



**F I L E D**

**Feb. 23, 2022**

**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**

**IN THE MATTER OF** §  
§  
**JESSE JOE PONCE III** § **No. 62308**  
§  
**TEXAS BAR NO. 24014329** §

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**BRIEF OF JESSE JOE PONCE III,  
IN RESPONSE TO STATUS OF BODA CASE NO. 62308**

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## **TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:**

### **I. Introduction and Context**

On January 31, 2022, the undersigned counsel received letter regarding this matter and requested that the parties submit briefing addressing whether this case is impacted by a different case, Case No. 04-20-00267-CV in the Fourth District Court of Appeals. Ed Stapleton, as one of the attorneys for Mr. Ponce presents this brief as requested.

### **II. Application of Law to Questions Posed by the Board.**

Mr. Ponce offers the following analysis to the questions posed by the Board.

#### **1. Does the Board retain jurisdiction over an evidentiary appeal challenging a disciplinary judge against a lawyer who has subsequently been disbarred in a separate case?**

The important fact in this case is that Mr. Ponce's disbarment is not final. As noted in the January 31, 2022, the disbarment order of February 18, 2019, Case No. 04-20-00267-CV, remains pending. This issue was addressed in a Memorandum Opinion from the 14<sup>th</sup> Court of Appeals in Houston in *Neely v. Comm'n for Lawyer Discipline*, No. 14-07-00137-CV, 2010 Tex. App. LEXIS 4507 (Tex. App. June 17, 2010). This decision rendered the appeal moot because of a final judgment of conviction. Also, the appellant failed to file a response for grounds continuing the appeal. We urge that because Mr. Ponce's disbarment is still on appeal and because he continues with both appeals, this one is not moot.

**2. Would the evidentiary appeal become moot if the Fourth Circuit Court of Appeals, and the Supreme Court of Texas if subsequently appealed, affirms the judgment of disbarment?**

If the Board follows *Neely, supra*, the appeal may become moot. However, we urge that Mr. Ponce will be adversely impacted by this disciplinary matter if he attempts to get his license back in the future. Among the matters to be considered include under Texas Rules of Disciplinary Procedure, 11.02 (I -M), are all other matters including civil actions that reflect on Mr. Ponce's character and ability to practice law. If his appeal is successful, this would remove and explain a complaint against him when his application for reinstatement is considered.

Differently put, if a successful appeal can put him in a better light, he should have the opportunity to proceed.

**3. Should the Board abate this evidentiary appeal pending final decision as to the disbarment?**

We urge the Board should not abate this evidentiary appeal. As stated in paragraph 2, the disbarment should stand separately, unless the Bar chooses to dismiss. We know from other pending matters that abatement has been rejected. In *Daniels v. Comm'n for Lawyer Discipline*, 142 S.W.3d 565 (Tex. App. 2004) the bar desired to continue with other investigations and further proceedings. In this case in which the complainant did not appear, the attorney was not allowed to abate other proceedings: "...Rule 2.11 provides that the "*Complainant shall . . . be invited to appear before the investigatory panel but the inability or failure to so appear*

*does not abate or preclude further proceedings.*" See TEX. R. DISCIPLINARY P. 2.11. Rule 2.16 provides for the procedures used in an evidentiary hearing where the investigatory panel of the Committee finds just cause, and the respondent fails to elect to have the complaint tried in district court. See TEX. R. DISCIPLINARY P. 2.16. Rule 2.16(F) provides that the "Respondent, the Complainant, and the Chief Disciplinary Counsel may, if they so choose, confront witnesses, including the Complainant. . . . The inability or failure to exercise this opportunity does not abate or preclude further proceedings." TEX. R. DISCIPLINARY P. 2.16(F)." Id. at 570-571.

**III. We urge dismissal of the case for due process violation because of delay. He would show his suspension in this matter is scheduled to expire May 19, 2022. Mr. Ponce proffers the following facts to which he could testify in support of dismissal:**

"The events described here are now five years old. It has been well established and supported by mandate for professionalism, promulgated by the Supreme Court of Texas and the Court of Criminal Appeals, that a lawyer must follow the sacred oath of the Texas Lawyers Creed. A Lawyer owes to the administration of justice personal dignity, integrity, and independence. A Lawyer must be responsible to assure that all persons have access to competent representation regardless of **wealth or position in life**. Furthermore, a lawyer owes to his client allegiance, learning, skill and industry and shall employ **all**

**appropriate means to protect and advance the client's legitimate rights, claims, and objectives.**

### **Case Summary**

I met Valerie Talamantes in early 2017. Ms. Talamantes had just had her divorce case finalized and entered. She was represented by Attorney Adam Cremshaw. Ms. Talamantes and Mr. Talamantes were appointed as Joint Managing Conservators of their three children. Ms. Talamantes was designated as the primary caretaker. Shortly thereafter, Mr Talamantes filed a Petition to Modify the Parent-Child Relationship through his attorney Andrew Roman. He alleged that Valerie Talamantes was in a new dating relationship with Eric John Castillo. Mr. Talamantes discovered that Mr. Castillo had a criminal record and several restraining orders filed against him and was physically threatening the children. Ms. Talamantes hired her 2<sup>nd</sup> attorney Patricia Jay to represent her with this lawsuit. A hearing was held on February 1, 2017 for Temporary Orders before Judge Cathy Stryker in the 224<sup>th</sup> State District Court. Ms. Talamantes lost at this hearing, in that, an Order was granted modifying the conservatorship of the children, whereby, Mr. Talamantez was appointed as the managing conservator of the children designated with the right to determine their residence and to receive child support payments from Valerie Talamantes.

Valerie Talamantes hired me shortly after that hearing to modify the Orders that were rendered in that case. She believed that the court was wrong in designating her ex-husband as the primary conservator of the children. I entered my Notice of Appearance and began representation. I met with her and Eric Castillo. I learned from that meeting that Eric had a drug problem and was concerned about getting drug tested at the courthouse. As a result, I could never get Eric to go to court and attend our initial hearings. The allegations were that Mr. Castillo was physically threatening the children and trying to assault them.

I represented Ms. Talamantes with a Motion to Reconsider Judge Stryker's Order. Mr. Castillo did not attend the first hearing on that Motion. Valerie told me that he was too busy with some lecture. We got an agreed reset from opposing counsel, Mr. Ramon. It was at this hearing that Mr. Ramon let me listen to voice messages from Eric Castillo. He was very vulgar and threatening with Ms. Talamantes ex-husband on the telephone. At our second hearing, Eric Castillo failed to show up again. My oral motion to reset was denied by the court. At this hearing the Investigator/Counselor testified that my client, Ms. Talamantes and her mother were trying to bribe the children with money to falsify testimony in court to the Judge about finding drug paraphernalia belonging to their father. Judge Stryker was angry and denied all of our relief that we requested and ordered the grandmother not to participate any more in this case. I finally told Ms. Talamantes



that I would have to withdraw from her case if her boyfriend was not going to go to court to defend these horrible accusations against him. They were very damaging to her case.

A Motion to Enforce was then filed regarding another incident and Eric Castillo failed to show up again when we went to court. Luckily the new attorney for Mr. Talamantes, Attorney Brandon Wong, asked for a reset. Ms. Talamantes would not agree to the reset so we had to wait in Presiding court until we were assigned out to see Judge Michael Mery. The case was reset for another 10 days. At our next setting Eric did not show up for court again. This time I told Ms. Talamantes that I would have to withdraw from the case if he didn't show up by the end of the morning. Eric finally showed up around 11:00 am. We were assigned to court with Judge Yanata. When I met with Eric outside in the hallway he proceeded to yell at me and cussed at me and threatened me physically. He also threatened to assault my daughter after the hearing. I was very angry and there were several witnesses that watched Eric Castillo threatening me, which included opposing counsel and his associate attorney. Several people approached me to make sure I was ok. We proceeded to go forward with the hearing. The court continued with the No Contact Order with Eric Castillo and the children. Afterwards I told Ms. Talamantes that I was going to withdraw.

I met her shortly after that at the Bexar County Courthouse to meet up with an attorney from the Attorney General's office. One of the pending issues was that she had gotten behind on her child support payments which she denied. While at the courthouse, after that meeting, I gave her the copy of my Motion to Withdraw, along with Discovery material that was given to me from opposing counsel. She was very upset and told me she was going to file a grievance against me.

### **Legal Representation**

After receiving the grievance material from the State Bar. I met with Wade Shelton sometime in June 2018 at his office. This was our initial meeting. I talked to him about my grievance and about representing me in this matter. We discussed matters about the case, and we also talked about my uncle, Ceasar Ponce, and my cousin "Buddy" Ponce. I had seen Wade earlier in the year at my uncle's funeral. That's when I learned that Wade Shelton knew some of my relatives. That is why I decided to go see Mr. Shelton about my grievance. Mr. Shelton was also the lawyer that represented my ex-girlfriend in her fight against me for custody of my daughter.

At that meeting he agreed that he would help me and represent me regarding this grievance with the state bar. I was very appreciative. We also discussed that an Answer needed to be filed. I also told him that I had not done anything on the case other than my initial responses to the complaint. I told him I did not file an

Answer. He told me he would take care of it and that we would set up another meeting.

I called his office several times. I was already scheduled to go on vacation on July 15<sup>th</sup> overseas. I tried to meet with him before that, but he wasn't able to see me before I left on vacation. I called him again in August shortly after my return from my vacation. I eventually was able to meet with him again, whereby, he introduced me to an associate attorney, Mr. Michael Benavides. Mr. Shelton told me that Mr. Benavides would be handling my case. Shortly after this Mr. Shelton finally memorialized our agreement and presented me with a contract to sign. I believe it was sometime in August or September 2018.

I remember running into Mr. Benavides at the courthouse sometime after that. This is when I learned that Mr. Benavides was no longer working on my case. I believe he left Mr. Shelton's office. After this I didn't see Mr. Shelton for quite some time. I did meet with him at least one time and again at his office with Ms. Strolle from the OCDC of the State Bar. I believe this was sometime in January or February 2019. The issue regarding the "Answer" was never discussed. No one mentioned anything about a default of any kind at this meeting. I never knew that an Answer to the suit had never been filed at this point. There was a discussion regarding trying to reach some sort of an agreement to the grievance filed by Ms. Talamantes. I remember Mr. Shelton pressing to Ms. Strolle that I met Ms.

Talamante's associate after I had withdrawn from the case because she was my case manager with my website. He also stated that I had a continuing duty to protect my client's interest. Mr. Shelton also expressed that there may be some sort of waiver issue since Ms Talamantes first shared the information regarding the discovery material with her associate and that it was her associate that brought that to my attention during our meeting. No agreement was ever reached at this meeting.

### **The Hearing**

My hearing was scheduled for May 19, 2019. I was present with my Attorney Wade Shelton. The hearing began with the issue of a default judgment because Mr. Shelton never filed an Answer on my behalf. Mr. Shelton argued that he thought it had been filed. He also argued that his filing of a Notice of Appearance constituted a denial of the allegations, and a default judgment could not be taken. Ms. Strolle mentioned something about giving him notice that this was a hearing regarding a default judgment and that he should be prepared for that. Mr. Shelton disagreed. The testimony regarding this exchange is a part of the record. See attached Transcript of the hearing.

The OCDC moved for a Default Judgment. The Panel Chair asked Mr. Shelton if he filed an Answer. The Panel Chair also commented that there was no Answer on file leading up to the hearing. He was also asked if he had filed one up to that morning. The Panel Chair made reference to the fact that we were at the

hearing, and we did not have an Answer on file. Mr. Shelton was at a loss for words and seemed discombobulated. Ms Strolle mentioned that this hearing was for the default judgment and that she had sent a specific notice regarding that to Mr. Shelton. I was never informed by Mr. Shelton that we were there specifically for a default judgment based on no filing of an Answer.

I will note that Mr. Shelton was not prepared for the hearing in that he had no witnesses to the case present on my behalf. Mr. Shelton knew that Ms. Talamantes had filed grievances on several of the lawyers that she hired to represent her with her matter. He never contacted any of them. He did not have any information regarding Eric Castillo's criminal record to present at the hearing. He did not have any witnesses that saw and heard Eric Castillo threatening me at the courthouse. I learned that he never contacted any of the other attorney's involved with this case. He did not have a copy of my Motion that I filed to withdraw from the case. He did not call and have present the attorney from the Attorney General's Office to testify on my behalf. He did not have any character witnesses present on my behalf. He did not have the Investigator present to testify that Valerie Talamantes and her mother committed perjury when they tried to bribe the children to falsify testimony to the Judge.

All of these witnesses were needed to be at the hearing to help exonerate me from the false allegations filed against me. He also could have asked for a 5-minute

continuance to sit there and write up an Answer very quickly and submit it. He was completely lost. I suffered because of his incompetence and his malpractice against me.

The state bar moved for a Default Judgment to be taken against me. It was granted and we proceeded to a hearing solely on the issue on sanctions. Mr. Shelton did timely file a Motion to Set Aside the Default Judgment and for a new trial and it was Denied.

I timely filed a Notice of Appeal to the Board of Disciplinary Appeals. My Brief was submitted and as of this date it still has not been ruled on.”

#### **IV. Conclusion**

In this case, Mr. Ponce struggles with a default judgment taken against him under circumstances that do not comply with the factors under *Craddock v. Sunshine Bus lines, Inc.*, 133 S.W.2d 124 (Tex. 1939). Mr. Ponce argues that a fair and full hearing will exonerate him. Regardless of the outcome of the disbarment appeal, he deserves a defense on this claim. We urge, at a minimum, the Board should be granted a full evidentiary hearing before the Evidentiary Panel. However, because of the long delay, we further urge the case should be dismissed under the Due Process Clause of the Fifth Amendment to the Constitution of the United States and the Due Course Provision of Article I, Section 19 of the Constitution of Texas.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to the Board of Disciplinary Appeals Internal Procedural Rules, the foregoing brief contains approximately 2,775 words (total for all sections of brief that are required to be counted). Counsel relies on the word count of the computer program used to prepare this petition.

/s/ Ed Stapleton \_\_\_\_\_  
Ed Stapleton

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Brief has been electronically transmitted to:

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