



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

**IN THE MATTER OF
EARL S. NESBITT,
STATE BAR CARD NO. 14916900**

§
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§

CAUSE NO. 70374

JUDGMENT DENYING RECIPROCAL DISCIPLINE

On the 25th day of April, 2025, the above-styled and numbered reciprocal disciplinary action was called for hearing before the Board of Disciplinary Appeals. The Commission for Lawyer Discipline, Petitioner, appeared by attorney and announced ready. Respondent, Earl S. Nesbitt, appeared by attorney and announced ready. All questions of fact and all issues of law were submitted to the Board of Disciplinary Appeals for determination. Having considered the pleadings on file, having received evidence, and having heard the argument of counsel, the Board of Disciplinary Appeals makes the following findings, conclusions, and orders:

Findings of Fact. The Board of Disciplinary Appeals finds as follows:

- (1) Respondent, Earl S. Nesbitt, Bar Card No. 14916900, is an attorney licensed and authorized by the Supreme Court of Texas to practice law in the State of Texas.
- (2) On July 19, 2024, Judge Jane J. Boyle of the United States District Court for the Northern District of Texas, Dallas Division, issued an Order to Show Cause in the matter styled *Nora Vargas, on behalf of herself and others similarly situated v. Panini America, Inc.*, Civil Action No. 3:23-CV-02689-B, ordering Respondent and other lawyers to, in relevant part: (1) review the legal authorities in a response brief and confirm in writing any authorities cited that do not stand for the legal or factual proposition offered, and (2) show cause why the lawyers should not be sanctioned for violating Federal Rule of Civil Procedure 11 and Texas Rule of Disciplinary

Professional Conduct 3.03.

- (3) On August 28, 2024, Judge Boyle conducted a show-cause hearing, at which Respondent appeared and presented argument.
- (4) On August 30, 2024, the United States District Court for the Northern District of Texas, Dallas Division, entered an Order in the matter styled *Nora Vargas, on behalf of herself and others similarly situated v. Panini America, Inc.*, Civil Action No. 3:23-CV-02689-B, reprimanding Respondent and other lawyers under Federal Rule of Civil Procedure 11(b), applying the Fifth Circuit’s interpretation of Rule 11 as imposing an affirmative duty on a lawyer “to certify that he has conducted a reasonable inquiry such that the filing presented embodies ‘existing legal principles.’” *See Childs v. State Farm Mut. Auto. Ins. Co.*, 29 F.3d 1018, 1023–24 (5th Cir. 1994); *Mercury Air Group, Inc. v. Mansour*, 237 F.3d 542, 548 (5th Cir. 2001).
- (5) Judge Boyle did not find a violation of Rule 3.03 or any other rule under the Texas Disciplinary Rules of Professional Conduct.
- (6) The reprimand entered by the United States District Court for the Northern District of Texas, Dallas Division, is final.
- (7) Respondent, Earl S. Nesbitt, is the same person as the Earl S. Nesbitt who is the subject of the orders entered by the United States District Court for the Northern District of Texas, Dallas Division.
- (8) Respondent filed a timely answer raising defenses under Texas Rule of Disciplinary Procedure 9.04(C), (D), and (E).

Conclusions of Law. Based upon the foregoing findings of facts, the Board of Disciplinary Appeals makes the following conclusions of law:

- (1) This Board has jurisdiction to hear and determine this matter. TEX. RULES DISCIPLINARY P. R. 7.08(H), 9.04 (“If the attorney files an answer, the Board of Disciplinary Appeals shall proceed to determine the case upon the pleadings, the evidence, and the briefs, if any.”).
- (2) A public reprimand issued by a federal court constitutes “discipline” for purposes of Part IX of the Texas Rules of Disciplinary Procedure. TEX. RULES DISCIPLINARY P. R. 9.01.
- (3) When the conduct for which a Texas-licensed lawyer was disciplined occurred in another jurisdiction, including before a federal court, that

jurisdiction's final adjudication as to conduct that violates one or more Texas Disciplinary Rules of Professional Conduct is conclusive for purposes of reciprocal discipline, subject to any defenses timely raised under Texas Rule of Disciplinary Procedure 9.04. TEX. RULES DISCIPLINARY P. R. 9.01, 1.06(CC)(2).

- (4) Though Texas Disciplinary Rule of Professional Conduct 3.03 was at issue in the federal court disciplinary matter, Judge Boyle did not find that Respondent's conduct violated that rule or any other Texas Disciplinary Rule of Professional Conduct.
- (5) Under Judge Boyle's Order issued August 30, 2024, Respondent was not disciplined for conduct that constitutes "Professional Misconduct" as defined by Texas Rule of Disciplinary Procedure 1.06(CC).
- (6) Respondent, Earl S. Nesbitt, also proved by clear and convincing evidence one or more of the defenses listed in Texas Rule of Disciplinary Procedure 9.04.
- (7) No reciprocal discipline is warranted in this case. *See* TEX. RULES DISCIPLINARY P. R. 9.01, 9.04.

It is, accordingly, **ORDERED, ADJUDGED, and DECREED** that the Petition for Reciprocal Discipline is **DENIED**.

Signed this 12th day of May 2025.



CHAIR PRESIDING

Board member Andrew Graham did not participate in this decision.

Board member Jason Boatright filed a concurring opinion, joined by members Arthur D'Andrea, Woodrow Halstead, Robert Henneke, and Courtney Schmitz. Board member David Iglesias dissents without opinion.

Jason Boatright, joined by Arthur D'Andrea, Woodrow Halstead, Robert Henneke, and Courtney Schmitz, concurring:

I agree with the Board's decision to deny the petition for reciprocal discipline, and I write separately to explain why.

Nesbitt and his colleagues were local counsel in a federal case in Dallas. The other lawyers on the legal team were from New York. The team had a call to discuss who would perform various tasks; they decided that the New York lawyers would draft a brief, and that the Dallas lawyers, including Nesbitt, would review it. The New York lawyers circulated the brief just before it was due, leaving very little time for review. The Dallas lawyers made what edits they could before filing the brief. A few weeks later, opposing counsel pointed out that the brief was full of errors and that it appeared to have been drafted by AI. The Dallas lawyers asked the New York lawyers whether they had used AI, and the New York lawyers said they did not. Nesbitt then wrote a letter to the court conceding that the brief was shoddy, but denying that it was drafted with AI. The court issued a show cause order instructing the lawyers to explain why they should not be sanctioned for violating Federal Rule of Civil Procedure 11 and Texas Disciplinary Rule of Professional Conduct 3.03. At the show cause hearing, the New York lawyers took responsibility for the errors and everyone denied using AI, but Nesbitt received a public reprimand anyway because the court thought the brief was drafted with AI and that Nesbitt should have caught it. The Texas bar then brought this reciprocal disciplinary proceeding, alleging that Nesbitt violated rule 3.03. In response, Nesbitt argued that his conduct did not violate that rule or any other. I agree with Nesbitt for six reasons.

First, rule 3.03 prohibits lawyers from knowingly making a false statement of material fact or law to a tribunal. There is no evidence or finding that Nesbitt knew the brief made a false statement, so the record does not support the conclusion that he violated rule 3.03.

Second, the court sanctioned Nesbitt because he “did not verify each of the cited cases” when he reviewed the brief. However, the rules do not require lawyers to do that. Every litigator in this state has reviewed someone else’s draft for tone, structure, persuasiveness, clarity, etc. without cite checking it, and that is totally fine. Somebody should cite check a draft, of course, but nobody has a duty to do so. In our adversarial system, the punishment for failing to catch bad cases is loss and shame; it is not a disciplinary sanction.

Third, there is no evidence that any case cited in the brief was generated by AI. Even if there were, using AI to come up with cases is no different from copying citations from Westlaw or someone else’s CLE paper and pasting them into a draft—something lawyers do all the time. Copying and pasting citations from other sources is bad practice for a lot of reasons, but it is not against the rules, and I do not think citing cases generated by AI is against them either.

Fourth, there is no evidence or finding that the brief cited fake cases. Instead, the court said the brief cited real cases that failed to support the brief’s legal arguments. I think that is a good reason to lose the underlying motion and credibility with the court, but it does not violate any rule.

Fifth, the court’s sanction treats the use of AI as a *per se* violation of the rules, but online resources like Google and Westlaw are powered by AI these days, and the rules do not prohibit lawyers from using them, so I do not think the rules prohibit the use of AI.

Sixth, most briefs are pretty bad, around half of all briefs turn out to be wrong in the end, and just about all of them use AI one way or another now. If we start handing out public reprimands

every time somebody puts his name on a bad and wrong brief that uses AI, the Bar Journal will have to fell whole forests. Luckily, there is no support for any of that in the rules.

The record shows that Nesbitt did absolutely nothing wrong and that he has been dragged through hell for the better part of a year for no good reason. This case should end today.