in the light most favorable to

[10] Of course, even Powell's responses to the Commission's interrogatories are themselves internally contradictory and inconsistent as she also swore that she "did not draft the complaints or attach the exhibits to the complaints." [App. 8, Int. No. 20(ii)].

the Commission and indulging every reasonable inference and resolving any doubts against Powell's motion – the summary judgment evidence in the record demonstrates a genuine issue of material fact as to each element of the Commission's claims against Powell.

CONCLUSION AND PRAYER

For the reasons set forth in this brief, Appellant, the Commission for Lawyer Discipline, respectfully prays that this Court reverse the trial court's Final Summary Judgment as to the Commission's claims against Powell for alleged violations of TDRPCs 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3) and remand this case for further proceedings consistent with that end.

RESPECTFULLY SUBMITTED,

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION

MICHAEL G. GRAHAM
APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY COUNSEL
STATE BAR OF TEXAS
P.O. BOX 12487
AUSTIN, TEXAS 78711
michael.graham@texasbar.com
TELEPHONE: (512) 427-1350;
(877) 953-5535

FAX: (512) 427-4253

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

CERTIFICATE OF COMPLIANCE

Pursuant to the Texas Rules of Appellate Procedure, the foregoing brief on the merits contains approximately 6,478 words (total for all sections of brief that are required to be counted), which is less than the total words permitted by the TRAPs. Counsel relies on the word count of the computer program used to prepare this petition.

MICHAEL G. GRAHAM

<u>CERTIFICATE OF SERVICE</u>

This is to certify that the above and foregoing brief of Appellant, the Commission for Lawyer Discipline has been served on Appellee, Sidney Powell, by and through her attorneys of record: Mr. Robert H. Holmes, 19 St. Laurent Place, Dallas, Texas 75225; Mr. S. Michael McColloch, 6060 N. Central Expressway, Suite 500, Dallas, Texas 75206; and Ms. Karen Cook, 6060 N. Central Expressway, Suite 500, Dallas, Texas 75206, each by electronic service through this Court's electronic filing service provider on the 21st day of July 2023.

MICHAEL G. GRAHAM
APPELLATE COUNSEL
STATE BAR OF TEXAS

No. 05-23-00497-CV

In The Court of Appeals
Fifth District of Texas
Dallas, Texas

COMMISSION FOR LAWYER DISCIPLINE,
APPELLANT
V.

SIDNEY POWELL,
APPELLEE

Appealed from the 116th Judicial District Court
of Dallas County, Texas
Honorable Andrea K. Bouressa, Sitting by Assignment

APPENDIX TO BRIEF OF APPELLANT COMMISSION FOR LAWYER DISCIPLINE

App 1: Trial Court's Final Summary Judgment [CR 3905-09]

App 2: Trial Court's Order Denying Motion for Reconsideration or New Trial [CR 5284-5286]

App 3: TEX. DISCIPLINARY R. PROF'L CONDUCT 3.03

App 4: TEX. DISCIPLINARY R. PROF'L CONDUCT 8.04

App 5: Summary Judgment Evidence - Altered Certificate attached to the Georgia Case [CR 1270-71]

App 6: Summary Judgment Evidence - Altered Test Report attached to the Georgia Case [CR 1272-99]

App 7: Summary Judgment Evidence – Powell's Georgia Complaint for Declaratory, Emergency and Permanent Injunctive Relief [CR 1300-1403]

App 8: Summary Judgment Evidence – Powell's Responses to Interrogatories [CR 1249-1267]

App 9: Summary Judgment Evidence – Declaration of Harry MacDougald [CR 86-91]

App 10: Summary Judgment Evidence – Declaration of Sidney Powell [CR 92-98]

App 1

Cause No. DC-22-02562

COMMISSION FOR LAWYER DISCIPLINE,	§	IN THE DISTRICT COURT
Plaintiff,	§	
v.	§	DALLAS COUNTY, TEXAS
SIDNEY POWELL,	§	
Defendant.	§	116th JUDICIAL DISTRICT

FINAL SUMMARY JUDGMENT

With the parties having elected to forego oral argument, the Court considered on submission Powell's July 20, 2022 motion for summary judgment (partial) and Powell's December 28, 2022 motion for no-evidence summary judgment. The Court rules as follows:

I. COMMISSION'S MOTION FOR CONTINUANCE

On the Commission's express motion for continuance of Powell's partial motion for summary judgment, and to the extent, if any, the Commission intended to include Powell's no-evidence motion, the Court rules that the request, being unsupported by affidavit and wholly failing to comply with Texas Rules of Civil Procedure 251 and 252, is DENIED.

II. DEFECTS IN COMMISSION'S RESPONSE

Page two of the Commission's second amended response lists six documents purportedly included in its appendix, Exhibits A through F. The actual documents attached to the response were marked Exhibits A through H, and did not match the

documents described in the brief. The Court alerted the parties to difficulty locating materials cited in the Commission's brief, but the Commission responded that no corrective action was necessary.[1]

The Commission's second amended response contained only three citations to purported summary judgment evidence.[2] The first and second citations were to Exhibit F at page 7, paragraph 12, and to Exhibit F at page 8, paragraph 12. These citations appear to refer correctly to the document marked and attached as Exhibit F, though the exhibit appears to have been originally listed as Exhibit D on page two of the Commission's response. The third citation was to Exhibit E at page 8, footnote 8, which appears to have been intended to refer to the document marked and attached as Exhibit G.

For clarity of the summary judgment record, in light of the numerous defects in the Commission's exhibits, the Court did not consider any document identified by the Commission that the Commission failed to cite or attach. Similarly, the Court did not consider any document attached by the Commission that the Commission failed to cite or identify. In short, the only exhibits considered by the Court were the two documents cited as summary judgment evidence and attached by the Commission: the documents marked Exhibits F and G.

[1] Specifically, the Commission cited to Exhibit E at page 8, footnote 8. No footnotes are visible on Exhibit E. Email communication was exchanged wherein the Court sought clarification regarding Exhibit E (copy filed separately). The Commission declined to correct its record.

[2] The Commission cited to other exhibits only in support of its request for a continuance, denied *supra*.

III. EVIDENTIARY OBJECTIONS

Powell's objections that the Commission's Exhibits B and C are not competent summary judgment evidence are well-taken and SUSTAINED.

Powell's objection that the Commission's Exhibit D—the document marked and attached as Exhibit F—is not competent summary judgment evidence is SUSTAINED IN PART. While pleadings are not evidence of the matters stated therein, the document marked and attached as Exhibit F is competent evidence of the fact that such pleading was filed by Powell and others, and was considered for that limited purpose.

Powell's objection that the Commission's Exhibit E—the document marked and attached as Exhibit G—is not competent summary judgment evidence is well-taken and SUSTAINED.

The Commission's hearsay objection to paragraph 10 of the MacDougald affidavit is well-taken and SUSTAINED.

The Commission's remaining objections to Powell's summary judgment evidence are OVERRULED.

IV. NO-EVIDENCE SUMMARY JUDGMENT

The Commission did not respond to Powell's no-evidence motion challenging elements of the Commission's claims under Rules 3.01, 3.02, or 3.04. Accordingly, the motion is granted as to those claims.

With the Commission's sole competent summary judgment evidence being Exhibit F, considered solely for its limited purpose—evidence of a pleading filed by

Powell and others—the Commission has failed to meet its burden on the challenged elements of the Commission's claims under Rules 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3). Accordingly, the motion is granted as to those claims.

IT IS THEREFORE ORDERED that Powell's no-evidence motion for summary judgment is GRANTED in its entirety.

V. PARTIAL SUMMARY JUDGMENT

IT IS FURTHER ORDERED that Powell's partial motion for summary judgment on the Commission's claims under Rules 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3) is GRANTED in its entirety.

This order resolves all claims between all parties and is final and appealable.

Signed on February 22, 2023.

Andrea K. Bouressa
PRESIDING JUDGE

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 73002722
Status as of 2/22/2023 3:59 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kristin Brady	24082719	kristin.brady@texasbar.com	2/22/2023 1:48:25 PM	SENT
S. Michael McColloch	13431950	smm@mccolloch-law.com	2/22/2023 1:48:25 PM	SENT
Brittany Paynton		brittany.paynton@texasbar.com	2/22/2023 1:48:25 PM	SENT
Karen Cook	12696860	karen@karencooklaw.com	2/22/2023 1:48:25 PM	SENT
Robert H.Holmes		rhholmes@swbell.net	2/22/2023 1:48:25 PM	SENT
Rachel Craig		rachel.craig@texasbar.com	2/22/2023 1:48:25 PM	SENT
Todd Hill		thill@collincountytx.gov	2/22/2023 1:48:25 PM	SENT

App 2

FILED
5/4/2023 4:19 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Rosa Delacerda DEPUTY

Cause No. DC-22-02562

COMMISSION FOR LAWYER DISCIPLINE,	§	IN THE DISTRICT COURT
	§	
	§	
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
SIDNEY POWELL,	§	
	§	
Defendant.	§	116th JUDICIAL DISTRICT

ORDER DENYING MOTION FOR RECONSIDERATION OR NEW TRIAL

Before the Court is "The Commission's Motion for Reconsideration and/or for New Trial." Following the hearing held on May 1, 2023, the Court rules as follows:

I. COMMISSION'S MOTION FOR RECONSIDERATION OF CONTINUANCE

The Commission seeks reconsideration of a motion for continuance filed November 21, 2022, which the Commission contends to have been denied. That motion pre-dated one dispositive motion and both of the dispositive settings that led to judgment, and in any event, was never presented to the Court, so no ruling was made on it. Rather, the Commission's response to Powell's dispositive motions contained, as alternative relief, a request for continuance. *That* motion was denied.

To the extent, if any, that the Commission's motion can be construed to request reconsideration of that ruling, the record reflects that: (a) the Commission had no motion for additional discovery pending before the Court until after the Commission's

summary judgment responses were due;[1] (b) the case had been pending far in excess of 180 days beyond the respondent's answer by which time it (by rule) should have proceeded to trial; and (c) when asked at the May 1st hearing about evidence absent from the summary judgment record, counsel for the Commission argued that such evidence was accessible to all parties online, and had no explanation for its omission from the record. For these and other reasons, including failure to satisfy TRCP 251 and 252, reconsideration of the denial of a continuance is DENIED.

II. SUMMARY JUDGMENT

With the Commission offering no explanation for its failure to respond to Powell's no-evidence motion challenging elements of the Commission's claims under Rules 3.01, 3.02, or 3.04, reconsideration of the no-evidence summary judgment as to those claims is DENIED.

As to summary judgment on the remaining claims on traditional and no-evidence grounds, reconsideration of summary judgment as to those claims is also DENIED.

IT IS THEREFORE ORDERED that the Commission's motion is DENIED in its entirety.

Signed on May 4, 2023.

PRESIDING JUDGE

[1] At the May 1st hearing, the Court clarified that the Commission's joint response was deemed timely, despite being 5 days late for Powell's traditional summary judgment motion. The Commission confirmed its intent that the response was to be considered for both motions.

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 75332293
Filing Code Description: Miscellanous Event
Filing Description: SIGNED ORDER DENYING MOTION FOR RECONSIDERATION OR NEW TRIALF
Status as of 5/5/2023 9:03 AM CST

Associated Case Party: COMMISSION FOR LAWYER DSICIPLINE

Name	BarNumber	Email	TimestampSubmitted	Status
Kristin Brady	24082719	kristin.brady@texasbar.com	5/4/2023 4:19:36 PM	SENT
Brittany Paynton		brittany.paynton@texasbar.com	5/4/2023 4:19:36 PM	SENT
Robert H.Holmes		rhholmes@swbell.net	5/4/2023 4:19:36 PM	SENT
Rachel Craig		rachel.craig@texasbar.com	5/4/2023 4:19:36 PM	SENT
Todd Hill		thill@collincountytx.gov	5/4/2023 4:19:36 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
S. Michael McColloch	13431950	smm@mccolloch-law.com	5/4/2023 4:19:36 PM	SENT
Karen Cook	12696860	karen@karencooklaw.com	5/4/2023 4:19:36 PM	SENT

App 3

V.T.C.A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9, Rule 3.03

Rule 3.03. Candor Toward the Tribunal

Currentness

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;

(3) in an ex parte proceeding, fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision;

(4) fail to disclose to the tribunal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(5) offer or use evidence that the lawyer knows to be false.

(b) If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts.

(c) The duties stated in paragraphs (a) and (b) continue until remedial legal measures are no longer reasonably possible.

Credits

Adopted by order of Oct. 17, 1989, eff. Jan. 1, 1990.

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

Editors' Notes

COMMENT:

2019 Main Volume

1. The advocate's task is to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client is qualified by the advocate's duty of candor to the tribunal.

Factual Representations by a Lawyer

2. An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.01. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or a representation of fact in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.02(c) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. See the Comments to Rules 1.02(c) and 8.04(a).

Misleading Legal Argument

3. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but should recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(4), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Ex Parte Proceedings

4. Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of unprivileged material facts known to the lawyer if the lawyer reasonably believes the tribunal will not reach a just decision unless informed of those facts.

Anticipated False Evidence

5. On occasion a lawyer may be asked to place into evidence testimony or other material that the lawyer knows to be false. Initially in such situations, a lawyer should urge the client or other person involved to not offer false or fabricated evidence. However, whether such evidence is provided by the client or by another person, the lawyer must refuse to offer it, regardless of the client's wishes. As to a lawyer's right to refuse to offer testimony or other evidence that the lawyer believes is false, see paragraph 15 of this Comment.

6. If the request to place false testimony or other material into evidence came from the lawyer's client, the lawyer also would be justified in seeking to withdraw from the case. See Rules 1.15(a)(1) and (b)(2), (4). If withdrawal is allowed by the tribunal, the lawyer may be authorized under Rule 1.05(c)(7) to reveal the reasons for that withdrawal to any other lawyer subsequently retained by the client in the matter; but normally that rule would not allow the lawyer to reveal that information to another

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

person or to the tribunal. If the lawyer either chooses not to withdraw or is not allowed to do so by the tribunal, the lawyer should again urge the client not to offer false testimony or other evidence and advise the client of the steps the lawyer will take if such false evidence is offered. Even though the lawyer does not receive satisfactory assurances that the client or other witness will testify truthfully as to a particular matter, the lawyer may use that person as a witness as to other matters that the lawyer believes will not result in perjured testimony.

Past False Evidence

7. It is possible, however, that a lawyer will place testimony or other material into evidence and only later learn of its falsity. When such testimony or other evidence is offered by the client, problems arise between the lawyer's duty to keep the client's revelations confidential and the lawyer's duty of candor to the tribunal. Under this Rule, upon ascertaining that material testimony or other evidence is false, the lawyer must first seek to persuade the client to correct the false testimony or to withdraw the false evidence. If the persuasion is ineffective, the lawyer must take additional remedial measures.

8. When a lawyer learns that the lawyer's services have been improperly utilized in a civil case to place false testimony or other material into evidence, the rule generally recognized is that the lawyer must disclose the existence of the deception to the court or to the other party, if necessary rectify the deception. See paragraph (b) and Rule 1.05(h). See also Rule 1.05(g). Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal by the lawyer but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer would be aiding in the deception of the tribunal or jury, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.02(c). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Perjury by a Criminal Defendant

9. Whether an advocate for a criminally accused has the same duty of disclosure has been intensely debated. While it is agreed that in such cases, as in others, the lawyer should seek to persuade the client to refrain from suborning or offering perjurious testimony or other false evidence, there has been dispute concerning the lawyer's duty when that persuasion fails. If the confrontation with the client occurs before trial, the lawyer ordinarily can withdraw. Withdrawal before trial may not be possible, however, either because trial is imminent, or because the confrontation with the client does not take place until the trial itself, or because no other counsel is available.

10. The proper resolution of the lawyer's dilemma in criminal cases is complicated by two considerations. The first is the substantial penalties that a criminal accused will face upon conviction, and the lawyer's resulting reluctance to impair any defenses the accused wishes to offer on his own behalf having any possible basis in fact. The second is the right of a defendant to take the stand should he so desire, even over the objections of the lawyer. Consequently, in any criminal case where the accused either insists on testifying when the lawyer knows that the testimony is perjurious or else surprises the lawyer with such testimony at trial, the lawyer's effort to rectify the situation can increase the likelihood of the client's being convicted as well as opening the possibility of a prosecution for perjury. On the other hand, if the lawyer does not exercise control over the proof, the lawyer participates, although in a merely passive way, in deception of the court.

11. Three resolutions of this dilemma have been proposed. One is to permit the accused to testify by a narrative without guidance through the lawyer's questioning. This compromises both contending principles; it exempts the lawyer from the duty to disclose false evidence but subjects the client to an implicit disclosure of information imparted to counsel. Another suggested resolution is that the advocate be entirely excused from the duty to reveal perjury if the perjury is that of the client. This solution, however, makes the advocate a knowing instrument of perjury.

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

12. The other resolution of the dilemma, and the one this Rule adopts, is that the lawyer must take reasonable remedial measure which may include revealing the client's perjury. A criminal accused has a right to the assistance of an advocate, a right to testify and a right of confidential communication with counsel. However, an accused should not have a right to assistance of counsel in committing perjury. Furthermore, an advocate has an obligation, not only in professional ethics but under the law as well, to avoid implication in the commission of perjury or other falsification of evidence.

False Evidence Not Introduced by the Lawyer

13. A lawyer may have introduced the testimony of a client or other witness who testified truthfully under direct examination but who offered false testimony or other evidence during examination by another party. Although the lawyer should urge that the false evidence be corrected or withdrawn, the full range of obligation imposed by paragraphs (a)(5) and (b) of this Rule do not apply to such situations. A subsequent use of that false testimony or other evidence by the lawyer in support of the client's case, however, would violate paragraph (a)(5).

Duration of Obligation

14. The time limit on the obligation to rectify the presentation of false testimony or other evidence varies from case to case but continues as long as there is a reasonable possibility of taking corrective legal actions before a tribunal.

Refusing to Offer Proof Believed to be False

15. A lawyer may refuse to offer evidence that the lawyer reasonably believes is untrustworthy, even if the lawyer does not know that the evidence is false. That discretion should be exercised cautiously, however, in order not to impair the legitimate interests of the client. Where a client wishes to have such suspect evidence introduced, generally the lawyer should do so and allow the finder of fact to assess its probative value. A lawyer's obligations under paragraphs (a)(2), (a)(5) and (b) of this Rule are not triggered by the introduction of testimony or other evidence that is believed by the lawyer to be false, but not known to be so.

Notes of Decisions (40)

V. T. C. A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9 Rule 3.03, TX ST RPC Rule 3.03
Current with amendments received through June 15, 2023. Some rules may be more current, see credits for details.

End of Document © 2023 Thomson Reuters. No claim to original U.S. Government Works.

App 4

V.T.C.A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9, Rule 8.04

Rule 8.04. Misconduct

Currentness

(a) A lawyer shall not:

(1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;

(2) commit a serious crime or commit any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(4) engage in conduct constituting obstruction of justice;

(5) state or imply an ability to influence improperly a government agency or official;

(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(7) violate any disciplinary or disability order or judgment;

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

(9) engage in conduct that constitutes barratry as defined by the law of this state;

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

(10) fail to comply with section 13.01 of the Texas Rules of Disciplinary Procedure relating to notification of an attorney's cessation of practice;

(11) engage in the practice of law when the lawyer is on inactive status, except as permitted by section 81.053 of the Government Code and Article XIII of the State Bar Rules, or when the lawyer's right to practice has been suspended or terminated including, but not limited to, situations where a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education; or

(12) violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.

(b) As used in subsection (a)(2) of this Rule, "serious crime" means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

Credits

Adopted by order of Oct. 17, 1989, eff. Jan. 1, 1990. Amended by order of June 15, 1994, eff. Oct. 1, 1994; Dec. 12, 2017, and April 20, 2018, eff. May 1, 2018.

Editors' Notes

COMMENT

2019 Main Volume

1. There are four principal sources of professional obligations for lawyers in Texas: these rules, the State Bar Act, the State Bar Rules, and the Texas Rules of Disciplinary Procedure (TRDP). All lawyers are presumed to know the requirements of these sources. Rule 8.04(a)(1) provides a partial list of conduct that will subject a lawyer to discipline.

2. Many kinds of illegal conduct reflect adversely on fitness to practice law. However, some kinds of offenses carry no such implication. Traditionally in this state, the distinction has been drawn in terms of those crimes subjecting a lawyer to compulsory discipline, criminal acts relevant to a lawyer's fitness for the practice of law, and other offenses. Crimes subject to compulsory discipline are governed by TRDP, Part VIII. In addition, although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for criminal acts that indicate a lack of those characteristics relevant to the lawyer's fitness for the practice of law. A pattern of repeated criminal acts, even ones of minor significance when considered separately, can indicate indifference to legal obligations that legitimately could call a lawyer's overall fitness to practice into question. See TRDP, Part VIII; Rule 8.04(a)(2).

3. A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief, openly asserted, that no valid obligation exists. The provisions of Rule 1.02(c) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges to legal regulation of the practice of law.

4. Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust.

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

Notes of Decisions (75)

V. T. C. A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9 Rule 8.04, TX ST RPC Rule 8.04
Current with amendments received through June 15, 2023. Some rules may be more current, see credits for details.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

App 5

Exh. 5

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the Dominion Voting System (EAC Certification Number DVS-DemSuite5.5-A), consisting of the Democracy Suite 5.5-A Election Management System Version 5.5.12.1, EMS Adjudication Version 5.5.8.1, ImageCast X Prime (ICX BMD) Ballot Marking Device Version 5.5.10.30, ImageCast Precinct (ICP) Precinct Scanning Device Version 5.5.3-0002, and ImageCast Central (ICC) Central Scanning Device Version 5.5.3-0002, manufactured by Dominion Voting Systems, Inc., 1201 18th Street, STE 210, Denver, Colorado 80202, has been thoroughly examined and tested and found to be in compliance with the applicable provisions of the Georgia Election Code and Rules of the Secretary of State, and as a result of this inspection, it is my opinion that this kind of voting system and its components can be safely used by the electors of this state in all primaries and elections as provided in Chapter 2 of Title 21 of the Official Code of Georgia; provided however, that I hereby reserve my opinion to reexamine this voting system and its components at anytime so as to ensure that it continues to be one that can be safely used by the voters of this state.

App 6

Exh. 6

Test Report

Dominion Voting Systems
D-Suite 5.5-A Voting System
Georgia State Certification Testing

Approved by: ______________________

Michael Walker, VSTL Project Manager

1 INTRODUCTION

The purpose of this Test Report is to document the procedures that Pro V&V, Inc. followed to perform certification testing of the Dominion Voting Systems D-Suite 5.5-A Voting System Voting System to the requirements set forth for voting systems in the State of Georgia Election Systems Certification Program.

1.1 Authority

The State of Georgia has a unified voting system whereby all federal, state, and county elections are to use the same voting equipment. Beginning in 2020, the unified voting system shall be an optical scanning voting system with ballot marking devices.

The Georgia Board of Elections, under the authority granted to it by the Georgia Election Code, has the duty to promulgate rules and regulations to obtain uniformity in the practices and procedures of local election officials as well as to ensure the fair, legal, and orderly conduct of primaries and elections. The Georgia Board of Elections is to investigate frauds and irregularities in primaries and elections and report violations for prosecution. It can issue orders, after the completion of appropriate proceedings, directing compliance with the Georgia Election Code.

The Georgia Secretary of State is designated as the Chief Election Official and is statutorily tasked with developing, programing, building, and reviewing ballots for use by counties and municipalities on the unified voting system in the state. The Georgia Election Code provides that the Secretary of State is to examine and approve an optical scanning voting system and ballot marking devices prior to their use in the state. County Boards of Elections (CBE) may only use an optical scanning voting system and ballot marking devices that have been approved and certified and that may be continuously reviewed for ongoing certification, by the Secretary of State. The Secretary of State has authority to decertify voting systems. The Secretary of State has promulgated rules and regulations that govern the voting system certification process.

1.2 References

The documents listed below were utilized in the development of this Test Report:

- Election Assistance Commission Testing and Certification Program Manual, Version 2.0
- Election Assistance Commission Voting System Test Laboratory Program Manual, Version 2.0

- National Voluntary Laboratory Accreditation Program NIST Handbook 150, 2016 Edition, "NVLAP Procedures and General Requirements (NIST HB 150-2016)", dated July 2016
- National Voluntary Laboratory Accreditation Program NIST Handbook 150-22, 2008 Edition, "Voting System Testing (NIST Handbook 150-22)", dated May 2008
- Pro V&V, Inc. Quality Assurance Manual, Revision 7.0
- United States 107th Congress Help America Vote Act (HAVA) of 2002 (Public Law 107-252), dated October 2002
- Dominion Voting Systems D-Suite 5.5-ATechnical Data Package

1.3 Terms and Abbreviations

The terms and abbreviations applicable to the development of this Test Plan are listed below:

"BMD" – Ballot Marking Device

"COTS" – Commercial Off-The-Shelf

"EAC" – Election Assistance Commission

"EMS" – Election Management System

"FCA" – Functional Configuration Audit

"PCA" – Physical Configuration Audit

"TDP" – Technical Data Package

"VSTL" – Voting System Test Laboratory

"2005 VVSG" – EAC 2005 Voluntary Voting Systems Guidelines

1.4 Background

The State of Georgia identified the Dominion Voting Systems D-Suite 5.5-A Voting System to be evaluated as part of this test campaign. This report documents the findings from that evaluation.

functions, which are essential to the conduct of an election in the State of Georgia, were evaluated.

The scope of this testing event incorporated a sufficient spectrum of physical and functional tests to verify that the D-Suite 5.5-A Voting System conformed to the State of Georgia requirements. Specifically, the testing event had the following goals:

- Ensure proposed voting systems provide support for all Georgia election management requirements (i.e. ballot design, results reporting, recounts, etc.).
- Simulate pre-election, Election Day, absentee, recounts, and post-election activities on the corresponding components of the proposed voting systems for the required election scenarios.

2 TEST CANDIDATE

The D-Suite 5.5-A Voting System is a paper-based optical scan voting system consisting of the following major components: The Election Management System (EMS), the ImageCast Central (ICC), the ImageCast Precinct (ICP), and the ImageCast X (ICX) BMD. The D-Suite 5.5-A Voting System configuration is a modification from the EAC approved D-Suite 5.0 system configuration. The D-Suite 5.5-A Voting System will be configured with the KNOWiNK Pollpad which utilizes the ePulse Epoll data management system, for voter registration purposes.

The following table provides the software and hardware components of the D-Suite 5.5-A Voting System that were tested, identified with versions and model numbers:

Table 2-1 D-Suite 5.5-A Voting System

D-Suite 5.5-A Voting System Component	Firmware/Software Version	Hardware Model
oftware pplications		
EMS Election Event Designer (EED)	5.5.12.1	---
EMS Results Tally and Reporting (RTR)	5.5.12.1	---
EMS Application Server	5.5.12.1	---
EMS File System Service (FSS)	5.5.12.1	---
EMS Audio Studio (AS)	5.5.12.1	---
EMS Data Center Manager (DCM)	5.5.12.1	---
EMS Election Data Translator (EDT)	5.5.12.1	---
ImageCast Voter Activation (ICVA)	5.5.12.1	---

Table 2-1 D-Suite 5.5-A Voting System *(continued)*

D-Suite 5.5-A Voting System Component	Firmware/Software Version	Hardware Model
Device Configuration File (DCF)	5.4.01_20170521	---
olling lace canner and eripherals		
ImageCast Precinct (ICP)	5.5.3-0002	PCOS-320C
ICP Ballot Box	---	BOX-330A
EMS Standard Configuration		
Dell Server R640	---	R640
Dell Precision 3430	---	3430
Dell Network Switch	---	X10206P
EMS Express Configuration		
Dell Precision 3420	---	3420
Dell Monitor	---	P2419H
Dell Network Switch	---	X1008
entral canning evice omponents		
ImageCast Central	5.5.3.0002	---
Canon DR-G1130 Scanner	---	DR-G1130
Canon DR-M160II Scanner	---	DR-M160II
Dell Optiplex 3050AIO Computer	Windows 10 Pro	3050AIO
ompliant allot Mar ing evice		
Avalue ImageCast X Prime 21” BMD	5.5.10.30	HID-21V
HP M402dne Printer	---	M402dne
e oll oo olution		
KNOWiNK Poll Pad	---	iPad Air Rev. 2
KNOWiNK ePulse Epoll Data Management System	---	---

2.1 Testing Configuration

The following is a breakdown of the D-Suite 5.5-A Voting System components and configurations for the test setup:

Standard Testing Platform (D-Suite 5.5-A):

The system will be configured in the EMS Standard configuration with an Adjudication

The precinct polling station setup will consist of ImageCast X Prime 21" BMD's and ImageCast Precinct tabulators with plastic ballot boxes. The ImageCast X Prime 21" BMD's will be set up as accessible voting stations.

The KNOWiNK Epollbook solution consisting of the Poll Pad and ePulse Epoll data management system, will be setup and interfaced as required with the EMS Standard configuration.

Dominion Voting Systems is expected to provide all previously identified software and equipment necessary for the test campaign along with the supporting materials listed in section 2.2. The State of Georgia is providing the election definitions and ballots.

Express Testing Platform (D-Suite 5.5-A):

The system will be configured in the EMS Express configuration. This platform will be used to test all scenarios as provided by the election definition.

The central office setup will be an EMS Express configuration accompanied by both Canon DR-G1130 and Canon DR-M160II Central Scan tabulators and their associated PC's.

The precinct polling station setup will consist of ImageCast X Prime 21" BMD's and ImageCast Precinct tabulators with plastic ballot boxes. The ImageCast X Prime 21" BMD's will be set up as accessible voting stations.

The KNOWiNK Epollbook solution consisting of the Poll Pad and ePulse Epoll data management system, will be setup and interfaced as required with the EMS Standard configuration.

Dominion Voting Systems provided all previously identified software and equipment necessary for the test campaign along with the supporting materials ,election definitions, and ballots

2.2 Test Support Equipment/Materials

The following materials, if required, were supplied by Dominion Voting Systems to facilitate testing:

- USB Flash Drives

- Ballot Paper
- Marking Devices
- Pressurized air cans
- Lint-free cloth
- Cleaning pad and isopropyl alcohol
- Labels
- Other materials and equipment as required

3 TEST PROCESS AND RESULTS

The following sections outline the test process that was followed to evaluate the D-Suite 5.5-A Voting System under the scope defined in Section 1.5.

3.1 General Information

All testing was conducted under the guidance of Pro V&V by personnel verified by Pro V&V to be qualified to perform the testing. The examination was performed at the Pro V&V, Inc. test facility located in Cummings Research Park, Huntsville, AL.

3.2 Testing Initialization

Prior to execution of the required test scenarios, the systems under test underwent testing initialization to establish the baseline for testing and ensure that the testing candidate matched the expected testing candidate and that all equipment and supplies were present.

The following were completed during the testing initialization:

- Ensure proper system of equipment. Check connections, power cords, keys, etc.
- Check version numbers of (system) software and firmware on all components.
- Verify the presence of only the documented COTS.
- Ensure removable media is clean
- Ensure batteries are fully charged.
- Inspect supplies and test decks

- Retain proof of version numbers.

3.3 Summary Findings

The voting system was evaluated against the requirements set forth for voting systems by the State of Georgia. A Conditions of Satisfaction Checklist was developed based on each identified test requirements. Throughout the test campaign, Pro V&V executed tests, inspected resultant data and performed technical documentation reviews to ensure that each applicable requirement was met. The Conditions of Satisfaction Checklist is presented in Section 4 of this test report. The Summary Findings from each area of evaluation are presented in the following sections.

3.3.1 Physical Configuration Audit (PCA) and Setup

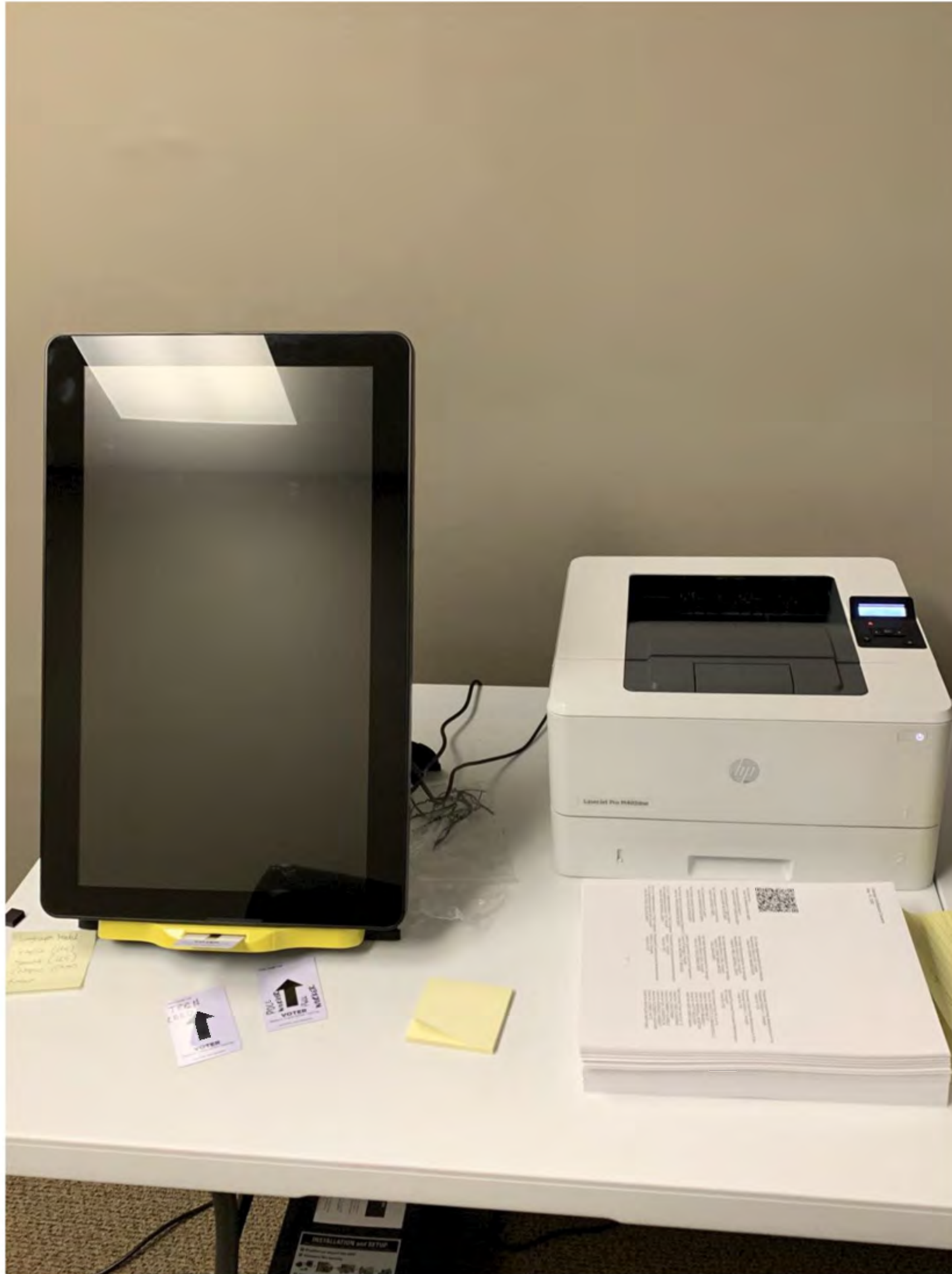
Prior to test initiation, the D-Suite 5.5-A Voting System was subjected to a Physical Configuration Audit (PCA) to baseline the system and ensure all items necessary for testing were present. This process included validating that the hardware and software components received for testing matched hardware and software components proposed and demonstrated to the State during the RFP process. This process also included validating that the submitted components matched the software and hardware components which have obtained EAC certification to the Voluntary Voting System Guidelines (VVSG) Standard 1.0, by comparing the submitted components to the published EAC Test Report. The system was then setup as designated by the manufacturer supplied Technical Documentation Package (TDP).

Photographs of the system components, as configured for testing, are presented below:

Photograph 1: EMS Express Configuration

Photograph 2: EMS Standard Configuration

DELL
Canon



Photograph 6: ePollbok

A pre-certification election was then loaded and an Operational Status Check was performed to verify satisfactory system operation. The Operational Status Check consisted of processing ballots and verifying the results obtained against known expected results from pre-determined

Summary Findings

During execution of the test procedure, the components of the D-Suite 5.5-A system were documented by component name, model, serial number, major component, and any other relevant information needed to identify the component. For COTS equipment, every effort was made to verify that the COTS equipment had not been modified for use. Additionally, the Operational Status Check was successfully completed with all actual results obtained during test execution matching the expected results.

3.3.2 System Level Testing

System Level Testing included the Functional Configuration Audit (FCA), the Accuracy Test, the Volume and Stress Test, and the System Integration Test. This testing included all proprietary components and COTS components (software, hardware, and peripherals).

During System Level Testing, the system was configured exactly as it would for normal field use per the manufacturer. This included connecting the supporting equipment and peripherals.

3.3.2.1 Functional Configuration Audit (FCA)

The Functional Configuration Audit (FCA) encompassed an examination of the system to the requirements set forth by the State of Georgia Election Systems Certification Program as designed in the Test Plan, and which are included in this report in the Conditions of Satisfaction Checklist.

Summary Findings

The D-Suite 5.5-A system successfully passed the FCA Tests without any noted issues. The individual testing requirements and their results can be seen in the included Conditions of Satisfaction Checklist.

3.3.2.2 Accuracy Testing

The Accuracy Test ensured that each component of the voting system could process at least 1,549,703 consecutive ballot positions correctly within the allowable target error rate. The Accuracy Test is designed to test the ability of the system to “capture, record, store, consolidate and report” specific selections and absences of a selection. The required accuracy is defined as

Summary Findings

The D-Suite 5.5-A system successfully passed the Accuracy Test. It was noted during test performance that the ICP under test experienced a memory lockup after scanning approximately 4500 ballots. The issue was presented to Dominion for resolution. Dominion provided the following analysis of the issue:

The ICP uClinux operating system does not have a memory management unit (MMU) and, as such, it can be susceptible to memory fragmentation. The memory allocation services within the ICP application are designed to minimize the effects of memory fragmentation. However, if the ICP scans a large number of ballots (over 4000), without any power cycle, it can experience a situation where the allocation of a large amount of memory can fail at the Operating System level due to memory fragmentation across the RAM. This situation produces an error message on the ICP which requires the Poll Worker to power cycle the unit, as documented. Once restarted, the ICP can continue processing ballots without issue. All ballots scanned and counted prior to the power cycle are still retained by the unit; there is no loss in data.

Pro V&V performed a power cycle, as instructed by Dominion, and verified that the issue was resolved and that the total ballot count was correct. Scanning then resumed with no additional issues noted.

A total of 1,569,640 voting positions were processed on the system with all actual results verified against the expected results. The individual testing requirements and their results can be seen in the included Conditions of Satisfaction Checklist.

3.3.2.3 Volume and Stress Testing

The Volume & Stress Tests consisted of tests designed to investigate the system's ability to meet the requirement limits and conditions set forth by the State of Georgia Election Systems Certification Program as designed in the Test Plan, and which are included in this report in the Conditions of Satisfaction Checklist.

Summary Findings

The D-Suite 5.5-A system successfully passed the Volume and Stress Tests without any noted issues. The individual testing requirements and their results can be seen in the included

3.3.2.4 System Integration Test

System Integration is a system level test that evaluates the integrated operation of both hardware and software. System Integration tests the compatibility of the voting system software components, or subsystems, with one another and with other components of the voting system environment. This functional test evaluates the integration of the voting system software with the remainder of the system.

During test performance, the system was configured as it would be for normal field use, with a new election created on the EMS and processed through the system components to final results.

Summary Findings

The D-Suite 5.5-A system successfully passed the System Integration Test without any noted issues. The individual testing requirements and their results can be seen in the included Conditions of Satisfaction Checklist.

3.3.3 e-Pollbook Testing

The ePolllbook Test evaluated the ability of the designated ePollbook to produced voter activation cards that could be successfully processed by the BMD.

Summary Findings

The D-Suite 5.5-A system successfully passed the ePollbook Test without any noted issues. The individual testing requirements and their results can be seen in the included Conditions of Satisfaction Checklist.

3.3.4 Ballot Copy Testing

The Ballot Copy Test evaluated the ability of a photocopy of a ballot produced by the system to be successfully processed by the system's tabulators.

Summary Findings

The D-Suite 5.5-A system successfully passed the Ballot Copy Test without any noted issues. The individual testing requirements and their results can be seen in the included Conditions of

3.3.5 Trusted Build and Software Hash Delivery

At test campaign conclusion, HASH signatures and software installation packets of the tested software were generated for delivery to the State of Georgia.

4 Conditions of Satisfaction

The voting system was evaluated against the requirements set forth for voting systems by the EAC 2005 VVSG and the State of Georgia. Throughout this test campaign, Pro V&V executed tests, inspected resultant data and performed technical documentation reviews to ensure that each applicable requirement was met. The Conditions of Satisfaction Checklist developed for this test campaign is presented in Table 4-1.

Table 4-1 Conditions of Satisfaction Checklist

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
FCA	Single FCA Test Election database(s) containing Republican and Democratic Primaries (Open Primary) and one Non-Partisan election	PASS
FCA	Database is being built for a single county jurisdiction	PASS
FCA	Republican Primary = 5 Races (1 statewide, 2 countywide, 3 county district level)	PASS
FCA	Democratic Primary = 5 Races (1 statewide, 1 countywide, 1 state district level, 2 county district level)	PASS
FCA	Non-Partisan Election = 1 Race (1 statewide)	PASS
FCA	Republican and Democratic races contain 1 to 8	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
FCA	Non-Partisan race contains 4 candidates and 1 write-in	PASS
FCA	All races are Vote for One	PASS
FCA	County contains 5 Precincts, for results reporting purposes	PASS
FCA	Each precinct is split at both state district and county district level	PASS
FCA	Election Day Voting [4 total], 1 Vote Center containing 2 precincts	PASS
FCA	Election Day Voting [4 total], 3 Polling Locations containing 1 precinct each	PASS
FCA	Advance Voting [2 total], Each polling location houses all 5 Precincts	PASS
FCA	Prepare election media from EMS to program PPS's (Polling Place Scanners) and BMD's for Advance Voting Polling locations	PASS
FCA	Prepare election media from EMS to program PPS's and BMD's for Election Day Polling locations	PASS
FCA	Prepare election media from EMS to program CSD's (Central Scan Devices) system for processing of mail-out absentee ballots and provisional ballots	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
FCA	Prepare election media from EMS to program CSD's for processing Advance Voting ballots generated by BMDs	PASS
FCA	Prepare election media from EMS to program CSD's for processing Election Day ballots generated by BMDs	PASS
FCA	Produce watermarked Sample ballots for public distribution	PASS
FCA	Prepare a test deck (Deck 1) of voted ballots with a known result using all available vote positions on all ballot styles generated by the test scenario, including write-ins, overvotes, undervotes, and blank ballots.	PASS
FCA	Prepare an Absentee test deck (Deck 2) of voted absentee ballots with a known result, to be used on the CSD, including write-ins, overvoted races, and blank ballots.	PASS
FCA	Vote test deck (Deck 1) on each BMD and print BMD ballots for each ballot in the test deck	PASS
FCA	Scan ballots created from the BMD's into the associated PPS's	PASS
FCA	Scan the Absentee test deck (Deck 2) on the CSD and confirm the CSD separates ballots by various conditions for physical review when scanning (i.e..	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
FCA	Prepare printouts from PPS's documenting results tabulated and verify them against test deck	PASS
FCA	Prepare printouts from CSD documenting results tabulates and verify them against test deck	PASS
FCA	Scan ballots created from BMD's on the CSD	PASS
FCA	Prepare printouts from CSD documenting results tabulated and verify them against Absentee test deck (Deck 2)	PASS
FCA	Upload to EMS the election media used in PPS and CSD devices	PASS
FCA	Prepare printouts from EMS documenting the results tabulated and verify them against test deck contents	PASS
FCA	Prepare printouts documenting results at various reporting levels:	PASS
FCA	Prepare printouts documenting results at various reporting levels: Precinct	PASS
FCA	Prepare printouts documenting results at various reporting levels: Polling Place	PASS
FCA	Prepare printouts documenting results at various reporting levels: vote Type	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
Accuracy	General election	PASS
Accuracy	21 Contests in election	PASS
Accuracy	2 Column Ballot	PASS
Accuracy	5 Precincts	PASS
Accuracy	Election is produced at County Level	PASS
Accuracy	No Counting Groups	PASS
Accuracy	Incumbency is supported	PASS
Accuracy	No Straight Party Voting	PASS
Accuracy	Non-Partisan contests only (Candidates are not directly linked to parties, but are labeled by party on the ballot)	PASS
	Parties (for labeling purposes): o Democratic	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
Accuracy	Write-Ins present in all races	PASS
Accuracy	Proposed State Wide Referendums	PASS
Accuracy	Advance Voting (Early Voting)	PASS
Accuracy	Elections for Judges are Non-Partisan	PASS
Accuracy	N of M Voting o Test N of M – 6 of 8 o Test N of M – 8 of 10	PASS
Accuracy	1000 Ballots printed from BMD using 3 units as follows (Unit 1: 250 ballots, unit 2: 250 ballots, unit 3: 500 ballots)	PASS
Accuracy	Run the Accuracy Test Election on BMD & Verify results against known expected results	PASS
Accuracy	Run the Accuracy Test Election on PPS & Verify results against known expected results	PASS
Accuracy	Run the Accuracy Test Election on CSD & Verify results against known expected results	PASS
Accuracy	Reporting: Winners: Contest reports review	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
Accuracy	Election Night Reporting: Export Election Night Results in the following formats: o Common Data Format (CDF)	PASS
Accuracy	Election Night Reporting: Export Election Night Results in the following formats: o Non-CDF	PASS
Accuracy	Accuracy in ballot counting and tabulation shall achieve 100% for all votes cast (1,549,703 ballot positions)	PASS
V&S	Volume & Stress Open Primary Election	PASS
V&S	400 Precincts	PASS
V&S	1 County	PASS
V&S	150 Ballot Styles	PASS
V&S	30 Ballot Styles in 1 Precinct	PASS
V&S	3 Languages (English, Spanish, Korean)	PASS
		PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
V&S	30 candidates in 1 contest	PASS
V&S	Referendum (Approximately 15000 words)	PASS
V&S	Referendum: Test using 10pt Arial Font (Currently used in State of Georgia)	PASS
V&S	Referendum: Test using 12pt Sans Serif font (To Accommodate future changes)	PASS
V&S	Referendum: Verify at Normal Size	PASS
V&S	Referendum: Verify when Zoomed-In (Text size increased)	PASS
V&S	Candidate Name Lengths – (Must support 25 characters) – Verify to make sure they display properly	PASS
V&S	Candidate Name Lengths – Check Translations	PASS
V&S	Candidate Name Lengths – Check appearance on BMD Printed Ballot	PASS
V&S	Candidate Name Lengths – Check appearance on Ballot Review Screen	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
V&S	Tabulator Reports – Tabulators print 3 copies of Zero Proof Reports, and Results Reports	PASS
V&S	Run the V&S Test Election on BMD & Verify results against known expected results	PASS
V&S	Run the V&S Test Election on PPS & Verify results against known expected results	PASS
V&S	Run the V&S Test Election on CSD & Verify results against known expected results	PASS
V&S	Reporting: Winners: Contest reports review	PASS
V&S	Reporting: Results: Precinct summary reports, precinct-based reporting, reporting by Congressional District Level	PASS
Epollbook	Verify that the Pollbook can program voter activation cards for BMD	PASS
Epollbook	Verify that voter activation cards activate the correct ballot styles when used on the BMD's	PASS
Ballot Copy	Verify whether or not a ballot produced by the BMD, can be photocopied, and then have the photocopied ballot be successfully cast on:	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
System Integration	Run the SI Test Election on BMD & Verify results against known expected results	PASS
System Integration	Run the SI Test Election on PPS & Verify results against known expected results	PASS
System Integration	Run the SI Test Election on CSD & Verify results against known expected results	PASS
System Integration	Reporting: Winners: Contest reports review	PASS
System Integration	Reporting: Results: Precinct summary reports, precinct-based reporting, reporting by Congressional District Level	PASS

App 7

IN THE UNITED STATES DISTRICCT COURT, NORTHERN DISTRCOICT OF GEORGIA, ATLANTA DIVISION

CORECO JA'QAN PEARSON, VIKKI TOWNSEND CONSIGLIO, GLORIA KAY GODWIN, JAMES KENNETH CARROLL, , CAROLYN HALL FISHER, CATHLEEN ALSTON LATHAM, and BRIAN JAY VAN GUNDY,

Plaintiffs.

v.

BRIAN KEMP, in his official capacity as Governor of Georgia, BRAD RAFFENSPERGER, in his official capacity as Secretary of State and Chair of the Georgia State Election Board, DAVID J. WORLEY, in his official capacity as a member of the Georgia State Election Board, REBECCA N.SULLIVAN, in her official capacity as a member of the Georgia State Election Board, MATTHEW MASHBURN, in his official capacity as a member of the Georgia State Election Board, and ANH LE, in her official capacity as a member of the Georgia State Election Board,

Defendants.

CASE NO.

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

EXHIBIT
F

NATURE OF THE ACTION

This civil action brings to light a massive election fraud, multiple violations of Georgia laws, including O.C.G.A. §§ 21-2-30(d), 21-2-31, 21-2-33.1 and §21-2-522, and multiple Constitutional violations, as shown by fact witnesses to specific incidents, multiple expert witnesses and the sheer mathematical impossibilities found in the Georgia 2020 General Election.[1]

1.

As a civil action, the plaintiff's burden of proof is a "preponderance of the evidence" to show, as the Georgia Supreme Court has made clear that, *"[i] was not incumbent upon [Plaintiff] to show how the [] voters would have voted if their [absentee] ballots had been regular. [Plaintiff] only had to show that there were enough irregular ballots to place in doubt the result." Mead v. Sheffield*, 278 Ga. 268, 272, 601 S.E.2d 99, 102 (2004) (*citing Howell v. Fears*, 275 Ga. 627, 571 S.E.2d 392 (2002).

[1] The same pattern of election fraud and voter fraud writ large occurred in all the swing states with only minor variations, see expert reports, regarding Michigan, Pennsylvania, Arizona and Wisconsin. (See William M. Briggs Decl., attached here to as Exh. 1, Report with Attachment). Indeed, we believe that in Arizona at least 35,000 votes were illegally added to Mr. Biden's vote count.

2.

The scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to make certain the election of Joe Biden as President of the United States.

3.

The fraud was executed by many means,[2] but the most fundamentally troubling, insidious, and egregious is the systemic adaptation of old-fashioned "ballot-stuffing." It has now been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose. Mathematical and statistical anomalies rising to the level of impossibilities, as shown by affidavits of multiple witnesses, documentation, and expert testimony evince this scheme across the state of Georgia. Especially egregious conduct arose in Forsyth, Paulding, Cherokee, Hall, and Barrow County. This scheme and artifice to defraud affected tens of thousands of votes in Georgia alone and "rigged" the election in Georgia for Joe Biden.

[2] 50 USC § 20701 requires Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation, but as will be shown wide pattern of misconduct with ballots show preservation of election records have not been kept; and Dominion logs are only voluntary, with no system wide preservation system.

4.

The massive fraud begins with the election software and hardware from Dominion Voting Systems Corporation ("Dominion") only recently purchased and rushed into use by Defendants Governor Brian Kemp, Secretary of State Brad Raffensperger, and the Georgia Board of Elections. Sequoia voting machines were used in 16 states and the District of Colombia in 2006. Smartmatic, which has revenue of about $100 million, focuses on Venezuela and other markets outside the U.S. [3]

After selling Sequoia, Smartmatic's chief executive, Anthony Mugica. Mr. Mugica said, he hoped Smartmatic would work with Sequoia on projects in the U.S., though Smartmatic wouldn't take an equity stake." Id.

5.

Smartmatic and Dominion were founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election. (*See* Redacted whistleblower affiant*, attached as Exh*. 2) Notably, Chavez "won" every election thereafter.

---

[3] *See WSJ.com, Smartmatic to Sell U.S. Unit, End Probe into Venezuelan Links, by Bob Davis, 12/22/2006,* h*ttps://www.wsj.com/articles/SB116674617078557263*

6.

As set forth in the accompanying whistleblower affidavit, the Smartmatic software was designed to manipulate Venezuelan elections in favor of dictator Hugo Chavez:

> Smartmatic's electoral technology was called "Sistema de Gestión Electoral" (the "Electoral Management System"). Smartmatic was a pioneer in this area of computing systems. Their system provided for transmission of voting data over the internet to a computerized central tabulating center. The voting machines themselves had a digital display, fingerprint recognition feature to identify the voter, and printed out the voter's ballot. The voter's thumbprint was linked to a computerized record of that voter's identity. Smartmatic created and operated the entire system.

7.

A *core requirement* of the Smartmatic software design was the *software's ability to hide its manipulation of votes from any audit.* As the whistleblower explains:

> Chavez was most insistent that Smartmatic design the system in a way that the system could change the vote of each voter without being detected. He wanted the software itself to function in such a manner that if the voter were to place their thumb print or fingerprint on a scanner, then the thumbprint would be tied to a record of the voter's name and identity as having voted, but that voter would not be tracked to the changed vote. He made it clear that the system would have to be setup to not leave any evidence of the changed vote for a specific voter and that there would be no evidence to show and nothing to contradict that the name or the fingerprint or thumb print was going with a changed vote. Smartmatic agreed to create such a system and produced the software and hardware that

accomplished that result for President Chavez. (See Id., see also Exh. 3, Aff. Cardozo, attached hereto)).

8.

The design and features *of* the Dominion software do not permit a simple audit to reveal its misallocation, redistribution, or deletion of votes. First, the system's central accumulator does not include a protected real-time audit log that maintains the date and time stamps of all significant election events. Key components of the system utilize unprotected logs. Essentially this allows an unauthorized user the opportunity to arbitrarily add, modify, or remove log entries, causing the machine to log election events that do not reflect actual voting tabulations—or more specifically, do not reflect the actual votes of or the will of the people. (*See* Hursti August 2019 Declaration, attached hereto as Exh. 4, at pars. 45-48; and attached hereto, as Exh. 4B, October 2019 Declaration in Document 959-4, at p. 18, par. 28).

9.

Indeed, under the professional standards within the industry in auditing and forensic analysis, when a log is unprotected, and can be altered, it can no longer serve the purpose of an audit log. There is incontrovertible physical evidence that the standards of physical security of the voting machines and the software were breached, and machines were connected to

the internet in violation of professional standards and state and federal laws. (*See Id.*)

10.

Moreover, lies and conduct of Fulton County election workers about a delay in voting at State Farm Arena and the reasons for it evince the fraud.

11.

Specifically, video from the State Farm Arena in Fulton County shows that on November 3rd after the polls closed, election workers falsely claimed a water leak required the facility to close. All poll workers and challengers were evacuated for several hours at about 10:00 PM. However, several election workers remained unsupervised and unchallenged working at the computers for the voting tabulation machines until after 1:00 AM.

12.

Defendants Kemp and Raffensperger rushed through the purchase of Dominion voting machines and software in 2019 for the 2020 Presidential Election[4]. A certificate from the Secretary of State was awarded to Dominion

---

[4] Georgia Governor Inks Law to Replace Voting Machines, The Atlanta Journal-Constitution, AJC News Now, Credit: Copyright 2019 The Associated Press, June 2019. https://www.ajc.com/blog/politics/georgia-governor-inks-law-replace-voting-machines/xNXs0ByQAOvtXhd27kJdqO/

Voting Systems but is undated. (*See* attached hereto Exh. 5, copy Certification for Dominion Voting Systems from Secretary of State). Similarly a test report is signed by Michael Walker as Project Manager but is also undated. (See Exh. 6, Test Report for Dominion Voting Systems, Democracy Suite 5-4-A)

13.

Defendants Kemp and Raffensperger disregarded all the concerns that caused Dominion software to be rejected by the Texas Board of Elections in 2018, namely that it was vulnerable to undetected and non-auditable manipulation. An industry expert, Dr. Andrew Appel, Princeton Professor of Computer Science and Election Security Expert has recently observed, with reference to Dominion Voting machines: "I figured out how to make a slightly different computer program that just before the polls were closed, it switches some votes around from one candidate to another. I wrote that computer program into a memory chip and now to hack a voting machine you just need 7 minutes alone with it and a screwdriver." (Attached hereto Exh. 7, Study, Ballot-Marking Devices (BMDs) Cannot Assure the Will of the Voters by Andrew W. Appel Princeton University, Richard A. DeMillo, Georgia Tech Philip B. Stark, for the Univ. of California, Berkeley, December 27, 2019).[5]

---

[5] Full unredacted copies of all exhibits have been filed under seal with the Court and Plaintiffs have simultaneously moved for a protective order.

14.

As explained and demonstrated in the accompanying redacted declaration of a former electronic intelligence analyst under 305th Military Intelligence with experience gathering SAM missile system electronic intelligence, the Dominion software was accessed by agents acting on behalf of China and Iran in order to monitor and manipulate elections, including the most recent US general election in 2020. This Declaration further includes a copy of the patent records for Dominion Systems in which Eric Coomer is listed as the first of the inventors of Dominion Voting Systems. (See Attached hereto as Exh. 8, copy of redacted witness affidavit, 17 pages, November 23, 2020).

15.

Expert Navid Keshavarez-Nia explains that US intelligence services had developed tools to infiltrate foreign voting systems including Dominion. He states that Dominion's software is vulnerable to data manipulation by unauthorized means and permitted election data to be altered in all battleground states. He concludes that hundreds of thousands of votes that were cast for President Trump in the 2020 general election were transferred to former Vice-President Biden. (Exh. 26).

16.

Additionally, incontrovertible evidence Board of Elections records demonstrates that at least 96,600 absentee ballots were requested and counted but were never recorded as being returned to county election boards by the voter. *Thus, at a minimum, 96,600 votes must be disregarded.* (See Attached hereto, Exh. 9, R. Ramsland Aff.).

17.

The Dominion system used in Georgia erodes and undermines the reconciliation of the number of voters and the number of ballots cast, such that these figures are permitted to be unreconciled, opening the door to ballot stuffing and fraud. The collapse of reconciliation was seen in Georgia's primary and runoff elections this year, and in the November election, where it was discovered during the hand audit that 3,300 votes were found on memory sticks that were not uploaded on election night, plus in Floyd county, another 2,600 absentee ballots had not been scanned. These "found votes" reduced Biden's lead over Donald Trump[6].

---

[6] *Recount find thousands of Georgia votes*, Atlanta Journal-Constitution by Mark Niesse and David Wickert,11/19/20. https://www.ajc.com/politics/recount-finds-thousands-of-georgia-votes-missing-from-initial-counts/ERDRNXPH3REQTM4SOINPSEP72M/

18.

Georgia's election officials and poll workers exacerbated and helped, whether knowingly or unknowingly, the Dominion system carry out massive voter manipulation by refusing to observe statutory safeguards for absentee ballots. Election officials failed to verify signatures and check security envelopes. They barred challengers from observing the count, which also facilitated the fraud.

19.

Expert analysis of the actual vote set forth below demonstrates that at least 96,600 votes were illegally counted during the Georgia 2020 general election. All of the evidence and allegation herein is more than sufficient to place the result of the election in doubt. More evidence arrives by the day and discovery should be ordered immediately.

20.

Georgia law, (OCGA 21-5-552) provides for a contest of an election where:

> (1) Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result; . . . (3) When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result; (4) For any error in counting the votes or declaring the result of the primary or election, if such error would change the result; or (5) For any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election.

21.

As further set forth below, all of the above grounds have been satisfied and compel this Court to set aside the 2020 General Election results which fraudulently concluded that Mr. Biden defeated President Trump by 12,670 votes.

22.

Separately, and independently, there are sufficient Constitutional grounds to set aside the election results due to the Defendants' failure to observe statutory requirements for the processing and counting of absentee ballots which led to the tabulation of more than fifty thousand illegal ballots.

THE PARTIES

23.

Plaintiff Coreco Ja'Qan ("CJ") Pearson, is a registered voter who resides in Augusta, Georgia. He is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia. He has standing to bring this action under *Carson v. Simon*, 2020 US App Lexis 34184 (8th Cir. Oct. 29, 2020). He brings this action to set aside and decertify the election results for the Office of President of the United States that was certified by the Georgia Secretary of State on November 20, 2020. The certified results showed a plurality of 12,670 votes in favor of former Vice-President Joe Biden over President Trump.

24.

Plaintiff Vikki Townsend Consiglio, is a registered voter who resides in Henry County, Georgia. She is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

25.

Plaintiff Gloria Kay Godwin, is a registered voter who resides in Pierece County, Georgia. She is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

26.

Plaintiff James Kenneth Carroll, is a registered voter who resides in Dodge County, Georgia. He is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

27.

Plaintiff Carolyn Hall Fisher, is a registered voter who resides in Forsyth County, Georgia. She is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

28.

Plaintiff Cathleen Alston Latham, is a registered voter who resides in Coffee County, Georgia. She is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

29.

Plaintiff Jason M. Shepherd is the Chairman of the Cobb County Republican Party and brings this action in his official capacity on behalf of the Cobb County Republican Party.

30.

Plaintiff Brian Jay Van Gundy is registered voter in Gwinnett County, Georgia. He is the Assistant Secretary of the Georgia Republican Party.

31.

Defendant Governor Brian Kemp (Governor of Georgia) is named herein in his official capacity as Governor of the State of Georgia. On or about June 9, 2019, Governor Kemp bought the new Dominion Voting Systems for Georgia, budgeting 150 million dollars for the machines. Critics are quoted, "Led by Abrams, Democrats fought the legislation and pointed to cybersecurity experts who warned it would leave Georgia's elections susceptible to hacking and tampering." And "Just this week, the Fair Fight voting rights group started by [Stacy] Abrams launched a television ad critical of the bill. In a statement Thursday, the group called it "corruption at its worst" and a waste of money on "hackable voting machines."[7]

---

[7] *Georgia Governor Inks Law to Replace Voting Machines*, The Atlanta Journal-Constitution, AJC News Now, Credit: Copyright 2019 The Associated Press, June 2019

32.

Defendant Brad Raffensperger ("Secretary Raffensperger") is named herein in his official capacity as Secretary of State of the State of Georgia and the Chief Election Official for the State of Georgia pursuant to Georgia's Election Code and O.C.G.A. § 21-2-50. Secretary Raffensperger is a state official subject to suit in his official capacity because his office "imbues him with the responsibility to enforce the [election laws]." *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). Secretary Raffensperger serves as the Chairperson of Georgia's State Election Board, which promulgates and enforces rules and regulations to (i) obtain uniformity in the practices and proceedings of election officials as well as legality and purity in all primaries and general elections, and (ii) be conducive to the fair, legal, and orderly conduct of primaries and general elections. *See* O.C.G.A. §§ 21-2-30(d), 21-2-31, 21-2-33.1. Secretary Raffensperger, as Georgia's chief elections officer, is further responsible for the administration of the state laws affecting voting, including the absentee voting system. *See* O.C.G.A. § 21-2-50(b).

33.

Defendants Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le (hereinafter the "State Election Board") are members of the State Election Board in Georgia, responsible for "formulating, adopting, and promulgating such rules and regulations, consistent with law, as will be

conducive to the fair, legal, and orderly conduct of primaries and elections." O.C.G.A. § 21-2-31(2). Further, the State Election Board "promulgate[s] rules and regulations to define uniform and nondiscriminatory standards concerning what constitutes a vote and what will be counted as a vote for each category of voting system" in Georgia. O.C.G.A. § 21-2-31(7). The State Election Board, personally and through the conduct of the Board's employees, officers, agents, and servants, acted under color of state law at all times relevant to this action and are sued for emergency declaratory and injunctive relief in their official capacities.

JURISDICTION AND VENUE

34.

This Court has subject matter jurisdiction under 28 U.S.C. 1331 which provides, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

35.

This Court also has subject matter jurisdiction under 28 U.S.C. 1343 because this action involves a federal election for President of the United States. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring); *Smiley v. Holm*, 285 U.S. 355, 365 (1932).

36.

The jurisdiction of the Court to grant declaratory relief is conferred by 28 U.S.C. 2201 and 2202 and by Rule 57 and 65, Fed. R. Civ. P. 7.

37.

This Court has jurisdiction over the related Georgia Constitutional claims and State law claims under 28 U.S.C. 1367.

38.

In Georgia, the "legislature" is the General Assembly. *See* Ga. Const. Art. III, § I, Para. I.

39.

Because the United States Constitution reserves for state legislatures the power to set the time, place, and manner of holding elections for Congress and the President, state executive officers, including but not limited to Secretary Raffensperger, have no authority to exercise that power unilaterally, much less flout existing legislation or the Constitution itself.

STATEMENT OF FACTS

40.

Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988, and under Georgia law, O.C.G.A. § 21-2-522 to remedy deprivations of rights,

privileges, or immunities secured by the Constitution and laws of the United States and to contest the election results.

41.

The United States Constitution sets forth the authority to regulate federal elections, the Constitution provides:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators. U.S. CONST. art. I, § 4 ("Elections Clause").

42.

With respect to the appointment of presidential electors, the Constitution provides: Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. U.S. CONST. art. II, § 1 ("Electors Clause").

43.

Neither Defendant is a "Legislature" as required under the Elections Clause or Electors Clause. The Legislature is "'the representative body which ma[kes] the laws of the people.'" *Smiley* 285 U.S. 365. Regulations of congressional and presidential elections, thus, "must be in accordance with

the method which the state has prescribed for legislative enactments." Id. at 367; see also *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 135 S. Ct. 2652, 2668 (U.S. 2015).

44.

While the Elections Clause "was not adopted to diminish a State's authority to determine its own lawmaking processes," *Ariz. State Legislature,* 135 S. Ct. at 2677, it does hold states accountable to their chosen processes when it comes to regulating federal elections, *id.* at 2668. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush,* 531 U.S. at 113 (Rehnquist, C.J., concurring); *Smiley,* 285 U.S. at 365.

45.

Plaintiffs also bring this action under Georgia law, O.C.G.A. § 21-2-522, Grounds for Contest:

> A result of a primary or election may be contested on one or more of the following grounds:
>
> (1) Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;
>
> (2) When the defendant is ineligible for the nomination or office in dispute;
>
> (3) When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;
>
> (4) For any error in counting the votes or declaring the result of the primary or election, if such error would change the result; or

> (5) For any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election.

O.C.G.A. § 21-2-522.

46.

Under O.C.G.A. § 21-2-10, Presidential Electors are elected.

47.

Under O.C.G.A. § 21-2-386(a)(l)(B), the Georgia Legislature instructed the county registrars and clerks (the "County Officials") to handle the absentee ballots as directed therein. The Georgia Legislature set forth the procedures to be used by each municipality for appointing the absentee ballot clerks to ensure that such clerks would "perform the duties set forth in this Article." *See* O.C.G.A. § 21-2-380.1.

48.

The Georgia Election Code instructs those who handle absentee ballots to follow a clear procedure:

> Upon receipt of each [absentee] ballot, a registrar or clerk ***shall*** write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk ***shall*** then compare the identifying information on the oath with the information on file in his or her office, ***shall*** compare the signature or make on the oath with the signature or mark on the absentee elector's voter card or the most recent update to such absentee elector's voter registration card and application for absentee ballot or a facsimile of said signature or maker taken from said card or application, and ***shall,*** if the information and signature appear to be valid and other identifying information appears to be correct, so certify by signing or initialing his or her name below the

> voter's oath. Each elector's name so certified shall be listed by the registrar or clerk on the numbered list of absentee voters prepared for his or her precinct.

O.C.G.A. § 21-2-386(a)(l)(B) (emphasis added).

49.

Under O.C.G.A. § 21-2-386(a)(l)(C), the Georgia Legislature also established a clear and efficient process to be used by County Officials if they determine that an elector has failed to sign the oath on the outside envelope enclosing the ballot or that the signature does not conform with the signature on file in the registrar's or clerk's office (a "defective absentee ballot").

50.

The Georgia Legislature also provided for the steps to be followed by County Officials with respect to defective absentee ballots:

> ***If the elector has failed to sign the oath, or if the signature does not appear to be valid***, or if the elector has failed to furnish required information ***or information so furnished does not conform with that on file in the registrar's or clerk's office***, or if the elector is otherwise found disqualified to vote, the registrar or clerk shall write across the face of the envelope "Rejected," giving the reason therefor. The board of registrars or absentee ballot clerk *shall* promptly ***notify the elector of such rejection***, a copy of which notification ***shall*** be retained in the files of the board of registrars or absentee ballot clerk for at least one year.

O.C.G.A. § 21-2 -386(a) (l)(C) (emphasis added).

I. DEFENDANTS' UNAUTHORIZED ACTIONS VIOLATED THE GEORGIA ELECTION CODE AND CAUSED THE PROCESSING OF DEFECTIVE ABSENTEE BALLOTS.

51.

Notwithstanding the clarity of the applicable statutes and the constitutional authority for the Georgia Legislature's actions, on March 6, 2020, the Secretary of State of the State of Georgia, Secretary Raffensperger, and the State Election Board, who administer the state elections (the "Administrators") entered into a "Compromise and Settlement Agreement and Release" (the "Litigation Settlement") with the Democratic Party of Georgia, Inc., the Democrat Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee (collectively, the "Democrat Party Agencies"), setting forth different standards to be followed by the clerks and registrars in processing absentee ballots in the State of Georgia8.

52.

Under the Settlement, however, the Administrators agreed to change the statutorily prescribed manner of handling absentee ballots in a manner that is not consistent with the laws promulgated by the Georgia Legislature for elections in this state.

---

[8] *See Democratic Party of Georgia, Inc., et al. v. Raffensperger, et al.,* Civil Action File No. 1:1 9-cv-05028-WMR, United States District Court for the Northern District of Georgia, Atlanta Division, Doc. 56-1.

53.

The Settlement provides that the Secretary of State would issue an "Official Election Bulletin" to county Administrators overriding the statutory procedures prescribed for those officials. That power, however, does not belong to the Secretary of State under the United States Constitution.

54.

The Settlement also changed the signature requirement reducing it to a broad process with discretion, rather than enforcement of the signature requirement as statutorily required under O.C.G.A. 21-2-386(a)(l).

55.

The Georgia Legislature instructed county registers and clerks (the "County Officials") regarding the handling of absentee ballots in O.C.G.A. S 21-2-386(a)(1)(B), 21-2-380.1. The Georgia Election Code instructs those who handle absentee ballots to follow a clear procedure:

> Upon receipt of each absentee ballot, a registrar or clerk shall write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk shall then compare the identifying information on the oath with the information on file in his or her office, shall compare the signature or make on the oath with the signature or mark on the absentee elector's voter card or the most recent update to such absent elector's voter registration card and application for absentee ballot or a facsimile of said signature or maker taken from said card or application, and shall, if the information and signature appear to be valid and other identifying information appears to be correct, so certify by signing or initialing his or her name below the voter's oath …

O.C.G.A. S 21-2-386(a)(1)(B).

56.

The Georgia Legislature prescribed procedures to ensure that any request for an absentee ballot must be accompanied by sufficient identification of the elector's identity. *See* O.C.G.A. § 21-2-38 l(b)(1) (providing, in pertinent part, "In order to be found eligible to vote an absentee ballot in person at the registrar's office or absentee ballot clerk's office, such person shall show one of the forms of identification listed in Code Section 21-2-417 ...").

57.

An Affiant testified, under oath, that "It was also of particular interest to me to see that signatures were not being verified and that there were no corresponding envelopes seen in site." (Attached hereto as Exh. 10, Mayra Romera, at par. 7).

58.

To reflect the very reason for process, it was documented that in the primary election, prior to the November 3, 2020 Presidential election, many ballots got to voters after the election. Further it was confirmed that "Untold thousands of absentee ballot requests went unfulfilled, and tens of thousands of mailed ballots were rejected for multiple reasons including arriving too late

to be counted. See the Associated Press, *Vote-by-Mail worries: A leaky pipeline in many states*, August 8, 2020.[9]

59.

Pursuant to the Settlement, the Administrators delegated their responsibilities for determining when there was a signature mismatch by considering in good faith only partisan-based training - "additional guidance and training materials" drafted by the Democrat Party Agencies' representatives contradicting O.C.G.A. § 21-2-31.

B. UNLAWFUL EARLY PROCESSING OF ABSENTEE BALLOTS

60.

In April 2020, the State Election Board adopted on a purportedly "Emergency Basis" Secretary of State Rule 183-1-14-0.9-.15, Processing Ballots Prior to Election Day. Under this rule, county election officials are authorized to begin processing absentee ballots up to three weeks befoe election day. Thus, the rule provides in part that "(1) Beginning at 8:00 AM on the third Monday prior to Election Day, the county election superintendent **shall be authorized to open the outer envelope of accepted absentee ballots** …" (Emphasis added).

---

[9] *https://apnews.com/article/u-s-news-ap-top-news-election-2020-technology-politics-52e87011f4d04e41bfffccd64fc878e7*

61.

Rule 183-1-14-0.9-.15 is in direct and irreconcilable conflict with O.C.G.A. § 21-2-386(a)(2), which prohibits the opening of absentee ballots until election day:

> **After the opening of the polls** on the day of the primary, election, or runoff, the registrars or absentee ballot clerks **shall be authorized to open the outer envelope** on which is printed the oath of the elector in such a manner as not to destroy the oath printed thereon; provided, however, that the registrars or absentee ballot clerk shall not be authorized to remove the contents of such outer envelope or to open the inner envelope marked "Official Absentee Ballot," except as otherwise provided in this Code section.

(Emphasis added).

62.

In plain terms, the statute clearly prohibits opening absentee ballots prior to election day, while the rule authorizes doing so three weeks before election day. There is no reconciling this conflict. The State Election Board has authority under O.C.G.A. § 21-2-31 to adopt lawful and legal rules and regulations, but no authority to promulgate a regulation that is directly contrary to an unambiguous statute. Rule 183-1-14-0.9-.15 is therefore plainly and indisputably unlawful.

63.

The State Election Board re-adopted Rule 183-1-14-0.9-.15 on November 23, 2020 for the upcoming January 2021 runoff election.

C. Unlawful Audit Procedures

64.

According to Secretary Raffensperger, in the presidential general election, 2,457,880 votes were cast in Georgia for President Donald J. Trump, and 2,472,002 votes were cast for Joseph R. Biden, which narrowed in Donald Trump's favor after the most recent recount.

65.

Secretary Raffensperger declared that for the Hand Recount:

> Per the instructions given to counties as they conduct their audit triggered full hand recounts, designated monitors will be given complete access to observe the process from the beginning. While the audit triggered recount must be open to the public and media, designated monitors will be able to observe more closely. The general public and the press will be restricted to a public viewing area. Designated monitors will be able to watch the recount while standing close to the elections' workers conducting the recount.
>
> Political parties are allowed to designate a minimum of two monitors per county at a ratio of one monitor per party for every ten audit boards in a county... Beyond being able to watch to ensure the recount is conducted fairly and securely, the two-person audit boards conducting the hand recount call out the votes as they are recounted , providing monitors and the public an additional way to keep tabs on the process.[10]

[10] *Office of Brad Raffensperger, Monitors Closely Observing Audit-Triggered Full Hand Recount: Transparency is Built Into Process*, https://sos.ga.gov/index.php/elections/monitors_closely_observing_audit-triggered_full_hand_recount_transparency_is_built_into_process

66.

The audit was conducted O.C.G.A. § 21-2-498. This code section requires that audits be completed “in public view” and authorizes the State Board of Elections to promulgate regulations to administer an audit “to ensure that collection of validly cast ballots is complete, accurate and trustworthy throughout the audit.”

67.

Plaintiffs can show that Democrat-majority counties provided political parties and candidates, including the Trump Campaign, no meaningful access or actual opportunity to review and assess the validity of mail-in ballots during the pre-canvassing meetings. While in the audit or recount, they witnessed Trump votes being put into Biden piles.

68.

Non-parties Amanda Coleman and Maria Diedrich are two individuals who volunteered to serve as designated monitors for the Donald J. Trump Presidential Campaign, Inc. (the "Trump Campaign") on behalf of the Georgia Republican Party (the "Republican Party") at the Hand Recount. (Attached hereto and incorporated herein as Exhibits 2 and 3), respectively, are true and correct copies of (1) the Affidavit of Amanda Coleman in Support of Plaintiffs' Motion for Temporary Restraining Order (the "Coleman Affidavit"), and (2) the Affidavit of Maria Diedrich in Support of Plaintiffs'

Motion for Temporary Restraining Order (the "Diedrich Affidavit"). (See Exh. 11, Coleman Aff.,2; Exh. 12, Diedrich Aff., 2.)

69.

The Affidavits set forth various conduct amounting to federal crimes, clear improprieties, insufficiencies, and improper handling of ballots by County Officials and their employees that Ms. Coleman and Ms. Diedrich personally observed while monitoring the Hand Recount. *(See* Exh. 11, Coleman Aff., 3-10; Exh. 12, Diedrich Aff., 4-14.)

70.

As a result of her observations of the Hand Recount as a Republican Party monitor, Ms. Diedrich declared, "There had been no meaningful way to review or audit any activity" at the Hand Recount. *(See* Exh. 12, Diedrich Aff.,14.)

71.

As a result of their observations of the Hand Recount as Republican Party monitors, Ms. Coleman likewise declared, "There was no way to tell if any counting was accurate or if the activity was proper." (See Exh. 12, Coleman Aff.,10).

72.

On Election Day, when the Republican poll watchers were, for a limited time, present and allowed to observe in various polling locations, they

observed and reported numerous instances of election workers failing to follow the statutory mandates relating to two critical requirements, among other issues:

> (1) a voter's right to spoil their mail-in ballot at their polling place on election day and to then vote in-person, and
>
> (2) the ability for voters to vote provisionally on election day when a mail-in ballot has already been received for them, but when they did not cast those mail-in ballots, who sought to vote in person during early voting but was told she already voted; she emphasized that she had not. The clerk told her he would add her manually with no explanation as to who or how someone voted using her name. (Attached hereto as Exh. 13, Aff. Ursula Wolf)

73.

Another observer for the ballot recount testified that "*at no time did I witness any Recounter or individual participate in the recount verifying signatures [on mail-in ballots].*" (Attached hereto as Exh. 14, Nicholas Zeher Aff).

74.

In some counties, there was no actual "hand" recounting of the ballots during the Hand Recount, but rather, County Officials and their employees

simply conducted another machine count of the *same* ballots. (See. Exh. 9, 10). That will not reveal the massive fraud of which plaintiffs complain.

75.

A large number of ballots were identical and likely fraudulent. An Affiant explains that she observed a batch of utterly pristine ballots:

> 14. Most of the ballots had already been handled; they had been written on by people, and the edges were worn. They showed obvious use. However, one batch stood out. It was pristine. There was a difference in the texture of the paper - it was if they were intended for absentee use but had not been used for that purposes. There was a difference in the feel.
>
> 15. These different ballots included a slight depressed pre-fold so they could be easily folded and unfolded for use in the scanning machines. There were no markings on the ballots to show where they had com~ from, or where they had been processed. These stood out.
>
> 16. In my 20 years of experience of handling ballots, I observed that the markings for the candidates on these ballots were unusually uniform, perhaps even with a ballot-marking device. By my estimate in observing these ballots, approximately 98% constituted votes for Joe Biden. I only observed two of these ballots as votes for President Donald J. Trump." (See Exh. 15 Attached hereto).

76.

The same Affiant further testified specifically to the breach of the chain of custody of the voting machines the night before the election stating:

> we typically receive the machines, the ballot marking devices – on the Friday before the election, with a chain of custody letter to be signed on Sunday, indicating that we had received the machines and the counts on the machines when received, and that the machines have been sealed. **<u>In this case, we were asked to sign the chain of custody letter on Sunday, even though the machines were not delivered until 2:00 AM in the morning on Election Day.</u>**

> The Milton precinct received its machines at 1:00 AM in the morning on Election Day. This is unacceptable and voting machines should [not] be out of custody prior to an Election Day. *Id.*

II. EVIDENCE OF FRAUD

A PATTERN SHOWING THE ABSENCE OF MISTAKE

77.

The stunning pattern of the nature and acts of fraud demonstrate an absence of mistake.

78.

The same Affiant further explained, in sworn testimony, that the breach included: "when we did receive the machines, they were not sealed or locked, the serial numbers were not what were reflected on the related documentation..." *See Id.*

79.

An affiant testified that "While in Henry County, I personally witnessed ballots cast for Donald Trump being placed in the pile for Joseph Biden, I witnessed this happen at table "A".' (See Exh. 14, par. 27).

80.

The Affiant further testified, that "when this was brought to Ms. Pitts attention, it was met with extreme hostility. At no time did I witness any ballot cast for Joseph Biden be placed in the pile for Donald Trump. (See Exh. 14, par. 28).

81.

Another Affiant in the mail-in ballot and absentee ballot recounting process, testified in her sworn affidavit, that "on November 16, 2020 … It was also of particular interest to me to see that signatures were not being verified and there were no corresponding envelopes seen in sight." (See Exh. 10, at Par. 7).

82.

Yet another Affiant, in the recount process, testified that he received push back and a lack of any cooperation and was even threatened as if he did something wrong, when he pointed out the failure to follow the rules with the observers while open mail-in ballot re-counting was occurring, stating:

> "However, as an observer, I observed that the precinct had twelve (12) counting tables, but only one (1) monitor from the Republican Party. I brought it up to Erica Johnston since the recount rules provided for one (1) monitor from each Party per ten (10) tables or part thereof…"

(See Attached hereto, Exh. 16, Ibrahim Reyes Aff.)

83.

Another Affiant explains a pattern of behavior that is alarming, in his position as an observer in the recount on absentee ballots with barcodes, he testified:

> ***I witnessed two poll workers placing already separated paper machine receipt ballots with barcodes in the Trump tray, placing them in to the Biden tray.*** I also witnessed the same two poll workers putting the already separated paper receipt ballots in

> the "No Vote" and "Jorgensen" tray, and removing them and putting them inside the Biden tray, They then took out all of the ballots out of the Biden tray and stacked them on the table, writing on the count ballot sheet.

> *(*See Attached hereto, Exh.17*,* pars. 4-5, Aff. of Consetta Johson*).*

84.

Another Affiant, a Democrat, testified in his sworn affidavit, that before he was forced to move back to where he could not see, he had in fact seen "absentee ballots for Trump inserted into Biden's stack, and counted as Biden votes. This occurred a few times". (See attached hereto, Exh. 18 at Par. 12, Aff. of Carlos Silva).

85.

Yet another Affiant testified about the lack of process and the hostility only towards the Republican party, which is a violation of the Equal Protection Clause. He testified:

> I also observed throughout my three days in Atlanta, not once did anyone verify these ballots. In fact, there was no authentication process in place and no envelopes were observed or allowed to be observed. I saw hostility towards Republican observers but never towards Democrat observers. Both were identified by badges.

(*See Id.*, at pars. 13-14).

86.

Another Affiant explained that his ballot was not only not processed in accordance with Election law, he witnessed people reviewing his ballot to decide where to place it, which violated the privacy of his ballot, and when he

tried to report it to a voter fraud line, he never received any contact or cooperation stating:

> "I voted early on October 12 at the precinct at Lynwood Park … Because of irregularities at the polling location, I called the voter fraud line to ask why persons were discussing my ballot and reviewing it to decide where to place it. When I called the state fraud line, I was directed to a worker in the office of the Secretary of State…"

(See Attached hereto, Exh. 19, Andrea ONeal Aff, at par. 3).

87.

He further testified that when he was an Observer at the Lithonia location, he saw many irregularities, and specifically "saw an auditor sort Biden votes that he collected and sorted into ten ballot stacks, which [the auditor] did not show anyone." Id. at p. 8.

88.

Another Affiant testified about the use of different paper for ballots, that would constitute fraud stating:

> I noticed that almost all of the ballots I reviewed were for Biden. Many batches went 100% for Biden. I also observed that the watermark on at least 3 ballots were solid gray instead of transparent, leading me to believe the ballot was counterfeit. I challenged this and the Elections Director said it was a legitimate ballot and was due to the use of different printers. Many ballots had markings for Biden only, and no markings on the rest of the ballot.

(See Attached hereto, Exh. 20, Aff of Debra J. Fisher, at pars. 4, 5, 6).

89.

An Affiant testified, that while at the Audit, '**While in Henry County, I personally witnessed ballots cast for Donald Trump being placed in the pile for Joseph Biden. I witnessed this happen at table "A"**'. (*See* attached hereto as Exh. 22, Kevin Peterford, at par. 29). Another Affiant testified, that "I witnessed two poll workers placing already separated paper machine receipt ballots with barcodes in the Trump tray, placing them in to the Biden tray. I also witnessed the same two poll workers putting the already separated paper receipt abllots in the "No Vote" and "Jorgensen" tray, and removing them and putting them inside the Biden tray, They then took out all of the ballots out of the Biden tray and stacked them on the table, writing on the count ballot sheet. (See Exh. 17, Johnson, pars. 4-5).

90.

Another Affiant, a Democrat, testified in his sworn affidavit, before he was forced to move back to where he could not see, he had in fact seen, **"*I also saw absentee ballots for Trump inserted***

***into Biden's stack, and counted as Biden votes. This occurred a few times*". **(See Exh. 18, Par. 12).

91.

A Republican National Committee monitor in Georgia's election recount, Hale Soucie, told an undercover journalist there are individuals counting ballots who have made continuous errors," writes O'Keefe. Project Veritas, Watch: Latest Project Veritas Video reveals "Multiple Ballots Meant for Trump Went to Biden in Georgia.[11]

B. The Voting Machines, Secrecy Software Used By Voting Machines Throughout Georgia is Crucial

92.

These violations of federal and state laws impacted the election of November 3, 2020 and set the predicate for the evidence of deliberate fraudulent conduct, manipulation, and lack of mistake that follows. The commonality and statewide nature of these legal violations renders certification of the legal vote untenable and warrants immediate

[11] https://hannity.com/media-room/watch-latest-project-veritas-video-reveals-multiple-ballots-meant-for-trump-went-to-biden-in-georgia/

impoundment of voting machines and software used throughout Georgia for expert inspection and retrieval of the software.

93.

An Affiant, who is a network & information cyber-security expert, under sworn testimony explains that after studying the user manual for Dominion Voting Systems Democracy software, he learned that the information about scanned **ballots can be tracked inside the software system for Dominion**:

> (a) When bulk ballot scanning and tabulation begins, the "ImageCast Central" workstation operator will load a batch of ballots into the scanner feed tray and then start the scanning procedure within the software menu. The scanner then begins to scan the ballots which were loaded into the feed tray while the "ImageCast Central" software application tabulates votes in real-time. Information about scanned ballots can be tracked inside the "ImageCast Central" software application.

(*See* attached hereto Exh 22, Declaration of Ronald Watkins, at par. 11).

94.

Affiant further explains that the central operator can remove or discard batches of votes. "After all of the ballots loaded into the scanner's feed tray have been through the scanner, the "ImageCast Central" operator will remove the ballots from the tray then have the option to either "Accept Batch" or "Discard Batch" on the scanning menu …. "(*Id.* at par. 8).

95.

Affiant further testifies that the Dominion/ Smartmatic user manual itself makes clear that the system allows for threshold settings to be set to mark all ballots as "problem ballots" for *discretionary determinations* on where the vote goes. It states:

> *During the scanning process, the "ImageCast Central" software will detect how much of a percent coverage of the oval was filled in by the voter. The Dominion customer determines the thresholds of which the oval needs to be covered by a mark in order to qualify as a valid vote. If a ballot has a marginal mark which did not meet the specific thresholds set by the customer, then the ballot is considered a "problem ballot" and may be set aside into a folder named "NotCastImages". Through creatively tweaking the oval coverage threshold settings it should be possible to set thresholds in such a way that a non-trivial amount of ballots are marked "problem ballots" and sent to the "NotCastImages" folder. It is possible for an administrator of the ImageCast Central work station to view all images of scanned ballots which were deemed "problem ballots" by simply navigating via the standard "Windows File Explorer" to the folder named "NotCastImages" which holds ballot scans of "problem ballots". It is possible for an administrator of the "ImageCast Central" workstation to view and delete any individual ballot scans from the "NotCastImages" folder by simply using the standard Windows delete and recycle bin functions provided by the Windows 10 Pro operating system.*

Id. at pars. 9-10.

96.

The Affiant further explains the vulnerabilities in the system when the copy of the selected ballots that are approved in the Results folder are made

to a flash memory card – and that is connected to a Windows computer stating:

> *It is possible for an administrator of the "ImageCast Central" workstation to view and delete any individual ballot scans from the "NotCastImages" folder by simply using the standard Windows delete and recycle bin functions provided by the Windows 10 Pro operating system. … The upload process is just a simple copying of a "Results" folder containing vote tallies to a flash memory card connected to the "Windows 10 Pro" machine. The copy process uses the standard drag-n-drop or copy/paste mechanisms within the ubiquitous "Windows File Explorer". While a simple procedure, this process may be error prone and* ***is very vulnerable to malicious administrators****.*

Id. at par. 11-13 (emphasis supplied).

97.

It was announced on "Monday, [July 29, 2019], [that] Governor Kemp awarded a contract for 30,000 new voting machines to Dominion Voting Systems, scrapping the state's 17-year-old electronic voting equipment and replacing it with touchscreens that print out paper ballots."[12] Critics are quoted: "Led by Abrams, Democrats fought the legislation and pointed to cybersecurity experts who warned it would leave Georgia's elections susceptible to hacking and tampering." And "Just this week, the Fair Fight voting rights group started by [Stacy] Abrams launched a television ad

---

[12] *Georgia Buys New Voting Machines for 2020 Presidential Election, by Mark Niesse, the Atlanta Journal-Constitution, July 30, 2019, https://www.ajc.com/news/state--regional-govt--politics/georgia-awards-contract-for-new-election-system-dominion-voting/tHh3V8KZnZivJoVzZRLO4O/*

critical of the bill. In a statement Thursday, the group called it "corruption at its worst" and a waste of money on "hackable voting machines."[13]

98.

It was further reported in 2019 that the new Dominion Voting Machines in Georgia "[w]ith Georgia's current voting system, there's **no way to guarantee that electronic ballots accurately reflect the choices of voters because there's no paper backup to verify results**, with it being reported that:

> (a) Recounts are meaningless on the direct-recording electronic voting machines because they simply reproduce the same numbers they originally generated.
>
> (b) But paper ballots alone won't protect the sanctity of elections on the new touchscreens, called ballot-marking devices.
>
> (c) The new election system depends on voters to verify the printed text of their choices on their ballots, a step that many voters might not take. The State Election Board hasn't yet created regulations for how recounts and audits will be conducted. And paper ballots embed selections in bar codes that are only readable by scanning machines, leaving Georgians uncertain whether the bar codes match their votes.[14]

---

[13] *Georgia Governor Inks Law to Replace Voting Machines, The Atlanta Journal-Constitution, AJC News Now, by Greg Bluestein and Mark Niesse, June 14, 2019; Credit: Copyright 2019 The Associated Press, June 2019*

i. *As part of the scheme and artifice to defraud the plaintiffs, the candidates and the voters of undiminished and unaltered voting results in a free and legal election, the Defendants and other persons known and unknown committed the following violations of law:*

50 U.S.C. § 20701 requires the retention and preservation of records and papers by officers of elections under penalty of fine and imprisonment:

> **§ 20701. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation**
>
> Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, **all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election,** except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

50 U.S.C.§ 20701.

99.

In the primaries it was confirmed that, "The rapid introduction of new technologies and processes in state voting systems heightens the risk of

foreign interference and insider tampering. That's true even if simple human error or local maneuvering for political advantage are more likely threats[15].

100.

A Penn Wharton Study from 2016 concluded that "Voters and their representatives in government, often prompted by news of high-profile voting problems, also have raised concerns about the reliability and integrity of the voting process, and have increasingly called for the use of modern technology such as laptops and tablets to improve convenience."[16]

101.

As evidence of the defects or features of the Dominion Democracy Suite, as described above, the same Dominion Democracy Suite was denied certification in Texas by the Secretary of State on January 24, 2020 specifically because of a **lack of evidence of efficiency and accuracy and to be safe from fraud or unauthorized manipulation.**[17]

---

[15] *See Threats to Georgia Elections Loom Despite New Paper Ballot Voting, By Mark Niesse, The Atlanta Journal-Constitution and (The AP, Vote-by-Mail worries: A leaky pipeline in many states, August 8, 2020).*

[16] Penn Wharton Study by Matt Caufield, The Business of Voting, July 2018.

[17] Attached hereto, Exh. 23, copy of Report of Review of Dominion Voting Systems Democracy Suite 5.5-A Elections Division by the Secretary of State's office, Elections Division, January 24, 2020.

102.

Plaintiffs have since learned that the "glitches" in the Dominion system–that have the uniform effect of taking votes from Trump and shifting them to Biden—have been widely reported in the press and confirmed by the analysis of independent experts.

103.

Plaintiffs can show, through expert and fact witnesses that:

c. Dominion/ Smartmatic Systems Have Massive End User Vulnerabilities.

1. Users on the ground have full admin privileges to machines and software. Having been created to "rig" elections, the Dominion system is designed to facilitate vulnerability and allow a select few to determine which votes will be counted in any election. Workers were responsible for moving ballot data from polling place to the collector's office and inputting it into the correct folder. Any anomaly, such as pen drips or bleeds, results in a ballot being rejected. It is then handed over to a poll worker to analyze and decide if it should count. This creates massive opportunity for purely discretionary and improper vote "adjudication."

2. Affiant witness (name redacted for security reasons[18]), in his sworn testimony explains he was selected for the national security guard detail of the President of Venezuela, and that he witnessed the creation of Smartmatic for the purpose of election vote manipulation to insure Venezuelan dictator Hugo Chavez never lost an election and he saw it work. Id.

   "The purpose of this conspiracy was to create and operate a voting system that could change the votes in elections from votes against

> persons running the Venezuelan government to votes in their favor in order to maintain control of the government."

(*See* Exh. 2, pars. 6, 9, 10).

104.

Smartmatic's incorporators and inventors have backgrounds evidencing their foreign connections, including Venezuela and Serbia, specifically its identified inventors:

> Applicant: SMARTMATIC, CORP.
>
> Inventors: Lino Iglesias, Roger Pinate, Antonio Mugica, Paul Babic, Jeffrey Naveda, Dany Farina, Rodrigo Meneses, Salvador Ponticelli, Gisela Goncalves, Yrem Caruso.[19]

105.

The presence of Smartmatic in the United States—owned by foreign nationals, and Dominion, a Canadian company with its offices such as the Office of General Counsel in Germany, would have to be approved by CFIUS. CFIUS was created in 1988 by the Exon-Florio Amendment to the Defense Production Act of 1950. CFIUS' authorizing statute was amended by the Foreign Investment and National Security Act of 2007 (FINSA).

> As amended, section 721 of the DPA directs "the President, acting through [CFIUS]," to review a "**covered transaction to determine the effects of the transaction on the national security of the United States.**" 50 U.S.C. app. § 2170(b)(1)(A). Section 721 defines

19 https://patents.justia.com/assignee/smartmatic-corp

a covered transaction as "any merger, acquisition, or takeover ..., by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States." Id. § 2170(a)(3). *Ralls Corp. v. Comm. on Foreign Inv.*, 758 F.3d 296, 302, 411 U.S. App. D.C. 105, 111, (2014). Review of covered transactions under section 721 begins with CFIUS. As noted, CFIUS is chaired by the Treasury Secretary and its members include the heads of various federal agencies and other high-ranking Government officials with foreign policy, national security and economic responsibilities.

106.

Then Congresswoman Carolyn Maloney wrote October 6, 2006 to the Secretary of Treasury, Henry M. Paulson, Jr., Objecting to approval of Dominion/Smartmatic by CFIUS because of its corrupt Venezuelan origination, ownership and control. (See attached hereto as Exh. 24, Carolyn Maloney Letter of October 6, 2006). Our own government has long known of this foreign interference on our most important right to vote, and it had either responded with incompetence, negligence, willful blindness, or abject corruption. In every CFIUS case, there are two TS/SCI reports generated. One by the ODNI on the threat and one by DHS on risk to critical infrastructure. Smartmatic was a known problem when it was nonetheless approved by CFIUS.

107.

The Wall Street Journal in 2006 did an investigative piece and found that, “Smartmatic came to prominence in 2004 when its machines were used

in an election to recall President Chávez, which Mr. Chávez won handily -- and which the Venezuelan opposition said was riddled with fraud. Smartmatic put together a consortium to conduct the recall elections, including a company called Bizta Corp., in which Smartmatic owners had a large stake. For a time, the Venezuelan government had a 28% stake in Bizta in exchange for a loan.'[20] …"Bizta paid off the loan in 2004, and Smartmatic bought the company the following year. But accusations of Chávez government control of Smartmatic never ended, especially since Smartmatic scrapped a simple corporate structure, in which it was based in the U.S. with a Venezuelan subsidiary, for a far more complex arrangement. The company said it made the change for tax reasons, but critics, including Rep. Carolyn Maloney (D., N.Y.) and TV journalist Lou Dobbs, pounded the company for alleged links to the Chávez regime. *Id*. Since its purchase by Smartmatic, Sequoia's sales have risen sharply to a projected $200 million in 2006, said Smartmatic's chief executive, Anthony Mugica." *Id.*

108.

Indeed, Mr. Cobucci testified, through his sworn affidavit, that he born in Venezuela, is cousins with Antonio ('Anthony') Mugica, and he has

[20] *See WSJ.com, Smartmatic to Sell U.S. Unit, End Probe into Venezuelan Links, by Bob Davis, 12/22/2006,* h*ttps://www.wsj.com/articles/SB116674617078557263*

personal knowledge of the fact that Anthony Mugica incorporated Smartmatic in the U.S. in 2000 with other family members in Venezuela listed as owners. He also has personal knowledge that Anthony Mugica manipulated Smartmatic to ensure the election for Chavez in the 2004 Referendum in Venezuela. He also testified, through his sworn affidavit, that Anthony Mugica received tens of millions of dollars from 2003- 2015 from the Venezuelan government to ensure Smartmatic technology would be implemented around the world, including in the U.S. (See attached hereto, Exh. 25, Juan Carlos Cobucci Aff.)

109.

Another Affiant witness testifies that in Venezuela, she was in an official position related to elections and witnessed manipulations of petitions to prevent a removal of President Chavez and because she protested, she was summarily dismissed. Corroborating the testimony of our secret witness, and our witness Mr. Cobucci, cousin of Anthony Mugica, who began Smartmatic, and this witness explains the vulnerabilities of the electronic voting system and Smartmatica to such manipulations. (See Exh. 3, Diaz Cardozo Aff).

110.

Specific vulnerabilities of the systems in question that have been documented or reported include:

a. Barcodes can override the voters' vote: As one University of California, Berkeley study shows, "In all three of these machines [including Dominion Voting Systems] the ballot marking printer is in the same paper path as the mechanism to deposit marked ballots into an attached ballot box. This opens up a very serious security vulnerability: the voting machine can make the paper ballot (to add votes or spoil already-cast votes) after the last time the voter sees the paper, and then deposit that marked ballot into the ballot box without the possibility of detection." (See Exh. 7). [21]

b. Voting machines were able to be connected to the internet by way of laptops that were obviously internet accessible. If one laptop was connected to the internet, the entire precinct was compromised.

c. We … discovered that at least some jurisdictions were not aware that their systems were online," said Kevin Skoglund, an independent security consultant who conducted the research with nine others, all of them long-time security professionals and academics with expertise in election security. Vice. August 2019. [22]

---

[21] *Ballot Marking Devices (BMDs) Cannot Assure the Will of the Voters,* Andrew W. Appel, Richard T. DeMillo, University of California, Berkeley, 12/27/2019.

[22] *Exclusive: Critical U.S. Election Systems Have Been Left Exposed Online Despite Official Denials, Motherboard Tech by Vice, by Kim Zetter, August 8, 2019, https://www.vice.com/en/article/3kxzk9/exclusive-critical-us-election-systems-have-been-left-exposed-online-despite-official-denials*

d. October 6, 2006 – Congresswoman Carolyn Maloney called on Secretary of Treasury Henry Paulson to conduct an investigation into Smartmatic based on its foreign ownership and ties to Venezuela. (See Exh. 24)

e. Congresswoman Maloney wrote that "It is undisputed that Smartmatic is foreign owned and it has acquired Sequoia … Smartmatica now acknowledged that Antonio Mugica, a Venezuelan businessman has a controlling interest in Smartmatica, but the company has not revealed who all other Smartmatic owners are." *Id.*

f. Dominion "got into trouble" with several subsidiaries it used over alleged cases of fraud. One subsidiary is Smartmatic, a company "that has played a significant role in the U.S. market over the last decade," according to a report published by UK-based AccessWire[23].

g. Litigation over Smartmatic "glitches" alleges they impacted the 2010 and 2013 mid-term elections in the Philippines, raising questions of cheating and fraud. An independent review of the source codes used in the machines found multiple problems, which concluded, "The software

---

[23] *Voting Technology Companies in the U.S. – Their Histories and Present Contributions, Access Wire, August 10, 2017, https://www.accesswire.com/471912/Voting-Technology-Companies-in-the-US--Their-Histories.*

inventory provided by Smartmatic is inadequate, … which brings into question the software credibility…"[24]

h. Dominion acquired Sequoia Voting Systems as well as Premier Election Solutions (formerly part of Diebold, which sold Premier to ES&S in 2009, until antitrust issues forced ES&S to sell Premier, which then was acquired by Dominion).[25].

i. Dominion entered into a 2009 contract with Smartmatic and provided Smartmatic with the PCOS machines (optical scanners) that were used in the 2010 Philippine election—the biggest automated election run by a private company. The international community hailed the automation of that first election in the Philippines.[26] The results' transmission reached 90% of votes four hours after polls closed and Filipinos knew for the first time who would be their new president on Election Day. In keeping with local election law requirements, Smartmatic and Dominion were required to provide the source code of

---

[24] *Smartmatic-TIM running out of time to fix glitches, ABS-CBN News, May 4, 2010 https://news.abs-cbn.com/nation/05/04/10/smartmatic-tim-running-out-time-fix-glitches*
[25] *The Business of Voting*, Penn Wharton, Caufield, p. 16.
[26] *Smartmatic-TIM running out of time to fix glitches, ABS-CBN News, May 4, 2010 https://news.abs-cbn.com/nation/05/04/10/smartmatic-tim-running-out-time-fix-glitches*

the voting machines prior to elections so that it could be independently verified.[27]

j. In late December of 2019, three Democrat Senators, Warren, Klobuchar, Wyden, and House Member Mark Pocan wrote about their ***'particularized concerns that secretive & "trouble -plagued companies"'*** "***have long skimped on security in favor of convenience***," in the context of how they described the voting machine systems that three large vendors – Election Systems & Software, Dominion Voting Systems, & Hart InterCivic – collectively provide voting machines & software that facilitate voting for over 90% of all eligible voters in the U.S." (See attached hereto as Exh. 26, copy of Senator Warren, Klobuchar, Wyden's December 6, 2019 letter).

k. Senator Ron Wyden (D-Oregon) said the findings [insecurity of voting systems] are "yet another damning indictment of the profiteering election vendors, who care more about the bottom line than protecting our democracy." It's also an indictment, he said, "of the notion that important cybersecurity decisions should be left entirely to county

[27] Presumably the machiens were not altered following submission of the code. LONDON, ENGLAND / ACCESSWIRE / August 10, 2017, *Voting Technology Companies in the U.S. - Their Histories and Present Contributions*

election offices, many of whom do not employ a single cybersecurity specialist."[28]

111.

An analysis of the Dominion software system by a former US Military Intelligence expert concludes that the system and software have been accessible and were certainly compromised by rogue actors, such as Iran and China. By using servers and employees connected with rogue actors and hostile foreign influences combined with numerous easily discoverable leaked credentials, Dominion neglectfully allowed foreign adversaries to access data and intentionally provided access to their infrastructure in order to monitor and manipulate elections, including the most recent one in 2020. (See Exh. 7).

112.

An expert witness in pending litigation in the United States District Court, Northern District Court of Georgia, Atlanta Div., 17-cv-02989 specifically testified to the acute security vulnerabilities, among other facts, by declaration filed on October 4, 2020, (See Exh. 4B, Document 959-4

---

[28] *Exclusive: Critical U.S. Election Systems Have Been Left Exposed Online Despite Official Denials, Motherboard Tech by Vice, by Kim Zetter, August 8, 2019, https://www.vice.com/en/article/3kxzk9/exclusive-critical-us-election-systems-have-been-left-exposed-online-despite-official-denials*

attached hereto, paragraph. 18 and 20 of p. 28, Exh. 4, Hursti Declaration). wherein he testified or found:

1) The failure of the Dominion software "*to meet the methods and processes for national standards for managing voting system problems and should not be accepted for use in a public election under any circumstances*."

2) In Hursti's declaration he explained that "There is evidence of remote access and remote troubleshooting which presents a grave security implication and certified identified vulnerabilities should be considered an "extreme security risk." *Id*. Hari Hursti also explained that USB drives with vote tally information were observed to be removed from the presence of poll watchers during a recent election. *Id*. The fact that there are no controls of the USB drives was seen recently seen the lack of physical security and compliance with professional standards, " in one Georgia County, where it is reported that 3,300 votes were found on memory sticks not loaded plus in Floyd county, another 2,600 were unscanned, and the "found votes" reduced Biden's lead over Donald Trump[29].

(a) In the prior case against Dominion, supra, further implicating the secrecy behind the software used in Dominion Systems,

---

[29] *Recount find thousands of Georgia votes*, Atlanta Journal-Constitution by Mark Niesse and David Wickert,11/19/20. https://www.ajc.com/politics/recount-finds-thousands-of-georgia-votes-missing-from-initial-counts/ERDRNXPH3REQTM4SOINPSEP72M/

Dr. Eric Coomer, a Vice President of Dominion Voting Systems, testified that even he was not sure of what testing solutions were available to test problems or how that was done, " *I have got to be honest, we might be a little bit out of my bounds of understanding the rules and regulations*… and in response to a question on testing for voting systems problems in relation to issues identified in 2 counties, he explained that "*Your Honor, I'm not sure of the complete test plan… Again Pro V&V themselves determine what test plan in necessary based on their analysis of the code itself.*" (*Id.* at Document 959-4, pages 53, 62 L.25- p. 63 L3).

113.

Hursti stated within said Declaration:

"The security risks outlined above – operating system risks, the failure to harden the computers, performing operations directly on the operating systems, lax control of memory cards, lack of procedures, and potential remote access are extreme and destroy the credibility of the tabulations and output of the reports coming from a voting system."

(See Paragraph 49 of Hursti Declaration).

114.

Rather than engaging in an open and transparent process to give credibility to Georgia's brand-new voting system, the election processes were

hidden during the receipt, review, opening, and tabulation of those votes in direct contravention of Georgia's Election Code and federal law.

115.

The House of Representatives passed H.R. 2722 in an attempt to address these very risks identified by Hursti, on June 27, 2019:

> *This bill addresses election security through grant programs and requirements for voting systems and paper ballots.*
>
> *The bill establishes requirements for voting systems, including that systems (1) use individual, durable, voter-verified paper ballots; (2) make a voter's marked ballot available for inspection and verification by the voter before the vote is cast; (3) ensure that individuals with disabilities are given an equivalent opportunity to vote, including with privacy and independence, in a manner that produces a voter-verified paper ballot; (4) be manufactured in the United States; and (5) meet specified cybersecurity requirements, including the prohibition of the connection of a voting system to the internet.*

ADDITIONAL SPECIFIC FRAUD

116.

On November 4, 2020, the Georgia GOP Chairman issued the following statement:

> *"Let me repeat. Fulton County elections officials told the media and our observers that they were shutting down the tabulation center at State Farm Arena at 10:30 p.m. on election night to continue counting ballots in secret until 1:00 a.m.* [30]

117.

It was widely reported that "As of 7 p.m. on Wednesday Fulton County Elections officials said 30,000 absentee ballots were not processed due to a pipe burst."[31] Officials reassured voters that none of the ballots were damaged and the water was quickly cleaned up. But the emergency delayed officials from processing ballots between 5:30 a.m. and 9:30 a.m. Officials say they continued to count beginning at 8:30 a.m. Wednesday. The statement from Fulton County continues:

> "Tonight, Fulton County will report results for approximately 86,000 absentee ballots, as well as Election Day and Early Voting results. These represent the vast majority of ballots cast within Fulton County.
>
> "As planned, Fulton County will continue to tabulate the remainder of absentee ballots over the next two days. Absentee ballot processing requires that each ballot is opened, signatures verified, and ballots scanned. This is a labor-intensive process that takes longer to tabulate than other forms of voting. Fulton County did not anticipate having all absentee ballots processed on Election Day." Officials said they will work to ensure every vote is counted and all laws and regulations are followed.[32]

---

[31] "4,000 remaining absentee ballots being counted in Fulton County", Fox 5 Atlanta, November 3, 2020, https://www.fox5atlanta.com/news/pipe-burst-at-state-farm-arena-delays-absentee-ballot-processing

[32] 4,000 remaining absentee ballots being counted in Fulton County, Fox 5 Atlanta, November 3, 2020, https://www.fox5atlanta.com/news/pipe-burst-at-state-farm-arena-delays-absentee-ballot-processing

118.

Plaintiffs have learned that the representation about "a water leak affecting the room where absentee ballots were counted" was not true. The only water leak that needed repairs at State Farm Arena from November 3 – November 5 was a toilet overflow that occurred earlier on November 3. It had nothing to do with a room with ballot counting, but the false water break representation led to "everyone being sent home." Nonetheless, first six (6) people, then three (3) people stayed until 1:05 a.m. working on the computers.

119.

An Affiant recounts how she was present at State Farm Arena on November 3, and saw election workers remaining behind after people were told to leave. (See Exh. 28, Affidavit of Mitchell Harrison; Exh. 29, Affid. of Michelle Branton)

120.

Plaintiffs have also learned through several reports that in 2010 Eric Coomer joined Dominion as Vice President of U.S. Engineering. According to his bio, Coomer graduated from the University of California, Berkeley with a Ph.D. in Nuclear Physics. Eric Coomer was later promoted to Voting Systems Officer of Strategy and Security although Coomer has since been removed from the Dominion page of directors. Dominion altered its website after

Colorado resident Joe Oltmann disclosed that as a reporter he infiltrated ANTIFA, a domestic terrorist organization where he recorded Eric Coomer representing: "Don't worry. Trump won't win the election, we fixed that." – as well as social media posts with violence threatened against President Trump. (See Joe Oltmann interview with Michelle Malkin dated November 13, 2020 which contains copies of Eric Coomer's recording and tweets).[33]

121.

While the bedrock of American elections has been transparency, almost every crucial aspect of Georgia's November 3, 2020, General Election was shrouded in secrecy, rife with "errors," and permeated with anomalies so egregious as to render the results incapable of certification.

MULTIPLE EXPERT REPORTS AND STATISTICAL ANALYSES PROVE HUNDREDS OF THOUSANDS OF VOTES WERE LOST OR SHIFTED THAT COST PRESIDENT TRUMP AND THE REPUBLICAN CANDIDATES OF CONGRESSIONAL DISTRICTS 6 AND 7 THEIR RACES.

122.

As evidenced by numerous public reports, expert reports, and witness statements, Defendants egregious misconduct has included ignoring legislative mandates concerning mail-in and ordinary ballots and led to

---

33 Malkin Live: Election Update, Interview of Joe Oltmann, by Michelle Malkin, November 13, 2020, *available at:* https://www.youtube.com/watch?v=dh1X4s9HuLo&fbclid=IwAR2EaJc1M9RT3DaUraAjsycM0uPKB3uM_-MhH6SMeGrwNyJ3vNmlcTsHxF4

disenfranchisement of an enormous number of Georgia voters. Plaintiffs experts can show that, consistent with the above specific misrepresentations, analysis of voting data reveals the following:

(a) Regarding uncounted mail ballots, based on evidence gathered by Matt Braynard in the form of recorded calls and declarations of voters, and analyzed by Plaintiff's expert, Williams M. Briggs, PhD, shows, based on a statistically significant sample, **that the total number of mail ballots that voters mailed in, but were never counted, have a 95% likelihood of falling between 31,559 and 38,886 total lost votes.** This range exceeds the margin of loss of President Trump of 12,670 votes by at least 18,889 lost votes and by as many as 26,196 lost votes. (See Exh. 1, Dr. Briggs' Report, with attachments).

(b) Plaintiff's expert also finds that **voters received tens of thousands of ballots that they never requested.** (See Exh. 1). Specifically, Dr. Briggs found that in the state of Georgia, based on a statistically significant sample, the expected amount of persons that received an absentee ballot that they did not request ranges from 16,938 to 22,771. **This range exceeds the margin of loss of**

President Trump by 12,670 votes by at least 4,268 unlawful requests and by as many as 10,101 unlawful requests. *Id.*

(c) This widespread pattern, as reflected within the population of unreturned ballots analyzed by Dr. Briggs, reveals the unavoidable reality that, in addition to the calculations herein, third parties voted an untold number of unlawfully acquired absentee or mail-in ballots, which would not be in the database of unreturned ballots analyzed here. See O.G.C.A. 21-2-522. **These unlawfully voted ballots prohibited properly registered persons from voting and reveal a pattern of widespread fraud down ballot as well.**

(d) **Further, as calculated by Matt Braynard, there exists clear evidence of 20,311 absentee or early voters in Georgia that voted while registered as having moved out of state.** (See Id., attachment to report). Specifically, these persons were showing on the National Change of Address Database (NCOA) as having moved, or as having filed subsequent voter registration in another state also as evidence that they moved and even potentially voted in another state. The 20,311 votes by persons documented as having moved exceeds the margin by which Donald Trump lost the election by 7,641 votes.

(e) Applying *pro-rata* the above calculations separately to Cobb County based on the number of unreturned ballots, a range of 1,255 and 1,687 ballots ordered by 3rd parties and a range of 2,338 and 2,897 lost mail ballots, plus 10,684 voters documented in the NCOA as having moved, **for a combined minimum of 14,276 missing and unlawful ballots, and maximum of 15,250 missing and unlawful ballots, which exceeds the statewide Presidential race total margin by a range of as few as 1,606 ballots and as many as 2,580 in the County of Cobb alone impacting the Cobb County Republican Party ("Cobb County Republicans").**

123.

As seen from the **expert analysis of Eric Quinnell**, mathematical anomalies further support these findings, when in various districts within Fulton County such as vote gains that exceed reasonable expectations when compared to 2016, and a failure of gains to be normally distributed but instead shifting substantially toward the tail of the distribution in what is known as a platykurtic distribution. Dr. Quinell identifies numerous anomalies such as votes to Biden in excess of 2016 exceed the registrations that are in excess of 2016. Ultimately, he identifies the counties in order of their excess performance over what would have fit in a

normal distribution of voting gains, revealing a list of the most anomalous counties down to the least. These various anomalies provide evidence of voting irregularities. (See Exh.27, Declaration of Eric Quinnell, with attachments).

124.

In sum, with the expert analysis of William M. Briggs PhD based on recorded calls and declarations, the extent of missing AND unlawfully requested ballots create substantial evidence that the mail ballot system has fundamentally failed to provide a fair voting mechanism. In short, tens of thousands of votes did not count while the pattern of fraud makes clear that tens of thousands were improperly counted. This margin of victory in the election for Mr. Biden was only 12,670 and cannot withstand most of these criticisms individually and certainly not in aggregate.

125.

Cobb county, based on lost votes, unlawfully requested votes and NCOA data on these facts alone would consume more than the entire margin of the statewide difference in the Presidential race. These election results must be reversed.

126.

Applying *pro-rata* the above calculations separately to Cobb County based on the number of unreturned ballots, a range of 1,255 and 1,687 ballots

ordered by 3rd parties and a range of 2,338 and 2,897 lost mail ballots, plus 10,684 voters documented in the NCOA as having moved, **for a combined minimum of 14,276 missing and unlawful ballots, and maximum of 15,250 missing and unlawful ballots, which exceeds the statewide Presidential race total margin by a range of as few as 1,606 ballots and as many as 2,580 in the County of Cobb alone impacting the Cobb County Republican Party ("Cobb County Republicans").** (See Exh. 1).

127.

Mr. Braynard also found a pattern in Georgia of voters registered at totally fraudulent residence addresses, including shopping centers, mail drop stores and other non-residential facilities[34].

128.

In sum, with the expert analysis of William M. Briggs PhD based on extensive investigation, recorded calls and declarations collected by Matt Braynard, (See attachments to Exh. 1, Briggs' report) the extent of missing and unlawfully requested ballots create substantial evidence that the mail ballot system has fundamentally failed to provide a fair voting mechanism. In

---

[34] Matt Braynard, https://twitter.com/MattBraynard/status/1331324173910761476; https://twitter.com/MattBraynard/status/1331299873556086787?s=20; (a) https://twitter.com/MattBraynard/status/1331299873556086787?s=20

short, tens of thousands of votes did not count while the pattern of fraud and mathematical anomalies that are impossible absent malign human agency makes clear that tens of thousands were improperly counted. This margin of victory in the election for Mr. Biden was only 12,670 and cannot withstand most of these criticisms individually and certainly not in aggregate.

129.

Cobb county, based on lost votes, unlawfully requested votes and NCOA data on these facts alone would consume more than the entire margin of the statewide difference in the Presidential race.

130.

Russell Ramsland confirms that data breaches in the Dominion software permitted rogue actors to penetrate and manipulate the software during the recent general election. He further concludes that at least 96,600 mail-in ballots were illegally counted as they were not cast by legal voters.

131.

In sum, as set forth above, for a host of independent reasons, the Georgia certified election results concluding that Joe Biden received 12,670 more votes that President Donald Trump must be set aside.

COUNT I

DEFENDANTS VIOLATED THE ELECTIONS CLAUSE AND 42 U.S.C. § 1983

132.

Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

133.

The Electors Clause states that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" for President. Art. II, § 1, cl. 2 (emphasis added). Likewise, the Elections Clause of the U.S. Constitution states that "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." Art. I, § 4, cl. 1 (emphasis added).

134.

The Legislature is "'the representative body which ma[kes] the laws of the people.'" *Smiley*, 285 U.S. at 193. Regulations of congressional and presidential elections, thus, "must be in accordance with the method which the state has prescribed for legislative enactments." *Id.* at 367; *see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2668 (2015).

135.

Defendants are not part of the General Assembly and cannot exercise legislative power. Rather, Defendants' power is limited to "tak[ing] care that the laws be faithfully executed." Pa. Const. Art. IV, § 2. Because the United States Constitution reserves for the General Assembly the power to set the time, place, and manner of holding elections for the President and Congress, county boards of elections and state executive officers have no authority to unilaterally exercise that power, much less to hold them in ways that conflict with existing legislation.

136.

Defendants are not the legislature, and their unilateral decision to create a "cure procedure" violates the Electors and Elections Clauses of the United States Constitution.

137.

The Secretary of State and the State Election Board are not the legislature, and their decision to permit early processing of absentee ballots in direct violation of the unambiguous requirements of O.C.G.A. § 21-2-386(a)(2) violates the Electors and Elections Clauses of the United States Constitution.

138.

Many Affiants testified to many legal infractions in the voting process, including specifically switching absentee ballots or mail-in ballots for Trump to Biden. Even a Democrat testified in his sworn affidavit that before he was forced to move back to where he could not see, he had in fact seen, "*I also saw absentee ballots for Trump inserted into Biden's stack, and counted as Biden votes. This occurred a few times*". (See Exh. 18, Par. 12).

139.

Plaintiff's expert also finds that voters received tens of thousands of ballots that they never requested. (See Exh. 1, Dr. Briggs' Report). Specifically, Dr. Briggs found that in the state of Georgia, based on a statistically significant sample, the expected amount of persons that received an absentee ballot that they did not request one ranges from 16,938 to 22,771. This range exceeds the margin of loss of President Trump by 12,670 votes by at least 4,268 unlawful requests and by as many as 10,101 unlawful requests.

140.

This widespread pattern, as reflected within the population of unreturned ballots analyzed by Dr. Briggs, reveals the unavoidable reality that, in addition to the calculations herein, third parties voted an untold number of unlawfully acquired absentee or mail-in ballots, which would not

be in the database of unreturned ballots analyzed here. *See* O.G.C.A. 21-2-522. These unlawfully voted ballots prohibited properly registered persons from voting and reveal a pattern of widespread fraud.

141.

Further, as shown by data collected by Matt Braynard, there exists clear evidence of 20,311 absentee or early voters in Georgia that voted while registered as having moved out of state. Specifically, these persons were showing on the National Change of Address Database (NCOA) as having moved, or as having filed subsequent voter registration in another state also as evidence that they moved and even potentially voted in another state. The 20,311 votes by persons documented as having moved exceeds the margin by which Donald Trump lost the election by 7,641 votes.

142.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted. Defendants have acted and, unless enjoined, will act under color of state law to violate the Elections Clauses of the Constitution. Accordingly, the results for President and Congress in the November 3, 2020 election must be set aside. The results are infected with Constitutional violations.

COUNT II

THE SECRETARY OF STATE AND GEORGIA COUNTIES VIOLATED THE FOURTEENTH AMENDMENT U.S. CONST. AMEND. XIV, 42 U.S.C. § 1983

DENIAL OF EQUAL PROTECTION

INVALID ENACTMENT OF REGULATIONS AFFECTING OBSERVATION AND MONITORING OF THE ELECTION

143.

Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

144.

The Fourteenth Amendment of the United States Constitution provides “nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *See also Bush v. Gore*, 531 U.S. 98, 104 (2000)(having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over the value of another’s). *Harper v. Virginia Board of Elections*, 383 U.S. 663, 665 (1966) (“Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.”).

145.

The Court has held that to ensure equal protection, a "problem inheres in the absence of specific standards to ensure its equal application. The formulation of uniform rules to determine intent based on these recurring circumstances is practicable and, we conclude, necessary." *Bush v. Gore*, 531 U.S. 98, 106, 121 S. Ct. 525, 530, 148 L. Ed. 2d 388 (2000).

146.

The equal enforcement of election laws is necessary to preserve our most basic and fundamental rights. The requirement of equal protection is particularly stringently enforced as to laws that affect the exercise of fundamental rights, including the right to vote.

147.

In statewide and federal elections conducted in the State of Georgia, including without limitation the November 3, 2020, General Election, all candidates, political parties, and voters, including without limitation Plaintiffs, have a vested interest in being present and having meaningful access to observe and monitor the electoral process in each County to ensure that it is properly administered in every election district and otherwise free, fair, and transparent.

148.

Moreover, through its provisions involving watchers and representatives, the Georgia Election Code ensures that all candidates and political parties in each County, including the Trump Campaign, have meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and otherwise free, fair, and transparent. *See, e.g*. In plain terms, the statute clearly prohibits opening absentee ballots prior to election day, while the rule authorizes doing so three weeks before election day. There is no reconciling this conflict. The State Election Board has authority under O.C.G.A. § 21-2-31 to adopt lawful and legal rules and regulations, but no authority to promulgate a regulation that is directly contrary to an unambiguous statute. Rule 183-1-14-0.9-.15 is therefore plainly and indisputably unlawful.

Plaintiffs also bring this action under Georgia law, O.C.G.A. § 21-2-522, Grounds for Contest:

149.

A result of a primary or election may be contested on one or more of the following grounds:

150.

(1) Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;

(2) When the defendant is ineligible for the nomination or office in dispute;

(3) When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;

(4) For any error in counting the votes or declaring the result of the primary or election, if such error would change the result; or

(5) For any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election. O.C.G.A. § 21-2-522.

151.

Several affiants testified to the improper procedures with absentee ballots processing, with the lack of auditable procedures with the logs in the computer systems, which violates Georgia law, and federal election law. See

also, 50 U.S.C. § 20701 requires the retention and preservation of records and papers by officers of elections under penalty of fine and imprisonment.

152.

The State Election Board re-adopted Rule 183-1-14-0.9-.15 on November 23, 2020 for the upcoming January 2021 runoff election.

153.

A large number of ballots were identical and likely fraudulent. An Affiant explains that she observed a batch of utterly pristine ballots:

> 14. Most of the ballots had already been handled; they had been written on by people, and the edges were worn. They showed obvious use. However, one batch stood out. It was pristine. There was a difference in the texture of the paper - it was if they were intended for absentee use but had not been used for that purposes. There was a difference in the feel.
>
> 15. These different ballots included a slight depressed pre-fold so they could be easily folded and unfolded for use in the scanning machines. There were no markings on the ballots to show where they had com~ from, or where they had been processed. These stood out.
>
> 16. In my 20 years of experience of handling ballots, I observed that the markings for the candidates on these ballots were unusually uniform, perhaps even with a ballot-marking device. By my estimate in observing these ballots, approximately 98% constituted votes for Joe Biden. I only observed two of these ballots as votes for President Donald J. Trump." (See Exh. 15).

154.

The same Affiant further testified specifically to the breach of the chain of custody of the voting machines the night before the election stating:

> we typically receive the machines, the ballot marking devices – on the Friday before the election, with a chain of custody letter to be signed on Sunday, indicating that we had received the machines and the counts on the machines when received, and that the machines have been sealed. **In this case, we were asked to sign the chain of custody letter on Sunday, even though the machines were not delivered until 2:00 AM in the morning on Election Day.** The Milton precinct received its machines at 1:00 AM in the morning on Election Day. This is unacceptable and voting machines should [not] be out of custody prior to an Election Day. *Id*.

155.

Defendants have a duty to treat the voting citizens in each County in the same manner as the citizens in other counties in Georgia.

156.

As set forth in Count I above, Defendants failed to comply with the requirements of the Georgia Election Code and thereby diluted the lawful ballots of the Plaintiffs and of other Georgia voters and electors in violation of the United States Constitution guarantee of Equal Protection.

157.

Specifically, Defendants denied the plaintiffs equal protection of the law and their equal rights to meaningful access to observe and monitor the electoral process enjoyed by citizens in other Georgia Counties by:

(a) mandating that representatives at the pre-canvass and canvass of all absentee and mail-ballots be either Georgia barred

attorneys or qualified registered electors of the county in which they sought to observe and monitor;

(b) not allowing watchers and representatives to visibly see and review all envelopes containing official absentee and mail-in ballots either at or before they were opened and/or when such ballots were counted and recorded; and

(c) allowing the use of Dominion Democracy Suite software and devices, which failed to meet the Dominion Certification Report's conditions for certification.

158.

Instead, Defendants refused to credential all of the Trump Republican's submitted watchers and representatives and/or kept Trump Campaign's watchers and representatives by security and metal barricades from the areas where the inspection, opening, and counting of absentee and mail-in ballots were taking place. Consequently, Defendants created a system whereby it was physically impossible for the candidates and political parties to view the ballots and verify that illegally cast ballots were not opened and counted

159.

Many Affiants testified to switching absentee ballots or mail-in ballots for Trump to Biden, including a Democrat. He testified in his sworn affidavit, that before he was forced to move back to where he could not see, he

had in fact seen, “absentee ballots for Trump inserted into Biden’s stack, and counted as Biden votes. This occurred a few times”. (See Exh. 18, Par. 12).

160.

Other Georgia county boards of elections provided watchers and representatives of candidates and political parties, including without limitation watchers and representatives of the Republicans and the Trump Campaign, with appropriate access to view the absentee and mail-in ballots being pre-canvassed and canvassed by those county election boards and without restricting representatives by any county residency or Georgia bar licensure requirements.

161.

Defendants intentionally and/or arbitrarily and capriciously denied Plaintiffs access to and/or obstructed actual observation and monitoring of the absentee and mail-in ballots being pre-canvassed and canvassed by Defendants, depriving them of the equal protection of those state laws enjoyed by citizens in other Counties.

162.

Defendants have acted and will continue to act under color of state law to violate Plaintiffs’ right to be present and have actual observation and access to the electoral process as secured by the Equal Protection Clause of the United States Constitution.

163.

Defendants further violated Georgia voters' rights to equal protection insofar as Defendants allowed the Georgia counties to process and count ballots in a manner that allowed ineligible ballots to be counted, and through the use of Dominion Democracy Suite, allowed eligible ballots for Trump and McCormick to be switched to Biden or lost altogether. Defendants thus failed to conduct the general election in a uniform manner as required by the Equal Protection Clause of the Fourteenth Amendment and the Georgia Election Code.

164.

Plaintiffs seek declaratory and injunctive relief holding that the election, under these circumstances, was improperly certified and that the Governor be enjoined from transmitting Georgia's certified Presidential election results to the Electoral College. Georgia law forbids certifying a tally that includes any ballots that were not legally cast, or that were switched from Trump to Biden, through the unlawful use of Dominion Democracy Suite software and devices.

165.

Alternatively, Plaintiffs seek declaratory and injunctive relief holding that the election, under these circumstances, was improperly certified and that the Governor be required to recertify the results declaring that Donald

Trump has won the election and transmitting Georgia's certified Presidential election result in favor of President Trump.

166.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the declaratory and injunctive relief requested herein is granted. Indeed, the setting aside of an election in which the people have chosen their representative is a drastic remedy that should not be undertaken lightly, but instead should be reserved for cases in which a person challenging an election has clearly established a violation of election procedures and has demonstrated that the violation has placed the result of the election in doubt. Georgia law allows elections to be contested through litigation, both as a check on the integrity of the election process and as a means of ensuring the fundamental right of citizens to vote and to have their votes counted accurately. O.C.G.A. § 21-2-520 et seq.

167.

In addition to the alternative requests for relief in the preceding paragraphs, hereby restated, Plaintiffs seek a permanent injunction requiring the County Election Boards to invalidate ballots cast by: 1) voters whose signatures on their registrations have not been matched with ballot, envelope and voter registration check; 2) all "dead votes"; and 4) all 900 military ballots in Fulton county that supposedly were 100% for Joe Biden.

COUNT III

FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE U.S. CONST. AMEND. XIV, 42 U.S.C. § 1983

DENIAL OF DUE PROCESS

DISPARATE TREATMENT OF ABSENTEE/MAIL-IN VOTERS AMONG DIFFERENT COUNTIES

168.

Plaintiffs incorporate each of the prior allegations in this Complaint.

Voting is a fundamental right protected by the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment protects the right to vote from conduct by state officials which seriously undermines the fundamental fairness of the electoral process. *Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994); *Griffin*, 570 F.2d at 1077-78. "[H]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush*, 531 U.S. at 104-05.

169.

Defendants are not part of the General Assembly and cannot exercise legislative power. Rather, Defendants' power is limited to executing the laws as passed by the legislature Although the Georgia General Assembly may enact laws governing the conduct of elections, "no legislative enactment may

contravene the requirements of the Georgia or United States Constitutions." *Shankey*, 257 A. 2d at 898.

170.

Federal courts "possess broad discretion to fashion an equitable remedy." *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Engineers*, 781 F.3d 1271, 1290 (11th Cir. 2015); *Castle v. Sangamo Weston, Inc.*, 837 F.2d 1550, 1563 (11th Cir. 1988) ("The decision whether to grant equitable relief, and, if granted, what form it shall take, lies in the discretion of the district court.").

171.

Moreover, "[t]o the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, … the decision to provide a 'notice and opportunity to cure' procedure to alleviate that risk is one best suited for the Legislature[,] . . . particularly in light of the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots, all of which are best left to the legislative branch of Georgia's government." *Id.*

172.

The disparate treatment of Georgia voters, in subjecting one class of voters to greater burdens or scrutiny than another, violates Equal Protection guarantees because "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds*, 377 U.S. at 555. *Rice v. McAlister*, 268 Ore. 125, 128, 519 P.2d 1263, 1265 (1975); *Heitman v. Brown Grp., Inc.*, 638 S.W.2d 316, 319, 1982 Mo. App. LEXIS 3159, at *4 (Mo. Ct. App. 1982); *Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68, ¶ 41, 56 P.3d 524, 536-37 (Utah 2002).

173.

Defendants are not the legislature, and their unilateral decision to create and implement a cure procedure for some but not all absentee and mail-in voters in this State violates the Due Process Clause of the United States Constitution. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

COUNT IV

FOURTEENTH AMENDMENT, U.S. CONST. ART. I § 4, CL. 1; ART. II, § 1, CL. 2; AMEND. XIV, 42 U.S.C. § 1983

DENIAL OF DUE PROCESS ON THE RIGHT TO VOTE

174.

Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

175.

The right of qualified citizens to vote in a state election involving federal candidates is recognized as a fundamental right under the Fourteenth Amendment of the United States Constitution. *Harper*, 383 U.S. at See also *Reynolds*, 377 U.S. at 554 (The Fourteenth Amendment protects the "the right of all qualified citizens to vote, in state as well as in federal elections."). Indeed, ever since the Slaughter-House Cases, 83 U.S. 36 (1873), the United States Supreme Court has held that the Privileges or Immunities Clause of the Fourteenth Amendment protects certain rights of federal citizenship from state interference, including the right of citizens to directly elect members of Congress. *See Twining v. New Jersey*, 211 U.S. 78, 97 (1908) (*citing Ex parte Yarbrough*, 110 U.S. 651, 663-64 (1884)). *See also Oregon v. Mitchell,* 400 U.S. 112, 148-49 (1970) (Douglas, J., concurring) (collecting cases).

176.

The fundamental right to vote protected by the Fourteenth Amendment is cherished in our nation because it "is preservative of other basic civil and political rights." *Reynolds*, 377 U.S. at 562. Voters have a "right to cast a ballot in an election free from the taint of intimidation and fraud," Burson v. Freeman, 504 U.S. 191, 211 (1992), and "[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam).

177.

"Obviously included within the right to [vote], secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted" if they are validly cast. *United States v. Classic*, 313 U.S. 299, 315 (1941). "[T]he right to have the vote counted" means counted "at full value without dilution or discount." *Reynolds*, 377 U.S. at 555, n.29 (quoting *South v. Peters,* 339 U.S. 276, 279 (1950) (Douglas, J., dissenting)).

178.

"Every voter in a federal . . . election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes." *Anderson v. United States*, 417 U.S. 211, 227 (1974); see also *Baker v. Carr*, 369 U.S. 186, 208 (1962). Invalid or

fraudulent votes "debase[]" and "dilute" the weight of each validly cast vote. *See Anderson*, 417 U.S. at 227.

179.

The right to an honest [count] is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitution of the United States." *Anderson*, 417 U.S. at 226 (quoting *Prichard v. United States*, 181 F.2d 326, 331 (6th Cir.), *aff'd due to absence of quorum*, 339 U.S. 974 (1950)).

180.

Practices that promote the casting of illegal or unreliable ballots or fail to contain basic minimum guarantees against such conduct, can violate the Fourteenth Amendment by leading to the dilution of validly cast ballots. *See Reynolds*, 377 U.S. at 555 ("[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.").

181.

In Georgia, the signature verification requirement is a dead letter. The signature rejection rate for the most recent election announced by the Secretary of State was 0.15%. The signature rejection rate for absentee ballot applications was .00167% - only 30 statewide. Hancock County, Georgia,

population 8,348, rejected nine absentee ballot applications for signature mismatch. Fulton County rejected eight. No other metropolitan county in Georgia rejected even a single absentee ballot application for signature mismatch. The state of Colorado, which has run voting by mail for a number of years, has a signature rejection rate of between .52% and .66%.[35] The State of Oregon had a rejection rate of 0.86% in 2016.[36] The State of Washington has a rejection rate of between 1% and 2%.[37]If Georgia rejected absentee ballots at a rate of .52% instead of the actual .15%, approximately 4,600 more absentee ballots would have been rejected.

COUNT V

THERE WAS WIDE-SPREAD BALLOT FRAUD.

OCGA 21-2-522

182.

Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

---

[35] *See* https://duckduckgo.com/?q=colorado+signature+rejection+rate&t=osx&ia=web last visited November 25,2020

[36] *See* https://www.vox.com/21401321/oregon-vote-by-mail-2020-presidential-election, last visited November 25,2020.

[37] *See* https://www.salon.com/2020/09/08/more-than-550000-mail-ballots-rejected-so-far-heres-how-to-make-sure-your-vote-gets-counted/ last visited November 25, 2020.

183.

Plaintiffs contest the results of Georgia's election, with Standing conferred under pursuant to O.G.C.A. 21-2-521.

184.

Therefore, pursuant to O.G.C.A. 21-2-522, for misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result. The foundational principle that Georgia law "nonetheless allows elections to be contested through litigation, both as a check on the integrity of the election process and as a means of ensuring the fundamental right of citizens to vote and to have their votes counted accurately." *Martin v. Fulton County Bd. of Registration & Elections*, 307 Ga. 193, 194, 835 S.E.2d 245, 248 (2019). The Georgia Supreme Court has made clear that Plaintiffs need not show how the [] voters would have voted if their [absentee] ballots had been regular. [] only had to show that there were enough irregular ballots to place in doubt the result." See OCGA § 21-2-520 et seq., *Mead v. Sheffield*, 278 Ga. 268, 272, 601 S.E.2d 99, 102 (1994) the Supreme Court invalidated an election, and ordered a new election because it found that,

> Thus, [i]t was not incumbent upon [the Plaintiff] to show how the [481] voters would have voted if their [absentee] ballots had been regular. He only had to show that there were enough irregular ballots to place in doubt the result. He succeeded in that task.

Id. at 271 (citing *Howell v. Fears*, 275 Ga. 627, 571 SE2d 392, (2002) (primary results invalid where ballot in one precinct omitted names of both qualified candidates).

185.

The "glitches" in the Dominion system—that seem to have the uniform effect of hurting Trump and helping Biden have been widely reported in the press and confirmed by the analysis of independent experts.

186.

Prima facie evidence in multiple affidavits shows specific fraudulent acts, which directly resulted in the flipping of the race at issue:

a) votes being switched in Biden's favor away from Trump during the recount;
b) the lack of procedures in place to follow the election code, and the purchase and use, Dominion Voting System despite evidence of serious vulnerabilities;
c) a demonstration that misrepresentations were made about a pipe burst that sent everyone home, while first six, then three, unknown individuals were left alone until the morning hours working on the machines;

d) further a failure to demonstrate compliance with the Georgia's Election Codes, in maintaining logs on the Voting system for a genuine and sound audit, other than voluntary editable logs that prevent genuine audits. While the bedrock of this Democratic Republic rests on citizens' confidence in the validity of our elections and a transparent process, Georgia's November 3, 2020 General Election remains under a pall of corruption and irregularity that reflects a pattern of the absence of mistake. At best, the evidence so far shows ignorance of the truth; at worst, it proves a knowing intent to defraud.

187.

Plaintiff's expert also finds that voters received tens of thousands of ballots that they never requested. (See Exh. 1, Dr. Briggs' Report). Specifically, Dr. Briggs found that in the state of Georgia, based on a statistically significant sample, the expected amount of persons that received an **absentee ballot that they did not request ranges from 16,938 to 22,771.** This range exceeds the margin of loss of President Trump by 12,670 votes by at least 4,268 unlawful requests and by as many as 10,101 unlawful requests.

188.

This widespread pattern, as reflected within the population of unreturned ballots analyzed by Dr. Briggs, reveals the unavoidable reality that, in addition to the calculations herein, third parties voted an untold number of unlawfully acquired absentee or mail-in ballots, which would not be in the database of unreturned ballots analyzed here. See O.G.C.A. 21-2-522. These unlawfully voted ballots prohibited properly registered persons from voting and reveal a pattern of widespread fraud.

189.

Further, there exists clear evidence of 20,311 absentee or early voters in Georgia that voted while registered as having moved out of state. Specifically, these persons were showing on the National Change of Address Database (NCOA) as having moved, or as having filed subsequent voter registration in another state also as evidence that they moved and even potentially voted in another state. The 20,311 votes by persons documented as having moved exceeds the margin by which Donald Trump lost the election by 7,641 votes.

190.

Plaintiffs" expert Russell Ramsland concludes that at least 96,600 mail-in ballots were fraudulently cast. He further concludes that up to

136,098 ballots were illegally counted as a result of improper manipulation of the Dominion software. (Ramsland Aff).

191.

The very existence of absentee mail in ballots created a heightened opportunity for fraud. The population of unreturned ballots analyzed by William Briggs, PhD, reveals the probability that a far greater number of mail ballots were requested by 3rd parties or sent erroneously to persons and voted fraudulently, undetected by a failed system of signature verification. The recipients may have voted in the name of another person, may have not had the legal right to vote and voted anyway, or may have not received the ballot at the proper address and then found that they were unable to vote at the polls, except provisionally, due to a ballot outstanding in their name.

192.

When we consider the harm of these uncounted votes, and ballots not ordered by the voters themselves, and the potential that many of these unordered ballots may in fact have been improperly voted and also prevented proper voting at the polls, the mail ballot system has clearly failed in the state of Georgia and did so on a large scale and widespread basis. The size of the voting failures, whether accidental or intentional, are multiples larger than the margin of votes between the presidential candidates in the

state. For these reasons, Georgia cannot reasonably rely on the results of the mail vote.

193.

The right to vote includes not just the right to cast a ballot, but also the right to have it fairly counted if it is legally cast. The right to vote is infringed if a vote is cancelled or diluted by a fraudulent or illegal vote, including without limitation when a single person votes multiple times. The Supreme Court of the United States has made this clear in case after case. See, e.g., *Gray v. Sanders*, 372 U.S. 368, 380 (1963) (every vote must be "protected from the diluting effect of illegal ballots."); *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (plurality op. of Stevens, J.) ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters."); *accord Reynolds v. Sims*, 377 U.S. 533, 554-55 & n.29 (1964).

194.

Plaintiffs have no adequate remedy at law. As seen from the expert analysis of William Higgs, PhD, based on actual voter data, tens of thousands of votes did not count, and tens of thousands of votes were unlawfully requested.

195.

The Fourteenth Amendment Due Process Clause protects the right to vote from conduct by state officials which seriously undermines the fundamental fairness of the electoral process. *Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994); *Griffin v. Burns*, 570 F.2d 1065, 1077-78 (1st Cir. 1978).

196.

Separate from the Equal Protection Clause, the Fourteenth Amendment's due process clause protects the fundamental right to vote against "the disenfranchisement of a state electorate." *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981). "When an election process 'reaches the point of patent and fundamental unfairness,' there is a due process violation." *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 (11th Cir. 2008) (*quoting Roe v. Alabama*, 43 F.3d 574, 580 (11th Cir.1995) (*citing Curry v. Baker*, 802 F.2d 1302, 1315 (11th Cir.1986))). *See also Griffin*, 570 F.2d at 1077 ("If the election process itself reaches the point of patent and fundamental unfairness, a violation of the due process clause may be indicated and relief under § 1983 therefore in order."); *Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994) (enjoining winning state senate candidate from exercising official authority where absentee ballots were obtained and cast illegally).

197.

Part of courts' justification for such a ruling is the Supreme Court's recognition that the right to vote and to free and fair elections is one that is preservative of other basic civil and political rights. *See Black*, 209 F.Supp.2d at 900 (quoting *Reynolds*, 377 U.S. at 561-62 ("since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.")); see also *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) ("the political franchise of voting … is regarded as a fundamental political right, because [sic] preservative of all rights.").

198.

"[T]he right to vote, the right to have one's vote counted, and the right to have ones vote given equal weight are basic and fundamental constitutional rights incorporated in the due process clause of the Fourteenth Amendment to the Constitution of the United States." Black, 209 F. Supp. 2d at 900 (a state law that allows local election officials to impose different voting schemes upon some portions of the electorate and not others violates due process). "Just as the equal protection clause of the Fourteenth Amendment prohibits state officials from improperly diluting the right to vote, the due process clause of the Fourteenth amendment forbids state

officials from unlawfully eliminating that fundamental right." *Duncan*, 657 F.2d at 704. "Having once granted the right to vote on equal terms, [Defendants] may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush*, 531 U.S. at 104-05.

199.

In statewide and federal elections conducted in the State of Georgia, including without limitation the November 3, 2020 General Election, all candidates, political parties, and voters, including without limitation Plaintiffs, have a vested interest in being present and having meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and otherwise free, fair, and transparent.

200.

Moreover, through its provisions involving watchers and representatives, the Georgia Election Code ensures that all candidates and political parties, including without limitation Plaintiff, Republicans, and the Trump Campaign, shall be "present" and have meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and otherwise free, fair, and transparent.

201.

Defendants have a duty to guard against deprivation of the right to vote through the dilution of validly cast ballots by ballot fraud or election tampering. Rather than heeding these mandates and duties, Defendants arbitrarily and capriciously denied the Trump Campaign and Republicans meaningful access to observe and monitor the electoral process by: (a) mandating that representatives at the pre- canvass and canvass of all absentee and mail-ballots be either Georgia barred attorneys or qualified registered electors of the county in which they sought to observe and monitor; and (b) not allowing watchers and representatives to visibly see and review all envelopes containing official absentee and mail-in ballots either at the time or before they were opened and/or when such ballots were counted and recorded. Instead, Defendants refused to credential all of the Trump Campaign's submitted watchers and representatives and/or kept Trump Campaign's watchers and representatives by security and metal barricades from the areas where the inspection, opening, and counting of absentee and mail-in ballots were taking place. The lack of meaningful access with actual access to see the ballots invited further fraud and cast doubt of the validity of the proceedings.

202.

Consequently, Defendants created a system whereby it was physically impossible for the candidates and political parties to view the ballots and verify that illegally cast ballots were not opened and counted.

203.

Defendants intentionally and/or arbitrarily and capriciously denied Plaintiffs access to and/or obstructed actual observation and monitoring of the absentee and mail-in ballots being pre-canvassed and canvassed by Defendants, and included the unlawfully not counting and including uncounted mail ballots, and that they failed to follow absentee ballot requirements when thousands of **voters received ballots that they never requested.** Defendants have acted and will continue to act under color of state law to violate the right to vote and due process as secured by the Fourteenth Amendment to the United States Constitution.

204.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

205.

When we consider the harm of these uncounted votes, and ballots not ordered by the voters themselves, and the potential that many of these

unordered ballots may in fact have been improperly voted and also prevented proper voting at the polls, the mail ballot system has clearly failed in the state of Georgia and did so on a large scale and widespread basis. The size of the voting failures, whether accidental or intentional, are multiples larger than the margin in the state. For these reasons, Georgia cannot reasonably rely on the results of the mail vote.

206.

Relief sought is the elimination of the mail ballots from counting in the 2020 election. Alternatively, the Presidential electors for the state of Georgia should be disqualified from counting toward the 2020 election.

207.

The United States Code (3 U.S.C. 5) provides that,

> "[i]f any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

3 USCS § 5.

REQUEST FOR RELIEF

208.

Accordingly, Plaintiffs seek an emergency order instructing Defendants to de-certify the results of the General Election for the Office of President.

209.

In the alternative, Plaintiffs seek an emergency order prohibiting Defendants from including in any certified results from the General Election the tabulation of absentee and mailing ballots which do not comply with the Election Code, including, without limitation, the tabulation of absentee and mail-in ballots Trump Campaign's watchers were prevented from observing or based on the tabulation of invalidly cast absentee and mail-in ballots which (i) lack a secrecy envelope, or contain on that envelope any text, mark, or symbol which reveals the elector's identity, political affiliation, or candidate preference, (ii) do not include on the outside envelope a completed declaration that is dated and signed by the elector, or (iii) are delivered in-person by third parties for non-disabled voters.

210.

When we consider the harm of these uncounted votes, and ballots not ordered by the voters themselves, and the potential that many of these unordered ballots may in fact have been improperly voted and also prevented

proper voting at the polls, the mail ballot system has clearly failed in the state of Georgia and did so on a large scale and widespread basis. The size of the voting failures, whether accidental or intentional, are multiples larger than the margin in the state. For these reasons, Georgia cannot reasonably rely on the results of the mail vote. Relief sought is the elimination of the mail ballots from counting in the 2020 election. Alternatively, the electors for the state of Georgia should be disqualified from counting toward the 2020 election. Alternatively, the electors of the State of Georgia should be directed to vote for President Donald Trump.

211.

For these reasons, Plaintiff asks this Court to enter a judgment in their favor and provide the following emergency relief:

1. An order directing Governor Kemp, Secretary Raffensperger and the Georgia State Board of Elections to de-certify the election results;

2. An order enjoining Governor Kemp from transmitting the currently certified election results to the Electoral College;

3. An order requiring Governor Kemp to transmit certified election results that state that President Donald Trump is the winner of the election;

4. An immediate order to impound all the voting machines and software in Georgia for expert inspection by the Plaintiffs.

5. An order that no votes received or tabulated by machines that were not certified as required by federal and state law be counted.

6. A declaratory judgment declaring that Georgia Secretary of State Rule 183-1-14-0.9-.15 violates the Electors and Elections Clause, U.S. CONST. art. I, § 4;

7. A declaratory judgment declaring that Georgia's failed system of signature verification violates the Electors and Elections Clause by working a de facto abolition of the signature verification requirement;

8. A declaratory judgment declaring that current certified election results violates the Due Process Clause, U.S. CONST. Amend. XIV;

9. A declaratory judgment declaring that mail-in and absentee ballot fraud must be remedied with a Full Manual Recount or statistically valid sampling that properly verifies the signatures on absentee ballot envelopes and that invalidates the certified results if the recount or sampling analysis shows a sufficient number of ineligible absentee ballots were counted;

10. An emergency declaratory judgment that voting machines be Seized and Impounded immediately for a forensic audit—by plaintiffs' expects;

11. A declaratory judgment declaring absentee ballot fraud occurred in violation of Constitutional rights, Election laws and under state law;

12. A permanent injunction prohibiting the Governor and Secretary of State from transmitting the currently certified results to the Electoral College based on the overwhelming evidence of election tampering;

13. Immediate production of 36 hours of security camera recording of all rooms used in the voting process at State Farm Arena in Fulton County, GA from 12:00am to 3:00am until 6:00pm on November 3.

14. Plaintiffs further request the Court grant such other relief as is just and proper, including but not limited to, the costs of this action and their reasonable attorney fees and expenses pursuant to 42 U.S.C. 1988.

Respectfully submitted, this 25th day of November, 2020.

CALDWELL, PROPST & DELOACH, LLP

/s/ Harry W. MacDougald
Harry W. MacDougald
Georgia Bar No. 463076

CALDWELL, PROPST & DELOACH, LLP
Two Ravinia Drive, Suite 1600
Atlanta, GA 30346
(404) 843-1956 – Telephone
(404) 843-2737 – Facsimile
hmacdougald@cpdlawyers.com
Counsel for Plaintiffs

/s Sidney Powell*
Sidney Powell PC
Texas Bar No. 16209700
Julia Z. Haller *
Emily P. Newman*
Virginia Bar License No. 84265
2911 Turtle Creek Blvd, Suite 300
Dallas, Texas 75219

*Application for admission pro hac vice
Forthcoming

L. Lin Wood
GA Bar No. 774588
L. LIN WOOD, P.C.
P.O. Box 52584
Atlanta, GA 30305-0584
Telephone: (404) 891-1402

Howard Kleinhendler*
NEW YORK BAR NO. 2657120Howard Kleinhendler Esquire
369 Lexington Avenue, 12th Floor
New York, New York 10017
Office (917) 793-1188
Mobile (347) 840-2188
howard@kleinhendler.com
www.kleinhendler.com

*Application for admission pro hac vice
Forthcoming

Attorneys for Plaintiffs

App 8

From: no-reply@efilingmail.tylertech.cloud
To: Brittany Paynton
Subject: Notification of Service for Case: DC-22-02562, COMMISSION FOR LAWYER DSICIPLINE vs. SIDNEY POWELL for filing Service Only, Envelope Number: 66325965
Date: Thursday, July 14, 2022 1:46:51 PM

Notification of Service

Case Number: DC-22-02562
Case Style: COMMISSION FOR LAWYER DSICIPLINE vs. SIDNEY POWELL
Envelope Number: 66325965

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document. If the link does not work, please copy the link and paste into your browser. You can also obtain this document by following the steps on this article.

Filing Details	
Case Number	DC-22-02562
Case Style	COMMISSION FOR LAWYER DSICIPLINE vs. SIDNEY POWELL
Date/Time Submitted	7/14/2022 1:45 PM CST
Filing Type	Service Only
Filing Description	Response to Interrogs
Filed By	Robert Holmes
Service Contacts	Other Service Contacts not associated with a party on the case: Kristin Brady (kristin.brady@texasbar.com) S. Michael McColloch (smm@mccolloch-law.com) Brittany Paynton (brittany.paynton@texasbar.com) Karen Cook (karen@karencooklaw.com) Robert Holmes (rhholmes@swbell.net) Rachel Craig (rachel.craig@texasbar.com)

EXHIBIT
B

Document Details	
Served Document	Download Document
This link is active for 30 days.	

CAUSE NO. DC-22-02562

COMMISSION FOR LAWYER DISCIPLINE,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
SIDNEY POWELL	§	
(File Nos. 202006349, 202006347, 202006393, 202006599, 202100006, 202100652, 202101297, 202101300, 202101301, 202103520, 202106068, 202106284, 202106181)	§	DALLAS COUNTY, TEXAS
	§	
Defendant.	§	116th JUDICIAL DISTRICT

SIDNEY POWELL'S RESPONSE TO INTERROGATORIES

To: Commission for Lawyer Discipline by and through its counsel of record, Seana Willing, Kristin Brady & Rachel Craig, Office of the Chief Disciplinary Counsel State Bar of Texas, 14651 Dallas Parkway, Suite 925, Dallas, Texas 75254 via email and efileTex.gov.

SIDNEY POWELL'S RESPONSE TO INTERROGATORIES

Sidney Powell, pursuant to Tex.R.Civil P., Rule 197, serves her Response to Interrogatories.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. GENERAL OBJECTIONS TO INTERROGATORIES. Ms. Powell objects to each interrogatory to the extent (i) it asks for information not requested with reasonable particularity, (ii) it seeks information that is not relevant to the subject matter of this action or not reasonably calculated to lead to the discovery of admissible evidence,

or (iii) it is overly broad and unduly burdensome. Most of the Interrogatories are so broadly worded that they are impermissible fishing expeditions.

2. PRIVILEGE AND WORK PRODUCT. Ms. Powell objects to each interrogatory to the extent it seeks information that is privileged or protected, including but not limited to information or documents that constitute attorney work product or trial preparation materials or that are covered by the attorney-client privilege or other applicable privileges. In response to each Interrogatory, Ms. Powell does not waive any such privilege or immunity.

3. CONFIDENTIAL OR PROPRIETARY INFORMATION. Ms. Powell objects to each Interrogatory to the extent it seeks information that contain sensitive or confidential information relating to Ms. Powell or third parties, or that contain proprietary business information or commercial trade secrets, and Ms. Powell will only provide such information subject to the terms of a customary protective order or confidentiality agreement.

4. PRESERVATION OF OBJECTIONS. Ms. Powell reserves all objections as to the competency, relevance, materiality, privilege and/or admissibility of evidence in any subsequent proceeding and/or trial of this or any other action for any purpose whatsoever of any information provided in this Response.

5. PRESENT BEST KNOWLEDGE/ SUBSEQUENT DISCOVERY. This response is made to the best of Ms. Powell's present knowledge, information and belief. This response is at all times subject to such additional or different information that discovery or further investigation may disclose. Ms. Powell reserves the right to modify or supplement any and all responses herein as additional facts are ascertained. Ms. Powell reserves the right to make any use of, or to introduce at any hearing and/or trial, information responsive to the Interrogatory but discovered by Ms. Powell subsequent to the date of this response.

6. INFORMATION NOT WITHIN CONTROL OR POSSESSION. Ms. Powell objects to all instructions, definitions and interrogatories to the extent they seek information not currently known to Ms. Powell, on the grounds that such instructions, definitions, or interrogatory (i) seek to require more of Ms. Powell than any obligation imposed by law, (ii) exceed the scope of legitimate discovery, (iii) would subject Ms. Powell to unreasonable and undue annoyance, oppression, burden and

expense and would seek to impose on Ms. Powell an obligation to investigate or discover information or materials from third parties or sources who are equally accessible to Third Party Plaintiff.

7. DEFINITIONS. Ms. Powell objects to Plaintiff's definitions to the extent they seek to impose obligations on Ms. Powell greater than those allowed by the Texas Rules of Civil Procedure. Ms. Powell will respond to each Interrogatory with the understanding that the aforementioned terms shall not include Ms. Powell's attorneys where such inclusion would require the production of information protected from discovery.

8. EQUALLY AVAILABLE FROM OTHER SOURCES: Ms. Powell objects to these interrogatory to the extent they seek information that is publicly available, or that may be obtained from another source that is more convenient, less burdensome, or less expensive, or that is solely in possession, custody or control of third parties.

9. RELEVANCY/MATERIALITY: Ms. Powell submits these answers without conceding the relevancy or materiality of the subject matter of any Interrogatory, and without prejudice to Ms. Powell's right to object to further discovery or to object to the admissibility of any answer at the time of hearing or trial.

10. MARSHALING EVIDENCE: Ms. Powell objects to these Interrogatories to the extent they seek to require Ms. Powell to marshal her evidence.

These "General Objections and Reservation of Rights" are incorporated into each of the Answers stated below as if set forth in full. Without waiver of her general objections Ms. Powell responds as follows:

RESPONSE

1. Please identify all persons whom you will call to testify at trial and detail the substance of his/her testimony.
SPECIFIC OBJECTION: This interrogatory seeks information in advance of completion of discovery; therefore, Ms. Powell cannot identify all persons whom she will call to testify at trial or detail the substance of his/her testimony.
RESPONSE: Without waiver of her objections, at this time, Ms. Powell responds as follows:

A. Legal Team
1. Sidney Powell
2911 Turtle Creek Blvd
Suite 300
Dallas, Texas 75219
sidney@federalappeals.com
Defendant, knowledge from apex position of election fraud suits, expected to testify about her role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

2. Howard Kleinhendler
369 Lexington Avenue
12th Floor
New York, NY 10017
howard@kleinhendler.com
Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

4. Julia Haller
1225 19th St NW #320
Washington, DC 20036
Member of election fraud suits legal team, expected to testify about her role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

5. Brandon Johnson
Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

6. Emily Newman
Member of election fraud suits legal team, expected to testify about her role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

7. Lin Wood

P.O. Box 52584
Atlanta, GA 30305-0584
(404) 891-1402
Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

8. Scott Hagerstrom
222 West Genesse
Lansing, MI 48933
(517) 763-7499
scotthagerstrom@yahoo.com
Local Counsel Member of election fraud suits legal team, expected to testify about her role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

9. Gregory J. Rohl
411850 West 11 Mile Road
Suite 110
Novi, MI 48375
(248) 380-9404
gregoryrohl@yahoo.com
Local Counsel Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

10. Harry W. MacDougald
Caldwell, Propst & Deloach, LLP
Two Ravinia Drive, Suite 1600
Atlanta, GA 30346
(404) 843-1956
hmacdougald@cpdlawyers.com
Local Counsel Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

11. Alexander Kolodin

Kolodin Law Group, PLLC
3443 N. Central Ave. Ste 1009
Phoenix, AZ 85012
(602) 730-2985
Alexander.kolodin@kolodinlaw.com
Local Counsel Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

12. Christopher Viskovic
Kolodin Law Group, PLLC
Central Ave. Ste 1009
Phoenix, AZ 85012
(602) 730-2985
Alexander.kolodin@kolodinlaw.com
Local Counsel Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

B. Other Potential Witnesses:

1. Phil Waldron
contact information unknown
cyber-security expert

2. J. Alex Halderman
Campus mail: EECS/CSE
4717 Beyster Bldg
Ann Arbor MI 48109-2121
734-647-1806
E-Mail: jhalderm@umich.edu
cyber-security expert

3. Andrew Appel, Ph.D.
209 Computer Science
Princeton, NJ 08544
(609) 258-4627

E-Mail: appel@cs.princeton.edu
cyber-security expert

4. Merritt, Joshua
Allied Security Operations Group
817-899-6510
joshua.merritt210@gmail.com
affiant, *cyber-security expert*

2. Please describe the terms of any contract, whether oral or written, between you and/or your law firm and each Plaintiff in the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Based on the objection Ms. Powell will not respond.

3. For all amounts of money you received on behalf of or concerning the Election Fraud Suits, please state the amount of money received date the money was received, entity or individual from which the money was received, name of the financial institution into which the money was deposited, the account number, and the date of the deposit.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Subject to the objections, Ms. Powell responds she received no legal fees.

4. Please identify any and all communications you had with each Plaintiff, by explaining in detail: the name of the individual; date, time, location and substance of each communication; whether oral or written or via mobile device.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

5. Please identify any and all communications you had with each co-counsel concerning the Election Fraud Suits, by explaining in detail: the name of the individual; date, time, location and substance of each communication; whether oral or written or via mobile device.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade

the work product privilege and the attorney-client privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

6. Beginning in November 2020, please identify any and all communications you had with an election official: please list the name of the individual, date, time, location and substance of each communication, whether oral or written or via mobile device.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

7. Please list the date, time, location and substance of each communication, whether oral or written or via mobile device, you had with Donald Trump concerning the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege, the attorney-client privilege and the executive privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

8. Please list the date, time, location and substance of each communication, whether oral or written or via mobile device, you had with Rudy Guliani concerning the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

9. Please list the date, time, location and substance of each communication, whether oral or written or via mobile device, you had with Eric Herschmann concerning the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant.
RESPONSE: Without waiving her objections, Ms. Powell responds she had communications with Eric Herschmann on the night of December 18, 2020 in the Oval Office of the White House concerning the proof Ms. Powell had to support the allegations in the Election Fraud Suits.

10. Beginning in August 2020, please identify all meetings or communications you had in The White House or with someone in The White House concerning any mention of election fraud, by explaining in detail: the method of communication of each communication, the date of the communications, the substance of the

communication, who was present when the communications occurred, and if the communications were in writing or were reduced to writing.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege, the attorney-client privilege and the executive privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

11. Beginning in November 2020, please identify any and all communications you had with each Affiant, by explaining in detail: the name of the individual; date, time, location and substance of each communication; whether oral or written or via mobile device.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell responds other team members communicated directly with the Affiants upon which she relied.

12. Please detail any and all work performed and tasks completed by you concerning the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell responds she acted in the role of lead lawyer on a litigation team with other team members performing the research, drafting and filing duties. In addition local counsel was engaged in each state in which a suit was filed who handled the final duties of filing the complaints and attaching the exhibits to the complaints.

13. Please identify all attorneys, paralegals, assistants, and individuals who assisted you with the Election Fraud Suits.
RESPONSE: See response to Interrogatory # 1 §A.

14. Beginning in November 2020, please list the amount of money defendingtherepublic.org has raised.
SPECIFIC OBJECTIONS: The request seeks the irrelevant. Ms. Powell further objects to this Request as it is just a fishing expedition.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

15. Please describe your relationship to or ownership status of

sidneypowell2024.com.
RESPONSE: Ms. Powell has none.

16. Please describe your compliance with the Sanctions Order and include in your response, what fees have been paid, the date the fees were paid, continuing legal education completed, date such continuing legal education was completed.
SPECIFIC OBJECTIONS: The request seeks the irrelevant. Ms. Powell further objects to this Request as it is just a fishing expedition.
RESPONSE: Without waiving her objections, Ms. Powell responds the sanctions order has been appealed to the Sixth Circuit Court of Appeals, *King et al. v. Whitmer, et al*, Case No. 21-1786, United States Court of Appeals, Sixth Circuit, which remains pending before that court. Ms. Powell timely completed the cle requirement as shown in Exhibit "A" attached hereto.

17. If you contend that any professional misconduct alleged in this matter resulted from or was exacerbated by any physical or mental condition, disease, defect, or illness, state the following:

a. the nature and extent of the physical or mental condition, disease, defect or illness;
b. when the physical or mental condition, disease, defect, or illness first manifested;
c. each and every physician, psychiatrist, psychologist, counselor or other practitioner of the healing arts, who has diagnosed the physical or mental condition, disease, defect or illness or from whom you have sought treatment for the physical or mental condition, disease, defect or illness;
d. whether or not the physical or mental condition, disease, defect, or illness is now cured, in remission or otherwise under control or the present status of the condition and treatment thereof.
RESPONSE: Not applicable, Ms. Powell does not content the professional misconduct alleged in this matter resulted from or was exacerbated by any physical or mental condition, disease, defect, or illness.

18. Please set forth the factual basis for your contention that you did not violate Rule 3.01 of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a

Motion and her Live Answer and responds generally as follows:
(i) Reliance on First Amendment "Petition Clause" – anyone who believes they have been aggrieved by another party may engage a lawyer to file suit on their behalf to seek redress. U.S. Const. amend. I. under *NAACP v. Button*, 371 U.S. 415, 429 (1963); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972); and *Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (1961).
(ii) Reliance on sworn statements under *Healey v. Chelsea Resources, Ltd.*, 947 F.2d 611, 625-26 (2nd Cir. 1991).
(iii) The non-frivolous basis for alleging serious election-law violations justifying relief under *Bush v. Gore*, 531 U.S. 98 (2000) and *McDonald v. Smith*, 472 U.S. 479, 482, 105 S.Ct. 2787, 86 L.Ed.2d 384 (1985).
(iv) The right to file a complaint seeking redress of grievances on behalf of public official clients or others without fear of judicial reprisal applies no matter the ultimate truth or falsity, good or bad faith, of a client's statements, at least so long as the attorney does not suborn the statements under *California Motor Transport*, 404 U.S. 508 and *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, dissenting).
(v) The right to file a pleading if there is ". . . from the advocate's point of view . . . arguable grounds existed to support a reasonable belief that the case . . . [of the] possibility of obtaining a favorable result" from the advocates point of view. *Gray v. Turner*, 807 S.W.2d 818, 823 (Tex.App.–Amarillo 1991, no writ); *Ambrose v. Mack*, 800 S.W.2d 380, 383 (Tex.App.–Corpus Christi 1990, no writ).
(vi) Ms. Powell attached affidavits and exhibits to the complaints supporting the allegations in each of the Election Fraud Suits to wit: (i) 29 to the Petition in the Georgia Case; (ii) 30 to the Petition in the Michigan Case; (iii) 19 to the Petition in the Wisconsin Case; and (iv) 31 to the Petition in the Arizona Case. Ms. Powell had the undeniable right to rely on these exhibits. *Healey*, 947 F.2d at 625-26

19. Please set forth the factual basis for your contention that you did not violate Rule 3.02 of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a Motion and her Live Answer and responds generally as follows:
(i) All the Election Fraud Suits were dismissed within 11 days of filing except for the Michigan Case which remained pending by Judge parker for the sole purpose to allow the City of Detroit, a non-party, to intervene for the sole purpose of seeking sanctions.

(ii) There is a right to appeal the adverse rulings to the highest court available – without being subject to sanctions or grievances. Appeals from final judgments are a matter of right. *United States v. Horns*, 3 Cir. 147 F.2d 57. 28 U.S.C.A. § 1291 provides for the appeal of final decisions. *See Beneficial Industrial Loan Corp. v. Smith*, 170 F.2d 44, 49 (3rd Cir.1948) affirmed, *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949).
(iii) A decision is final when all appeals have been exhausted or when the time available for an appeal has passed. *See Leahy v. Orion Twp.*, 711 N.W.2d 438, 441 (Mich. Ct. App. 2006). Petitions for writs of certiorari were pending in each case until the Supreme Court denied them on January 7, 2021.

20. Please set forth the factual basis for your contention that you did not violate Rule 3.03(a)(1) of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a Motion and her Live Answer and responds generally as follows:
(i) Ms. Powell was entitled to rely on the representations of the client, sworn statements of affiants, and expert reports without having to assess the credibility of the clients, affiants or experts. *See Healey v. Chelsea Res., Ltd.*, 947 F.2d 611, 625-626 (2d Cir.1991); *Royal v. Netherland*, 4 F. Supp. 2d 540, 556 (E.D. Va. 1998); *Xcentric Ventures, L.L.C. v. Borodkin*, 908 F. Supp. 2d 1040, 1048-49 (D. Ariz. 2012), *aff'd*, 798 F.3d 1201 (9th Cir. 2015).
(ii) Ms. Powell did not draft the complaints or attach the exhibits to the complaints. *Klein v. Powell*, 174 F. 640 (3rd Cir. 1909); *Rachmil v. United States*, 43 F.2d 878 (9th Cir. 1930) certiorari denied, 283 U.S. 819, 51 S.Ct. 344, 75 L.Ed. 1434.
(iii) Ms. Powell did not act intentionally, any errors in filings were simply mistakes. *See Klein*, 174 F. 640; and *Rachmil*, 43 F.2d 878.

21. Please set forth the factual basis for your contention that you did not violate Rule 3.03(a)(5) of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a Motion and her Live Answer and responds: See response to Interrogatory #20.

22. Please set forth the factual basis for your contention that you did not violate Rule 3.04(c)(1) of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
(i) The Elections Fraud Suits were all based on similar claims and similar evidence.
(ii) Using affidavits "recycled" from the other election cases raising similar issues in other jurisdictions is no violation of the law. There is no rule or practice that prevents counsel from using affidavits that have also been used in other cases – the practice is not uncommon. *See, e.g.*, *Eclipse Res.-Ohio, LLC v. Madzia*, No. 2:15-CV-00177, 2017 WL 274732, at *7 (S.D. Ohio Jan. 20, 2017), *aff'd*, 717 F. App'x 586 (6th Cir. 2017).

23. Please set forth the factual basis for your contention that you did not violate Rule 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a Motion and her Live Answer and responds:
(i) Even if Ms. Powell had clients or affiants with zero credibility, she had the right to file the suits so long as the testimony was not incredible as a matter of law at the time she accepted it as true. *Healey*, 947 F.2d at 625-26
(ii) Ms. Powell had an entirely reasonable ground for bringing suit even if the law or the facts appear questionable or unfavorable at the outset. *Christiansburg Garment Co. v. Equal Emp't Opportunity Comm'n*, 434 U.S. 412, 422 (1978).
(iii) The allegations in the complaints were filed against local state officials for violating federal elections law, there is an exception to the 11th Amendment that allows such suits.
(iv) Ms. Powell had the right to rely on the statements of affiants as a matter of law. *Royal*, 4 F. Supp. 2d at 556; *Xcentric*, 908 F. Supp. 2d at 1048-49.
(v) Ms. Powell was not required to assess the credibility of the affiants or clients. *Healey*, 947 F.2d at 626.
(vii) Ms. Powell was never given an evidentiary hearing in any of the four Election Fraud Cases; there was no discovery, no depositions and the cases never passed the pleadings stage. Since there were no hearings conduced in the cases, all facts alleged in the complaints filed in the Election Fraud Cases must be viewed as true. *CTC*

Imports and Exports v. Nigerian Petroleum Corp., 951 F.2d 573, 578 (3d Cir.1991). Sanctions should not awarded at any level. *Id.*

Respectfully submitted,
HOLMES LAWYER, PLLC

By: */s/ Robert H. Holmes*
Robert H. Holmes
State Bar No. 09908400
19 St. Laurent Place
Dallas, Texas 75225
Telephone: 214-384-3182
Email: rhholmes@swbell.net

S. MICHAEL MCCOLLOCH PLLC
S. Michael McColloch
State Bar No. 13431950

6060 N. Central Expressway
Suite 500
Dallas, Texas 75206
Tel: 214-643-6055
Fax: 214-295-9556
Email: smm@mccolloch-law.com

and

KAREN COOK, PLLC
Karen Cook
State Bar No. 12696860

6060 N. Central Expressway
Suite 500
Dallas, Texas 75206
Tel: 214-643-6054
Fax: 214-295-9556
Email: karen@karencooklaw.com

COUNSEL FOR POWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been delivered, by efileTexas.gov to all attorneys of record on July 14, 2022.

/s/ Robert H. Holmes
Robert H. Holmes

Respectfully submitted,
HOLMES LAWYER, PLLC

By: */s/ Robert H. Holmes*

Robert H. Holmes
State Bar No. 09908400
19 St. Laurent Place
Dallas, Texas 75225
Telephone: 214-384-3182
Email: rhholmes@swbell.net

S. MICHAEL MCCOLLOCH PLLC
S. Michael McColloch
State Bar No. 13431950

6060 N. Central Expressway
Suite 500
Dallas, Texas 75206
Tel: 214-643-6055
Fax: 214-295-9556
Email: smm@mccolloch-law.com

and

KAREN COOK, PLLC
Karen Cook

State Bar No. 12696860

6060 N. Central Expressway
Suite 500
Dallas, Texas 75206
Tel: 214-643-6054
Fax: 214-295-9556
Email: karen@karencooklaw.com

COUNSEL FOR POWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been delivered, by efileTexas.gov to all attorneys of record on July 14, 2022.

/s/ Robert H. Holmes
Robert H. Holmes

UNSWORN DECLARATION

My name is Sidney Powell, my birth date is May 1, 1955, and my address is Turtle Creek Blvd, Suite 300, Dallas, Dallas County, Texas 75081. I declare under the penalty of perjury that the statements of fact contained in the foregoing Response to Interrogatories are true and correct.

Executed in Dallas County, Texas on July 14, 2022.

/s/ Sidney Powell
Sidney Powell

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Robert Holmes on behalf of Robert Holmes
Bar No. 9908400
rhholmes@swbell.net
Envelope ID: 66325965
Status as of 7/14/2022 1:46 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kristin Brady	24082719	kristin.brady@texasbar.com	7/14/2022 1:45:53 PM	SENT
S. Michael McColloch	13431950	smm@mccolloch-law.com	7/14/2022 1:45:53 PM	SENT
Brittany Paynton		brittany.paynton@texasbar.com	7/14/2022 1:45:53 PM	SENT
Karen Cook	12696860	karen@karencooklaw.com	7/14/2022 1:45:53 PM	SENT
Robert H.Holmes		rhholmes@swbell.net	7/14/2022 1:45:53 PM	SENT
Rachel Craig		rachel.craig@texasbar.com	7/14/2022 1:45:53 PM	SENT

App 9

EXHIBIT "1 "

UNSWORN DECLARATION OF HARRY MACDOUGALD

Pursuant to the provisions of the Texas Civil Practices and Remedies Code § 132.001, I Harry W. MacDougald make the following declarations:

1. My name is Harry W. MacDougald. I am over 18 years old and competent to make this affidavit. I have personal knowledge of all facts and statements contained herein and they are true and correct.

2. I am an attorney licensed to practice law in the State of Georgia. I have been licensed to practice law in Georgia for over 35 years. I am in good standing with the Georgia Bar. My Georgia Bar No. is 463076.

3. In late November 2020, I spoke with Sidney Powell when I was engaged by her to be local counsel in a case she and other attorneys anticipated filing in Georgia to question the outcome of the 2020 presidential election.

4. Ms. Powell connected me with Ms. Juli Haller and Mr. Harold Kleindhelder who I understood were the attorneys in charge of drafting the complaint to be filed in Federal District Court, Northern District of Georgia.

5. After becoming engaged, I communicated primarily with Mr. Kleindhelder and Ms. Haller about the substance of the complaint and the exhibits to be attached thereto until after the complaint had been filed. It was Mr. Kliendhelder that sent me

a draft of the complaint, and I thereafter exchanged multiple drafts with a varying roster of Mr. Kleinhendler, Ms. Haller, and others, but not including Ms. Powell, up through the filing of the complaint. Mr. Kleinhendler instructed me to file the complaint by mid-night on November 25, 2020, the day before Thanksgiving 2020. Time was of the essence; I had little to no time to determine the validity or accuracy of the exhibits before filing, and had to rely primarily on forwarding counsel who prepared and/or forwarded them to me.

6. On November 24, 2020 I received a draft of the complaint – the first I saw – from Mr. Kleindhelder at 8:13 PM. It was a 104-page complaint with what eventually became a total of 587 pages containing 29 exhibits. It took significant time to get the formatting squared away; then I spent several more hours editing the document in other respects. I worked continuously on the document from the moment I received it at 8:13 PM until I sent back a marked-up draft at 3:00 AM.

7. On November 25, 2020, in the early evening around 6:30 PM, I received from Ms. Haller a set of documents to be attached to the Complaint as exhibits. I worked with Ms. Haller and Mr. Kleinhendler in determining which of the documents provided by Ms. Haller would be attached to the complaint as exhibits. I did not confer in any manner with Ms. Powell about the exhibits to be attached or that were attached to the complaint before it was filed.

9. All communications regarding the complaint itself and the exhibits were predominantly with Mr. Kleinhendler and Ms. Haller.

10. Mr. Kleinhendler provided me with a draft of the so-called "Spyder Affidavit," which was later filed in redacted form as Exhibit 7. After reviewing the draft of the "Spyder Affidavit" I recall asking Mr. Kleinhendler by phone "Is this real?" He assured me that it was. I never had any direct communication with the affiant of the Spyder affidavit.

11. After a few revision cycles on the complaint, and substantial and tedious effort on my part to organize and number the exhibits I had been provided, and to harmonize their numbering with the extensive exhibit references in the lengthy complaint, albeit imperfectly in the final analysis, I filed the complaint and attached the exhibits, in the form they eventually took, shortly before mid-night on November 25, 2020, creating the eventually assigned Case No. 1:20-cv-04809-TCB, United States District Court, Northern District of Georgia. The elapsed time between my first laying eyes on the draft complaint and filing with the Clerk was approximately 27.5 hours, during which I recorded 19.7 hours of work.

12. To my knowledge, Ms. Powell had no knowledge of the exhibits I attached to the complaint until sometime after the complaint and exhibits were filed.

13. Sometime after the complaint was filed, I discovered that two of the

exhibits were improperly formatted, being Exhibits 5, and 6. In both exhibits, the page orientation was landscape instead of portrait, which caused the bottom of the pages to be cut off. This is the form in which these exhibits were delivered to me. I have no idea how they came to be in that form, and I do not recall noticing this problem in the intense period of work before filing. Filing these exhibits with this problem was inadvertent on my part.

14. Exhibit 5 was the Secretary of State's certification that the Dominion election system had been thoroughly examined and tested and was compliant with Georgia law. Exhibit 6 was a copy of the Pro V&V certification test report of Georgia's Dominion system that underlay the Secretary of State's certification in Exhibit 5. The facts that the Pro V&V testing had been done and that the Secretary of State had certified the Dominion system, and the dates of those events, were undisputed facts in the public record of the state government's acquisition and deployment of the Dominion system, and were certainly well known to the State defendants in the case. There is no reason for me to believe the formatting error in Exhibits 5 and 6 this was anything more than a downloading or copying error.

15. No one filed an objection to Exhibit 5 attached to the complaint in the Georgia Case. In my opinion the omission of the date on Exhibit 5 by the landscape orientation was not material because the fact and date the State of Georgia had

approved the Dominion Voting System were not in question. Similarly, the omission of portions of Exhibit 6 as a result of the landscape orientation was not material because the fact, date and result of the test report were not in question. Moreover, exhibits were not required to be attached to the complaint at all.

16. The Georgia Case was only pending in the trial court 12 days, the first four of which were Thanksgiving weekend (November 26-29), and five of which were legal holidays or weekends (November 26, 28, 29 and December 5 and 6). The Honorable Timothy C. Batten, Sr., dismissed the case on December 7, 2020. After January 6, 2021, we voluntarily dismissed all pending appellate proceedings arising from the case .

17. I am aware that the Commission for Lawyers Discipline of the State Bar of Texas has filed suit against Ms. Powell seeking sanctions against her for filing suits to question the outcome of the 2020 presidential election.

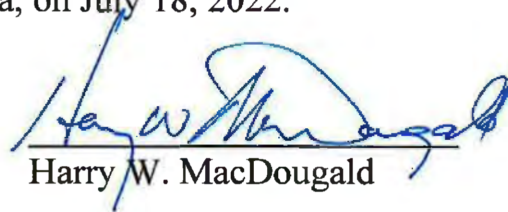
18. I have not been contacted in any manner by the Commission for Lawyer Discipline of the State Bar of Texas regarding any of the four Cases. If I had been contacted, I would have provided them the information in this declaration and told them there was no basis for them to accuse Ms. Powell of any knowledge of or dishonest conduct regarding the exhibits or the *Pearson v. Kemp* case mentioned above.

19. Moreover, I believe the allegations in the complaint filed in the Georgia were sufficiently supported by the affidavits filed therewith and had ample basis in law, and met all the requirements of Rule 11. In fact, Judge Batten gave us a temporary restraining order to secure machines in several counties in Georgia.

UNSWORN DECLARATION

My name is Harry MacDougald, my birth date is August 12, 1958, and my business address is Two Ravinia Drive, Suite 1600, Atlanta, Georgia, 30346. I declare under the penalty of perjury that the statements contained in the foregoing Declaration are true and correct.

Executed in DeKalb County, Georgia, on July 18, 2022.



Harry W. MacDougald

App 10

EXHIBIT "2"

DECLARATION OF SIDNEY POWELL

Pursuant to the provisions of the Texas Civil Practices and Remedies Code § 132.001, I Sidney Powell make the following declarations:

1. "My name is Sidney Powell. I am over 18 years of age and am fully competent to make this declaration. I have personal knowledge of all facts and statements contained herein, and they are true and correct.

2. I have been licensed to practice law in Texas since 1978. I am a member in good standing of the State Bar of Texas, the United States Supreme Court, the bars of multiple federal circuit courts of appeals, and the bars of the federal district courts in Texas.

3. I served as President of the American Academy of Appellate Lawyers—of which I was an elected member—and of the Bar Association of the Fifth Federal Circuit. I taught civil, criminal, and appellate advocacy for the Department of Justice, the State Bar of Texas, and spoken widely for various bars and professional associations.

4. I was part of a team of lawyers that filed four lawsuits alleging massive election fraud involving, *inter alia*, voting machines in Georgia, Michigan, Wisconsin, and Arizona ("Election Fraud Cases"). Time was of the essence in our election suits,

we were inundated with information, and members of the team attempted to vet and sort all information before providing any affidavits or reports to the court. We were working 18 - 20+ hour days through much of November and December. As lead counsel I had to rely on forwarding counsel and other counsel in obtaining and determining the validity of the exhibits attached to the complaints.

5. While I accept full responsibility as the most senior federal practitioner on the team, and my name appears on the filings, I did not draft the complaints nor compile or attach the exhibits attached to any of them. I personally had little to no role in the detailed vetting and sorting of the information provided to us.

6. In particular, I played no role in compiling or filing and had no actual knowledge of the exhibits attached to the complaint downloaded from the Georgia Secretary of State's office that were filed in Case No. 1:20-cv-04809-TCB, United States District Court, Northern District of Georgia. Specifically the Commission has challenged two exhibits attached to the complaint filed in the Georgia Case, and the Bar alleges that Exhibits "5" and "6," violated Disciplinary Rules §§ 3.08(a)(1) & (5) and § 8.04(a)(1). I relied on other counsel to download the challenged exhibits before they were filed. They were not even necessary to the complaint. That Georgia "rushed" to bring in the Dominion machines was widely reported in the media and the two exhibits, Exhibits "5" and "6" were not material. The date or signature were not

an issue; they are indisputable facts.

7. Likewise, I did not compile the challenged exhibits to the complaints filed in the other three cases, being the Michigan Case, Case No. 2:20-cv-13134-LVP-RSW, United States District Court, Eastern District of Michigan; Wisconsin Case, being Case No. 2:20-cv-1771, V, United States District Court, Eastern District of Wisconsin; and the Arizona Case, being Case No. 2-20-cv-02321-DJH, United States District Court District of Arizona.

8. In addition, the Commission alleges that I sponsored an affidavit from an anonymous source who claimed to be a "military intelligence expert" who used the code-name "Spyder," who was later identified as Joshua Merritt; and that I had knowledge that Mr. Meritt never actually worked as a "military intelligence expert." I did not know that Mr. Meritt never worked in military intelligence and he may have.

9. Moreover, the Commission clearly contradicts itself in Footnote Number 2 of its Second Amended Petition, by stating that Mr. Merritt purportedly admitted to the Washington Post that his affidavit—to which he had sworn under penalty of perjury—was incorrect on December 11, 2020. If the Post's report is correct, this is an admission to perjury by Mr. Merrit—well after his affidavit was attached to the complaints. I understood that others on our team determined that the statements in the Spyder Affidavit were reliable, in fact Mr. Harold Kliendhelder admitted in open court

in Michigan that he verified the Spyder Affidavit was valid. Mr. Kleindhelder offered to produce "Spyder," Jousha Merritt to testify about the statements in the Spyder Affidavit but Judge Parker refused. *See Exhibit "A" attached hereto*, a true and correct copy of the a portion of the transcript in the Michigan case held on July 12, 2021, in the Michigan case, *King v. Whitmer*, Case No. 20-cv-13134. I relied on Mr. Kleindhelder and believed Mr. Merritt's affidavit was true and correct when it was attached to all our pleadings and none of us would have included it had we not believed it to be correct.

10. I was receiving constant reports of developments and potential evidence to support our allegations. Validation of this evidence was by the forwarding counsel and co-counsel to whom I handed it off.

11. The Georgia complaint—and the other three—were drafted primarily by other attorneys on our team, who were working in Virginia at the time, while I was working in South Carolina. I reviewed and made corrections to the complaints. I made a reasonable inquiry as to the exhibits attached to the complaints and relied on other counsel as to the validity of the exhibits attached to the complaints.

12. Harry MacDougald was our local counsel in Georgia, who accepted the difficult, high-pressured and time-pressured job of compiling and making the actual filing. Time was of the essence in our election suits.

13. Mr. MacDougald finalized and filed the complaint and selected and filed the exhibits on November 25, 2020. I reviewed and made corrections to the complaint. I made a reasonable inquiry as to the exhibits attached to the complaint and relied on other counsel as to the validity of the exhibits attached to the Michigan complaint.

14. Scott Hagerstrom and Gregory J. Rohl were our local counsel in Michigan. They too accepted the difficult, high-pressured and time-pressured job of compiling and making the actual filing.

15. Messrs. Hagerstrom and Rohl finalized and filed the complaint for the Michigan Case and selected and filed the exhibits provided by others on our team on November 25, 2020. I reviewed and made corrections to the complaint. I made a reasonable inquiry as to the exhibits attached to the complaint and relied on other counsel as to the validity of the exhibits attached to the Michigan complaint.

16. Prior to the complaint being filed in the Michigan Case, I did receive a copy of the complaint from Mr. Kleindhendler, reviewed the document and returned it to him 45 minutes later with some minor corrections.

17. Michael D. Dean and Daniel J. Eastman were our local counsel in Wisconsin, who also accepted the difficult, high-pressured and time-pressured job of compiling and making the actual filing.

18. Messrs. Dean and Eastman finalized and filed the complaint in the

Wisconsin Case on December 1, 2020 and selected and filed the exhibits provided by others on our team. I did not review the exhibits filed in the Wisconsin case before they were filed. I reviewed and made corrections to the complaint. I made a reasonable inquiry as to the exhibits attached to the complaint and relied on other counsel as to the validity of the exhibits attached to the Wisconsin complaint.

19. Alexander Kolodin and Christopher Viskovic were our local counsel in Arizona, who also accepted the difficult, high-pressured and time-pressured job of compiling and making the actual filing.

20. Messrs. Kolodin and Viskovic finalized and filed the complaint in the Arizona Case on December 3, 2020 and selected and filed the exhibits provided by others on our team. I reviewed and made corrections to the complaint. I made a reasonable inquiry as to the exhibits attached to the complaint and relied on other counsel as to the validity of the exhibits attached to the Arizona complaint.

21. There are no circumstances under which I would knowingly mislead any court—much less knowingly make a false, dishonest, or deceitful statement at any level. That is completely contrary to my personal integrity and the way I have practiced law for now 44 years.

Further Declarant sayeth not."

/s/ Sidney Powell

Sidney Powell

UNSWORN DECLARATION

My name is Sidney Powell, my birth date is May 1, 1955, and my address is 2911 Turtle Creek Blvd, Suite 300, Dallas, Texas 75219. I declare under the penalty of perjury that the statements contained in the foregoing Declaration are true and correct.

Executed in Dallas County, Texas on July 18, 2022.

/s/ Sidney Powell

Sidney Powell

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Lauren Baisdon on behalf of Michael Graham
Bar No. 24113581
lbaisdon@texasbar.com
Envelope ID: 77780129
Filing Code Description: Brief Not Requesting Oral Argument
Filing Description: Brief Not Requesting Oral Argument
Status as of 7/21/2023 4:53 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Royce Lemoine	24026421	royce.lemoine@texasbar.com	7/21/2023 4:47:32 PM	SENT
Michael Graham	24113581	Michael.Graham@TEXASBAR.COM	7/21/2023 4:47:32 PM	SENT
Robert Holmes	9908400	rhholmes@swbell.net	7/21/2023 4:47:32 PM	SENT
S. Michael McColloch	13431950	smm@mccolloch-law.com	7/21/2023 4:47:32 PM	SENT
Karen Cook	12696860	karen@karencooklaw.com	7/21/2023 4:47:32 PM	SENT

FILE COPY

CHIEF JUSTICE
ROBERT D. BURNS, III

JUSTICES
KEN MOLBERG
ROBBIE PARTIDA-KIPNESS
BILL PEDERSEN, III
AMANDA L. REICHEK
ERIN A. NOWELL
CORY L. CARLYLE
BONNIE LEE GOLDSTEIN
CRAIG SMITH
DENNISE GARCIA
EMILY A. MISKEL
NANCY E. KENNEDY
MARICELA BREEDLOVE

Court of Appeals
Fifth District of Texas at Dallas

600 COMMERCE STREET, SUITE 200
DALLAS, TEXAS 75202
(214) 712-3400

RUBEN MORIN
CLERK OF THE COURT
(214) 712-3400
theclerk@5th.txcourts.gov

MYRNA GASC
BUSINESS ADMINISTRATOR
(214) 712-3417
myrna.gasc@5th.txcourts.gov

FACSIMILE
(214) 745-1083

INTERNET
WWW.TXCOURTS.GOV/5THCOA.ASPX

FILED
Jan 18 2024
THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

December 14, 2023

Rachel Craig
State Bar of Texas
14651 Dallas Parkway
Ste. 925
Dallas, TX 75254-8867
* DELIVERED VIA E-MAIL *

Robert H. Holmes
Holmes Lawyer, PLLC
19 St. Laurent Place
Dallas, TX 75225
* DELIVERED VIA E-MAIL *

Kristin V. Brady
State Bar of Texas
14651 Dallas Parkway
Ste. 925
Dallas, TX 75254
* DELIVERED VIA E-MAIL *

Royce LeMoine
State Bar of Texas
Office of the Chief Disciplinary Counsel
P.O. Box 12487, Capitol Station
Austin, TX 78711-2487
* DELIVERED VIA E-MAIL *

Karen M. Cook
Karen Cook, PLLC
6060 N. Central Expressway
Ste. 500
Dallas, TX 75206
* DELIVERED VIA E-MAIL *

Michael G. Graham
State Bar of Texas
Office of the Chief Disciplinary Counsel
P.O. Box 12487, Capital Station
Austin, TX 78711-2487
* DELIVERED VIA E-MAIL *

S. Michael McColloch
S. Michael McColloch PLLC
6060 N. Central Expressway
Ste. 500
Dallas, TX 75206
* DELIVERED VIA E-MAIL *

FILE COPY

Style: Commission for Lawyer Discipline
v.
Sidney Powell

RE: Court of Appeals Number: 05-23-00497-CV
Trial Court Case Number: DC-22-02562

The above referenced cause is set for submission before the Court on February 7, 2024. The submission hearing time has changed. Please note the new hearing time of **1:00 PM** with the panel consisting of Justice Garcia, Justice Breedlove and Justice Kennedy, subject to change by the Court. TEX RULES OF APP P. 39.8(d).

Respectfully,

/s/ Ruben Morin, Clerk of the Court