

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



FILED
3/7/25

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

**IN THE MATTER OF
LANE M. WEBSTER
STATE BAR CARD NO. 24089042**

§
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§

CAUSE NO. 70375

**PETITIONER'S RESPONSE TO RESPONDENT'S
CONSOLIDATED BRIEF IN RESPONSE TO ORDERS TO SHOW CAUSE ON
PETITIONS FOR RECIPROCAL DISCIPLINE**

TO THE BOARD OF DISCIPLINARY APPEALS:

COMES NOW Petitioner, the Commission for Lawyer Discipline ("CFLD"), and files this Response to Respondent's Consolidated Brief in Response to Orders to Show Cause on Petitions for Reciprocal Discipline. In support thereof, the Petitioner would show the Board the following:

I. INTRODUCTION

Petitioner filed its Petitions for Reciprocal Discipline with the Board of Disciplinary Appeals against Respondents Earl S. Nesbitt and Lane M. Webster on December 3, 2024. Respondents both received Petitioner's Petition via email to their counsel of record, Kelli Hinson, on December 3, 2024. An Order to Show Cause was issued to each Respondent, by the Board of Disciplinary Appeals on December 9, 2024, requiring both to show cause within 30 days of the Order why identical discipline should not be imposed.

On December 20, 2024, Respondents each filed an Answer to the Order to Show Cause on Petition for Reciprocal Discipline. Respondents also each filed Motions to Consolidate Cases for *In the Matter of Earl S. Nesbitt and In the Matter of Lane M. Webster*

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Briefing and Hearing, asking that the Board consolidate the two matters as they stemmed out of the same transaction and occurrences. In addition, Respondents filed Agreed Motions for Continuances and to Establish Briefing Schedules on December 20, 2024. Following briefing by both sides, the Board granted Respondents' Motion to Consolidate on January 14, 2025.

On January 31, 2025, Respondents filed Respondents' Consolidated Brief in Response to Orders to Show Cause on Petitions for Reciprocal Discipline. Petitioner now files this Response to Respondent's Memorandum.

II. BACKGROUND

This is a Reciprocal Disciplinary matter arising out of Respondents' Public Reprimand received from the United States Federal District Court for the Northern District of Texas, Dallas Division, during the representation of a plaintiff in a civil lawsuit styled *Nora Vargas, v. Panini America, Inc.* Respondents' underlying disciplinary cases "stem from Respondents serving as local counsel for Plaintiff Vargas. In that capacity they participated in preparing and editing a response brief (the "Response Brief") in response to a motion to dismiss filed by Defendant Panini America, Inc. ("Defendant Panini")." *See Respondent's Brief at 1-2*. On July 10, 2024, Defendant Panini filed a Reply alleging several instances in which Plaintiff Vargas's Response to the Partial Motion to Dismiss appeared to misstate a legal proposition or assert unsupported legal propositions and pointing out that those errors showed signs of AI-generated legal argument. *See generally Petitioner's Response Brief EX 3*.

On July 17, 2024, Plaintiff's counsel, Rogge Dunn, filed a letter in response to Defendant's Reply. *See generally Petitioner's Response Brief EX 4*. The letter unequivocally denounces the use of AI in the brief. *Id.* The letter admits that "there was a failure on the part of our Firm and our co-counsel (Omid Zareh and William Pham of the law firm of Weinberg Zareh Malkin Price LLP." *Id.* *In the Matter of Earl S. Nesbitt and In the Matter of Lane M. Webster*
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at 1. The letter further alleges that, “[m]istakes were made in preparing the brief due not only to administrative and logistical issues, but also a lack of familiarity amongst counsel, siloed research and knowledge, and poor integration of the work product of multiple attorneys.” *Id.* at 2. Plaintiff’s counsel argues that this “lack of familiarity led to typos and mis-citations.” *Id.* Plaintiff’s counsel also admits that “[f]our cases (*Bradshaw*, *Mims*, *Johnson*, and *Dobbins*) should not have made it into the Response. They are real cases, but are unfortunately inapplicable to the relevant issues in this case.” *Id.* at 5. Finally, Plaintiff’s counsel states, “We understand that using AI in place of attorney research, analysis, and writing is verboten. Moreover, we are simply not that stupid, or that lazy, that we would use AI.” *Id.* The letter was attested to and signed by both Respondents Nesbitt and Webster. *Id.* at 7.

The Court did not ultimately side with Plaintiff’s counsel and consequently, on July 19, 2024, the Court filed an Order to Show Cause ordering Petitioner’s counsel to complete the following:

- 1) Review the legal authorities in the Response that the Letter has not already touched upon and **CONFIRM IN WRITING** to the Court whether there are any other authorities cited that do not stand for the legal or factual proposition offered;
- 2) **SHOW CAUSE** in writing (i) why they should not be sanctioned for violating Federal Rule of Civil Procedure 11 and Texas Disciplinary Rule of Professional Conduct 3.03, and (ii) why John T. Fant has not sworn a declaration concerning his use of AI, or lack thereof, in drafting the Response. Failure to do so will result in sanctions.

Petitioner’s Response Brief EX 5 at 3. Plaintiff’s counsels filed their Response to the Order to Show Cause on July 26, 2024. On August 2, 2024, the Court ordered a hearing to take place to include every individual attorney who worked on the Response to appear before the Court in person. Said hearing took place on August 28, 2024. Following the hearing, the Court entered an order stating

in part:

During the hearing, the Court gave Plaintiff's Counsel the opportunity to address their misstatements of law and misrepresentations of cases in their Response to the Motion to Dismiss ("Response"). *See generally* Doc. 22.

On July 19, 2024, the Court ordered Plaintiff's Counsel to show cause in writing 'why they should not be sanctioned for violating Federal Rule of Civil Procedure 11 and Texas Disciplinary Rule of Professional Conduct 3.03' because of the misrepresentations in the Response. Doc. 25, OSC, 3. Plaintiff's Counsel previously chalked up the miscited law and unsupported legal propositions to 'mistakes...a lack of familiarity amongst counsel, siloed research and knowledge, and poor integration of the work product of multiple attorneys.' Doc. 24, Ltr., 2. Such explanations might explain the typos and misquoted law in the Response but they do not adequately explain the misstated legal principles and incongruous citations.

In their response to the Order to Show Cause, the "reviewing" attorneys—MR. Nesbitt and Mr. Zareh—admitted they did not review or 'verify each of the cited cases' in the Response. Doc. 25, OSC Resp., 8. But Plaintiff's Counsel still did not explain how their drafting process led to cite their unsupported legal propositions and false case citations they did. Therefore, the Court set a hearing to address the show cause Order. Doc. 40, Order. The hearing presented the third opportunity for Plaintiff's Counsel to explain the magnitude of errors in the Response. But their testimony only confirmed that Plaintiff's Counsel has no other explanation for how the wrong case law or case cites were drafted into their brief. Mr. Nesbitt and Mr. Zareh admitted they never reviewed the cases in question. Despite being unable to explain how the cases were drafted into the Response, they were emphatic no AI was used.

Plaintiff's Counsel signed and therefore certified that the Response provided sound legal principles, when the Response did not in fact do so. They have apologized and acknowledged the Response contains bad law. But they have never addressed the elephant in the room: how the false citations and statements of law made their way into the Response. After providing Plaintiff's counsel ample opportunity to provide any legitimate explanation for the drafting itself, in the face of a brief that can only otherwise be explained by AI, they could not provide one.

The Court concludes that the Response was drafted using AI without subsequent review by Plaintiff's Counsel. The Court **REPRIMANDS** Plaintiff's Counsel, which is the sanction the Court deems necessary to deter them and others practicing before this Court from using AI without making a reasonable inquiry that the 'legal contentions [in their filings] are

warranted by existing law.’ Fed. R. Civ. P. 11(b) *accord Jenkins*, 478 F3d at 265.

III. ARGUMENT AND AUTHORITY

- A. Respondent has failed to prove by clear and convincing evidence that he is entitled to any defense to the Petition for Reciprocal Discipline.

Part 9 of the Texas Rules of Disciplinary Procedure governs Reciprocal Discipline Matters. Rule 9.01 states that, “[u]pon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, including by any federal court or federal agency, the Chief Disciplinary Counsel shall diligently seek to obtain a certified copy of the order or judgment of discipline from the other jurisdiction, and file it with the Board of Disciplinary Appeals along with a petition requesting that the attorney be disciplined in Texas. A certified copy of the order or judgment is prima facie evidence of the matters contained therein, and a final adjudication in another jurisdiction that an attorney licensed to practice law in Texas has committed Professional Misconduct is conclusive for the purposes of a Disciplinary Action under this Part, subject to the defenses set forth in Rule 9.04 below. For purposes of this Part, “discipline” by a federal court or federal agency means a public reprimand, suspension, or disbarment; the term does not include a letter of “warning” or “admonishment” or a similar advisory by a federal court or federal agency. Tex. Rules Disciplinary P. R. 9.01.

Petitioner has filed a certified copy of the Final Order of Judge Jane J. Boyle of the Northern District of Texas Dallas Division Reprimanding Respondents Nesbitt and Webster. To the best of Petitioner’s knowledge, at no time during this proceeding has either Respondent attempted to argue that their judgment of Reprimand is not final. As such, the Federal Court sanction and finding of misconduct is conclusive.

Rule 9.04(A) – (E) of the Texas Rules of Disciplinary Procedure enumerates five defenses available to contest a Reciprocal Disciplinary Matter. Tex. Rules Disciplinary P. R. 9.04(A) – (E), *reprinted in* Tex. Gov’t Code Ann., tit. 2, subtit. G, app. A-1 (West 2013). In order for either Respondent to avail themselves of these defenses, each Respondent is required to prove by clear and convincing evidence that he has met the requirements of the defense. *Id.* Both Respondents have individually and collectively failed to meet their burden.

1) The conduct for which Respondents were both given a Public Reprimand constitutes Professional Misconduct in this State.

In their brief, Respondent’s argue that, “Reciprocal discipline of a public reprimand is not warranted in this case because the conduct for which Respondents were disciplined by the Federal Court does not constitute Professional Misconduct in this state.” This is simply not true. Respondent goes on to argue that, “[a]s applicable to this case, ‘Professional Misconduct’ is defined as acts or omissions by an attorney that ‘violate one or more of the Texas Disciplinary Rules of Professional Conduct.’ TEX. R. DISC. PROC. 1.06(CC)(1).”

Respondents were sanctioned by the Northern District for violating Rule 11(b) of the Federal Rules of Civil Procedure. *Petitioner’s Response Brief EX 1* at 4-5. The Court specifically calls out subsections (1) and (2), which read as follows:

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

FED. R. CIV. P. 11(b)(1)-(2). And while the Federal Rules of Civil Procedure are not binding in State Courts, Rule 13 of the Texas Rules of Civil Procedure is directly analogous and does bind Texas State Courts and Texas Attorneys. Rule 13 reads, in pertinent part, as follows:

The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. Attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215, upon the person who signed it, a represented party, or both. Courts shall presume that pleadings, motions, and other papers are filed in good faith.

TEX. R. CIV. P. 13

Respondents ask this Board to find that neither Respondent is eligible for Reciprocal Discipline because their Federal Sanction does not fit under any rule of Professional Misconduct. As shown above, Respondents violated, and were sanctioned for, violating Rule 11(b) of the Federal Rules of Civil Procedure, and there is a directly analogous Texas Rule of Civil Procedure, ergo, Respondents have similarly violated Texas Rule of Civil Procedure 13. What Respondents fail to address is that they therefore violated Texas Rule of Disciplinary Procedure 8.04(a)(12). Rule 8.04(a)(12) reads, “[a] lawyer shall not violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.” Tex. Disciplinary Rules Prof’l Conduct R. 8.04(a)(12), *reprinted in* Tex. Gov’t Code Ann., tit. 2, subtit. G, app. A (West 2013). The fact of the matter is that both Respondents violated the law of this state directly relating to professional conduct of lawyers and to the practice of law.

2) *Neither Respondent has shown that the discipline imposed by the Northern District of Texas warrants substantially different discipline.*

Rule 15.01 of the Texas Rules of Disciplinary Procedure states that a disciplinary tribunal should consider the following factors when imposing a sanction: the duty violated; Respondent's level of culpability; potential or actual injury caused by the Respondent's misconduct; and the existence of aggravating or mitigating factors. *See generally* Tex. Rules Disciplinary P. R. 15.02. Under the Texas guidelines for imposing sanctions, the analogous sanctions as enumerated in Rule 15.04(A)—Lack of Diligence: a “[p]ublic reprimand is generally appropriate when a Respondent does not act with reasonable diligence in representing a client, communicating with a client, providing competent representation, or abiding by client decisions and causes injury or potential injury to a client. Tex. Rules Disciplinary P. R. 15.04(A)(3). Additionally, Rule 15.05 for Violations of Duties Owed to the Legal System, subsection (A) for “False Statements, Fraud, and Misrepresentation,” reads:

Public reprimand is generally appropriate when a Respondent is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party, or causes an adverse or potentially adverse effect on the legal proceeding.

Tex. Rules Disciplinary P. R. 15.05(A)(3).

While Respondents argue that subsection 4 of rule 15.05(A) is more applicable, that requires this Board to find that Respondents made a singular isolated mistake. It is true that only one brief alleged to involve drafting by AI was filed. However, the brief is rife with multiple instances of wrong citations and false holdings. Multiple attorneys, not least of which are Respondents, were tasked with filing a brief in a case for their client. None of these attorneys undertook their duty to their client to fully review and proof the brief to which they signed their

names.

As quoted in Judge Boyle's Order:

The Fifth Circuit has interpreted Rule 11 as imposing an affirmative duty on an attorney to certify that he has conducted a reasonable inquiry such that the filing presented embodies "existing legal principles." *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). Compliance with this duty is measured when the attorney signs or files the document. *Childs*, 29 F.3d at 1024. The purpose of the rule is to "deter baseless filings in district court." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990).

Petitioner's Response Brief EX 1 at 5. Respondents have both admitted to failing to properly review the brief before filing to ensure that not only were the arguments written adequately, but that the case law cited stood for the conclusions asserted and the citations themselves were free of completely wrong information. These mistakes are more than a mere "isolated instance" which warrants private discipline.

Additionally, Respondents fail to address that this Board has already endorsed a finding that a formal reprimand in Federal Court is analogous to a public reprimand. On June 18, 2024, this Board entered a signed Order of Agreed Public Reprimand in BODA Cause No. 69412, styled *In the Matter of William Timothy Ladyman*. See generally, *Petitioner's Response EX 6*. In February of 2024, the Northern District of Texas, Abilene Division, held a hearing on a show cause order to give Respondent, William Timothy Ladyman, an opportunity to demonstrate good cause as to why [Ladyman] failed to comply with Court's Orders. *Petitioner's Response Brief EX 7* at 2. The Court ultimately found that Ladyman ignored the Court's deadlines and sanctioned Ladyman with formal reprimand and fines in the amount of \$300. *Id.* at 1 and 3. The Court's order further stated that the issue of the formal reprimand and sanction would be forwarded to the Texas State Bar's Chief Disciplinary Counsel for further potential discipline. See generally *Id.* Mr. Ladyman and the *In the Matter of Earl S. Nesbitt and In the Matter of Lane M. Webster*
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Office of the Chief Disciplinary Counsel, on behalf of the Commission for Lawyer Discipline, entered into an Agreed Public Reprimand which was signed off on by this Board. The Order from this Board also states:

The public reprimand entered by the United States District Court, Northern District of Texas, Abilene Division, is final... Reciprocal discipline identical, to the extent practicable, to that imposed by the United States District Court, Northern District of Texas, Abilene Division, is warranted in this case.

Petitioner's Response Brief EX 6 at 4.

Additionally worth mentioning is Respondents' proffer that no injury befell "any party or the case." *Respondents' Brief* at 14. But that seems patently false. For one thing, Plaintiff's case was dismissed at the hearing for the show cause order. Judge Boyle's Order states, "the Court finds that Plaintiff has failed to sufficiently plead her individual and class claims." *Petitioner's Response Brief EX 1* at 6. Arguably, had Respondents done a better job proofing the Response to the Motion to Dismiss and provided accurate case law, the Motion may not have prevailed and Plaintiff would not have had to re-file and replead. Further, Respondents completely ignore the injury to the profession caused by their lack of diligence. As admitted, the topic of Artificial Intelligence in the area of the legal profession is being heavily scrutinized right now. Respondents' "mistakes" engender mistrust of attorneys by the public and by courts. Such trust is fragile and difficult to earn back. Respondents have placed a spotlight on Texas attorneys who may now be concerned that inadvertent and truly mistaken citations will get them sanctions for accused use of Artificial Intelligence. For all the reasons argued here and above, Respondents are subject to and should be sanctioned with a Public Reprimand.

3) *Both Respondents failed to prove that imposition of a Public Reprimand would result in grave injustice.*

Respondent argue in their brief that they were sanctioned “because they would not “confess” that the Response Brief was generated using AI—while at the same time acknowledging that Respondents likely did not know how the Brief was generated.” *Respondents’ Brief* at 15. However, they seem to have a misunderstanding about why they were sanctioned. Respondents were sanctioned for failing to adequately review the brief before filing, and then attesting, by placing their signature on the brief, that the information provided was accurate and would not lead to frivolous arguments. *See generally Petitioner’s Response Brief EX 1.*

Respondents also argue “that imposition of a public reprimand in this case would be a grave injustice because it is a far more severe sanction than that imposed by the Federal Court.” *Respondent’s Brief* at 15. However, as explained above, it is patently not more severe and a formal reprimand by a Federal Court has already been found to be identical as is practical to a Public Reprimand. *See generally Petitioner’s Response Brief EX 6.*

IV. CONCLUSION

For the above reasons, Petitioner respectfully asks that Respondents be subject to Reciprocal Discipline as identical as is practical to the discipline imposed in the Northern District of Texas, Dallas Division, and enter a sanction of Public Reprimand against each of Respondents Nesbitt and Webster.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Amanda M. Kates
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
STATE BAR OF TEXAS
P.O. Box 12487, Capitol Station

Austin, Texas 78711-2487
Telephone: (512) 427-1350
Facsimile: (512) 427-4167
Email: amanda.kates@texasbar.com



Amanda M. Kates
State Bar Card No. 24075987

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 7th day of March, 2025.



Amanda M. Kates