



FILED

Jan 10 2025

**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**

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**PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO CONSOLIDATE  
CASES FOR BRIEFING AND HEARING**

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**TO THE BOARD OF DISCIPLINARY APPEALS:**

COMES NOW Petitioner, the Commission for Lawyer Discipline (“CFLD”), and files this Response to Respondent’s Motion to Consolidate Cases for Briefing and Hearing. In support thereof, the Petitioner would show the Board the following:

**I. INTRODUCTION**

Petitioner filed its Petition for Reciprocal Discipline with the Board of Disciplinary Appeals on December 3, 2024. An Order to Show Cause was issued by the Board of Disciplinary Appeals on December 9, 2024, requiring Respondent to show cause within 30 days of the Order why identical discipline should not be imposed. Respondent received Petitioner’s Petition and the Order to Show Cause via email to his counsel on December 9, 2024. Respondent timely filed an Answer on December 20, 2024. Also on December 9, 2024, Respondent filed an Agreed Motion for Continuance and to Establish a Briefing Schedule. On the same day, Respondent also filed the instant Opposed Motion to Consolidate. An Order granting Respondent’s Agreed Motion for Continuance was signed on January 6, 2025, resetting this matter for hearing to occur on April 25, 2025.

Petitioner now files this Response to Respondent’s Opposed Motion to Consolidate.

**II. BACKGROUND**

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This is a Reciprocal Disciplinary matter arising out of Respondent's action in Civil Action No. 3:23-CV-02689-B, in the United States District Court for the Northern District of Texas, Dallas Division; styled *Nora Vargas, on behalf of herself and others similarly situated, Plaintiff v. Panini America, Inc., Defendant*. Respondent, Earl S. Nesbitt – Texas State Bar No. 14916900, along with co-counsel and fellow Respondent, Lane M. Webster – Texas Bar No. 24089042, served as part of Plaintiff's Counsel team in the aforementioned case. During the course of the litigation, Respondent and co-counsel filed a Response to a Motion to Dismiss which included numerous misstatements of law and misrepresentation of cases.

On July 19, 2024, the Court ordered Respondent and his co-counsels to “show cause in writing ‘why they should not be sanctioned for violation Federal Rule of Civil Procedure 11 and Texas Disciplinary Rule of Professional Conduct 3.03’ because of the misrepresentations in the Response to the Motion to Dismiss. *Exhibit 1*. Respondent and his co-counsels’ Response to the Show Cause Order (“The Response”) admitted that the “reviewing” attorneys – Mr. Nesbitt and Mr. Zareh – did not review or “verify each of the cited cases” in the Response. *Id.* Because many of the errors involved misstatements of case holdings, court's findings, or legal principles in at least 10 cases, the Court became concerned that the misstatements and misrepresentations were caused by the use of Artificial Intelligence (“AI”). While the Response places the admitted blame on Mr. Nesbitt and Mr. Zareh's failure to review the brief prior to filing, the Court noted that the Response lacked an explanation as to why the information ended up on the briefing to begin with. *Id.*

When the Response proved an inadequate source of explanation, the Court set a hearing to occur on August 28, 2024. *Id.* At the hearing, Plaintiff's Counsels' testimony only succeeded in confirming that Plaintiff's Counsel had no other explanation for how the wrong case law or case cites were drafted into the Response. Ultimately, the Court entered an Order on August 30, 2024,

concluding that the Response was drafted using AI without subsequent review by Plaintiff's Counsel, and entered a sanction of a Reprimand against Plaintiff's Counsel, including Respondent.

### III. ARGUMENT AND AUTHORITY

#### A. Respondent cannot account for unintended consequences of consolidation.

The Rules of Disciplinary Procedure provide no guidance for Motions to Consolidate in Disciplinary matters. Additionally, Plaintiff has been unable to find a single instance of Reciprocal or Compulsory matters being consolidated.

Rule 174(a) of the Texas Rules of Civil Procedure states:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions **consolidated**; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

TEX. R. CIV. P. 174(a). Per the rules, it would appear that this Board has discretion whether to consolidate any pending disciplinary matters. However, it is important to note that, to the best of Plaintiff's knowledge, this has never been allowed prior to now.

There are several potential conflicts with consolidating Respondent Webster and Nesbitt's Reciprocal Matters. First, there are many counsels involved in the Order made by the Court in the underlying proceeding. Each Counsel has their own specific involvement or non-involvement. For example, in the Response filed by Respondent and his co-counsel, Earl S. Nesbitt expressly admits that he was an attorney responsible for reviewing the briefing submitted. There is no such admittance made on behalf of Respondent Webster. This could mean different defenses raised by each individual and could result in different outcomes for Respondents Nesbitt and Webster. It could also create a conflict of interest between the two Respondents, should one Respondent's culpability be a defense to the other.

Further, judgments in Reciprocal matters are public, and any public discipline is published to the State Bar of Texas website. Having one judgment for two separate Respondents could conflate the individual conduct of each attorney. Two separate cases and judgments would provide clearer findings of fact and conclusions of law for both. While it may be more convenient for Respondents and their attorney to consolidate their disciplinary matters, it is imperative that each Respondent be treated individually and be allowed to present their cases to each of their best abilities.

#### **IV. CONCLUSION**

For the above reasons, Petitioner respectfully asks that this Board deny Respondent's motion for Consolidation.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of this document has been served on Respondent, Lane M. Webster, III, by and through his attorney of record c/o Kelli Hinson, CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P., 901 Main Street, Suite 5500 Dallas, Texas 75202-3767 via electronic mail at khinson@ccsb.com on this 10<sup>th</sup> day of January 2025.



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Amanda M. Kates