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

IN THE MATTER OF	§	
EARL S. NESBITT	§	**CAUSE NO. 70374**
STATE BAR CARD NO. 14916900	§	

IN THE MATTER OF	§	
LANE M. WEBSTER	§	**CAUSE NO. 70375**
STATE BAR CARD NO. 24089042	§	

CONSOLIDATED BRIEF IN RESPONSE TO ORDERS TO SHOW CAUSE
ON PETITIONS FOR RECIPROCAL DISCIPLINE

TO THE HONORABLE BOARD:

Respondents Earl S. Nesbitt and Lane M. Webster ("Respondents"), Respondents in the two above-styled matters, file this Consolidated Brief in Response to the Orders to Show Cause on Petitions for Reciprocal Discipline filed in the two above-styled cases. Respondents respectfully show the Board as follows:

BRIEF BACKGROUND OF UNDERLYING SANCTION

On or about August 30, 2024, Judge Jane Boyle, United States District Judge for the Northern District of Texas, Dallas Division, issued an Order in the matter styled *Vargas v. Panini America, Inc.*, Civil Action No. 3:23-CV-02689-B (the "Vargas Case"), reprimanding Respondents for conduct the Court determined violated Federal Rule of Civil Procedure 11(b). As set forth in more detail below, Respondents were serving as local counsel for Plaintiff Nora Vargas in the Vargas Case and 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"). That Response Brief was primarily drafted by New York counsel. Respondents' role was

to provide edits for clarity, coordinate filing, and guide New York counsel in compliance with local rules, practice, and custom in the Northern District of Texas.

The undisputed testimony before the Federal District Court was that the Respondents did not review all of the cases cited in the Response Brief by New York counsel. See, Order attached as Exhibit A, p. 3. Instead, Respondents relied on New York counsel to research and brief the legal issues and to correctly cite relevant and applicable case law. That reliance proved to be misplaced, as the Response Brief contained several errors and incorrect citations. After a hearing, the Court concluded the Response Brief was drafted using artificial intelligence ("AI"), which—if that is the case—Respondents neither participated in nor knew about, as discussed below and as recognized by the Federal Court.

Ultimately, the Court found that both New York counsel and Respondents violated Rule 11 by failing to make a reasonable inquiry to ensure that the legal contentions in the brief were warranted by existing law and issued a reprimand. Although the Court considered possible violations of Texas Disciplinary Rule of Professional Conduct 3.03, ***it made no finding regarding any violation of the Disciplinary Rules***. The Court likewise made no finding that Respondents knowingly made any misstatement of law or lacked a reasonable basis to believe the legal assertions in the brief were accurate.

SUMMARY OF ARGUMENTS

In accordance with Rule 9.04 of the Texas Rules of Disciplinary Procedure, imposition of discipline identical to the discipline imposed on Respondents by the United States District Court for the Northern District of Texas, Dallas Division, is not warranted because Respondents can and will establish, by clear and convincing evidence, the following defenses:

- The misconduct for which Respondents were disciplined in the other jurisdiction does not constitute Professional Misconduct in this state (Rule 9.04(E)).

- The misconduct established in the other jurisdiction warrants substantially different discipline in this state (Rule 9.04(D)).

- The imposition by the Board of Disciplinary Appeals of discipline identical, to the extent practicable, with that imposed by the other jurisdiction would result in grave injustice (Rule 9.04(C)).

The Court's imposition of a reprimand based on conduct it found to be a violation of Federal Rule of Civil Procedure 11 has no corollary under the Texas Disciplinary Rules. As acknowledged in the comments to the Disciplinary Rules, the duties imposed on a lawyer by Rule 11 ***exceed*** those set out in the Disciplinary Rules. TEX. DISC. R. 3.01, cmt. 4. Therefore, the conduct for which Respondents were disciplined by the Federal Court under rules of civil procedure does not constitute Professional Misconduct under the Texas Disciplinary Rules. Likewise, the conduct established in the Federal Court would warrant substantially different discipline in this state because the isolated instance of conduct at issue does not violate the Disciplinary Rules. In the alternative, even if it did, a private reprimand would be the most appropriate sanction under Texas Rule of Disciplinary Procedure 15.05. And finally, given the totality of the circumstances involved, imposition of a public reprimand against the Respondents would result in grave injustice.

FACTUAL BACKGROUND

Respondents Get Assigned as Texas Counsel to a Case Already in Progress and Being Litigated by Other Attorneys.

In December 2023, Plaintiff Nora Vargas filed a Complaint in the Northern District of Texas, Dallas Division, alleging a pattern and practice of discrimination by her former employer, Defendant Panini. See, Complaint attached as Exhibit B. Ms. Vargas was represented by the New York law firm of Weinberg Zareh Malkin Price, LLP ("WZMP"). WZMP contacted Rogge Dunn Group, PC to act as Texas counsel, and Greg McAllister, a partner at the firm, signed and filed the Complaint. *Id*. Mr. McAllister left the Rogge Dunn Group in 2024 to start his own firm and

withdrew as counsel for Ms. Vargas on March 8, 2024. Ms. Vargas filed an Amended Complaint on March 18, 2024, which was signed by Rogge Dunn and Alex Pennetti of the Rogge Dunn Group, who had taken over as Texas counsel after Mr. McAlister's departure. See, Amended Complaint, attached as Exhibit C. Defendant Panini filed a motion to dismiss the Amended Complaint on May 9, 2024. On May 23, 2024, the Rogge Dunn Group filed an unopposed motion for extension of time to file a response to the motion to dismiss. In that motion, counsel explained that Mr. Pennetti—the Texas lawyer most familiar with the Vargas Case—left the firm on May 10 and that Respondent Nesbitt had recently been assigned to the case but was also extremely busy with other matters he had taken over for Mr. Pennetti and another departed attorney, Anna Richardson. See, Motion for Extension, attached as Exhibit D. The motion for extension was granted.

Notably, Respondent Webster did not join the Rogge Dunn Group until June 10, 2024 (after the motion to dismiss had been filed), at which time he was assigned to work with Mr. Nesbitt on the Vargas Case along with a number of other already-proceeding cases. At the time Respondents Nesbitt and Webster were assigned to the Vargas Case (in mid-May and mid-June of 2024, respectively), Respondents were unfamiliar with the New York lawyers working on the case.

Respondents Work With New York Counsel to Finalize the Response Brief Shortly Before It Is Due.

Respondent Nesbitt had his first conference call with New York counsel about the Response Brief on June 5, 2024. WZMP associate, William Pham, was primarily responsible for legal research and putting together a draft of the Response Brief. Respondent Webster's first day with Rogge Dunn Group was June 10, 2024, which was after that June 5, 2024 conference call.

On June 24, just two days before the Response Brief was due, Respondent Nesbitt emailed Mr. Pham and others checking on the status of the Response Brief. Mr. Pham responded that his

supervisor, the named-partner Mr. Zaher, was reviewing and revising the Response Brief and that he would have a draft to Respondents by the following day. See, Exhibit E. The first time Respondents saw a draft of the Response Brief was the following morning, June 25. *Id*. Respondents reviewed the draft and suggested certain revisions and additions, exchanging drafts with New York counsel, but they did not undertake to cite check the brief or to confirm the accuracy of all case law citations. The next day, on June 26, Respondents entered an appearance as counsel for Ms. Vargas and filed the Response Brief. Exhibits F and G.

Problems With the Response Brief Are Revealed, and Respondents Quickly Respond.

In Defendant Panini's reply brief, filed July 10, 2024, Defendant Panini accused Vargas' attorneys of violating Rule 11 by citing and relying on legal authority that either did not exist, did not stand for the cited proposition, or was cited incorrectly. Defendant Panini also suggested that the Response Brief must have been generated through use of AI. It is important to note that, although Defendant Panini accused Vargas' attorneys of violating Rule 11, it did not explicitly request sanctions against the attorneys. It therefore avoided complying with the provisions of Rule 11 requiring notice to the attorneys and the opportunity to correct the alleged violation before the issue was presented to the Court. FED. R. CIV. PROC. 11(c)(2) (Rule 11 motion "must not be filed or presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service"). Counsel for Defendant Panini also did not contact Respondents by phone or email to address Defendant Panini's concerns about the Response Brief.

Had Defendant Panini followed the sanctions procedure under Rule 11 or contacted Respondents about these concerns, Respondents would have withdrawn the Response Brief and corrected the citations without the need for Court intervention and, presumably, without sanction.

Instead, Defendant Panini chose to ambush Respondents with these allegations in its reply brief. The Court eventually issued a show cause order on its own initiative pursuant to Federal Rule 11(c)(3), ***after*** Respondents had voluntarily acknowledged the errors and attempted to correct the situation.

As soon as Defendant Panini accused Respondents and the New York attorneys of violating Rule 11, Respondents promptly investigated those allegations and concluded that the Response Brief did contain errors and was far from the quality product they would have expected from themselves or from the other attorneys that had engaged Respondents as local counsel.

Within a week of the reply, Respondents filed a lengthy and candid letter to the Court on July 17, 2024, conceding there was "no excuse for the shoddy Response that was filed." Exhibit H. With regard to the allegation that the Response Brief was generated using AI, Respondents promptly contacted the New York lawyers who had drafted the sections at issue and confronted them about the possible use of AI. During a conference call, New York counsel adamantly denied having used AI. At Respondents' request, New York counsel even signed statements declaring that they did not use AI, which were also filed with the Court. *Id.*

The Court Holds a Show Cause Hearing and Sanctions Counsel.

The Court nevertheless issued a Show Cause Order on July 19, 2024 and directed Respondents and the WZMP lawyers to, among other things, show cause why they should not be sanctioned for violating Rule 11 ***and Texas Disciplinary Rule of Professional Conduct 3.03***. Exhibit I. A show cause hearing was held on August 28, 2024. A transcript of the hearing is attached as Exhibit J. At the hearing, Respondent Nesbitt explained to the Court that he and Respondent Webster were the lawyers at the Rogge Dunn Group who primarily worked on the Response Brief and that they absolutely did not use AI, or even know how to use AI, for that

matter. Exhibit J, pp. 13-16. He also reported that he had been assured by New York counsel that they did not use AI in preparing the Response Brief. *Id*., p. 13. Respondent Nesbitt explained to the Court that he and Respondent Webster were focused on the factual side of the briefing and conforming to local practice and that they relied on New York counsel for the legal briefing. *Id*., p. 20-21. The WZMP lawyers, Omid Zareh and William Pham, testified that they primarily worked on the legal portions of the brief. *Id*., p. 24-26. Mr. Zareh testified that when he needed a legal citation for a certain proposition, he asked Mr. Pham to look it up, and that Mr. Pham made errors that Mr. Zareh did not catch. *Id.*, at p. 30. Mr. Pham was apparently going through some personal issues at the time that were unknown to his supervisor, and certainly were unknown to Respondents.

At the hearing, New York Counsel Mr. Zareh took full responsibility for the errors: "Look, these cases, the vast majority of them came from our firm, it came from my watch. And whatever William [Pham] was going through at the time, it rests with me." *Id*., p. 29; see also, p. 30 ("I didn't proof it. It's on my watch, and I take full responsibility"). Mr. Zareh also confirmed that Respondents were deferring to the New York lawyers to get the cases right, and he acknowledged that Respondents were brand new to the case when the Response Brief was filed. *Id*., p. 26-29 ("At some point, Texas deferred to New York and said, We're not going to read the cases, we assume the New York guys got the cases right.").

The Court repeatedly inquired about how particular citations and cases made their way into the Response Brief, but Respondent Nesbitt could not answer those questions because it was not his or Respondent Webster's work. *Id*., pp. 19-21. *See, e.g.*,

> Q: Like *Bradshaw v. Unity Marine*, how did that even make it into the brief? It was the one about class actions.

A: Yes, ma'am. I can't answer that question. I didn't put it in the brief, and I didn't catch that. It shouldn't have been there.

Id., p. 21 (Respondent Nesbitt responding). Notably, at the hearing, the Court did not even question Respondent Webster, seek any statement from him, or receive any testimony from him.

The Court ultimately concluded that New York counsel Mr. Pham had used AI and that the other lawyers failed to catch it:

> But Mr. Zareh, ***I don't think you probably used [AI], I don't think you did, but I think Mr. Pham did***. … I think you need to address his problems in-house and deal with that, whatever it was,[1] but I think we have an AI brief here. ***And I don't think that you knew about it. I agree that you didn't probably know about it. And I can't believe the Dallas lawyers did not look at this brief any more closely than they did.***

Id., pp. 39-40. The Court acknowledged that the decision to issue a public reprimand was largely influenced by the fact that counsel would not "confess" to having used AI, while also acknowledging that counsel (other than Mr. Pham) may not know whether or not AI was used:

> I probably wouldn't have done a public reprimand if you-all – well, I wouldn't have done one if you-all had just agreed that this is an AI brief, ***but maybe you don't know. Maybe you don't know.*** Maybe you do know, I don't know.

Id., pp. 40-41.

In the written Order memorializing the reprimand, the Court reiterated that it had ordered Plaintiff's Counsel to show cause "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 misrepresentations in the Response Brief. Exhibit A, p. 1 (emphasis added). The Court noted that Plaintiff's lead New York counsel, Mr. Zareh, "attested to playing a central role in the drafting process" and that Mr. Pham testified "that he drafted a significant part of the Response." *Id.*, p. 2-4. The Order also referred to Respondents as the "reviewing" attorneys and found that they did not

[1] Mr. Pham no longer works at WZMP.

review or "verify each of the cited cases" in the Response Brief. *Id.*; see also p. 3 (noting that the witnesses testified that Respondents did not review all the cases cited in the Response).

The Court held that "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.'" *Id.*, p. 5 (citing *Jenkins v. Methodist Hosps. of Dallas, Inc.*, 478 F.3d 255, 265 (5th Cir. 2007)). Based on that standard, the Court found that both New York counsel and Respondents had violated Rule 11. In justifying the sanction of a public reprimand, the Court again chided counsel for failing to explain "how the false citations and statements of law made their way into the Response." *Id.*, pp. 5-6. Respondents filed a motion for reconsideration of the Court's Order and requested the Court to modify the public reprimand to an "admonition," which would not have given rise to reciprocal discipline. Counsel for Defendant Panini did not oppose the motion for reconsideration. But the Court denied Respondents' request.

Critical to the Board's determination in this reciprocal discipline case, ***the Court made no finding that Respondents violated Disciplinary Rule 3.03 or any other disciplinary rule*** and made no finding that Respondents knowingly made any false representations to the Court or even that Respondents had knowledge of any false representations to the Court made by others.

ARGUMENT AND AUTHORITIES

A. The misconduct for which Respondents were disciplined in the Federal Court does not constitute Professional Misconduct under the Texas Disciplinary Rules.

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. TEX. R. DISC. PROC. 9.04(E). Upon the filing of a petition for reciprocal discipline and a certified copy of the order of discipline from another jurisdiction, the order is "prima facie evidence of the matters contained therein," and a final adjudication in

another jurisdiction that an attorney has "committed Professional Misconduct" is conclusive for the purposes of reciprocal discipline. TEX. R. DISC. PROC. 9.01. In this case, there was no finding by the Court that Respondents "committed Professional Misconduct," and the factual matters found by the Court do not amount to Professional Misconduct under the Disciplinary Rules.

As 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). Conduct that results in discipline by another jurisdiction, including a federal court, is only "Professional Misconduct" "if the conduct is 'Professional Misconduct' under the Disciplinary Rules of Professional Conduct." *Id*., at 1.06(CC)(2). Therefore, a violation of a Rule of Civil Procedure, including Rule 11, is not Professional Misconduct unless the conduct also violates an identified Disciplinary Rule.

As discussed above, Respondents were reprimanded by the Federal Court for violating Federal Rule of Civil Procedure 11, which imposes "an affirmative duty on an attorney to certify that he has conducted a reasonable inquiry such that the filing presented embodies 'existing legal principles.'" *Jenkins*, 478 F.3d at 265. There is no similar affirmative duty imposed under the Texas Disciplinary Rules. To the contrary, the comments to the Disciplinary Rules acknowledge that "***the duties imposed on a lawyer by Rule 11 of the Federal Rules of Civil Procedure exceed those set out in [Rule 3.01]***," regarding meritorious claims and contentions. TEX. DISC. R. 3.01, cmt. 4 (emphasis added).[2] Comment 4 goes on to state that a lawyer "must prepare all filings subject to Rule 11 in accordance with its requirement." But it cites Rule 3.04(c)(1), which prohibits

[2] The Court did not allege or find that Respondents violated Rule 3.01. Rule 3.01 provides that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes there is a basis for doing so that is not frivolous. Notably, although the Court found errors with the cited authorities in the Response Brief, it did not conclude that Respondents had brought a frivolous proceeding or asserted frivolous positions. The Court granted Defendant Panini's motion to dismiss without prejudice and permitted Vargas to file an amended complaint, which has now occurred.

an attorney from "habitually" violating established rules of procedure or evidence. TEX. DISC. R. 3.04(c)(1). The comments reiterate that paragraph (c)(1) "subjects a lawyer to discipline only for ***habitual abuses*** of procedural or evidentiary rules." TEX. DISC. R. 3.04, cmt. 3 (emphasis added). There is no allegation or suggestion that Respondents have "habitually" violated Rule 11, and there was certainly no such finding from the Federal Court.[3] There is nothing in the Disciplinary Rules suggesting that a single—even intentional—violation of a procedural rule constitutes Professional Misconduct. (And the actions for which Respondents were reprimanded were clearly ***not*** intentional.) In fact, the comments state that a lawyer "may be subject to ***judicial sanctions***"—not State Bar discipline—for a "single intentional violation" of the procedural rules. TEX. DISC. R. 3.04, cmt. 3 (emphasis added).

Likewise, the duties imposed by Rule 11 exceed those imposed by Disciplinary Rule 3.03, regarding candor to the tribunal, which is the rule the Court considered but did not find a violation of. A violation of Rule 3.03 requires that the lawyer ***knowingly*** make a false statement of material fact or law. The comments reiterate that the rule applies to legal arguments "based on a ***knowingly false*** representation of law." TEX. DISC. R. 3.03, cmt. 3 (emphasis added). The term "knowingly" is defined in the Disciplinary Rules to mean "actual knowledge of the fact in question." See, Disciplinary Rules, Terminology.[4]

[3] In addition, the Rules are clear that the comments provide guidance only. They do not add obligations to the rules, "and no disciplinary action may be taken for failure to conform to the Comments." Preamble, ¶ 10. Accordingly, there can be no finding of Professional Misconduct based on Comment 4's statement that lawyers "should" conform to applicable rules of procedure or that they "must" comply with Rule 11.

[4] See also, TEX. DISC. R. 4.01, cmt. 2 (a lawyer only violates this rule by incorporating false statements of law by another "if the lawyer knows they are false and intends thereby to mislead").

The Court did not find that Respondents made any knowingly false representations of law. To the contrary, the Court concluded Respondents probably did not know about the inaccurate citations:

> "I think we have an AI brief here. And I don't think that you knew about it. I agree that you didn't probably know about it. And I can't believe the Dallas lawyers did not look at this brief any more closely than they did."

Transcript, Exhibit J, p. 39.

> "I wouldn't have done [a public reprimand] if you-all had just agreed that this is an AI brief, but maybe you don't know."

Id., p. 41.

> "The Court concludes that the Response was drafted[5] using AI without subsequent review by Plaintiff's Counsel."

Order, Exhibit A, p. 6.

Unlike the Disciplinary Rules, the standard under which an attorney is measured under Rule 11 "is an ***objective, not subjective***, standard of reasonableness under the circumstances." *Jenkins*, 478 F.3d at 264 (emphasis in original). "Accordingly, an attorney's good faith will not, by itself, protect against the imposition of Rule 11 sanctions." *Id.* The Disciplinary Rules impose a different standard, however. A lawyer who acts in good faith is not subject to discipline for an isolated inadvertent or unskilled act or omission, tactical error, or error of judgment. TEX. DISC. R. 1.01, cmt. 7.

Here, reasonable minds can differ on whether Respondents—acting as local counsel—***should*** have caught the briefing errors made by New York counsel. And Respondents concur, in retrospect, that they should have been more proactive in reviewing the legal research of New York

[5] It is undisputed that Mr. Pham "drafted" the Response Brief.

counsel. But their inadvertent failure to do so in this single instance does not warrant sanctions under the Disciplinary Rules.

Accordingly, because the Court did not find any violation of the Texas Disciplinary Rules and did not find Respondents knowingly engaged in any misrepresentation, the conduct found by the Court does not constitute Professional Misconduct in this state, and reciprocal discipline is not appropriate.

B. **The misconduct established in the other jurisdiction warrants substantially different discipline in this state**.

In addition or in the alternative, reciprocal discipline in the form of a public reprimand is not warranted in this case because the conduct the Federal Court found to be improper would warrant substantially different discipline under the disciplinary rules.

At the outset, as discussed at length above, a single violation of a procedural rule without any finding of a knowing or intentional misrepresentation does not violate any of the Disciplinary Rules. Therefore, Respondents' conduct would not warrant any discipline under the Disciplinary Rules.

Even assuming a violation of the Disciplinary Rules could be implied by the conduct addressed in the Federal Court's order, a public reprimand would not be the appropriate sanction under the state disciplinary rules. Part XV of the Texas Rules of Disciplinary Procedure sets out the guidelines for determining the appropriate sanction for a violation of the disciplinary rules. With regard to a violation involving false statements, fraud, or misrepresentations to a court, a private reprimand is generally appropriate when a Respondent engages in an "isolated instance of negligence in determining whether submitted statements or documents are false … and causes little to no actual or potential injury to a party, or causes little to no adverse or potentially adverse

effect on the legal proceeding." TEX. R. DISC. PROC. 15.05(A)(4). A public reprimand, as was imposed by the Court, is only appropriate where the attorneys' misrepresentation "causes injury or potential injury to a party, or causes an adverse or potentially adverse effect on the legal proceeding." TEX. R. DISC. PROC. 15.05(A)(3). In this case, the offending brief was promptly withdrawn before any Court intervention, and no injury was done to any party or to the case.

Moreover, under the state's disciplinary rules, a disciplinary body would have to consider the mitigating factors present in this case, including but not limited to the Respondents' absence of any prior disciplinary record, absence of any dishonest or selfish motive, timely good faith effort to rectify the consequences of the misconduct, immediate and voluntary disclosure of the sanction to the disciplinary authority, cooperative conduct during proceedings, and the Respondents' character and reputations in this community. TEX. R. DISC. PROC. 15.09(C). As discussed above, Respondents immediately took action to rectify the consequences of their conduct, owning up to the mistakes in the Response Brief and apologizing profusely. Both Respondents are respected members of this legal community, and neither Respondent has ever had a bar complaint filed against him or been sanctioned by any other court. And when the sanction was handed down by the Court in this case, they immediately and voluntarily disclosed it to the State Bar.

Accordingly, applying the sanction guidelines and the mitigating factors, the sanction of a public reprimand by this Board is not warranted in this case. As discussed below, a public reprimand by this Board would have even more serious implications than the reprimand issued by the Federal Court and so it is not truly reciprocal. To the extent any discipline were appropriate, it should be a private reprimand.

C. The imposition by the Board of Disciplinary Appeals of a public reprimand would result in grave injustice.

Considering all of the circumstances detailed above, the imposition of a public reprimand in this case would be a grave injustice. There was no finding by the Federal Court that Respondents violated any disciplinary rule or made any knowing or intentional misrepresentations to the Court. Rather, the Court sanctioned Respondents 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. This put Respondents in a Catch-22—either disingenuously "confess" to a fact they did not know to be true or honestly respond to the Court's questions and face a public reprimand.

Rather than committing Professional Misconduct, Respondents were caught up in a perfect storm—thrown into a case already in progress; working with New York counsel with whom they were unfamiliar; and trying to finalize a Response Brief in a very short amount of time. Their failure to catch the errors made by New York counsel is regrettable and, as Respondents would freely admit, embarrassing. But it is not sanctionable. Moreover, had their opposing counsel followed the notice procedures in Rule 11, Respondents would have promptly withdrawn the Response Brief and, thus, avoided any sanction. FED. R. CIV. P. 11(c)(2) (stating that a motion for sanctions under Rule 11 "must not be filed or be presented to the court if the challenged paper … is withdrawn or appropriately corrected within 21 days after service or within another time the court sets").

In addition, 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. Although similar in name, a public reprimand by a federal judge does not carry the same implications as a public reprimand by this Board. The Court's reprimand is contained in an Order that, although available to the

public, will likely not garner much public attention. A public reprimand by the Board, however, will be published in the Texas Bar Journal and will be permanently noted on Respondents' profile pages with the State Bar. Such a smear on Respondents' otherwise unblemished reputations would be an injustice in light of the facts of this case.

WHEREFORE, Respondents Earl S. Nesbitt and Lane M. Webster each respectfully pray that the Board DENY the Commission's petitions for reciprocal discipline completely or, in the alternative, impose private reprimands.[6]

Respectfully submitted,

/s/ Kelli M. Hinson

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing pleading has been served via email on Amanda M. Kates, Assistant Disciplinary Counsel, Office of the Chief Disciplinary Counsel, on this 31st day of January, 2025.

/s/ Kelli M. Hinson
KELLI M. HINSON

[6] If the Board determines that one or more of Respondents' defenses have been established, it may enter such orders as it deems necessary and appropriate. TEX. R. DISC. PROC. 9.04.