EXHIBIT

A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WESLEASE 2018 OPERATING, LP,

Plaintiff,

v. **No. 4:20-cv-00776-P**

INNOVATIVE SAND SOLUTIONS, LLC, ET AL.,

Defendants.

OPINION & ORDER

Before the Court is J. Robert Forshey's (Receiver) Motion for Order to Show Cause Against Attorney J. Shelby Sharpe. ECF No. 459. Among the sanctions proposed in Receiver's Motion is that the Court permanently suspend Sharpe from practice before this Court. Receiver also asks to be compensated for expenses incurred in responding to Sharpe's recent motion for stay pending appeal as well as the pursuit of this Motion. Having considered the Motion, applicable law, and relevant docket entries, the Court will **GRANT** the Motion **in part**.

This case spans more than five years and contains nearly 500 docket entries, a related disciplinary case, and a dozen different appeals.[1] The Court cannot give a full account of the Weslease saga. Nonetheless, the Court will provide, though it may not seem like it, a brief history of Sharpe's dealings in this case on behalf of his clients, Dale and Linda Behan, and the related disciplinary action before the three-judge panel (Panel). This history will provide context to the sanctions assessed by the Panel against Sharpe, and more importantly, the decision by the Court today in assessing the least restrictive sanction to ensure

[1]Of the twelve appeals to the Fifth Circuit filed by Sharpe, ten have been resolved unfavorably for his clients, the Behans, and two remain unresolved. *See* Case Nos. 24-10460 (consol. with 24-10246), 24-10822 (consol. with 10246), 24-10898 (consol. with 24-10246), 24-10998, 25-10283, 25-10339, 25-10353, 25-10682, 25-10905.

compliance with the rules: **an indefinite suspension from the practice of law before this Court.**

BACKGROUND

This case began in 2020 when Weslease 2018 Operating LP (Weslease) acquired the right to collect a $200,000 debt owed by Innovative Sand Solutions, LLC (Innovative Sand). ECF No. 4 at 12. After finding that Innovative Sand was created with the intent to hinder the payment of the $200,000, the undersigned entered judgment against both Innovative Sand and Dale and Linda Behan. ECF No. 78 at 4. Multiple turnover orders were subsequently entered in an attempt to satisfy this judgment. ECF Nos. 137, 139, 467, 208. Those turnover orders included an order that the Behans turn over stock in a separate entity, River North Farms (River North). ECF No. 139 at 1.

Notwithstanding the undersigned's order concerning River North, the Behans refused to grant Weslease access to assets of River North, specifically, a piece of property on the Brazos River (Brazos Property). *See* ECF No. 144 at 1. The Behans' attorney, Sharpe, replied to emails from Weslease indicating that the Court's order did not effectively turn over any access because Amarillo National Bank, not the Behans, owned the Brazos Property. *Id.* at 144-2 at 1. The Court only learned of the Behans' and Sharpe's resistance through a motion to show cause filed by Weslease. *See id.* The Court then held the first of what would become many show cause hearings. ECF No. 150. The Behans were ordered to turn over financial information for all entities in which they had an interest dating back to 2017. ECF No. 149. The Court further ordered the Behans to "fully comply with all provisions of [the undersigned's] prior Turnover Order." *Id.*

After the show cause hearing, the Court learned that Sharpe filed two state court lawsuits on behalf of River North, one in Tarrant County and the other in Parker County. ECF No. 162 at 1–2. Sharpe asserted that, because River North was no longer owned by the Behans, and the Court's turnover order did not require *Sharpe* to do anything, Sharpe did not violate the Court's orders. ECF No. 163 at 2.

At this point, the Court entered two orders. The first opened a

miscellaneous disciplinary matter against Sharpe, Case No. 4:24-mc-00007-X (*In re Sharpe*). ECF No. 166. The second required Sharpe to hand over all documents relating to his representation of River North and dismiss all petitions filed on behalf of River North after the Court's turnover order. ECF No. 167. Sharpe and the Behans were also held in contempt and fined. ECF No. 172 at 18. When Sharpe and the Behans failed to pay their fines on time, the Court set another show cause hearing but canceled the hearing once the fines were paid. ECF Nos. 181, 182.

Two weeks later, Weslease filed another motion for enforcement of the Court's turnover order alleging that the Behans deposited two checks payable to River North on June 5 and June 6, 2024. ECF No. 183. In response, Sharpe argued, "Weslease, if it finally determined by the Fifth Circuit to be the Owner of River Nort [sic] Farms, will be the sole beneficiary of the payment of the debts." ECF No. 184 at 2. The same day as this response, Weslease filed another motion for an execution order, this time claiming that Sharpe had received $228,000 from River North and loaned—without the Behans' knowledge—$100,000 to Haynes & Boone law firm for money owed to the law firm in another case. ECF No. 185 at 2.[2] Sharpe's later explanation to the Panel was that, even though the Behans subsequently repaid Sharpe $100,000 for this transaction, the $100,000 "loan" to Haynes & Boone was not intended to be loan, and the Behans only "learned of the attorney's fee payment" afterward and insisted on repaying Sharpe themselves. *In re Sharpe*, ECF No. 29 at 10–11.

Sharpe's antics did not end there. Two months later, on August 9, 2024, Sharpe informed Weslease that the Behans signed a sale of real estate on behalf of River North, despite this Court's repeated orders that

[2]On June 27, 2025, as the successor-in-interest to the Behans' estate, the Receiver filed a report in this case outlining various potential claims that might be brought against Sharpe for this loan including: (1) fraudulent transfer under TUFTA; (2) aiding and abetting breaches of fiduciary duties by the Behans to River North; (3) breach of fiduciary duties owed to River North by Sharpe and his law firm; and (4) disgorgement by Sharpe and his law firm. ECF No. 407 at 6.

the Behans refrain from exercising control over River North or its assets. ECF No. 199 at 2.[3] Weslease argued that the Behans and Sharpe induced a third party into "putting down a non-refundable deposit." *Id.* Regarding this transaction and Sharpe's explanation to the Panel in his disciplinary proceeding, the Panel stated the following: "what went unsaid speaks volumes: Sharpe never refuted the fact that he facilitated the real estate transaction." *In re Sharpe*, ECF No. 29 at 14.

These events provide context for the decision by the undersigned to open a disciplinary proceeding against Sharpe and the eventual order by the Panel to sanction Sharpe. Sharpe had become a drain on the Court's resources in the Weslease case. Sanctions and even civil contempt did not stop him from thwarting or attempting to thwart the Court's enforcement orders at every step. Consequently, *In re Sharpe* was opened on May 21, 2024. *See In re Sharpe*, ECF No. 1. The undersigned appointed special assistant counsel Geffrey W. Anderson and Stephen P. Fahey—both of whom worked without pay on the matter—to aid in the Court's investigation of Sharpe. *Id.*, ECF Nos. 5, 9. Several months later, on November 7, 2024, and after hearing Sharpe's responses regarding the $100,000 loan, the undersigned temporarily suspended Sharpe pending resolution of the disciplinary matter against him. *Id.* ECF No. 17. The undersigned also referred a motion by Sharpe for a three-judge panel to be appointed over the disciplinary case to Chief Judge David Godbey. ECF No. 16.

Two days later, on November 8, 2024, Chief Judge Godbey appointed the Panel, comprised of the honorable Judges Brantley Starr, Terry Means, and Wes Hendrix. *Id.* ECF No. 18. The next month, on December 18, 2024, the Panel denied Sharpe's motion to lift the undersigned's temporary suspension. *Id.* ECF No. 29. The Panel's order did not deter

[3]Sharpe argued that the property was not subject to the Court's order because, in a separate and earlier-filed case before Judge O'Connor, Judge O'Connor came to a different conclusion regarding River North than Judge Pittman in the later Weslease case. As this Court has reiterated time and again, Judge O'Connor's ruling did not collaterally estop the undersigned's order regarding River North—new facts and circumstances arose throughout the Weslease litigation that made River North subject to the turnover order in this case.

Sharpe either. While temporarily suspended Sharpe helped prepare a response on behalf of the Behans in this case; as the Panel found in its Memorandum Opinion & Order (Panel's Sanctions Order) six months later, on June 3, 2025, Sharpe "practiced law (again) in the Northern District of Texas since his suspension." *Id.* ECF No. 54 at 22. The Panel concluded that, while temporarily suspended, Sharpe advised Dale Behan on filings in the Weslease case. *Id.* Sharpe argued this advice was solely related to his role as "appellate counsel" for appeals on the Weslease orders. The Panel disagreed:

> Sharpe's view is incorrect. Developing the district court record when there might be a future appeal is practicing law in the district court. As such, Sharpe continued to practice in the Northern District of Texas while suspended. At this point, Sharpe has shown no regard for either Judge Pittman's orders or now the order of this Panel upholding his temporary suspension. The Panel warns Sharpe that if he continues to defy orders from this Panel and Judge Pittman, the Panel may disbar him from the Northern District of Texas or take other serious measures.

Id. at 23.

The Panel's Sanctions Order assessed final sanctions against Sharpe. *Id.* ECF No. 54. Those sanctions included the following:

> (1) [Sharpe] [s]hall withdraw from any and all litigation in the Northern District of Texas involving Dale or Linda Behan or their companies, including River North, their former companies, their associated companies, their affiliated companies, or any other entity that bears any meaningful relationship to the Behans whatsoever within seven days of this order;
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> (2) [Sharpe] [s]hall not give legal advice to Dale or Linda Behan or their companies, including River North, their former companies, their associated companies, their affiliated companies, or any other entity that bears any

> meaningful relationship to the Behans in any matter in litigation in the Northern District of Texas;
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> (3) [Sharpe] [s]hall file within seven days of this order sealed copies of this opinion in any appellate litigation involving the Behans or River North, including in Fifth Circuit case numbers: No. 22-10495, No. 24-10246, No. 24-10366, No. 24-10460, No. 24-10822, No. 24-10898, No. 24-10998, No. 25-10339, and No. 25-10353; and
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> (4) [Sharpe] [s]hall not represent or take on any new client in the Northern District of Texas without the express, prior approval of this Panel. If Sharpe wishes to begin a new representation, he shall file a motion for leave with the Panel and the Panel will determine whether Sharpe is capable of the proposed representation.

Id. at 20–21. On June 30, 2025, the Panel denied Sharpe's motion for reconsideration of the Panel's Sanctions Order. *Id.* ECF No. 61.

A little over two months after the Panel's Sanctions Order, we arrive at the current allegations against Sharpe. Receiver filed this Motion for Sharpe to show cause on August 11, 2025. ECF No. 459. The Motion attaches an Emergency Motion for Stay Pending Appeal (Stay Motion) filed by Sharpe on August 8, 2025, in the United States Court of Appeals for the Fifth Circuit. *Id.* Ex. 1. Sharpe's Stay Motion asks the Fifth Circuit to stay this Court's order (ECF No. 438) authorizing the Receiver to sell a 100-acre lot in Arkansas (Arkansas Property) that the Court determined to be owned by the Behans through an entity called Hermitage Newark and therefore subject to the receivership. *See id.* Receiver argues in his Motion that Sharpe's Stay Motion should have been filed in this Court under Federal Rule of Appellate Procedure 8(a). FED. R. APP. P. 8(a)(1)(A) ("A party must ordinarily move first in the district court for . . . a stay of the judgment or order of a district court pending appeal.").

Receiver's Motion alleges three separate ethical violations stemming from Sharpe's Stay Motion, two of which relate to the Panel's Sanctions

Order, and the third relating to the Texas Disciplinary Rules of Professional Conduct. *See* ECF No. 459. Receiver asks the Court to sanction Sharpe for the expenses incurred by Receiver in responding to the Stay Motion as well as his pursuit of this Motion. *Id.* at 6. Receiver also asks the Court to permanently suspend Sharpe from practicing in the Northern District of Texas. *Id.*

After issuing an order and setting a hearing for Sharpe to show cause for the allegations found in Receiver's Motion, and out of an abundance of caution, the Court issued a Notice and Request for Clarification on the Panel's docket for guidance on whether the Panel or the undersigned had jurisdiction over the matter.[4] ECF No. 463. The Panel issued an opinion the following day stating, "the most appropriate path forward" is for the undersigned "to have full jurisdiction over the allegations in the motion to show cause." *In re Sharpe*, ECF No. 63 at 1.

In a motion to continue the hearing, Sharpe indicated that his Panel counsel, Marshall Searcy Jr., was his counsel for this matter.[5] ECF No. 464. Sharpe requested that the hearing be pushed back one week until August 21, 2025. *Id.* This extension was not possible for the Court given its docket and other obligations. Thus, while the Court denied the motion for continuance, it offered Sharpe three options for hearing dates, and accepted Sharpe's choice to move the hearing to August 15, 2025. *See* ECF Nos. 467, 469. Despite never formally making an appearance, Sharpe's Panel counsel, Mr. Searcy, filed an unopposed motion to withdraw or clarify representation. ECF No. 471. The Court granted Mr. Searcy's withdrawal. ECF No. 472. Sharpe's hearing to

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[4]In the Panel's order denying Sharpe's motion for reconsideration of the Sanctions Order, the Panel stated the following concerning future sanctionable conduct by Sharpe: "Lastly, the Panel wishes to convey that any further sanctionable conduct, except compliance with the Panel's sanction order, is outside the jurisdiction of the Panel. Therefore, any additional sanctionable conduct Sharpe undertakes is most properly handled in the first instance with the related district court." ECF No. 61 at 4.

[5]Upon reviewing Sharpe's response, the Court noted that Sharpe wrote and signed the response in his own name and informed Sharpe that he was not entitled to dual representation. *See* ECF No. 469.

show cause was held on August 15, 2025. The Court now addresses the Receiver's Motion.

LEGAL STANDARD

"District courts have authority to discipline attorneys pursuant to their local rules."[6] *In re Finn*, 78 F.4th 153, 156 (5th Cir. 2023). Local

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[6]Over 400 hundred years ago, Sir Francis Bacon admonished trial judges to be on guard to prevent lawyers from engaging in "nimble and sinister tricks and shifts, whereby they pervert the plain and direct courses of courts, and bring justice into oblique lines and labyrinths." Sir Francis Bacon, *Essay "Of Judicature," in* HANDBOOK FOR JUDGES 25, 28 (American Judicature Society ed. 1961).

Likewise, Arch Cantrall famously lectured new judges in 1959:

> The judge sets the standard of practice in his court. He can countenance a low standard of lawyer conduct generally or he can require a high standard of lawyer conduct. Whichever standard prevails in his court will be the standard of practice and conduct of his lawyers outside his court and in their offices.
>
> Unless the judge requires a high standard of all who practice before him, the best will be forced down to the level of the worst in order to compete on equal terms.
>
> In all these and other matters, each judge is a leader by virtue of disposition as *the* representative in *his* jurisdiction, of the judicial branch of government.

Arch M. Cantrall, *The Judge as a Leader: the Embodiment of the Ideal of Justice, in* HANDBOOK FOR JUDGES 57, 59 (American Judicature Society ed., 1961) (emphasis in original).

Perhaps because of this duty, "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates." *Anderson v. Dunn*, 19 U.S. 204, 227 (1821); *see also Ex parte Robinson*, 86 U.S. 505, 510 (1873). Trial courts have inherent authority "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1962). Moreover, the court, may also exercise its inherent power to "vindicate its own interests" *Ben E. Keith Co. v. Dining All., Inc.*, 80 F.4th 695, 701 (5th Cir. 2023), including maintaining the integrity and ethical standards that govern attorney conduct. *See In re: Deepwater Horizon*, 824 F.3d 571, 578 (5th Cir. 2016).

Rule 83.8(b)(1)–(4), and (6) provide as follows:

> "(b) Grounds for Disciplinary Action. A presiding judge, after giving opportunity to show case to the contrary, may take any appropriate disciplinary action against a member of the bar for:
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> (1) Conduct unbecoming a member of the bar;
> (2) Failure to comply with any rule or order of this court;
> (3) Unethical behavior;
> (4) Inability to conduct litigation properly;
>
> . . .
>
> (6) Having been public or privately disciplined by any court, bar, court agency, or committee."

L.R. 83.8(b)(1)–(4), (6).

The Court further possesses authority to sanction attorneys based on obligations imposed by the en banc opinion of this court in *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284 (N.D. Tex. 1988) (en banc). For Northern District practitioners, *Dondi* is "not an obscure case"—it is a code that all licensed attorneys in the Northern District agree to abide by. *See Wissel v. Rural Media Group, Inc.*, No. 4:24-CV-00999-P, 2025 WL 2108002, at *2 (N.D. Tex. July 28, 2025). Standards adopted by *Dondi* that are relevant here include the following:

> (A) In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.
> (B) A lawyer owes, to the judiciary, candor, diligence and utmost respect.
>
> . . .
>
> (D) A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.

Dondi, 121 F.R.D. at 287–88.

"[A]ttorney discipline proceedings require proof only by clear and

convincing evidence." *Sealed Appellant I v. Sealed Appellee 1*, 211 F.3d 252, 254 (5th Cir. 2000). "Clear and convincing evidence is that weight of proof which produces in the mind of the trier of fact a firm belief or conviction . . . so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." *Shafer v. Army & Air Force Exch. Serv.*, 376 F.3d 386, 396 (5th Cir. 2004) (cleaned up). On appeal, any order from the undersigned would be reviewed for abuse of discretion. *In re Finn*, 78 F.4th 153, 156 (5th Cir. 2023).

"As a general rule, 'the sanctioning court must use the least restrictive sanction necessary to deter the inappropriate behavior.'" *In re Luttrell*, 749 F. App'x 281, 286 (5th Cir. 2018) (quoting *In re First City Bancorporation of Tex. Inc.*, 282 F.3d 864, 867 (5th Cir. 2002)). "In imposing a sanction after a finding of misconduct, a court should consider the duty violated, the attorney's mental state, the actual or potential injury caused by the attorney's misconduct, and the existence of aggravating or mitigating factors." *In re Sealed Appellant*, 194 F.3d 666, 673 (5th Cir. 1999) (citing ABA Standard for Imposing Lawyer Sanctions (ABA Standard) 3.0; *In re Quaid*, 646 So.2d 343, 350 (La. 1994) (citing ABA Standard 3.0)).

ANALYSIS

The Motion presents three instances of sanctionable conduct by Sharpe. *First*, the Motion argues that by filing the Stay Motion in the Fifth Circuit rather than this Court, Sharpe violated the Panel's Sanctions Order by giving legal advice to the Behans through their company, Hermitage Newark, in the Northern District of Texas. *Second*, the Motion contends that by filing the Stay Motion, Sharpe took on new clients (Appellants)[7] in the Northern District of Texas without the Panel's permission, in violation of the Panel's Sanctions Order. And *third*, by representing the Appellants, Sharpe violated the Texas Disciplinary Rules of Professional Conduct because Appellants recently

[7]The Appellants names are Laura Davis, Whitney Martin, Annalisa Anderson, Christianson J. Anderson, and William Dale Behan.

brought suit against the Behans in state court regarding the same property. The Court will take each in turn.

A. Practicing Law in the Northern District

Receiver argues that Sharpe gave legal advice to the Behans[8] for litigation in the Northern District by filing the Stay Motion. As stated above, the Panel's Sanctions Order against Sharpe stated, "[Sharpe] [s]hall not give legal advice to Dale or Linda Behan or their companies, including River North, their former companies, their associated companies, their affiliated companies, or any other entity that bears any meaningful relationship to the Behans in any matter in litigation in the Northern District of Texas." *In re Sharpe*, ECF No. 54 at 20.

This allegation requires analysis of Federal Rule of Appellate Procedure 8. Rule 8 states,"[a] party must ordinarily move first in the district court for the following relief: a stay of the judgment or order of a district court pending appeal . . . ." FED. R. APP. P. 8(a)(1)(A). Such a motion *may* be made in the court of appeals if "moving first would be impracticable." *Id.* 8(a)(2)(A)(i).

Sharpe's filing of the Stay Motion in the Fifth Circuit unavoidably required giving legal advice to the Behans in the Northern District. As stated in Rule 8(a), a Stay Motion of this Court's order must ordinarily be filed before this Court. An exception exists as found in 8(b). In Sharpe's Stay Motion attached to the Receiver's Motion, the reasoning for an exception is scantily addressed.[9] It is clear to the Court from both

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[8]Sharpe's appeal and Stay Motion are not brought on behalf of the "Behans" as clients. However, as this Court has found (*See* ECF No. 438) and declarations drafted by Sharpe demonstrate (ECF No. 249), the entity Hermitage Newark is an "affiliated company" with the Behans and subject to the Panel's Sanctions Order. As such, the Court will use "Behans" and "Hermitage Newark" interchangeably for purposes of this opinion.

[9]In the only citation to a Fifth Circuit case, Sharpe cites to *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, for the proposition that a motion for stay can be filed in the appellate court if harm could begin the day after the district court issued its order. 734 F.3d 406, 411 (5th Cir. 2013). This argument is easily dismantled by an analysis of Sharpe's Stay Motion. To begin, the Stay Motion involves a piece of property that was *already* sold. In other words, there was no forthcoming harm, because the sale was

the Receiver's Motion and the testimony provided in the hearing that the real reason for Sharpe's filing in the appellate court is because Sharpe was banned from doing so in this Court. Even so, any advice on the ordinary route through the district court would *inevitably* require Sharpe to counsel the Behans and Appellants—at a minimum—on their rights concerning the enforcement of the *district court's order.*[10] And such advice would, necessarily, involve practicing law in the Northern District of Texas. If filing first in the appellate court was the "ordinary" route for filing a Stay Motion, the Court agrees that Sharpe would not be practicing in the Northern District, but such is not the case. Sharpe's Stay Motion categorically constitutes legal advice given to the Behans in violation of the Panel's Sanctions Order.

Sharpe's contentions to the contrary are unavailing and repeat already rejected arguments made before the Panel. Sharpe argues that "nothing in the Motion contends that Sharpe is prohibited from practicing in the Fifth Circuit." ECF No. 473 at 5. This is not the first time that Sharpe has been caught making this excuse. After the Panel denied Sharpe's motion to lift the temporary suspension assessed by the undersigned on December 18, 2024, this Court held a hearing relating to the distribution of property subject to the receivership on May 15, 2025. ECF No. 379. In preparation for that hearing, and because Sharpe was already temporarily suspended, the Behans filed a response to the Receiver's motion for hearing "*pro se*." ECF No. 362.[11] At the hearing,

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completed. Additionally, the Court's order on the Arkansas Property was issued on July 24, 2025. Sharpe's Stay Motion was not filed until August 8, 2025, more than two weeks after.

[10]According to Sharpe's testimony at the hearing, he did not "counsel" with the Appellants about filing the Stay Motion in the appellate court rather than the district court. Instead, he asserts that the Appellants merely relied on his professional judgment to make this decision and that he "recommended" that the motion be filed in the Fifth Circuit. *See* August 15, 2025, Hearing Transcript at 20 (hereinafter "Transcript"). The Court can discern no meaningful difference either way—Sharpe's decision to file first in the appellate court required his legal advice on how to handle a filing that should ordinarily be filed in the district court.

[11]The Court subsequently struck this response from the record because all purported interests the Behans asserted were vested in the Receiver at this

and upon the questioning of Dale Behan under oath, the Court learned that Dale Behan consulted Sharpe regarding the filing, meaning that the Behans had not prepared and filed the response *pro se*—Sharpe had assisted. ECF No. 377 at 53–58 ("And you said that this was typed up by Mr. Sharpe's legal assistant, and he gave you some input; is that correct? Yes, sir. That's correct."). Dale Behan also testified that he had visited Sharpe's office in preparation of the filing. *Id.* at 59 (explaining that he visited Sharpe's office to talk with Sharpe's paralegal Tanika regarding the filing). Sharpe admitted as much in response to the Panel's order that he provide an explanation of Mr. Behan's testimony before the Panel issued its Sanctions Order. *See In re Sharpe*, ECF No. 53-1 at 6 (admitting that he told Dale Behan of "some places to look for the response he was planning on filing"). But as he does here now with the Stay Motion, Sharpe argued to the Panel that "[t]his referral was solely related to my role as appellate counsel so it would be part of the appellate record if an appeal became appropriate." *Id.* In its Sanctions Order, issued two weeks after Sharpe's response, the Panel noted, "Sharpe has practiced law (again) in the Northern District of Texas since his suspension." ECF No. 54 at 22. And in response to Sharpe's description that he was solely acting as "appellate counsel," the Panel stated:

> Sharpe's view is incorrect. Developing the district court record when there might be a future appeal is practicing law in the district court. As such, Sharpe continued to practice in the Northern District of Texas while suspended. At this point, Sharpe has shown no regard for either Judge Pittman's orders or now the order of this Panel upholding his temporary suspension. The Panel warns Sharpe that if he continues to defy orders from this Panel and Judge Pittman, the Panel may disbar him from the Northern District of Texas or take other serious measures.

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point. The Order striking the response was appealed and is one of the two remaining appeals at the Fifth Circuit—the other being the appeal in which Sharpe filed the Stay Motion.

Sharpe has been warned time and again that his actions to avoid this Court's judgments and orders may result in a serious penalty. Just as the Panel did, the Court rejects Sharpe's latest arguments that his maneuver can be chalked up to his role as appellate counsel for the Behans.

B. New Clients

Next, Receiver argues for sanctions against Sharpe for violating the Panel's Sanctions Order that Sharpe not represent new clients in the Northern District without permission from the Panel. The Panel's Sanctions Order states, "[Sharpe] [s]hall not represent or take on any new client in the Northern District of Texas without the express, prior approval of this Panel. If Sharpe wishes to begin a new representation, he shall file a motion for leave with the Panel and the Panel will determine whether Sharpe is capable of the proposed representation." *In re Sharpe*, ECF No. 54 at 21.

For the same reasons listed above concerning Federal Rule of Appellate Procedure 8, the Court rejects the argument that Sharpe's representation of Appellants can merely be attributed to his role as appellate counsel. The Appellants, who Sharpe has never represented before, are the Behans' children or step-children. As Sharpe testified at the hearing, he had never represented any of the Appellants before the Stay Motion. *See* Transcript at 25. Sharpe also conceded he never made any request to the Panel to represent Appellants. *Id.* at 26. This constitutes a second violation of the Panel's Sanctions Order.

C. Conflict of Representation

The third and final issue presented by Receiver's Motion is that Sharpe's representation of Appellants constitutes a conflict of interest. Texas Disciplinary Rule of Professional Conduct 1.06 says:

> (b) [A] lawyer shall not represent a person if the representation of that person:
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> (1) involves a substantially related matter in which that person's interests are materially and directly adverse to

> the interests of another client of the lawyer or the lawyer's firm; or
>
> (2) reasonably appears to be or become adversely limited by the lawyers or the law firm's responsibilities to another client or to a third person or by the lawyers or law firm's own interests.

TEX. R. PROF. COND. 1.06(b)(1)–(2). A lawyer may engage in representation like the above if "the lawyer reasonably believes the representation of each client will not be materially affected" and "each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any." *Id.* 1.06(c)(1)–(2).

Before Sharpe filed the Stay Motion of this Court's order approving the sale of the Arkansas Property (on which the Court held multiple hearings), Appellants filed a lawsuit in state court in Independence County, Arkansas, against the Behans and Receiver over the sale of the Arkansas Property. *See* ECF No. 398-3. Thus, through the Stay Motion and appeal, Sharpe represents the same individuals suing his other clients, the Behans, in Arkansas state court.

Sharpe's response to this apparent conflict is that he was "not involved in [the Arkansas] litigation." ECF No. 473 at 5. But Rule 1.06 does not contemplate whether a lawyer was involved in the prior litigation, it simply asks whether representation of the new client, in this case the Appellants, involves interests that are materially adverse to another client, the Behans. A question the Court must answer in the affirmative. Accordingly, Sharpe's response does nothing to dispel the conflict in his representation of both Appellants and the Behans. Moreover, as Sharpe testified at the hearing, the only Appellant Sharpe actually spoke with prior to accepting representation is William Dale Behan, and there is no indication that this discussion included anything related to the apparent conflict. *See* Transcript at 14, 38. This is yet another ethical violation on Sharpe's part.

D. Other Misrepresentations

While Sharpe was only ordered to show cause for the three violations listed above, the Court notes two other examples revealed at the hearing that demonstrate Sharpe's continued lack of candor: (1) Sharpe has acted contrary to his testimony and filings before the Panel; and (2) Sharpe was aware there was no emergency concerning his Stay Motion and proceeded, nonetheless.

As for the first, in a filing before the Panel on February 21, 2025, Sharpe represented, "Mr. Sharpe has made the difficult decision to never practice law again." *In re Sharpe*, ECF No. 36 at 35. Months later, just before the Panel issued its final sanctions, Sharpe was asked by the Panel about his plans to wind down his career. In fact, the representations made by Sharpe, including that he would "retire before the end of the year from the practice of law," were "important facts" for the Panel in assessing its sanctions against Sharpe. *See In re Sharpe*, ECF No. 54 at 22. At a hearing prior to the Sanctions Order, the Panel asked Sharpe, "Other than completing the appeals that are now pending in the Fifth Circuit, do you have any other plans to engage in any other litigation?" Sharpe responded, "No." Transcript at 43–44. At the show cause hearing for this Motion, the undersigned asked Sharpe whether he was truthful in his testimony before the Panel in May 2025 that he would not take on additional matters. *Id.* at 42–43. Sharpe answered "Yes." *Id.* at 43. Yet, as the Court pointed out, and is available as public record, Sharpe has taken on *multiple* new clients since the Panel's Sanctions Order, both in Texas district courts as well as Texas appellate courts. *Id.* at 45.[12] Sharpe's response to the undersigned was that this additional litigation is for "very close friends." *Id.* at 48. But Sharpe had no response for how these new cases comported with his representation to the Panel that he did not have *any* plans to take on additional litigation, nor why he chose not to disclose these additional matters to the Panel afterward. *Id.* at 49.

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[12]Those cases include Moreno v. S2 Forest Ridge, LP, Case No. 17-364302-25; *Dombroski v. UNT Health Science Center, et al*, Case No. 67-364268-25; *Tanika Grover v. Tom Nail & Tanning*, Case No. 352-366879-25, with the latest being filed on July 22, 2025.

Additionally, in the same filing that Sharpe told the Panel he made the "difficult decision to never practice law again," and in an apparent attempt to deflect, he characterized the Behans as "nonpaying, very difficult clients." *In re Sharpe*, ECF No. 36 at 35. And three weeks earlier, in a different filing before the Panel, Sharpe argued, "there is perhaps an unintended conflation of Mr. Sharpe's advocate role with the *dodgy* conduct of his clients." *In re Sharpe*, ECF No. 32 at 1 (emphasis added). When asked about this statement at the show cause hearing, Sharpe stated, "That's [my attorney] Mr. Marshall's language; that is not my language." *See* Transcript at 39. Yet, Sharpe admitted to the undersigned that he "signed off" on his attorney's filings. *Id.* at 42. Such representations are wholly inconsistent with Sharpe's continuing, albeit improper, legal advice to the Behans here.[13]

As for the second, Sharpe's Stay Motion was filed on an emergency basis. Yet, as revealed by Receiver at the hearing, Sharpe received an email from Receiver on August 7, 2025, the day before the Stay Motion was filed, disclosing that the sale over the Arkansas Property had already been consummated. *See* ECF No. 479-9, Ex. 3. As a result, any motion for a stay would be moot. Despite acknowledging he had received the email providing notice of the consummated sale,[14] Sharpe filed the Stay Motion anyway and falsely categorized it as an emergency.

While these misrepresentations do not form the primary basis for the Court's sanctions today, they demonstrate a continuing pattern of dishonesty from Sharpe.

E. Least Severe Sanction

This Court and its predecessors have been on guard against unethical behavior by attorneys for thirty-seven years. *See Wissel*, 2025

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[13] *See Dondi*, 121 F.R.D. at 288 ("A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.").

[14] *See* Transcript at 29. Additionally, as Receiver pointed out, Sharpe made this filing knowing that Hermitage Newark and Appellant were millions of dollars out of the money, making it futile, and causing the Receiver additional expense. *See* Transcript at 34–35.

WL 2108002, at *1 (highlighting that *Dondi* provided "principles of litigation conduct that have governed attorneys in the district for the nearly forty years since . . . *Dondi*."). Nonetheless, the Court takes very seriously its duty to impose the "least restrictive sanction necessary to deter the inappropriate behavior." *In re Luttrell*, 749 F. App'x 281, 286 (5th Cir. 2018) (citations omitted).

Evidence of a pattern of misconduct is relevant to this Court's determination. In *In re Finn*, a disciplinary matter before a three-judge panel, including the undersigned, the Court noted that it had "previously tried a lesser sanction" against Finn. *In re Finn*, No. 3:22-MC-22-N, 2022 WL 20509131, at *2 (N.D. Tex. Oct. 25, 2022), *aff'd*, 78 F.4th 153 (5th Cir. 2023). And the Court further recognized that "Mr. Finn's pattern of misconduct has persisted over some time." *Id.* Taking these and other factors into consideration, the Court ordered that Mr. Finn be "indefinitely suspended from the practice of law before this Court" with the opportunity to "reapply" for admission after one year of suspension. *Id.* at *3.

Like *Finn*, the Court has tried lesser sanctions. The Court has, on separate occasions, fined Sharpe; held him in contempt; temporarily suspended his license to practice in the Northern District; ordered he withdraw from representing the Behans; and even ordered him to take the Multi state Professional Responsibility Exam (MPRE).[15] ECF Nos. 172, 291; *In re Sharpe*, ECF No. 17. The Court also opened a separate disciplinary matter and granted Sharpe's motion that a three-judge panel be appointed. *In re* Sharpe, ECF Nos. 17, 18. Yet even after additional sanctions from the Panel, and countless show cause hearings, Sharpe persists. As best the Court can tell, Sharpe is incapable of

[15]Texas adopted the MPRE requirement in 1992. According to Sharpe's bar page, he has been licensed since 1965, and therefore, the Court's order was likely the first time Sharpe took the exam. The Court first ordered Sharpe to take the March 2025 Exam, which he failed. *See* ECF Nos. 291, 365. The Court then ordered Sharpe to reapply for the exam on the next available date, which falls on August 21, 2025. ECF No. 370. This order remains outstanding, and notwithstanding the Court's order today, it expects a report from Sharpe on his MPRE examination scheduled for August 21, 2025.

honesty. And as the undersigned expressed in one show cause hearing, "the Court is exasperated."

Sharpe's conduct has wasted untold hours of time and expense for Plaintiff, the Court, the Behans' seemingly endless creditors, and now the Receiver. As the undersigned's predecessor stated in another case involving an indefinite suspension: "If this court were to order less than removal of [practitioner's] right to practice law before this court . . . the expectations of *Dondi* would be sorely disappointed." *In re Discipline of Ray*, No. 4:19-MC-015-A, 2019 WL 3082523 (N.D. Tex. July 15, 2019), *aff'd sub nom. In re Ray*, 951 F.3d 650 (5th Cir. 2020). As in *Ray*, the Court makes a "fair inference" of Sharpe's "repeated violations of his ethical and moral obligations over a period of years . . . that he intentionally did what he did, knowing that it was wrong." *Id.*

Regrettably, the Court concludes Sharpe must endure the same fate as ordered in *Ray* and *Finn*. Based on the clear and convincing evidence of the violations presented in Receiver's Motion and combined with the pattern of misconduct exhibited by Sharpe, it is **ORDERED** that Sharpe be indefinitely suspended from the practice of law before this Court. It is further **ORDERED** that Sharpe may reapply to resume his practice before this Court after **two years** of suspension.

The Court also finds that Sharpe must pay the costs and fees expended by Receiver in defending the Stay Motion and in pursuit of this Motion. As outlined by Receiver at the hearing, Sharpe is **ORDERED** to pay **$12,000 on or before August 25, 2025**.

CONCLUSION

For the reasons discussed above, Sharpe is indefinitely suspended from the practice of law in the Northern District of Texas. Sharpe may reapply to be admitted for practice after **two years**. The Court **DIRECTS** the Clerk of Court to remove Sharpe's name from the list of attorneys authorized to practice before this Court. If Sharpe is to seek readmission, he must attach a copy of this Opinion & Order to his application.

Sharpe is also **ORDERED** to pay the costs and fees to Receiver

associated with defending against Sharpe's Stay Motion and pursuing this Motion into the registry of the Court to be disbursed to Receiver in the amount of **$12,000**. Sharpe is **ORDERED** pay this amount **on or before August 25, 2025**, and file notice with the Court confirming such payment.

Lastly, the Court **DIRECTS** the Clerk of Court to file this Opinion & Order in Case No. 4:24-mc-00007-X before the Panel, and Case No. 25-10905 before the United States Court of Appeals for the Fifth Circuit. The Court also **DIRECTS** the Clerk of Court to file (1) this Opinion & Order, (2) the Panel's Sanctions Order,[16] and (3) the Panel's order denying Sharpe's motion for reconsideration of the Panel's Sanctions Order[17] with the following courts and bars to consider whether reciprocal discipline is appropriate against Sharpe:

- Seana Willing, Chief Disciplinary Counsel of the Texas State Bar;
- the Clerk of Court for the Eastern and Southern Districts of Texas;
- the Clerk of Court for the Western and Eastern Districts of Arkansas;
- the Chief Judge of the Court of Appeals for the Fifth, Sixth, Tenth, and Federal Circuits; and
- the Chief Justice of the United States Supreme Court.

SO ORDERED on this **18th day of August 2025.**

Mark T. Pittman

MARK T. PITTMAN
UNITED STATES DISTRICT JUDGE

[16]This can be found at ECF No. 54 in Case No. 4:24-mc-00007-X.

[17]This can be found at ECF No. 61 in Case No. 4:24-mc-00007-X.

EXHIBIT

B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WESLEASE 2018 OPERATING, LP,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**No. 4:20-cv-00776-P**
	§	
INNOVATIVE SAND SOLUTIONS, LLC, et al.,	§	
	§	
Defendants.	§	

MOTION TO SHOW CAUSE, TO ENFORCE PANEL ORDERS AGAINST J. SHELBY SHARPE, AND REQUEST FOR EXPEDITED HEARING

TO THE HONORABLE MARK T. PITTMAN, UNITED STATES DISTRICT JUDGE:

COMES NOW J. Robert Forshey, in his capacity as receiver ("Receiver"), and files this *Motion to Show Cause, to Enforce Panel Orders Against J. Shelby Sharpe, and Request for Expedited Hearing* ("Motion").

I. Expedited Hearing Requested

1. The Receiver requests an expedited hearing on this Motion, if possible, at 1:00 p.m. on August 14, 2025.

II. Factual Background

2. This Motion relates to the following:

a) This Court's Amended Final Order [ECF 438] ("Amended Final Order ") authorizing the sale of 100 acres of land located in Independence County, Arkansas;

b) Sealed Memorandum Opinion [ECF 54] ("First Order")[1] entered by the three-judge panel ("Panel") in Misc. Action no. 4:24-mc-0007-x; and

c) The Memorandum Opinion [ECF 61] ("Second Order") entered in the miscellaneous action when Mr. Sharpe sought reconsideration of the First Order.

3. Laura Davis, Whitney Martin, Annalisa Anderson, Christianson J. Anderon, and William Dale Behan (collectively, the "Appellants") have filed notices of appeal as to the Amended Final Order, which appeal is now docketed as Case No. 25-10905 before the Fifth Circuit Court of Appeals.

4. Through attorney J. Shelby Sharpe, Appellants have filed Appellants' Emergency Opposed Motion for Stay Pending Appeal [Doc. 20] ("Stay Motion"), a copy of which is attached as **Exhibit "1"**. Mr. Sharpe's representation of the Appellants in filing the Stay Motion violates the provisions of the Panel's Orders.

5. Pursuant to the First Order, Mr. Sharpe was ordered to withdraw from all litigation in the Northern District of Texas involving either the Behans or their former, associated, or affiliated corporations. One of these affiliated corporations is Hermitage Newark. At page 21, the First Order prohibits Mr. Sharpe from taking on any new clients for matters in the courts of the Northern District of Texas without the prior approval of the Panel.

6. Mr. Sharpe sought a partial reconsideration of the First Order which was denied pursuant to the Second Order.

7. However, in filing the Stay Motion seeking a stay pending appeal as to an order entered by this Court, Mr. Sharpe was clearly required to give legal advice in relation to litigation pending in the Northern District, including advising the Appellants regarding the application of

[1] The Memorandum Opinion has been unsealed at ECF no. 57.

Fed. Rule of Appellate Procedure 8(a) which requires any motion for a stay to be ordinarily filed first before this Court. The First Order states at pages 20 and 21 as follows:

> Sharpe:
>
> ***
>
> 2. Shall not give legal advice to Dale or Linda Behan or their companies, including River North, their former companies, their affiliated companies, or any other entity that bears any meaningful relation to the Behans in any matter in litigation in the Northern District of Texas;
>
> ***
>
> 4. Shall not represent any new client in the Northern District of Texas without the express, prior approval of the Panel.

First Order, pp. 20-21.

8. The First Order then clearly explains what the Panel considered to be practicing law in the Northern District:

> Lastly, and very importantly, the Panel wishes to make abundantly clear what it means when it says that Sharpe may not give legal advice in litigation involving the Behans in the Northern District of Texas. The Panel has learned that Sharpe has practiced law (again) in the Northern District of Texas since his suspension. **Sharpe's recent declaration admits as much when he states that he told Dale Behan of "some places to look for the response he was planning on filing." Sharpe stated that '[t]his referral was solely related to my role as appellate counsel so it would be part of the appellate record if an appeal became appropriate.'**
>
> Sharpe's view is incorrect. **Developing the district court record when there might be a future appeal is practicing law in the district court.** As such, Sharpe continued to practice in the Northern District of Texas while suspended. At this point, Sharpe has shown no regard for either Judge Pittman's orders or now the order upholding his temporary suspension.

First Order, pp. 22-23 (emphasis added).

9. Mr. Sharpe is not believed to have ever previously represented any of the Appellants, and has never represented the Appellants in this litigation. By filing the Stay Motion, Mr. Sharpe is representing new clients in the Northern District in violation of the Panel's Orders.

10. In order for Mr. Sharpe to represent the Appellants in filing the Stay Motion for a stay pending appeal of the Amended Final Order entered by this Court, he had to, by necessity, consult with and advise Appellants in litigation involving the Behans and one of their related entities ("Hermitage Newark") in the Northern District of Texas. The Panel held that developing the district court record for a future appeal to the Fifth Circuit is practicing law in the Northern District (First Order, pp. 22-23). Consequently, advising clients on how to obtain a stay of an order entered by a court in the Northern District is also practicing law in the Northern District, especially given the provisions of FRAP 8(a) that a motion for a stay pending appeal must ordinarily be filed first in this Court. This violates the prohibition against taking on new clients in relation to matters pending in the Northern District of Texas, and the litigation in question directly involves the Behans and an affiliated entity, Hermitage Newark.

11. Mr. Sharpe's current representation of the Appellants in filing the Stay Motion involves practicing law in the Northern District in violation of the Panel's Orders:

a) The order for which Mr. Sharpe now seeks a stay arises out of litigation in the Northern District in which the Behans are the central figures and relates to one of the Behans' affiliated entities;

b) In order to advise the Appellants with regard to the Stay Motion, Mr. Sharpe, by necessity, had to counsel with and advise them on the following matters:

i. Mr. Sharpe had to advise the Appellants regarding the record of the proceedings before this Court leading up to the entry of the Amended Final Order;

ii. Mr. Sharpe had to advise the Appellants regarding the Amended Final Order entered by this Court and the Appellants' potential rights to appeal such an order;

iii. Mr. Sharpe had to advise the Appellants regarding their rights to seek a stay pending appeal, including the requirements of FRAP 8(a) that the motion for a stay appeal must ordinarily be filed first with this Court and potential courses of action available to avoid filing such a stay motion before this Court.

c) The Appellants, who Mr. Sharpe has never represented before, are the Behans' children or step-children; and

d) Advising the Behans' children regarding a stay of an order entered in the Behans' receivership case relating to one of their associated companies, including the record before this Court, the Final Amended Stay Order, and the application of FRAP 8(a) to the Stay Motion, is practicing law in the Northern District in violation of the Panel's Orders.

12. Moreover, Mr. Sharpe has heretofore represented the Behans, the Receiver's predecessors in interest, in this and other litigation. However, the Appellants have brought suit against both the Behans and the Receiver in state court in Independence County, Arkansas. This creates a clear conflict of interest as Mr. Sharpe cannot sue his former clients (the Behans) or the Receiver as their successor in interest.

III. Motion to Enforce the Panel's Orders

13. The Receiver moves the Court for appropriate relief against Mr. Sharpe to enforce the Panel's Orders. This includes:

a) Requiring Mr. Sharpe to appear at the hearing on this Motion at 1:00 p.m. on August 14, 2025, to show cause why the relief sought herein should not be granted;

b) A finding by this Court that, by representing the Appellants in relation to the Stay Motion, Mr. Sharpe violated the Panel's Orders;

c) Enjoining Mr. Sharpe from further violation of the Panel's Orders, including representing Appellants, either directly or individually, or in any manner assisting the Appellants or any other person in any future motions for a stay pending appeal from orders entered by this Court. Such a representation must, by necessity, include advising the Appellants or other persons as to the record of proceedings before this Court, their potential rights to attack the orders entered by this Court, and potentially their rights to such a stay pending appeal;

d) Requiring Mr. Sharpe to withdraw from the Appellants' current Stay Motion;

e) Granting appropriate sanctions against Mr. Sharpe, including for the expense to the Receivership of responding to the Stay Motion; and

f) Permanently disbarring Mr. Sharpe from the future practice of law before the Northern District of Texas.

Prayer for Relief

Receiver prays that the above Motion be granted and for all appropriate relief.

Date: August 11, 2025

Respectfully submitted,

/s/ J. Robert Forshey

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AS RECEIVER

CERTIFICATE OF CONFERENCE

I have attempted to confer with Mr. Sharpe and believe that he is opposed to the relief sought herein.

/s/ J. Robert Forshey
J. Robert Forshey

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all parties receiving electronic notice via the Court's CM/ ECF system, if available, and on the parties listed below by United States, first class postage prepaid by mail on August 11, 2025.

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/s/ J. Robert Forshey
J. Robert Forshey

Exhibit "1"

No. 24-10905

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

WESLEASE 2018 OPERATING LP,

Plaintiff

v.

LINDA BEHAN and DALE BEHAN;

Defendants

LAURA DAVIS, WHITNEY MARTIN,
ANNALISA ANDERSON, CHRISTIANSON J. ANDERSON
And WILLIAM DALE BEHAN

Appellants

v.

J. ROBERT FORSHEY, RECEIVER

Appellee

On appeal from the United States District Court
for the Northern District of Texas
Case No. 4:20-CV-776-P, Judge Mark T. Pittman

APPELLANTS' EMERGENCY[1] OPPOSED MOTION FOR STAY PENDING APPEAL

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[1] Relief is Requested by August 12, 2025

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Counsel for Appellants

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

- Dale and Linda Behan—as Defendants to the judgment.
- Weslease 2018 Operating LP—as Plaintiff to the judgment.
- Hermitage Newark, LLC. — as non-party to the judgment whose land and personal property are to be sold by Receiver to apply to a judgment of part owners of the company Dale and Linda Behan.
- Laura Davis, Whitney Martin, Annalisa Anderson, Christianson J. Anderson and William Dale Behan, Appellants who are 50% owners of Hermitage Newark, an Arkansas limited liability company, a non-party to the judgment.
- Select Sands America Corporation, who has two easements on the land of Hermitage Newark to be sold by the Receiver,
- First Security Bank has a mortgage on the property of Hermitage Newark property to be sold by the Receiver,
- Inveniam Principal Investing Mezzanine 2 Limited Partnership, who has a mortgage and security agreement on the land of Hermitage Newark,

- Union Pacific Railroad Company, who has a default judgment lien recorded against the property of Hermitage Newark to be sold by the Receiver,
- Innovative Sand Solutions, LLC, Bull Moose Pipeline, LLC, and Lindale Pipeline, LLC—as Defendants in the underlying judgment,
- J. Shelby Sharpe—counsel for Appellants,
- Justin N. Byran of McCathern, PLLC—counsel for Plaintiff,
- J. Robert Forshey, Receiver,
- Vartabedian Hester & Haynes, LLP, counsel for the Receiver.

/s/ J. Shelby Sharpe
J. Shelby Sharpe

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Federal Cases

Pursuant to Federal Rule of Appellate Procedure 8, Appellants Laura Davis, Whitney Martin, Annalisa Anderson, Christianson J. Anderson, and William Dale Behan, hereafter "Hermitage Owners," who own 50% interest in Hermitage Newark, LLC, an Arkansas limited liability company, hereafter "Hermitage LLC," hereby move for a stay pending the appeal of the district court's Amended Final Order Granting Receiver's Motion To (A) Modify Sale Order, (B) Sell Land Free and Clear, (C) Authorize Intervention of Hermitage Newark, LLS, (D) Distribute Sales Proceeds, and (E) Other Associated Relief [ECF 438], which authorizes Receiver, J. Robert Forshey, to sell property of non-judgment debtor Hermitage LLC that has never been in *custodia legis* of the district court and enjoins Hermitage Owners from pursing their Arkansas litigation challenging the legal authority of Receiver to sell Hermitage LLC property and ordering them to release the Lis Pendens. [ECF 438] Ex. A. Hermitage Owners, who are also non-judgment debtors, have no recourse to stay the order by filing a supersedeas bond because there is no judgment against them to supersede.

As explained in Section II below, this motion is made on an emergency basis to this Court, since going before the district court first would be impractical because until Hermitage Owners filed their notices of appeal, they had never been subject to the jurisdiction of the district court since they are not parties to the judgment and neither is Hermitage LLC., whose property the district court has ordered sold to apply to the judgment. Hermitage Owners request an immediate ruling by August 12, 2025.

Appellee, J. Robert Forshey ("Receiver") is opposed. The district court's order and other relevant documents are submitted herewith.

I. SUMMARY

This appeal arises from an order granting Receiver authority to sell property belonging to non-judgment debtor Hermitage LLC, that Hermitage Owners own 50% in Hermitage LLC and ordering Hermitage Owners to dismiss a suit for declaratory relief filed in circuit court in Arkansas. Ex. A. At the time Receiver was appointed, neither Hermitage LLC nor Hermitage Owners were given any notice of the order appointing Receiver.

Also, the property of Hermitage LLC has never been held by the district court in *custodia legis* because the company and its property have never been a part of the suit that resulted in a judgment that Receiver has been appointed to collect. While Dale and Linda Behan own a 50% interest in Hermitage LLC and their ownership might be subject to sale to apply to the judgment, their ownership interest their ownership in the company does not make the property of Hermitage LLC, which "is an entity distinct from its member or members," according to Arkansas law Title 4, Chapter 38-108(a), subject to the district court judgment. Accordingly, this does not place the property of Hermitage LLC in *custodia legis* in the district court.

Therefore, the district court has no jurisdiction to approve Receiver selling property of Hermitage LLC nor does the district court have jurisdiction to order Hermitage Owners to dismiss their declaratory judgment suit in the circuit court in

Arkansas where the Hermitage LLC property is located and to release the *Lis Pendens* they caused to be filed related to their suit in the circuit court. Ex B.

II. GOOD CAUSE EXISTS FOR EMERGENCY RELIEF, AND FIRST SEEKING RELEIF FROM THE DISTRICT COURT WOULD BE IMPRACTICABLE

Under Federal Rule of Appellate Procedure 8, a party should ordinarily seek a stay of a final decision from the district court. However, Hermitage Owners have never been parties in any suit before the district court. Their only appearance in the district court was when they had to file notices of appeal of an order affecting them and Hermitage LLC in which they own 50% interest. Thus, the two-step process would be "impracticable."

Examples of exceptions for impracticability may where, *e.g.*, the order shows a commitment to a particular course of action, where the motion would not require factual findings on new evidence, where the urgency of the matter creates a risk that harm might occur during completion of the two-step process, or where the circumstances otherwise indicate it would serve little purposes to require another motion to the district court. *See, e.g., Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 411 (5th Cir. 2013) (granting motion where harm could begin as soon as the "the day after the district court issued its opinion and final judgment"); *Chem. Weapons Working Grp. v. Dep't of the Army,* 101 F.3d 1360, 1362 (10th Cir. 1996) (discussing various exceptions); *McClendon v. City of Albuquerque,* 79 F.3d 1014, 1020

(10th Cir. 1996) (granting motion where another motion to the district court would "serve little purpose"). Local Rule 27.3 allows emergency motions for good cause.

Here, impracticability and good cause are to be found on all of the foregoing factors. The grounds for stay are based on binding precedents. The district court has over previous objections granted motions of Receiver to sell property of non-judgment debtors including that of River North Farms, Inc whose property in Hood County was sold because of judgment debtors Dale and Linda Behan's ownership of stock in the corporation that was transferred by a turnover order.

Concerning this transfer of the Behans' stock, this Court noted in an opinion dismissing appeals as moot because of an appointment of Receiver that this was not in accordance with decisions of the Texas Supreme Court nor this Circuit. See Ex. C page 6 in a footnote reading any "rights in real property owned by River North, a non-judgment debtor third party.") In this footnote cited in Ex C, this Court also cited *Dole Food Co. v. Patrickson*, 588 U.S. 468, 475 (2003), for the proposition that a person's ownership of stock in a corporation "does not own the corporation's assets." Ex. C, page .7. Also, the Court cited *Bollore* S.A. *v. Imp. Warehouse, Inc.*, 448 F.3d 317, 322 (5th Cir. 2006), holding that Texas court have consistently held that assets of a court may not reach the "assets of non-judgment [debtor] third parties." Ex. C page 7.

The order appealed that is the subject of this emergency motion does not give Hermitage Owners sufficient time to try to get the district court to consider a stay, which his prior conduct reveals he would not grant even if they had sufficient time.

III. ARGUMENT

A. Applicable legal standards

The purpose of a stay pending appeal is to "maintain the status quo pending a final determination on the merits of the suit" by the appellate court. *See, e.g., Ruiz v. Estelle,* 650 F.2d 555, 565 (5th Cir. Unit A 1981).

In general, stays pending appeal are determined by balancing four factors: "(1) whether the movant has made a showing of likelihood of success on the merits, (2) whether the movant has made a showing of irreparable injury if the stay is not granted, (3) whether the granting of the stay would substantially harm other parties, and (4) whether the granting of the stay would serve the public interest." *E.g., United States v. Baylor Univ. Med. Ctr.*, 711 F.2d 38, 39 (5th Cir. 1983). This Court has "refused to apply these factors in a rigid, mechanical fashion." *Id.*

The likelihood of success on the merits does not require a mathematical probability of success, as a movant "need only present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay." *Baylor Univ. Med. Ctr.*, 711 F.2d at 39.

B. Hermitage Owners have a likelihood of success on appeal.

Although likelihood of success does not require a "probability" of success, there is such a high "probability" here because the order violates multiple pronouncements of this Court. While page limitations prevent a full discussion, a summary of the major arguments is sufficient to demonstrate a substantial case on multiple grounds.

1. Hermitage LLC Property Not in Custodia Legis

The district court order declares that Hermitage Owners "State Court Lawsuit and Lis Pendens interfere with this Court's exclusive *in rem* jurisdiction over the assets of Hermitage Newark, including as to the land, all of which are held in *custodia legis* by this Court." Ex. A page 6.

The determinative defect in the district court order is that the Arkansas property of Hermitage LLC, in which Hermitage Owners own a 50% interest in the company, has never been in *custodia legis* of the district court. This is fundamental to the applicability of the doctrine.

The doctrine of *custodia legis* is predicated on the power of a court to be able to take control of property of a party, which Hermitage LLC is not a party before the court, that is often the situation in bankruptcy cases. *In re Meter Maid Industries, Inc.* 462 F.2d 436, 438 (5th Cir. 1972). In bankruptcy, it relates to the court's "control over the assets of a bankrupt's estate," not the assets of a third party, which Hermitage LLC is. *Id.*

Arkansas courts have recognized the "nearly universal rule" that a limited liability company and its members are separate and distinct entities." *Anderson v. Stewart*, 366 Ark. 203, 208, 234 S.W.3d 295, 298 (2006). The preceding quoted language was taken from the Arkansas Limited Liability Company Act where Hermitage LLC was formed. Arkansas Code Title 4, Chapter 38 Section 4-38-108(a). Ex. D.

Furthermore, a] limited liability company is not merely an informal business association. It is a legal entity distinct from its members." 54 C.J.S. Limited Liability

Companies §3. "Even where a limited liability company has a sole shareholder, it is an entity separate and distinct from that shareholder in terms of procedural capacity." 51 Am. Jur.2d Limited Liability Companies §1.

There is little case lase on the Arkansas Limited Liability Company Act because it was so recently enacted. However, Arkansas case law addressing the relationship of stockholders to corporation property should be argumentative since the relationship of owners to companies is identical. The United States Eight Circuit has recognized that "A corporation and its stockholders are separate and distinct entities even though a stockholder may own the majority of the stock." *Epps v. Stewart Info. Servs. Corp.*, 327 F.3d 642, 649 (8th Cir. 2003). See also *McCall Law Firm, PLLC v. Crystal Queen, Inc.*, 2020 U.S. Dist. LEXIS 263722, 2020 WL 13337788 (Eastern Dist. of Arkansas).

Additionally, Texas case law is argumentative in that the relationship of a limited liability company to its members is relevant. In *WC 4th v. LaZona Rio*, LLC, 2024 Tex. App. LEXIS 1905, 2024 WL 1138568 *34 (Tex. App. – El Paso 2024, no pet.), involving a "Receivership Order," ordering the turnover of business interests "including limited liability companies and limited partnerships," the court wrote that "under Texas law . . . only 'interest' in the partnership or the LLC would be limited to its share of the profits and its right to receive distributions." The opinion goes to explain that "a member of a limited liability or its assignee does not have an interest in any specific property of the company." *Id.* "Thus, this provision of the Receivership Order would have at most,

[grant] authorization to collect . . . interest in receiving profits or distributions from . . . the LLC." *Id.*

Simply looking at the district court order statements reveals that the Hermitage LLC property cannot be in *custodia legis*. Accordingly, Hermitage Owners' suit in Circuit Court in Arkansas is proper because the district court does not have the Hermitage LLC property in *custodia legis*.

2. Hermitage Owners Rights in Hermitage LLC Property Determined Contrary to Due Process. .

The Fifth Amendment to the United States Constitution requires that a person, which would include Hermitage Owners and Hermitage LLC, cannot be deprived of their property without due process.

The first requirement of due process consists of receiving notice. *Ray v. Norseworthy*, 90 U.S. 128, 136 (1875). "An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and an opportunity for hearing appropriate to the nature of the case." *Cleveland Bd. of Educ. v. Loudermilk*, 470 U.S. 532, 542 (!985) Neither Hermitage Owners nor Hermitage LLC received notice that the property of Hermitage LLC was considered part of the suit resulting in a judgment in the district court. Giving notice of a hearing to Hermitage Owners on Receiver's motion to collect a judgment that is not against Hermitage Owners or Hermitage LLC to sell property belonging to Hermitage LLC requiring them to appear and prove any objection to the sale is not due process under any measure.

Second, requiring Hermitage Owners to prove their right to object to Receiver's selling of property owned by Hermitage LLC is contrary to due process where the burden is on one seeking to deprive one of property. *Green v. Greenwood Pub. Sch. Dist.*, 890 F.3d 240, 241 (5th Cir. 2018). Receive had no burden of proof. His motion merely alleged that Dale and Linda Behan owned an interest in Hermitage LLC [ECF 359]. But their ownership interests in Hermitage LLC, according to the authorities cited herein, did not give Receiver or the district court jurisdiction over Hermitage LLC or its property. The Behans did not even have the right to sell Hermitage LLC property to pay for their debts.

The Receiver's original motion did not give notice to Hermitage Owners. [ECF 359]. It was not until his supplement to the motion that notice was sent to Hermitage Owners with the allegation that they "are well aware of the issue and, to the extent that they interfere with this Court's *in rem* jurisdiction going forward, they should be sanctioned or held in contempt." [ECF 414] The supplement further alleged "any action in regard to Hermitage Newark and its assets, including the Land, must be brough in this Court based upon its exclusive *in rem* jurisdiction over Hermitage Newark and its assets." [ECF 414]. In other words, the burden was being placed on Hermitage Owners to prove their right to stop Receiver and why they should not drop their suit in Arkansas. This is totally contrary to all due process requirements.

Therefore, the district court order authorizing Receiver to sell Hermitage LLC property and ordering Hermitage Owners to drop their Arkansas suit is precluded by the Fifth Amendment to the United States Constitution.

C. Hermitage Owners will be irreparably harmed if a stay is not granted.

As to the second factor, a threatened injury is "irreparable" if it cannot be "undone" through monetary remedies. *Deerfield Medical Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981) (quoting, *e.g.*, *Parker v. Dunlop*, 517 F.2d 785, 787 (5th Cir. 1975)). Or, stated another way, the question is whether a future remedy in the litigation would provide "adequate compensation" to make the appellant whole. *See, e.g., Mississippi Power & Light Co. v. United Gas Pipeline Co.*, 760 F.2d 618, 623-25 (5th Cir. 1985).

Hermitage Owners, who are not parties to the judgment, are not involved in the litigation in the district court where they would be entitled to any judicial remedy. Furthermore, the property is unimproved land with unique features that have value beyond the sale as proposed, which even if the sale occurs pending the appeal, could be destroyed if transferred to new owners. The impact on Hermitage Owners' interest in Hermitage LLC cannot be quantified.

D. Granting the Stay Will Not Harm Other Parties

Granting this emergency motion will not harm any other party. This unimproved land has been as it is for decades. The property in its current state will not change if the stay is granted until the appeal is final.

E. Public Interest Would Be Served in Favor of a Stay

There is nothing Receiver placed in evidence before the district court that seeking the order to sell the Hermitage LLC property suggests any urgency and not granting it would not serve the public interest.

IV. PRAYER

For the foregoing reasons, Laura Davis, Whitney Martin, Annalis Anderson, Christianson J. Anderson, and William Dale Behan request an emergency stay of the district court's order [ECF 438] pending appeal.

Respectfully submitted,

/s/ J. Shelby Sharpe
J. Shelby Sharpe
TX Bar No. 18123000
utlawman@aol.com
6100 Western Place, Suite 912
Fort Worth, Texas 76107
(817) 338-4900
(817) 332-6818 Fax No.
Counsel for Appellants

CERTIFICATE OF CONFERENCE

Counsel for Appellants sent an email on Thursday, August 7, 2025, asking if Receiver J. Robert Forshey would agree to a stay pending appeal that was responded to by email of August 7, 2025, opposing the stay.

/s/ J. Shelby Sharpe
J. Shelby Sharpe

CERTIFICATE OF SERVICE

On August 8, 2025, the foregoing document will be served electronically on all counsel of record via the Court's ECF system.

/s/ J. Shelby Sharpe
J. Shelby Sharpe

CERTIFICATE OF COMPLIANCE

Not counting the cover page, certificate of interested persons, tables, signature block, certificate of conference, and certificate of service, the forgoing motion contains 3798 words as automatically determined by Microsoft Word, using 14-point, double-spaced Garamond font with one-inch margins on each page.

/s/ J. Shelby Sharpe
J. Shelby Sharpe

EXHIBIT

C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WESLEASE 20218 OPERATION LP,	§	
	§	
Plaintiff.	§	
	§	
v.	§	**Cause no. 4:20-cv-00776-P**
	§	
INNOVATIVE SAND SOLUTIONS, LLC, BULL MOOSE PIPELINE, *LLC*, DALE BEHAN, AND LINDA BEHAN	§	
	§	
Defendants.	§	

AMENDED
RESPONSE TO MOTION TO SHOW CAUSE
AND TO ENFORCE PANEL ORDERS

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

J. Shelby Sharpe, *pro se*, hereafter "Sharpe," files this amended response to Motion to Show Cause, To Enforce Panel Orders against J. Shelby Sharpe, and For Expedited Hearing, hereafter "Motion," and the Court's Show Cause Order, and would respectfully show to the Court that Sharpe has not violated any orders of the panel or of this Court.

SUMMARY OF MOTION

(1) In essence, the Motion alleges that Sharpe has practiced in the Northern District of Texas since being ordered by the three-judge panel not do so without first seeking permission from the panel.

(2) The Motion contends that "Sharpe's representation of the Appellants in filing the Stay Motion violates the provisions of the Panel's Orders." Motion, paragraph 4.

(3) The Motion goes on to allege that "Sharpe was clearly required to give legal advice in relationship to litigation pending in the Northern District" and the application of Fed. Rule of Appellate Procedure 8(a)." Motion, paragraph 7.

(4) The Motion contends that by "filing the Stay Motion, Mr. Sharpe is representing new clients in the Norther District in violation of the Panels' Orders." Motion, paragraph 9.

(5) Next, the Motion alleges that "by necessity" Sharpe had to "consult with and advise Appellant in litigation . . . in the Northern District." In connection with this allegation, it is alleged that "advising clients on how to obtain a stay of an order entered by a court in the Norther District is also practicing law in the Norther District," This conduct is alleged to be "taking new clients in relation to matters pending in the Northern District" violates "the prohibition of the Panel Orders. Motion, paragraphs 10 and 11.

(6) Lastly, the Motion contends that because "Appellants have brought suit against both the Behans and the Receiver in state court in Independence County, Arkansas" this "creates a clear conflict of interest as Mr. Sharpe cannot sue

his former clients (the Behans) or the Receiver as their successor in interest." Motion, paragraph 12.

SUMMARY OF ORDER TO SHOW CAUSE

(7) The Court states that Sharpe filed the motion to stay this Court's order pending appeal that "Sharpe was required to first file a motion to stay this Court's order in the district court," which the Court declares required him to counsel the "Behans and Appellants on obtaining a stay" is "practicing law in the Northern District."

(8) The Court declares that developing the record in the district court is practicing law in the Northern District.

(9) The Court states that the emergency motion that Sharpe filed establishes he is now "representing new clients in the Norther District of Texas," which is contrary to the Panel's order that Sharpe not represent any new client without first obtaining permission from the Panel.

(10) Lastly, the Court order states that because Sharpe has represented the Behans for years and recently his clients brought suit in Arkansas against the Behans and the Receiver, Sharpe has a conflict of interest in representing his new clients on appeal in the Fifth Circuit.

RESPONSE TO MOTION AND ORDER

(11) The determinative response that defeats the Motion is the only conduct accurately stated is Sharpe filed an emergency motion for stay in the Fifth Circuit, which is practicing in the Fifth Circuit, not the Northern District of Texas. The attached declarations from the individuals Sharpe represents in the Fifth Circuit as well as Sharpe's declaration refute every speculation on what Sharpe supposedly did in this Court.

(12) The Court knows that none of these individuals ever appeared in this Court in connection with the motion to authorize the Receiver to sell Hermitage Newark property in Arkansas.

(13) The only individual Sharpe represents on appeal who appeared before the Court is Annalisa Anderson, who only appeared in connection with water pumps belonging to her company, which is not a part of the appeal.

(14) The first entry of appearance by Sharpe's clients in this Court was when they filed their notices of appeal, which Sharpe had nothing to do with according to the sworn testimony in their declarations.

(15) Sharpe had no contact with his clients until after they contacted him after they filed their notices of appeal, which he swears under oath that he did not prepare or assist in the preparation.

(16) Nothing in the Motion contends that Sharpe is prohibited from practicing in the Fifth Circuit, only in the Northern District of Texas.

(17) The filing of the emergency motion for stay that the Fifth Circuit has asked the Receiver to file a response is an act in the Fifth Circuit, not the Northern District of Texas.

(18) Rule 8(2) of the Federal Rules of Appellate Procedure does not require that a motion for stay **must** first be filed in the district court. In fact Rule 8(2)(D) requires such a motion to be filed in the circuit court. While a motion for stay is usually filed in the district court, this is not required if the two-step process is satisfied not to do this, which obviously occurred, or the Fifth Circuit would not have requested Receiver to file a response.

(19) The declarations of Sharpe's clients are clear that Sharpe did nothing for them in this Court since they were never there except to file notices of appeals so he could not have helped them with any record for appeal.

(20) Sharpe is not representing any hew clients in the Northern District, where he has not appeared on their behalf, but only in the Fifth Circuit, which the Panel's Orders do not prohibit.

(21) There cannot be a conflict of interest in Sharpe representing his clients in the Fifth Circuit based on the Arkansas litigation where Sharpe is not involved in

that litigation and only learned of it after it was filed, according to Sharpe's declaration.

APPELLATE VERSUS TRIAL COURT

(22) The district court is governed by the Federal Rules of Civil Procedure while the appellate courts are governed by the Federal Rules of Appellate Procedure.

(23) All of Sharpe's conduct alleged in the motion that is supported by fact and not speculation or conjecture is governed by the Federal Rules of Appellate Procedure.

CONCLUSION

(24) Sharpe has been very careful to abide by the Panel's Orders by having all of his conduct reviewed in advance of it happening by his attorney Marshall Searcy, Jr., who would be representing Sharpe but for the fact is out of state on vacation and could not get back in time for the filing of this response and to attend the hearing. However, he reviewed this response before it was filed.

PRAYER

(25) Wherefore, J. Shelby Sharpe prays that the Court give an objective review of the Motion measured against the undisputed facts and deny the Motion.

Respectfully submitted,

/s/J. Shelby Sharpe, *Pro se*

J. SHELBY SHARPE
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utlawman@aol.com
Law Office of J. Shelby Sharpe
6100 Western Place, Suite 912
Fort Worth, Texas 76107
Telephone : (817) 338-4900
Fax No (817) 332-6818.

CERTIFICATE OF SERVICE

On August 13, 2025, the foregoing document will be served electronically on all counsel of record via the Court's ECF system.

/s/ J. Shelby Sharpe
J. Shelby Sharpe, *Pro se*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WESLEASE 20218 OPERATION LP,	§	
	§	
Plaintifs.	§	
	§	
v.	§	**CAUSE NO. 4:20-cv-00776-P**
	§	
INNOVATIVE SAND SOLUTIONS, LLC, BULL MOOSE PIPELINE, *LLC*, DALE BEHAN, AND LINDA BEHAN	§	
	§	
Defendants.	§	

DECLARATION OF ANNALISA ANDERSON

(1) My name is Annalisa Anderson. My address is 159 Waggoner Court, Fort Worth, Texas 76108. I am over the age of 18 years and competent to make this declaration which is based on my personal knowledge.

(2) J. Shelby Sharpe is my appellate lawyer in the Fifth Circuit.

(3) I retained him by signing a fee agreement letter to handle an appeal to the Fifth Circuit after the district court granted permission to Receiver J. Robert Forshey to sell property belonging to Hermitage Newark, an Arkansas limited liability company in which I own an interest in the company.

(4) Prior to asking him to handle an appeal to the Fifth Circuit, I had no communication with him at all concerning the suit in the court in which this

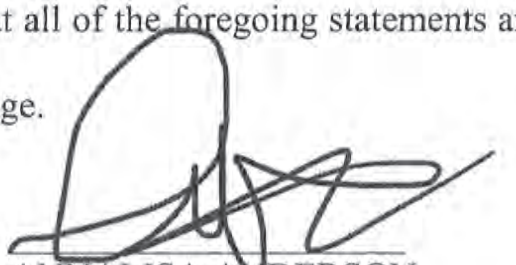
declaration is being filed attached to a response I understand Mr. Sharpe will be filing in response to some motion against him.

(5) Mr. Sharpe did not assist me with the notice of appeal that I signed without his or any lawyer's help.

(6) I know he did not file my notice of appeal.

(7) Mr. Sharpe has given me no advice in the Fifth Circuit other than to agree to represent me in the appeal, which is not advice.

I swear under penalty of perjury that all of the foregoing statements are true and correct based on my personal knowledge.



ANNALISA ANDERSON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WESLEASE 20218 OPERATION LP,	§	
	§	
Plaintiff.	§	
	§	
v.	§	**CAUSE NO. 4:20-cv-00776-P**
	§	
INNOVATIVE SAND SOLUTIONS, LLC, BULL MOOSE PIPELINE, *LLC*, DALE BEHAN, AND LINDA BEHAN	§	
	§	
Defendants.	§	

DECLARATION OF LAURA DAVIS

(1) My name is Laura Davis. My address is 354 S. Waverly Way, Baton Rouge, Louisiana, 70306. I am over the age of 18 years and competent to make this declaration which is based on my personal knowledge.

(2) J. Shelby Sharpe is my appellate lawyer in the Fifth Circuit.

(3) I retained him by signing a fee agreement letter to handle an appeal to the Fifth Circuit after the district court granted permission to Receiver J. Robert Forshey to sell property belonging to Hermitage Newark, an Arkansas limited liability company in which I own an interest in the company.

(4) Prior to asking him to handle an appeal to the Fifth Circuit, I had no communication with him at all concerning the suit in the court in which this

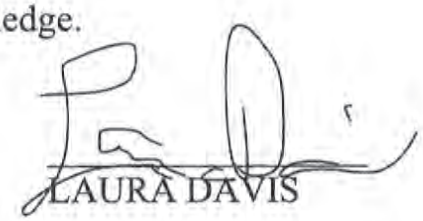
declaration is being filed attached to a response I understand Mr. Sharpe will be filing in response to some motion against him.

(5) Mr. Sharpe did not assist me with the notice of appeal that I signed without his or any lawyer's help.

(6) I know he did not file my notice of appeal.

(7) Mr. Sharpe has given me no advice in the Fifth Circuit other than to agree to represent me in the appeal, which is not advice.

I swear under penalty of perjury that all of the foregoing statements are true and correct based on my personal knowledge.



LAURA DAVIS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WESLEASE 20218 OPERATION LP,	§	
	§	
Plaintiff.	§	
	§	
v.	§	**CAUSE NO. 4:20-cv-00776-P**
	§	
INNOVATIVE SAND SOLUTIONS, LLC, BULL MOOSE PIPELINE, *LLC*, DALE BEHAN, AND LINDA BEHAN	§	
	§	
Defendants.	§	

DECLARATION OF WHITNEY E. MARTIN

(1) My name is Whitney E. Martin. My address is 200 Leavines Road, Boyce, Louisiana, 71409. I am over the age of 18 years and competent to make this declaration which is based on my personal knowledge.

(2) J. Shelby Sharpe is my appellate lawyer in the Fifth Circuit.

(3) I retained him by signing a fee agreement letter to handle an appeal to the Fifth Circuit after the district court granted permission to Receiver J. Robert Forshey to sell property belonging to Hermitage Newark, an Arkansas limited liability company in which I own an interest in the company.

(4) Prior to asking him to handle an appeal to the Fifth Circuit, I had no communication with him at all concerning the suit in the court in which this

declaration is being filed attached to a response I understand Mr. Sharpe will be filing in response to some motion against him.

(5) Mr. Sharpe did not assist me with the notice of appeal that I signed without his or any lawyer's help.

(6) I know he did not file my notice of appeal.

(7) Mr. Sharpe has given me no advice in the Fifth Circuit other than to agree to represent me in the appeal, which is not advice.

I swear under penalty of perjury that all of the foregoing statements are true and correct based on my personal knowledge.

WHITNEY E. MARTIN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WESLEASE 2018 OPERATING, LP,	§	
	§	
Plaintiff.	§	
	§	
v.	§	**CAUSE NO. 4:20-cv-00776-P**
	§	
INNOVATIVE SAND SOLUTIONS, LLC, BULL MOOSE PIPELINE, LLC, DALE BEHAN, AND LINDA BEHAN	§	
	§	
Defendants.	§	

DECLARATION OF WILLIAM DALE BEHAN

(1) My name is William Dale Behan. My address is 4120 Flintridge Drive, Dallas, Texas 75244 I am over the age of 18 years and competent to make this declaration which is based on my personal knowledge.

(2) J. Shelby Sharpe is my appellate lawyer in the Fifth Circuit.

(3) I retained him by signing a fee agreement letter to handle an appeal to the Fifth Circuit after the district court granted permission to Receiver J. Robert Forshey to sell property belonging to Hermitage Newark, an Arkansas limited liability company in which I own an interest in the company.

(4) Prior to asking him to handle an appeal to the Fifth Circuit, I had no communication with him at all concerning the suit in the court in which this declaration is being filed attached to a response I understand Mr. Sharpe

will be filing in response to some motion against him.

(5) Mr. Sharpe did not assist me with the notice of appeal that I signed without his or any lawyer's help.

(6) I know he did not file my notice of appeal.

(7) Mr. Sharpe has given me no advice in the Fifth Circuit other than to agree to represent me in the appeal, which is not advice.

I swear under penalty of perjury that all of the foregoing statements are true and correct based on my personal knowledge.

W Dale Behan

WILLIAM DALE BEHAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WESLEASE 2018 OPERATION LP,	§	
	§	
Plaintiff.	§	
	§	
v.	§	**CAUSE NO. 4:20-cv-00776-P**
	§	
INNOVATIVE SAND SOLUTIONS, LLC, BULL MOOSE PIPELINE, *LLC*, DALE BEHAN, AND LINDA BEHAN	§	
	§	
	§	
	§	
Defendants.	§	

DECLARATION OF J. SHELBY SHARPE

(1) My name is J. Shelby Sharpe. My office address is 6100 Western Place, Suite 912, Fort Worth, Texas 76107. I am over the age of 18 years and competent to make this declaration which is based on my personal knowledge.

(2) I am the Respondent to the Motion to Show Cause, to Enforce Panel Orders against J. Shelby Sharpe, hereafter "Motion," which I have reviewed carefully and have filed a response to the Motion that this declaration will be attached.

(3) I had no contact with Laura Davis, Whitney Martin, Annalisa Anderson, Christianson J. Anderson, and Willaim Dale Behan before I was

contacted by them asking if I would represent them on appeal to the Fifth Circuit of an order, they had filed notices of appeal *pro se*.

(4) I did not assist or prepare or file the notices of appeal these people filed.

(5) At their request I prepared an engagement letter to represent them in the Fifth Circuit.

(6) After I received signed engagement letters, I entered an appearance for them in the Fifth Circuit.

(7) I reviewed the record in the suit they were asking me to represent them on appeal, which I did not assist in any way, to determine if they had standing to appeal the order, they wanted appealed.

(8) I determined that their notices of appeal, which was their first and only appearance in the district court, were sufficient to give them standing for an appeal.

(9) I then researched the law as it related to the order authorizing the sale of property belonging to Hermitage Newark, an Arkansas limited company in which my clients own a 50% interest.

(10) I analyzed the suit filed on their behalf in circuit court in Arkansas, in which I had no participation at all, and learned of it for the first time after it was filed.

(11) The appeal to the Fifth Circuit where I am representing my clients does not involve Dale and Linda Behan, only Receiver, J. Robert Forshey.

(12) Having analyzed the order, I determined an emergency motion was proper without seeking a stay from the district court.

(13) The Fifth Circuit considers the emergency motion proper without going to the district court or it would not have asked Receiver J. Robert Forshey for a response.

(14) All of my conduct for my clients has been in the Fifth Circuit and not in the Northern District of Texas.

(15) In fact, I have obeyed the three-judge panel's orders not to practice in the Northern District of Texas without first seeking their permission.

(16) The representation of my clients in the appeal to the Fifth Circuit is not practicing in the Northern District of Texas.

I swear under penalty of perjury that all of the foregoing statements are true and correct based on my personal knowledge.

J. SHELBY SHARPE

EXHIBIT

D

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
June 6, 2025
Lyle W. Cayce
Clerk

No. 24-10246
CONSOLIDATED WITH
Nos. 24-10366, 24-10822, 24-10898

WESLEASE 2018 OPERATING, L.P.,

Plaintiff—Appellee,

versus

LINDA BEHAN; DALE BEHAN,

Defendants—Appellants,

CONSOLIDATED WITH

No. 24-10460

WESLEASE 2018 OPERATING, L.P.,

Plaintiff—Appellee,

versus

LINDA BEHAN; DALE BEHAN,

Defendants—Appellants,

J. SHELBY SHARPE,

Appellant.

Appeals from the United States District Court
for the Northern District of Texas
USDC Nos. 4:20-CV-776

UNPUBLISHED ORDER

Before ELROD, *Chief Judge*, and KING and GRAVES, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the Behans' motion for an expedited ruling is DISMISSED AS MOOT.

Appellant.

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CV-776

Before ELROD, *Chief Judge*, and KING and GRAVES, *Circuit Judges*.

PER CURIAM:*

Dale and Linda Behan, two judgment creditors, appeal the district court's turnover order transferring an interest in stock from them to Weslease 2018 Operating, the judgment debtor. The Behans also appeal four orders enforcing the turnover order. Because the district court later superseded all of these orders when it appointed a receiver to take possession of the Behans' property, we DISMISS these consolidated appeals as moot.

I

Around a decade ago, Weslease 2018 Operating lent the Behans and several of their companies around $7 million in two separate loans to finance the purchase of equipment. The Behans and their companies failed to repay these debts. So Weslease sought, and later obtained, two judgments against them. *Weslease 2018 Operating, LP v. Behan*, No. 1:19-cv-157, slip op. at 1 (D.N.D. Dec. 22, 2021); *Weslease 2018 Operating, LP v. Innovative Sand Sols., LLC*, No. 4:20-CV-0776-P, 2022 WL 1604787, (N.D. Tex. May 10, 2022), *aff'd*, 2022 WL 17614861 (5th Cir. Dec. 13, 2022).

To collect on these two judgments, Weslease filed three turnover applications under Texas Civil Practice & Remedies Code § 31.002,[1] which

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* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

[1] The Federal Rules of Civil Procedure authorize federal courts to execute judgments using the law of the state in which the court is located. Fed. R. Civ. P. 69(a)(1).

permits judgment creditors to seize nonexempt property from judgment debtors to satisfy unpaid judgments. In the first two applications, Weslease requested certain real property owned by River North Farms, Inc., a corporation in which the Behans held all shares of outstanding stock. Both applications were denied on the grounds that Texas law only permits a judgment creditor to collect property owned by the judgment debtor. Because the real property was owned by River North, the courts held that it was not subject to turnover.

In February 2024, Weslease filed its third turnover application. This time, it requested the Behans' stock interest in River North and a list of all of the Behans' assets. The district court granted this request in the "Turnover Order," and ordered the Behans to "turnover all stock/membership in [River North] to the United States Marshals, Fort Worth office." As it explained, Weslease, by virtue of the Turnover Order, became the 100% owner of River North's stock. The Behans timely appealed this order.

Thereafter, Weslease attempted to access River North-owned real property. The Behans and their counsel, J. Shelby Sharpe, refused to grant Weslease access, asserting that the Behans remained River North's directors with exclusive authority over that real property. So, starting in March 2024, Weslease filed several motions to enforce the Turnover Order. The district court granted these motions in four separate "Enforcement Orders."

Generally speaking, the Enforcement Orders required the Behans to "refrain from interfering with Weslease's exercise of any and all rights conferred under the Turnover Order, or any other Order of this Court." For example, the court ordered the Behans to provide Weslease with "gate

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Here, Weslease filed its turnover applications in the U.S. District Court for the Northern District of Texas, so Texas law applies.

codes, keys, or anything else necessary for Weslease to access" the River North-owned real property after the Behans refused Weslease's requests for this information. The court also ordered the Behans to "withdraw or otherwise cause the nonsuit or dismissal" of state-court litigation that the Behans had filed on River North's behalf challenging Weslease's right to the real property.

In each of the four Enforcement Orders, the district court also ordered the Behans to pay Weslease's attorneys' fees. In the second and fourth orders, the court ordered the Behans to pay Weslease $5,000 as sanctions for their actions that led to the motions to enforce. Further, the court's second order held the Behans and Sharpe jointly and severally liable for the sanctions.

The Behans timely appealed each of these orders. We later consolidated the Behans' appeals of the Turnover Order and the four Enforcement Orders.

In September 2024, after these appeals were filed, the district court appointed a receiver to take "exclusive custody, control, and possession of non-exempt property of whatever kind and wherever situated" of the Behans, including "all entities owned in whole or to the extent they are owned in part by" the Behans. This order explicitly "supersede[d] and/or amend[ed]" the prior orders, except for the portions of the orders that awarded attorneys' fees and sanctions. The Behans did not appeal the order appointing a receiver.

II

The parties agree that we have jurisdiction over the appeals of the Turnover and Enforcement Orders because they are "final decision[s]" under 28 U.S.C. § 1291. *See Hewlett-Packard Co. v. Quanta Storage, Inc.*, 961

F.3d 731, 741–42 (5th Cir. 2020) (concluding that turnover and enforcement orders under Texas law are final and appealable under § 1291).

The Behans make two arguments regarding the Turnover Order: (1) Weslease's requested turnover relief is barred by res judicata because its two prior turnover applications were denied; and (2) the property ordered turned over is not subject to turnover under Texas law. The Behans argue that the Enforcement Orders are improper because they exceed the authority granted to the district court under Texas law. Weslease disagrees.

Weslease and the receiver, who submitted an *amicus* brief to the court, contend that these appeals are now moot following the appointment of the receiver. We consider mootness first because it is a "threshold jurisdictional inquiry." *DeOtte v. Nevada*, 20 F.4th 1055, 1064 (5th Cir. 2021) (citation omitted).

A

"[M]ootness accounts for such events that occur during the litigation." *Pool v. City of Houston*, 978 F.3d 307, 313 (5th Cir. 2020). "As a general rule, 'any set of circumstances that eliminates actual controversy after the commencement of a lawsuit renders that action moot.'" *Env't Conservation Org. v. City of Dallas*, 529 F.3d 519, 527 (5th Cir. 2008) (citation omitted). "If intervening circumstances make it impossible for the court to 'grant any effectual relief,' the case is moot." *Pool*, 978 F.3d at 313 (quoting *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012)).

Under similar circumstances, we recently concluded that a district court's post-appeal orders mooted the appeal in *Securities & Exchange Commission v. Barton*, No. 22-11242, 2024 WL 1087366, at *3 (5th Cir. Mar. 13, 2024). There, one party appealed the district court's ratification of a receiver's proposed settlement agreement. *Id.* at *2. After the appeal was filed, the district court entered a new receivership order and simultaneously

ratified the prior settlement agreement. *Id.* We explained that the appeal was moot because the post-appeal order had become the "'operative' ruling of the district court" that the appellant needed to attack to obtain its requested relief. *Id.* at *3. Similarly, we have dismissed an appeal as moot where district and bankruptcy courts had "effectively vacat[ed]" the order from which the appeal arose. *In re Ondova Ltd. Co.*, 619 F. App'x 362, 365 (5th Cir. 2015).

So too here. In this case, the district court's order appointing a receiver explicitly "supersedes and/or amends all portions of the court's prior orders directing the turnover of assets of any Receivership Parties to Weslease." The term "Receivership Parties" is defined to include "all entities owned in whole or to the extent they are owned in part by" the Behans. In other words, the Behans' property previously turned over to Weslease is now in the possession of the receiver.

The Behans contend that, following their appeals, the district court lacked jurisdiction to appoint a receiver. But they have not appealed the order appointing a receiver, so we do not consider the district court's jurisdiction to enter that order. *See Flast v. Cohen*, 392 U.S. 83, 96 (1968) ("[T]he oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions." (citation omitted)).

Accordingly, we cannot grant any effectual relief to the Behans. *See Pool*, 978 F.3d at 313. Any controversy now lies between the Behans and the receiver, not Weslease. These five appeals are now moot, except for the awards of attorneys' fees and sanctions, which the district court specifically left intact.[2] *See id.*

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[2] This opinion concludes only that these appeals are moot, not that the Behans' arguments are without foundation. Indeed, on the record and arguments before us, we question whether the Turnover Order's conveyance of stock to Weslease granted Weslease any rights in real property owned by River North, a non-judgment debtor third party. *See*

B

Having concluded that these five appeals are now moot, all that remains is for us to review the award of attorneys' fees and sanctions.

The Texas turnover statute permits a district court to award both attorneys' fees and sanctions. *See* Tex. Civ. Prac. & Rem. Code § 31.002(c), (e). The Behans do not argue that the awards themselves were improper. Rather, they contend that they are entitled to reimbursement for fees and sanctions because the Turnover and Enforcement Orders are "invalid." Weslease, by contrast, contends that the awards are proper because they were within the district court's discretion under § 31.002 and the underlying Orders were valid. While both parties addressed the possible mootness of the Orders, neither offered a proposed course of action with respect to the fees and sanctions in the event that we held that the Orders were moot.

We have previously concluded that we lacked § 1291 jurisdiction to resolve fee and sanction disputes where the underlying merits issues remained before the district court. In *Pool v. City of Houston*, for example, we held that an order denying attorneys' fees became an "interim" order when another panel of this court had remanded the merits issues to the district court. 858 F. App'x 732, 734 (5th Cir. 2021) (citing *Shipes v. Trinity Indus., Inc.*, 883 F.2d 339, 341–45 (5th Cir. 1989)). In *Quilling v. Funding Resource Group*, we did the same for contempt sanctions because the sanctions were

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Dole Food Co. v. Patrickson, 538 U.S. 468, 475 (2003) ("An individual shareholder, by virtue of his ownership of shares, does not own the corporation's assets . . . ."); *Bollore S.A. v. Imp. Warehouse, Inc.*, 448 F.3d 317, 322 (5th Cir. 2006) ("Texas courts construing the turnover statute have expressly and consistently held that it may be used to reach only the assets of parties to the judgment, not the assets of non-judgment [debtor] third parties."). The Behans may continue to press their substantive arguments in district court proceedings involving the receiver's possession of the Behans' property, or in appeals arising out of the same.

"part and parcel" of continuing litigation in the district court. 227 F.3d 231, 235–36 (5th Cir. 2000).

The district court may modify its conclusions underlying the Orders in future proceedings involving the receiver. If that occurs, the Behans and Sharpe may seek relief from the fee awards or sanctions. We decline to grant that relief at this juncture.

* * *

Accordingly, we DISMISS these appeals as moot.

EXHIBIT

E

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WESLEASE 2018 OPERATING, LP,

Plaintiff,

v. **No. 4:20-cv-00776-P**

INNOVATIVE SAND SOLUTIONS, LLC, ET AL.,

Defendants.

ORDER

Before the Court is Weslease 2018 Operating LP's ("Weslease") Motion for Disgorgement of Funds (ECF No. 198). The Court held a hearing on the Motion on September 25, 2024. *See* ECF No. 231. Having considered the briefing, applicable law, and arguments of the Parties, the Court hereby **GRANTS** the Motion in part and **DENIES** it in part.

The history of this case is long and arduous, and the Court will not revisit it here. In its Motion, Weslease asks the Court to disgorge Defense Counsel J. Shelby Sharpe ("Sharpe") of some $227,745. ECF No. 198 at 3. Weslease argues that these funds were improperly paid to Sharpe by Linda and Dale Behan (the "Behans") through River North Farms, LLC ("River North").[1] *Id.* at 2–3. Weslease contends that

[1]The Behans raise the argument that Weslease lacks standing to bring this Motion. The Court has repeatedly rejected that argument and does so again here.

Additionally, the Behans again raise the argument that Judge O'Connor's ruling in *Weslease 2018 Operating LP v. Behan, et al.*, 4:22-cv-1013-O (N.D. Tex. 2024) precludes the Court from finding that the Behans have used River North as an alter ego. Normally, Judge O'Connor's ruling would be binding on this Court. However, because the Behans' have transferred assets subject to the judgment in this case to River North, and new facts have been presented here that were not presented in that case, Judge O'Connor's ruling is not binding. *See, e.g., Baby Dolls Topless Saloons, Inc. v. City of Dallas, Tex.*, 295 F.3d 471, 479 (5th Cir. 2002) ("'[C]hanges in facts essential to a judgment will render collateral estoppel inapplicable in a subsequent action raising the same issues'") (quoting *Montana v. United States*, 440 U.S. 147, 159 (1979)). Therefore, any argument made in response to this motion, or any motion preceding it, rejecting the Court's ability to enforce its orders against River North, is rejected. It is

$127,745 was paid to Sharpe as improper attorney fees and $100,000 as a repayment for an "unknown" loan. Weslease urges the Court to disgorge the aforementioned payments from Sharpe under the Court's turnover order and Section 37 of the Restatement (Third) of the Law Governing Lawyers.

Texas law has adopted Section 37 of the Restatement (Third) of the Law Governing Lawyers. *See, e.g., Burrow v. Arce*, 997 S.W.2d 229, 238 (Tex. 1999) (incorporating then proposed Section 49 which is now official Section 37); *Izen v. Laine*, 614 S.W.3d 775, 791 (Tex. App.—Houston [14th Dist.] 2020, pets. denied) (collecting cases and applying Section 37). Section 37 provides:

> A lawyer engaging in clear and serious violation of duty to a client may be required to forfeit some or all of the lawyer's compensation for the matter. Considerations relevant to the question of forfeiture include the gravity and timing of the violation, its willfulness, its effect on the value of the lawyer's work for the client, any other threatened or actual harm to the client, and the adequacy of other remedies.

The Restatement (Third) of the Law Governing Lawyers, Section 37.

Beginning with the alleged repayment of an "unknown" loan, the Court finds that Weslease's Motion should be **GRANTED** with regards to the $100,000 repayment. Texas Disciplinary Rule of Professional Conduct 1.08(a) provides:

> (a) A lawyer shall not enter into a business transaction with a client, or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless:
>
> (1) the terms of the transaction or acquisition are fair and reasonable to the client, and are fully disclosed and transmitted to the client in a writing that can be reasonably understood by the client;
>
> (2) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing to

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clear to this Court that there can be no other description of River North other than that of an alter ego for the Behans.

> seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and
>
> (3) the client thereafter provides informed consent in writing to the terms of the transaction or acquisition, and to the lawyer's role in it, including whether the lawyer is representing the client in the transaction

TEX. DISC. R. PROF. COND. 1.08(A).

At the September 25, 2024 hearing—after being reminded of his *Miranda* Rights—Mr. Sharpe admitted to making an unknown and undisclosed loan on behalf of his clients, to another law firm. *See* Case No. 4:20-cv-776-P ECF No. 239 at 18–20 (*Miranda* Rights), 21–28 (Mr. Sharpe testifying that: 1) his clients had outstanding legal fees with another law firm; 2) he paid $100,000 of those outstanding legal fees with his law firm's funds; 3) he did so without his clients' knowledge; 4) when his clients found out they considered it a loan; and 5) his clients fully reimbursed him the $100,000 he paid on their behalf, which he accepted). While Sharpe insists that the $100,000 payment on his client's behalf was not a loan, the undisputed facts necessitate the opposite conclusion. Consequently, the Court finds that the appropriate remedy for Sharpe's admitted violation of Texas Disciplinary Rule of Professional Conduct 1.08(a) is the disgorgement of the $100,000 loan repayment.

Turning now to the $127,745 that Weslease claims are improper attorney's fees; the Court finds that there is insufficient evidence regarding the fees for the Court to order their disgorgement. Accordingly, Weslease's Motion is **DENIED** with regard to those funds.

CONCLUSION

Based on the foregoing Weslease's Motion for Disgorgement is hereby **GRANTED** in part and **DENIED** in part. It is hereby **ORDERED** that Sharpe shall pay $100,000 to the Registry of the Court within 14 days of this Order. It is further **ORDERED** that the monies shall be held by the clerk of the Court until the receiver appointed in this case—J. Robert Forshey—files an appropriate motion for the release of said funds for disbursement to the appropriate party.

SO ORDERED on this **6th day of November 2024.**

Mark T. Pittman

MARK T. PITTMAN
UNITED STATES DISTRICT JUDGE

EXHIBIT

F

United States Court of Appeals for the Fifth Circuit

No. 24-10998

WESLEASE 2018 OPERATING, L.P.,

Plaintiff—Appellee,

versus

J. SHELBY SHARPE,

Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CV-776

UNPUBLISHED ORDER

Before SOUTHWICK, WILLETT, and OLDHAM, *Circuit Judges*.

PER CURIAM:

J. Shelby Sharpe was ordered to disgorge $100,000 because the district court determined that he violated fiduciary duties owed to River North Farms, Inc. Sharpe requests a stay of that order pending appeal. Because Sharpe faces no irreparable injury, we deny his request.

I

The background of this case is long and convoluted. We provide only a short synopsis of the facts relevant to this stay application.

Weslease 2018 Operating, LP ("Weslease") won a money judgment against Dale and Linda Behan ("the Behans") and two LLCs that the Behans owned and controlled—Innovative Sand Solutions, LLC and Bull Moose Pipeline, LLC. To execute the judgment, Weslease sought and won a turnover order. The turnover order required the Behans to turn over all stock in River North Farms, Inc.[1] ("River North") to U.S. Marshals, who were obligated to transfer all rights and ownership to Weslease. Weslease thus became the sole shareholder of River North when the district court entered the turnover order.

J. Shelby Sharpe is the Behans' lawyer. He also represents their various entities, including River North. One of Sharpe's co-counsel from a different law firm represented another Behan-related entity called Lindale Pipeline, LLC ("Lindale"). Lindale was not paying its legal bills. To ensure that the co-counsel continued working on the Lindale case, Sharpe wired $97,519.81[2] via his law firm to that lawyer's firm. Sharpe allegedly did not tell anyone why he did so. When the Behans found out about the payment over a year later, they reimbursed Sharpe's firm in the amount of $100,000 through River North.[3]

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[1] The district court refers to this entity as River North Farms, LLC. But that court's March 22, 2024 order says that the two names are interchangeable, as there must have been some uncertainty about the type of entity at issue at the time. The record on appeal reveals that the entity at issue is a corporation.

[2] The district court rounded up the number to $100,000.

[3] It is uncertain whether this "reimbursement" was $97,519.81 or $100,000, as it was part of a larger payment to Sharpe's firm that included other outstanding bills. At least some record evidence indicates it was $100,000. So we treat it as such for purposes of resolving the stay.

Here's where the turnover order and the $100,000 collide. After Weslease gained complete ownership over River North's shares by way of the turnover order, Weslease discovered the $100,000 payment to Sharpe's firm. In response, Weslease moved for disgorgement of the money from Sharpe.

The district court granted that motion. It concluded that Sharpe's payment on behalf of Lindale was a loan reimbursed by his clients (the Behans and River North). It then held that this constituted a "business transaction" that violated Texas Disciplinary Rule of Professional Conduct 1.08(a) ("TDRPC"). And because the district court concluded that this was a "clear and serious violation of duty to a client" that warranted fee forfeiture, *Burrow v. Arce*, 997 S.W.2d 229, 237, 241 (Tex. 1999) (quotation omitted), the court ordered Sharpe to pay $100,000 into the registry of the court.

Sharpe timely appealed that order. He asks this court for a stay pending appeal. We granted an administrative stay after Weslease did not timely respond in order to further consider Sharpe's stay request.

II

"A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)). As such, stays "are granted only in extraordinary circumstances." *Williams v. Zbaraz*, 442 U.S. 1309, 1311 (1979) (Stevens, J., in chambers) (quoting *Graves v. Barnes*, 405 U.S. 1201, 1203 (1972) (Powell, J., in chambers)). Four factors guide our discretion to issue a stay: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where

the public interest lies." *Nken*, 556 U.S. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

We consider only two factors here: (A) Weslease's likelihood of success on the merits, and (B) whether Weslease will be irreparably injured absent a stay.

A

On the merits, the district court likely erred. We note a few of its likely errors. Assuming Weslease brought this motion as a derivative claim on behalf of River North, it appears Weslease did not comply with Oklahoma's demand requirement.[4] *See* OKLA. STAT. tit. 12, § 2023.1 (1984); *Hargrave v. Canadian Valley Elec. Co-op., Inc.*, 1990 OK 43, ¶ 11–12, 792 P.2d 50, 54. Nor does it seem that Weslease complied with Federal Rule of Civil Procedure 23.1. And we find it unlikely that Weslease could evade these requirements by simply bringing a derivative claim via motion instead of in a separate lawsuit.

In the alternative, assuming this was a direct claim by Weslease in its individual capacity, Texas law does not permit a shareholder to "recover damages individually for injury to the corporation." *Wingate v. Hajdik*, 795 S.W.2d 717, 718 (Tex. 1990); *accord Pike v. Tex. EMC Mgmt., LLC*, 610

[4] Under Texas choice-of-law rules, the requirements governing a derivative action by shareholders of a corporation are determined by the state of incorporation's laws. TEX. BUS. ORGS. CODE § 21.562(a); *see also In re Helix Energy Sols. Grp., Inc.*, 440 S.W.3d 167, 174 (Tex. App.—Houston [14th dist.] 2013). River North was incorporated in Oklahoma. So Oklahoma law governs the requirements of the derivative claim here. But Texas law governs direct claims. *See Condon v. Kadakia*, 661 S.W.3d 443, 452–53 (Tex. App.—Houston [14th dist.] 2023), *rev. denied* (Nov. 10, 2023). And Texas law governs the elements of the fiduciary duty claim here because it does not involve the internal affairs of the corporation. *See* TEX. BUS. ORGS. CODE §§ 1.102, 1.105; *State Farm Mut. Auto. Ins. Co. v. Lopez*, 156 S.W.3d 550, 557 n.7 (Tex. 2004) (noting that the "internal affairs doctrine" covers "matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders" (quoting *Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982))).

S.W.3d 763, 775–76 (Tex. 2020). And under Texas law, a lawyer's fiduciary duties generally extend only to his clients—here, River North and the Behans. *See, e.g.*, 48 ROBERT P. SCHUWERK ET AL., TEXAS PRACTICE SERIES: HANDBOOK OF TEXAS LAWYER & JUDICIAL ETHICS § 2:10 (2024 ed.) (listing exceptions to the general rule, none of which apply here). Weslease likely trips on each point.

Finally, we are not certain Sharpe's actions constituted a "clear and serious" violation of TDRPC 1.08(a). *See Burrow*, 997 S.W.2d at 241. The meaning of "business transaction" for purposes of that rule has received little judicial interpretation by Texas courts, and we have not located an analogous case. So it is difficult to conclude in this posture that Sharpe "kn[ew] that the conduct was wrongful." *See id.* Even assuming Sharpe violated TDRPC 1.08(a), therefore, fee forfeiture is likely not available here.

Thus, Sharpe is likely to succeed on the merits.

B

Sharpe, however, faces no irreparable injury absent a stay. The failure to make this showing is "critical." *Nken*, 556 U.S. at 434.

If Sharpe ultimately succeeds on the merits of his appeal, the *entire* money judgment is recoverable. This strongly weighs against a finding of irreparable injury. *See, e.g.*, *Enter. Int'l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 472–73 (5th Cir. 1985). We have also held that an applicant's need "to 'liquidate' to obtain the funds to pay" a money judgment does not establish an irreparable injury. *Campbell v. Guetersloh*, 287 F.2d 878, 880 & n.2 (5th Cir. 1961). And Sharpe nowhere alleges that he cannot liquidate assets to satisfy the district court's order. Moreover, this is not a situation where temporary "loss threatens the very existence of the movant's business." *Texas v. EPA*, 829 F.3d 405, 434 & n.1 (5th Cir. 2016);

accord Wages & White Lion Invs., LLC v. FDA, 16 F.4th 1130, 1142 (5th Cir. 2021).

In response, Sharpe counters that he will be unable to pay the full $100,000 and will thus be subject to civil contempt and the attendant risk of imprisonment. But "a party's complete inability, due to poverty or insolvency, to comply with an order to pay court-imposed monetary sanctions *is a defense* to a charge of civil contempt." *In re White-Robinson*, 777 F.3d 792, 798 (5th Cir. 2015) (alteration omitted) (quoting *Huber v. Marine Midland Bank*, 51 F.3d 5, 10 (2d Cir. 1995)). So civil contempt and thus imprisonment are not available here.

* * *

Although Sharpe is likely to succeed on the merits, he has suffered no irreparable injury. Thus, we DENY Sharpe's request for a stay pending appeal.

EXHIBIT

G

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE: J. SHELBY SHARPE	§	**CASE NO. 4:24-MC-00007-X**
	§	
	§	

RESPONSE TO ORDER

To The Honorable Panel (Starr, Means and Hendrix) by Designation:

The Panel in its Opinion denying the Respondent's motion to lift his "temporary suspension" invited Mr. Sharpe to respond to the continuation of his suspension. [ECF No. 29 at p.4] With the Special Prosecutors' report due to be imminently filed, and since Mr. Sharpe is allowed to respond to that report, a largely redundant motion for reconsideration seems an unnecessary imposition on the Panel's time. However, Mr. Sharpe does appreciate the opportunity to simply respond to certain statements in that Opinion.

I. There Was No Trail of Recalcitrance by Mr. Sharpe Prior To The Initiation of This Proceeding

First, it is unfair to suggest that the initiation of this disciplinary proceeding on **May 21, 2024**, was preceded by numerous show cause hearings and sanctions imposed *against Mr. Sharpe*.

The Panel, in its Opinion, appropriately recited the contentious background of the underlying collection effort in the *Innovative Sand* litigation. Certain generalities, however, might leave the misimpression that Mr. Sharpe was the originator of this contention. Mr. Sharpe respectfully suggests that any such impression is inaccurate and that many of the conflicts cited do not relate to Mr. Sharpe's conduct. Instead, there is perhaps an unintended conflation of Mr. Sharpe's advocate role with the dodgy conduct of his clients. The record – with the glaring exception of Mr. Sharpe's Friday 13th mishap – does ***not*** reflect that Mr. Sharpe (as perhaps

opposed to his clients) has any history of defying court orders. [Mr. Sharpe's affidavit ("Sharpe affid.") is attached to this *Response* as **Exhibit 1**. See, Sharpe affid. ¶'s 2 -14]

- The unfortunate underlying collection scuffle turned against the Behans upon the filing of Weslease *second* application for a turnover order [ECF No. 111] – after Judge Pittman had previously denied Weslease's initial application for a turnover order and after Weslease lost the *River North* battle in Judge O'Connor's court.
- This third application was heard and granted on **March 20, 2024**. [ECF No. 137]
- In response to this *third* application, Mr. Sharpe had taken the very reasonable position that the application should be denied (as Judge Pittman had previously done) because of the preclusive effects of the intervening decision of Judge O'Connor. Nonetheless, Judge Pittman granted the application. There were absolutely no sanctions entered against Mr. Sharpe for his reasonable advocacy.
- Mr. Sharpe next appeared before Judge Pittman on **April 5, 2024**.
- This hearing related to Weslease's first motion for enforcement that sought to require the recalcitrant Behans to turnover gate codes to Weslease and allow Weslease access to certain property. Again, no sanctions were imposed on Mr. Sharpe and the order was fully complied with.
- The third time Mr. Sharpe appeared before Judge Pittman was in fact on **May 21, 2024**, when this disciplinary proceeding was *initiated*. On that date, Weslease's second motion for enforcement was heard. As a result of Mr. Sharpe's filing of collateral state court litigation on behalf of River North Farms, Judge Pittman did in fact monetarily sanction Mr. Sharpe (for the first time) and demanded that the collateral litigation be dismissed. Again, the order was promptly and fully complied with.

May 21, 2024, was therefore not the culmination of months of recalcitrant actions by Mr. Sharpe, but instead was the inauguration of Mr. Sharpe's time of troubles.

II. Mr. Sharpe Did Not Facilitate an Improper Sale of Real Estate

Secondly, the Panel states that Mr. Sharpe, as counsel for the busy Behans, appeared to "facilitate a real estate transaction to sell the very property" involved in the *Innovative Sand* litigation. The "real estate transaction" referenced by the Panel involved a contract to sell real property in Azle, Texas that was owned by River North Farms. Part of the very same tract was the subject of the suit in Judge O'Connor's court. Contrary to the Panel's supposition, Mr. Sharpe had absolutely nothing to do with this confused transaction and certainly did not "facilitate it". [Sharpe affid. at ¶'s 6-10] Mr. Sharpe's first knowledge of this contract was when his fast-moving clients called Mr. Sharpe and told Mr. Sharpe that the Behans were having difficulty closing the sale.

Mr. Sharpe was naturally aghast. Prior to this surprising call, Mr. Sharpe had no knowledge of the Behans' actions. He had no knowledge or role in the solicitation of the prospective sale; he had no knowledge or role in the drafting of the contract; he had no knowledge or role in the closing of the contract. Mr. Sharpe, far from facilitating the transaction, immediately and unequivocally told his clients that the ill-conceived transaction had to be rescinded. Mr. Sharpe repeated the same instructions to the putative purchaser's attorney when he received an unsolicited call from that attorney. Mr. Sharpe was no more than innocent bystander that far from facilitating the transaction, affirmatively stopped it.

III. Friday the 13th

It is reputed that President Franklin D. Roosevelt would not travel on the 13th day of any month and would never host 13 guests at a meal. Napoleon and President Herbert Hoover also

harbored an abnormal fear of the number 13. The Respondent, Shelby Sharpe, should join these ranks.

His fortunes in this matter were seriously jeopardized by a stupid (but unintentional) blunder that was appropriately sanctioned by Judge Pittman on Friday, **December 13, 2024** [ECF No. 279]. Mr. Sharpe's stupidity – which was largely inconsequential and pointless – has now cast a pale upon this proceeding that rationally should not exist and certainly should not drive the proceeding.

- **November 7, 2024.** November 7 was a very important day in this disciplinary proceeding. The previous day (November 6), Judge Pittman had correctly referred the disciplinary matter to the Chief Judge of this district for transfer to a panel for ultimate disposition. [ECF No. 16] Subsequently, however, Judge Pittman "temporarily suspended" Mr. Sharpe from practicing in the Northern District of Texas. On the same day, the Court entered an order that required Mr. Sharpe to "disgorge" $100,000 to a court appointed receiver. The Court's ruling was based primarily upon a 2021 transaction in an unrelated state court case that the Court deemed a violation of Tex. R. Professional Res. 1.108(a).
- **Post November 7**. Mr. Sharpe moved to lift the November 7 "temporary suspension" [ECF No. 19]. Moreover, Judge Pittman's ruling that Mr. Sharpe must pay $100,000 in "disgorgement" damages was placed in serious doubt by a Fifth Circuit opinion that specifically noted that it was substantially likely that the disgorgement award was erroneous, and that the Court's analysis of Rule 1.108(a) was flawed. ***Weslease 2018 v. Sharpe,*** No.

24-10998, p.4-5 (5th Cir., November 18, 2024) (The decision is attached as **Exhibit 2**) Things were looking up for the embattled Mr. Sharpe.

- **"Meanwhile".** While these matters were unfolding, the court-appointed receiver (Mr. Forshey) for River North Farms petitioned to dispose of property of River North. [ECF No. 258]. Various creditors of River North had filed responses to the receiver's petition that questioned the propriety of the receiver's request. *For some wholly unfathomable reason, the aged Mr. Sharpe felt that it was incumbent upon him to file a similar response on behalf of the penurious Behans.*
- **Believing is seeing.** After inadequately studying Judge Pittman's temporary suspension order, and after conferring with his wife and paralegal, Mr. Sharpe somehow convinced himself that the first sentence of the last paragraph of the temporary suspension somehow exempted the cases that Mr. Sharpe was then "active in" from the suspension's prohibitions. [Sharpe affid. at ¶'s11-14] Thus, like a modern-day William Jennings Bryan staggering through the Scopes trial, Mr. Sharpe put pen to paper and authored and filed a wholly superfluous pleading that was instantly struck by Judge Pittman *sua sponte* on the very same day of filing. [ECF No. 276]

IV. No Excuses, ...Rather Than a Bad One

In this last instance, offering no excuse is far better than the proffer of a bad excuse. Thus, we cannot candidly urge that Mr. Sharpe's ebullient reading of the temporary suspension was remotely correct and we will not urge any other "excuse". To be very clear, Mr. Sharpe should **not** have filed the needless response that Judge Pittman *sua sponte* and instantly struck. It was an obviously

absurd blunder. It was a self-inflicted wound. Mr. Sharpe has expressed his remorse and again apologizes to this Panel for his pointless, but largely inconsequential blunder. [Sharpe affid. at ¶'s14] He has been appropriately sanctioned by a monetary fine that further depleted his dwindling assets. [Sharpe affid. at ¶'s 9]

Mr. Sharpe's blunder, while inexcusable, was stupidly innocent. This was not an act of defiance; it was not purposeful, not contemptuous, and not made in bad faith. If anything, it was pure pathos and was simply dumb. Moreover, since the blunder was instantly resolved by the Court's striking order, without expense to any party, and the filing was largely replicative of the prior creditor filings, it was largely inconsequential. Mr. Sharpe's ill-advised words have died without a battle, never to be heard again.

As everyone agrees, disciplinary sanctions must be "limited to 'deter repetition' of offending conduct. Thus, ...trial courts issuing a sanction must exercise discretion to consider 'the least severe sanction' to effectuate corrective action." ***Anteras Reinsurance Co., Ltd. V. Nat'l Tran. Assocs., Inc.***, 2024 U.S. Dist. LEXIS 118653 (N.D. Tex. May 10, 2024) (Attached as **Exhibit 3**) There will be no repetition of Mr. Sharpe's blunder, as he awaits the Panel's pending decision and his contemplated March retirement.

Mr. Sharpe is eighty-four years of age. With his long and noble career running well past its twilight hours, his financial situation is less than bright and is dimming by the minute. Without intending any pun, Mr. Sharpe has been seldom sharp in conducting the financial aspects of his law practice (as his recent deposition reflects). As is his practice, he vigorously represented a non-paying, broke client, considering it his duty. He has promptly paid past fines and is fighting a ruinous (and presumptively erroneous) disgorgement judgment in the Fifth Circuit. Meanwhile, he is fighting to preserve the legacy of a sixty-plus year legal career in this disciplinary proceeding.

Any sanction leveled will only compound this dire period in his rapidly expiring career. We ask for nothing more than merciful leniency so that a noble man can depart with some dignity. Judicial discretion that is exercised without mercy is too frequently seen as mere cruelty, not deterrence or justice.

Respectfully Submitted,

/s/ Marshall M. Searcy, Jr.
Marshall M. Searcy, Jr.
State Bar No. 17955500
marshall@marshallsearcylaw.com
MARSHALL SEARCY LAW
950 Commerce Street
Fort Worth, Texas 76102
Tel: 817-336-7220

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I certify that on this 30th day of January 2025, a true and correct copy of the foregoing was served electronically on all counsel of record who are deemed to have consented to electronic service via electronic mail.

/s/ Marshall M. Searcy, Jr.
Marshall M. Searcy, Jr.

CERTIFICATE OF COMPLIANCE

I additionally certify that on this 30th day of January 2025, a paper copy of this motion was sent via CMRRR in accord with Judge Means' Local Rule.

/s/ Marshall M. Searcy, Jr.
Marshall M. Searcy, Jr.

Exhibit 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORH DIVISION

IN RE: J. SHELBY SHARPE	§ § §	**CAUSE NO. 4:24-MC-0007**

DECLARATION OF J. SHELBY SHARPE

(1) My name is J. Shelby Sharpe. My office address is 6100 Western Place, Suite 912. Fort Worth, Texas 76107. I am licensed to practice law in the State of Texas, in good standing with the Supreme Court of Texas and competent to make this Declaration. This Declaration is based on my personal knowledge. I submit this Declaration in connection with a *Response to Order* to which this Declaration is attached.

(2) Except for the show cause hearing on December 13, 2024, addressing my violation of Judge Pittman's temporary suspension order, I have not been ordered to show cause in any hearing before Judge Pittman in the *Innovative Sand* case based upon any order directing me to do anything.

(3) On May 21, 2024, I was ordered by Judge Pittman in the *Innovative Sand* lawsuit to dismiss state court suits for slander of title that I had filed on behalf of a non-party, River North Farms. These suits had been filed because quit claim deeds had been filed by Weslease 2018 in various counties where River North Farms owned real property. The quit claim

deeds purported to transfer title from River North Farms to Weslease 2018.

(4) Judge Pittman's order of May 21, 2024, was not based on any order directed at me. I nevertheless promptly complied with the order, and paid the sanction imposed upon me by Judge Pittman.

(5) I have never prepared any contract for the sale of property for Dale and Linda Behan or any entity in which they have an ownership interest. I have mainly represented the Behans in specific litigation matters that they, or entities controlled by them, have retained me as trial counsel.

(6) The August 2024, attempted sale of River North Farms' property (referred to as the Azle property) was (to the extent of my knowledge) handled by a real estate agent Dale and Linda Behan obtained. I had no knowledge or participation in that transaction.

(7) I did not learn of this Azle property sale until a problem arose with the closing of the transaction in August 2024.

(8) Part of the Azle property, however, had been the subject of the litigation Weslease 2018 had brought against River North Farms in Judge Reed O'Connor's court where he ruled, in part, that River North Farms is not a judgment debtor of Weslease. I had served only as trial counsel in that litigation.

(9) When I learned that some of the Azle property was having trouble closing I advised the participants in that transaction that the transaction could only close if Weslease agreed. I further advised that the purchase price should be placed in the title company's escrow account until the Fifth Circuit ruled on the turnover order, or that the prospective purchaser's earnest money should be returned and the contract cancelled.

(10) All conversations with the purchaser's lawyer were initiated by the purchaser's lawyer with my response as stated above.

(11) Concerning the violation of the November 7, 2024, suspension order, since I was in bad favor with Judge Pittman, and I knew I had a motion before the Panel to lift the suspension, I would never deliberately violate that suspension order.

(12) When I received the suspension order I read it very carefully and was pleased to see "Mr. Sharpe remains active in the case that gave rise to this miscellaneous action as well as on other case in this district." I misunderstood this language as Judge Pittman being kind to my clients in the pending cases by only prohibiting me from being involved in any future case pending the outcome of the disciplinary matter against me. I had my wife and paralegal (who are regularly involved with legal matters) read the order and I understood their interpretation of the order was the same as mine.

(13) Had I correctly understood that I was barred from further participation on behalf of my clients in the pending cases, I would never have filed the response for my clients that I filed in December 2024.

(14) I sincerely apologized to Judge Pittman for this honest misunderstanding and I paid the sanctions he imposed on December 13, 2024 . I will not, under any circumstances, appear in any matter in the United States District Court for the Northern District of Texas until this Panel had ruled and allowed such appearance.

(15) I swear under the penalty of perjury that all statements in the *Response* to which this affidavit is attached (that are not otherwise specifically addressed) are true and correct based on my personal knowledge. I swear under the penalty of perjury that every statement herein is true based on my personal knowledge.

Signed this 30th day of January 2025.

J. Shelby Sharpe

J SHELBY SHARPE

Exhibit 2

United States Court of Appeals for the Fifth Circuit

No. 24-10998

United States Court of Appeals
Fifth Circuit
FILED
December 10, 2024
Lyle W. Cayce
Clerk

WESLEASE 2018 OPERATING, L.P.,

Plaintiff—Appellee,

versus

J. SHELBY SHARPE,

Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CV-776

UNPUBLISHED ORDER

Before SOUTHWICK, WILLETT, and OLDHAM, *Circuit Judges.*

PER CURIAM:

J. Shelby Sharpe was ordered to disgorge $100,000 because the district court determined that he violated fiduciary duties owed to River North Farms, Inc. Sharpe requests a stay of that order pending appeal. Because Sharpe faces no irreparable injury, we deny his request.

I

The background of this case is long and convoluted. We provide only a short synopsis of the facts relevant to this stay application.

Weslease 2018 Operating, LP ("Weslease") won a money judgment against Dale and Linda Behan ("the Behans") and two LLCs that the Behans owned and controlled—Innovative Sand Solutions, LLC and Bull Moose Pipeline, LLC. To execute the judgment, Weslease sought and won a turnover order. The turnover order required the Behans to turn over all stock in River North Farms, Inc.[1] ("River North") to U.S. Marshals, who were obligated to transfer all rights and ownership to Weslease. Weslease thus became the sole shareholder of River North when the district court entered the turnover order.

J. Shelby Sharpe is the Behans' lawyer. He also represents their various entities, including River North. One of Sharpe's co-counsel from a different law firm represented another Behan-related entity called Lindale Pipeline, LLC ("Lindale"). Lindale was not paying its legal bills. To ensure that the co-counsel continued working on the Lindale case, Sharpe wired $97,519.81[2] via his law firm to that lawyer's firm. Sharpe allegedly did not tell anyone why he did so. When the Behans found out about the payment over a year later, they reimbursed Sharpe's firm in the amount of $100,000 through River North.[3]

---

[1] The district court refers to this entity as River North Farms, LLC. But that court's March 22, 2024 order says that the two names are interchangeable, as there must have been some uncertainty about the type of entity at issue at the time. The record on appeal reveals that the entity at issue is a corporation.

[2] The district court rounded up the number to $100,000.

[3] It is uncertain whether this "reimbursement" was $97,519.81 or $100,000, as it was part of a larger payment to Sharpe's firm that included other outstanding bills. At least some record evidence indicates it was $100,000. So we treat it as such for purposes of resolving the stay.

Here's where the turnover order and the $100,000 collide. After Weslease gained complete ownership over River North's shares by way of the turnover order, Weslease discovered the $100,000 payment to Sharpe's firm. In response, Weslease moved for disgorgement of the money from Sharpe.

The district court granted that motion. It concluded that Sharpe's payment on behalf of Lindale was a loan reimbursed by his clients (the Behans and River North). It then held that this constituted a "business transaction" that violated Texas Disciplinary Rule of Professional Conduct 1.08(a) ("TDRPC"). And because the district court concluded that this was a "clear and serious violation of duty to a client" that warranted fee forfeiture, *Burrow v. Arce*, 997 S.W.2d 229, 237, 241 (Tex. 1999) (quotation omitted), the court ordered Sharpe to pay $100,000 into the registry of the court.

Sharpe timely appealed that order. He asks this court for a stay pending appeal. We granted an administrative stay after Weslease did not timely respond in order to further consider Sharpe's stay request.

II

"A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)). As such, stays "are granted only in extraordinary circumstances." *Williams v. Zbaraz*, 442 U.S. 1309, 1311 (1979) (Stevens, J., in chambers) (quoting *Graves v. Barnes*, 405 U.S. 1201, 1203 (1972) (Powell, J., in chambers)). Four factors guide our discretion to issue a stay: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where

the public interest lies." *Nken*, 556 U.S. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

We consider only two factors here: (A) Weslease's likelihood of success on the merits, and (B) whether Weslease will be irreparably injured absent a stay.

A

On the merits, the district court likely erred. We note a few of its likely errors. Assuming Weslease brought this motion as a derivative claim on behalf of River North, it appears Weslease did not comply with Oklahoma's demand requirement.[4] *See* OKLA. STAT. tit. 12, § 2023.1 (1984); *Hargrave v. Canadian Valley Elec. Co-op., Inc.*, 1990 OK 43, ¶ 11–12, 792 P.2d 50, 54. Nor does it seem that Weslease complied with Federal Rule of Civil Procedure 23.1. And we find it unlikely that Weslease could evade these requirements by simply bringing a derivative claim via motion instead of in a separate lawsuit.

In the alternative, assuming this was a direct claim by Weslease in its individual capacity, Texas law does not permit a shareholder to "recover damages individually for injury to the corporation." *Wingate v. Hajdik*, 795 S.W.2d 717, 718 (Tex. 1990); *accord Pike v. Tex. EMC Mgmt., LLC*, 610

[4] Under Texas choice-of-law rules, the requirements governing a derivative action by shareholders of a corporation are determined by the state of incorporation's laws. TEX. BUS. ORGS. CODE § 21.562(a); *see also In re Helix Energy Sols. Grp., Inc.*, 440 S.W.3d 167, 174 (Tex. App.—Houston [14th dist.] 2013). River North was incorporated in Oklahoma. So Oklahoma law governs the requirements of the derivative claim here. But Texas law governs direct claims. *See Condon v. Kadakia*, 661 S.W.3d 443, 452–53 (Tex. App.—Houston [14th dist.] 2023), *rev. denied* (Nov. 10, 2023). And Texas law governs the elements of the fiduciary duty claim here because it does not involve the internal affairs of the corporation. *See* TEX. BUS. ORGS. CODE §§ 1.102, 1.105; *State Farm Mut. Auto. Ins. Co. v. Lopez*, 156 S.W.3d 550, 557 n.7 (Tex. 2004) (noting that the "internal affairs doctrine" covers "matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders" (quoting *Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982))).

S.W.3d 763, 775–76 (Tex. 2020). And under Texas law, a lawyer's fiduciary duties generally extend only to his clients—here, River North and the Behans. *See, e.g.*, 48 ROBERT P. SCHUWERK ET AL., TEXAS PRACTICE SERIES: HANDBOOK OF TEXAS LAWYER & JUDICIAL ETHICS § 2:10 (2024 ed.) (listing exceptions to the general rule, none of which apply here). Weslease likely trips on each point.

Finally, we are not certain Sharpe's actions constituted a "clear and serious" violation of TDRPC 1.08(a). *See Burrow*, 997 S.W.2d at 241. The meaning of "business transaction" for purposes of that rule has received little judicial interpretation by Texas courts, and we have not located an analogous case. So it is difficult to conclude in this posture that Sharpe "kn[ew] that the conduct was wrongful." *See id.* Even assuming Sharpe violated TDRPC 1.08(a), therefore, fee forfeiture is likely not available here.

Thus, Sharpe is likely to succeed on the merits.

B

Sharpe, however, faces no irreparable injury absent a stay. The failure to make this showing is "critical." *Nken*, 556 U.S. at 434.

If Sharpe ultimately succeeds on the merits of his appeal, the *entire* money judgment is recoverable. This strongly weighs against a finding of irreparable injury. *See, e.g.*, *Enter. Int'l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 472–73 (5th Cir. 1985). We have also held that an applicant's need "to 'liquidate' to obtain the funds to pay" a money judgment does not establish an irreparable injury. *Campbell v. Guetersloh*, 287 F.2d 878, 880 & n.2 (5th Cir. 1961). And Sharpe nowhere alleges that he cannot liquidate assets to satisfy the district court's order. Moreover, this is not a situation where temporary "loss threatens the very existence of the movant's business." *Texas v. EPA*, 829 F.3d 405, 434 & n.1 (5th Cir. 2016);

accord Wages & White Lion Invs., LLC v. FDA, 16 F.4th 1130, 1142 (5th Cir. 2021).

In response, Sharpe counters that he will be unable to pay the full $100,000 and will thus be subject to civil contempt and the attendant risk of imprisonment. But "a party's complete inability, due to poverty or insolvency, to comply with an order to pay court-imposed monetary sanctions *is a defense* to a charge of civil contempt." *In re White-Robinson*, 777 F.3d 792, 798 (5th Cir. 2015) (alteration omitted) (quoting *Huber v. Marine Midland Bank*, 51 F.3d 5, 10 (2d Cir. 1995)). So civil contempt and thus imprisonment are not available here.

* * *

Although Sharpe is likely to succeed on the merits, he has suffered no irreparable injury. Thus, we DENY Sharpe's request for a stay pending appeal.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

December 10, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 24-10998 Weslease 2018 v. Sharpe
USDC No. 4:20-CV-776

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Melissa B. Courseault, Deputy Clerk
504-310-7701

Mr. Justin Neal Bryan
Ms. Karen S. Mitchell
Mr. J. Shelby Sharpe

Subject: 24-10998 Weslease 2018 v. Sharpe "Non Dispositive Court Order denying stay pending appeal" (4:20-CV-776)
Date: 12/10/2024 9:39:54 AM Central Standard Time
From: cmecf_caseprocessing@ca5.uscourts.gov
To: utlawman@aol.com

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United States Court of Appeals for the Fifth Circuit

Notice of Docket Activity

The following transaction was entered on 12/10/2024 at 9:38:03 AM Central Standard Time and filed on 12/10/2024

Case Name: Weslease 2018 v. Sharpe
Case Number: 24-10998
Document(s): Document(s)

Docket Text:
COURT ORDER denying Motion for stay pending appeal filed by Appellant J. Shelby Sharpe [6] [24-10998] (MBC)

Notice will be electronically mailed to:

Mr. Justin Neal Bryan: jbryan@mccathernlaw.com, cvaladez@mccathernlaw.com, receptionist@mccathernlaw.com
Ms. Karen S. Mitchell, Clerk of Court: TXND_Appeals@txnd.uscourts.gov
Mr. J. Shelby Sharpe: utlawman@aol.com

The following document(s) are associated with this transaction:
Document Description: Non Dispositive Court Order
Original Filename: 24-10998 Weslease v. Sharpe - Stay Opinion (Final Corrected).pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1105048708 [Date=12/10/2024] [FileNumber=10492554-0]
[ab014fb68b88200ec262f5a8224fef5e04bcab2992df59d9bd98e16117424669f3ed0eabba45360fbcc7de70df9bc2a1d9f94b6bab49f70fed7d1997278a5ff1]]

Document Description: MOT-2 Letter
Original Filename: /opt/ACECF/live/forms/MelissaCourseault_2410998_10492554_MotionNotice-MOT-2_381.pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1105048708 [Date=12/10/2024] [FileNumber=10492554-1]
[0005fe26b00e1aed2b721a5fe6e9e30683a2def976221921ddc03a7bd6e1fa1ca8ade65f52cac2a30ca57ed055a2e422dc5cf19f6bbe4763ca28483556d8c639]]
Recipients:

- Mr. Justin Neal Bryan
- Ms. Karen S. Mitchell, Clerk of Court
- Mr. J. Shelby Sharpe

Exhibit 3

Antares Reinsurance Co. Ltd. v. Nat'l Transp. Assocs., Inc.

United States District Court for the Northern District of Texas, Fort Worth Division

May 10, 2024, Decided; May 10, 2024, Filed

No. 4:23-cv-00928-P

Reporter
2024 U.S. Dist. LEXIS 118653 *

ANTARES REINSURANCE COMPANY LIMITED, Plaintiff, v. NATIONAL TRANSPORTATION ASSOCIATES, INC., ET AL.,

Prior History: *Antares Reinsurance Co. Ltd. v. Nat'l Transp. Assocs., Inc., 2023 U.S. Dist. LEXIS 167938, 2023 WL 6152415 (N.D. Tex., Sept. 19, 2023)*

Counsel: [*1] For Antares Reinsurance Company Limited, Bermudian Company, Plaintiff: Jennafer Groswith, LEAD ATTORNEY, Wilson Elser Moskowitz Edelman & Dicker LLP, Dallas, TX; Michelle R Press, LEAD ATTORNEY, PRO HAC VICE, Wislon Elser Moskowitz Edelman & Dicker LLP, Los Angeles, CA; Robert David Dennison, PRO HAC VICE, Wilson Elser Moskowitz Edleman & Dicker LLP, Los Angeles, CA; Jillian van Rensburg Keith, Wilson Elser Mosowitz Edelman & Dicker, LLP, Dallas, TX.

For National Transportation Associates, Inc., a California Corporation, doing business as, NTA General Insurance Agency, Defendant: Jordan R Curry, PRO HAC VICE, Brandon Michael Stendara, Michael Craig Lee, Munsch Hardt Kopf and Harr, Dallas, TX.

For Superior Risk Management, Inc., a California Corporation, Defendant: Todd D Ogden, LEAD ATTORNEY, Maron Marvel Bradley Anderson & Tardy LLC, Dallas, TX; John Philip Parsons, Maron Marvel Bradley Anderson & Tardy, Dallas, TX.

For ADR Provider, Mediator: David R Seidler, LEAD ATTORNEY, Lacy Lyster Malone & Steppick PLLC, Fort Worth, TX.

Judges: MARK T. PITTMAN, UNITED STATES DISTRICT JUDGE.

Opinion by: MARK T. PITTMAN

Opinion

ORDER

As noted in the Show Cause Hearing held this date, the Court finds Michelle R. Press of the law **[*2]** firm Wilson Elser Moskowitz Edelman & Dicker, LLP has demonstrated bad faith and/or blatant disregard for the Court's orders. Federal district courts are empowered to issue sanctions under such circumstances. *See generally* *Fed. R. Civ. P. 11(c)*; N.D. TEX. L. CIV. R. 83.8(b). Sanctions under *Rule 11* must be limited to "deter repetition" of offending conduct. *See id.* Thus, the Fifth Circuit has long stressed that trial courts issuing a sanction must exercise discretion to consider "the least severe sanction" to effectuate corrective action. *Thomas v. Cap. Sec. Servs., Inc., 836 F.2d 866, 878 (5th Cir. 1988)*. Accordingly, for the reasons stated in today's hearing, the Court **ORDERS** as follows:

1. Michelle Press, along with all attorneys of record in this action affiliated with Wilson Elser Moskowitz Edelman & Dicker, LLP, must read the following materials:

- *Dondi Props. Corp. v. Commerce Savs. & Loan Ass'n, 121 F.R.D. 284 (N.D. Tex. 1988)* (en banc);
- THE TEXAS LAWYER'S CREED;
- THE TEXAS RULES OF PROFESSIONAL CONDUCT;
- THE LOCAL CIVIL RULES OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS; and
- THE FEDERAL RULES OF CIVIL PROCEDURE.

2. Michelle Press, along with all attorneys of record in this action affiliated with Wilson Elser Moskowitz Edelman & Dicker, LLP, must certify via **SWORN AFFIDAVIT** that they have read and will abide by the above materials by **5:00 p.m.** on **May [*3] 15, 2024**. In the alternative, should any attorney be unable to locate a notary or duly sworn official authorized to administer oaths, they may appear before the undersigned at **11:00 a.m.** on **May 15,**

2024, and swear under penalty of perjury that they have read and will abide by the above materials.

3. Michelle Press, or the law firm of Wilson Elser Moskowitz Edelman & Dicker, LLP on her behalf, is further **ORDERED** to pay a monetary sanction of **$950.00** by **11:00 a.m.** on **May 15, 2024**.

Noncompliance with any of the above requirements may result in further sanctions.

SO ORDERED on this **10th day** of **May 2024**.

/s/ Mark T. Pittman

MARK T. PITTMAN

UNITED STATES DISTRICT JUDGE

End of Document

EXHIBIT

H

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE: J. SHELBY SHARPE	§	**CASE NO. 4:24-MC-00007-X**

RESPONSE TO SPECIAL PROSECTOR REPORT

To The Honorable Panel (Starr, Means and Hendrix) by Designation:

INTRODUCTION

"Nice guys end up last, and I am winner."
Louie DePalma (Danny Devito), *Taxi*

The ***Report*** provided by the Panel's Special Prosecutors (two superb lawyers and gentlemen who have graciously taken time from their busy practices to serve in this difficult capacity) is extremely painful – not for what it says, but for what it does not say and the astringent way in which it is sometimes said.[1]

But even more troubling is what it might appear to champion. Reading between its lines, the ***Report*** seems to suggest that the "nice [old] guys", who practice alone and truly sacrifice for the often challenging or non-paying clients they often represent, are the Bar's nub of disposal. The ***Report*** asks the Panel to literally "turn [the now proverbial] blind eye" not only at the exacting standards required to find a violation of the disciplinary rules, but (more importantly) at the past noble service of just such a "nice [old] guy". To the ***Report,*** the past nobility of a combative courthouse menial is an invisible irrelevancy, … not worthy of mention, much less consideration.

[1] This Panel knows the deep respect that counsel for Mr. Sharpe holds for Judge Pittman, as well as counsel's personal esteem and admiration. Mr. Sharpe's counsel holds an equal respect and admiration of the Special Prosecutors. All are fine men, dedicated to their profession. In pointing out professional "problems" with the process, counsel does not intend, in any way, to infer any criticism or disrespect for these distinguished jurist and lawyers. It is simply counsel's effort to professionally disagree and assure that a fair process is accorded to a fellow professional.

Thus, if a "nice [old] guy" innocently loses an argument or errs in a burst of over-zealous advocacy, he should be condemned to the death penalty of disbarment. The real problem with "nice [old] guys" is that they too frequently elect to represent clients that probably do not deserve their loyalty. According to the inferences of the ***Report*** this is an unpardonable sin. Thus, according to the ***Report***, the "nice [old] guys" must not just "end up last" – they must be ridiculed and thrown on life's rubbish heap, broke and disgraced. The ***Report*** implicitly seeks "winners" – indifferent (and very quiet) acolytes, the lukewarm who do not have clients to whom they must answer, who are unmoved by client loyalty, and who would never deign to represent a troubled or impecunious client.

One can only hope that in these very troubling times of partisan screams of "lawfare" – when many have wrongfully tagged our revered justice system as simply a dysfunctional tool of the powerful – such would not be the painful result of this sad matter.

The Special Prosecutors, who remain two of the most esteemed members of this Court's Bar (as well as my friends), thus grossly (and sadly) miss the mark in their long-awaited ***Report*** to the Panel. Apparently, the ***Report*** suggests that the Panel should hang Mr. Sharpe – not in effigy but in infamy – as he struggles to leave the practice of law in his eighty-fifth year of age and sixtieth year of practice. Neither the law nor the facts justify such a harsh ending for a fine, respected gentleman. In essence, it amounts to little more than senseless cruelty to a dedicated professional who has spent virtually the entirety of his life serving the public – often without compensation – as a blemish-free member of this Bar. Indeed, Mr. Sharpe has been recognized by eight separate Bar presidents as worthy for appointment to the Bar's crucial Court Rules Committee, covering twenty-four years of service, and appointment to the District 7-A Grievance Committee. Despite this record, according to the ***Report***, he should now be disbarred.

The Panel should thus reject the ***Report's*** cruel (and regrettably acerbic) recommendations for two glaring reasons: First, the "clear and convincing evidence" – while showing elderly slips in judgment – does not warrant any finding of either unethical or unbecoming conduct on the part of Mr. Sharpe.[2] Secondly, the severe penalty recommended – the ultimate death penalty of disbarment – is certainly not the "least severe" sanction that the Panel can decree to appropriately redress and deter any transgression committed by Mr. Sharpe in his farewell appearance in this Court – particularly when such transgressions have already been sanctioned by the presiding judge in the underlying *Innovative Sand* litigation and Mr. Sharpe has already been on "temporary suspension" for several months.

THE STANDARDS

Everyone agrees on the "standards" that this Panel must follow in its deliberations of Mr. Sharpe's fate, and everyone agrees on the high burden of proof and persuasion born by the Special Prosecutors.

As urged throughout this matter, disciplinary actions based on over-zealous advocacy are very delicate proceedings. Disciplinary actions require the delicate balancing between deterring vexatious misconduct and stifling vigorous advocacy. Disciplinary actions, by law, are therefore "adversary proceedings of a quasi-criminal nature." ***In re Ruffalo,*** 390 U.S. 544, 551 (1968). An accused is thus entitled to a proceeding that affords most (but not all) rights shared by every accused (from the lowest thug to dedicated retiring professionals) under our justice system.

Attorneys subject to disciplinary proceedings are, of course, "entitled to procedural due process, which includes fair notice of the charge." ***In re Ruffalo, supra*** 390 U.S. at 550. In such a

[2] To aid the Panel in its factual review, the Respondent has attached the declarations of Justice (ret.) Martin Richter who has consulted with Mr. Sharpe in this matter. Not only is Justice Richter a distinguished jurist of massive experience, but also one of the most experienced prosecutors of disciplinary matters in the State. [App. 1 and App. 2]

proceeding, moreover, the Special Prosecutors must read the disciplinary rules "***strictly, resolving any ambiguity in favor of the person charged***." ***In re Thalheim***, 853 F.2d 383, 388 (5th Cir. 1988) (emphasis added). (As will be shown, the ***Report*** does not.)

The special prosecutor also bears the burden of proving all elements of a violation by clear and convincing evidence. ***In re Medrano***, 956 F.2d 101, 102 (5th Cir. 1992). "Clear and convincing evidence" is that weight of proof which "produces in the mind of the trier of fact (here, the Panel) a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts" of the case. **Id.** (citing ***Cruzan by Cruzan v. Director, Missouri Dep't of Health***, 497 U.S. 261, 285 n.11 (1990)).

The respondent is presumed innocent. The burden of proof always remains with the Special Prosecutor. ***Sealed Appellant 1 v. Sealed Appellant 2,*** 211 F.3rd 252, 254-55 (5th Cir. 2000). Even though the Court has ordered Respondent to appear and show cause why he should not be disciplined, the special prosecutor bears the burden of proving all the elements of any alleged violation. The Court must make specific findings if it determines that Respondent violated any disciplinary rule. ***Resolution Trust Corp v. Bright***, 6 F.3d 336, 341 (5th Cir. 1993).

Finally, if discipline is required, the Court must use ***the least restrictive sanction*** necessary to deter the inappropriate action. ***In re Luttrell,*** *749 Fed Appx, 281, 286 (5th Cir. 2018, per curiam).* When punishing an erring attorney, the Panel must consider *all factors*, including the *duty violated*, the *attorney's mental state*, the *actual or potential injury caused* by the attorney's misconduct, and the *existence of aggravating or mitigating circumstances*. ***In re Sealed Appellant 1***, *supra* at 194 F.3rd at 673. (As will be shown, the ***Report*** sadly and entirely ignores this most difficult phase in this proceeding.)

THE FACTS WHEN VIEWED THROUGH THE PROPER PRISM OF A PRESUMPTION OF INNOCENCE

In retrospect, Mr. Sharpe's overriding fault was persistence and an unwavering dedication to his debt-ridden clients' plight – when those clients might not have deserved such loyalty. Obviously, no one admires an overly ambitious entrepreneur who does not pay its debts. But, given that our economy is one that is now built on a mountain of debt (from the highest offices of Government to the lowest credit card holder), the unpopular debtor is almost universal and must be entitled to vigorous representation against creditor claims which are often predatory or bought for pennies on the dollar by vulture funds. Protection of debtors' rights is not pretty, popular, or sympathetic, but it is needed – even though seldom remunerative. Thus, the issue for this case is, "Did Mr. Sharpe transgress permissible limits in his vigorous representation of his debtor clients?"

In answering this essential question, the disciplinary "rules" must be strictly construed, and Mr. Sharpe must be given every benefit of the doubt required by the "clear and convincing" evidence standard. Such are the requirements of due process, and such is the law. Justice can tolerate nothing less.

With deep respect, the factual section of the Special Prosecutors' ***Report*** sheds these fundamental axioms. It is neither neutral nor dispassionate. Instead, the ***Report*** pushes the limits of advocacy as it inaccurately (and caustically) attacks the character of Mr. Sharpe – while remaining mute as to his noble past. It considers all the bad, and never mentions the mitigating. *The* ***Report*** also loosely or incorrectly applies numerous disciplinary rules while obliterating the presumption of innocence. The prosecutorial ***Report*** tends to look at the factual background through a prosecutorial "dirty windowpane" – perhaps as is the Special Prosecutor's job – rather than through the clear picture provided by a presumption of innocence that this Panel must bring to this proceeding. The ***Report's*** factual recitations thus (perhaps understandably) tend to rely too

heavily upon the charged pleadings of Mr. Sharpe's bitter adversary, Weslease, to support its very partisan position. The ***Report*** also tends to regularly conflate the misdeeds of Mr. Sharpe's uncontrollable clients with Mr. Sharpe by wrongly attributing to Mr. Sharpe the financially desperate acts of his clients, thus blurring his role as an advocate.

To clear the focus of due process, Mr. Sharpe will thus retrace the actual events – which extend over one-half a decade -- that led to this proceeding and its tragedy.

1. **June 2019**: ***The Equinor case***.

The true story really begins in 2019 – far outside the Northern District of Texas.

Mr. Sharpe was representing a Behan-related entity (Lindale Pipeline LLC) in the highly successful prosecution of a multi-million dollar claim against Equinor Energy LP in Houston. This suit had been filed in **June 2019**. Mr. Sharpe (by default) became lead counsel in October 2019. [App. 3 at 8].[3] At the time, Mr. Sharpe was pushing eighty years of age. Given the severe limitations of his law practice, Mr. Sharpe, in June 2020, associated the assistance of his friend, Lynne Liberato, a very prestigious lawyer with the excellent firm of Haynes & Boone. Ms. Liberato was a long-time colleague of Mr. Sharpe who had been associated with Mr. Sharpe in other litigation. [App. 3 at 9] At this time, all was quiet on the Fort Worth front.

2. **June 2020. Dismissal of Weslease I.**

Things soon changed in Fort Worth.

A somewhat featureless creditor of the Behans, Weslease 2018 Operating LP ("Weslease"), began this draining saga by filing suit (as was its right) in the late Judge McBryde's court against Innovative Sand Solutions, LLC ("Innovative Sand") and Linda Behan, seeking to collect a debt that it had purchased in a Canadian bankruptcy proceeding. [**Case Number 4:19-CV-0055**]

[3] At the same time, Mr. Sharpe, in association with Justice Scott Brister (ret), was involved as lead counsel in the largest church property dispute in history. That dispute did not end until 2023.

For some reason, this *first* lawsuit is not even mentioned in the ***Report.*** [4]

Mr. Sharpe skillfully and honorably headed the debtors' defense (as was his obligation) – in a court which was legendary for its demands for proper advocacy. On the eve of trial, Weslease, rather than endure the rigors of Judge McBryde's pre-trial protocol, voluntarily dismissed its claim (through no fault of Mr. Sharpe) in **June 2020**. Judge McBryde (perhaps, impetuously) stated a stern inclination to enter a default judgment against the departing Weslease on the debtors' counterclaim. Mr. Sharpe, displaying his character, dissuaded the court from so doing due to a potential error in such course based upon Canadian bankruptcy law. Instead, the counterclaim was also dismissed. Peace in the Northern District was briefly restored. [App. 3 at 5]

3. **June 2021: The payment of H&B in *Equinor*.**

Meanwhile, back in Houston, by **June 23, 2021**, the cash-strapped Lindale was significantly behind in its payment of H&B's hourly bills in the *Equinor* litigation. Feeling a deep professional obligation to his longtime friend and colleague, Mr. Sharpe's professional corporation (without the knowledge of his client, Lindale) paid approximately $ 97,000 to H&B to compensate H&B for its services in assisting Mr. Sharpe in the prosecution of the *Equinor* case. The *Equinor* case was ultimately tried to verdict, resulting in a $24 million judgment in Lindale's favor. This judgment was affirmed by the Houston Court of Appeals and is now awaiting conclusion before the Texas Supreme Court.[5] [App. 3 at 9]

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[4] When an advocate is accused of being "vexatious" (i.e., annoying) it is certainly relevant to determine whether the advocate was irritatingly initiating redundant proceedings, or, instead, was being required to respond serial litigation on behalf of a besieged client.

[5] *Equinor Energy LP v. Lindale Pipeline LLC,* 2023 Tex. App. Lexis 8724 (Tex. App.- Houston 1st Nov. 21, 2023) *pet. pending.* [Attached as App. 7]

4. **July 2021: Weslease II.**

Almost a month after Mr. Sharpe's gratuitous payment to H&B in the *Equinor* matter, Weslease, in **July 2021**, obviously through no prompting by Mr. Sharpe[6], regrouped, returned and refiled its previously non-suited claim in Judge Pittman's court [**Case No. 4-20-CV-776**] – not Judge McBryde's court. [ECF No. 1][7].

The refiled suit was tried before Judge Pittman in early January 2022. [ECF No. 77]. This time, Mr. Sharpe's clients lost the rematch – again, through no fault of Mr. Sharpe. Judgment was entered by the Court against the defendants (not Mr. Sharpe), jointly and severally, finding them liable for the Weslease creditor's claim of more than $700,000. [ECF No. 79] The debtor/defendants, again through no fault of Mr. Sharpe, were unable to supersede the judgment, but nevertheless prosecuted an appeal, as was their right and Mr. Sharpe's duty. The defendants' appeal – through no fault of Mr. Sharpe – was unsuccessful.[8]

5. **November 2022:** ***Turnover Application 1 is denied.***

While the appeal was pending in Weslease II, Weslease began its dogged collection efforts – as again was its right but again was not the fault of Mr. Sharpe.[9] Weslease filed its ***first*** application for a "turnover order"[10] on **October 12, 2022** [ECF No. 90]. ("Turnover Application 1") As the ***Report*** admits, this application concerned "54 acres of real property in Tarrant County by way of River North Farms", a non-judgment debtor to the Weslease judgment. [***Report*** at p. 6] The ***Report***

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[6] It is well to remember that Mr. Sharpe is accused of being "vexatious" in this matter. In truth, most of Mr. Sharpe's actions were taken in response to relentless and often duplicative claims brought by Weslease.

[7] Weslease added Bull Moose Pipeline, LLC, Lindale Pipeline, LLC, and Dale Behan as defendants.

[8] The ***Report*** refers to an existing North Dakota judgment owed by the Behans or their affiliates. Mr. Sharpe was not involved in that matter.

[9] See footnote 4, supra.

[10] Under the law, a "turnover order" is an order, entered under the authority of TEX. CIV. P. & REMS. CODE, § 31.002(b)(1) requiring a debtor to "turn over nonexempt property that is in the debtor's *possession or subject to the debtor's control*, together with all documents related to the property, *to a designated [officer] for execution. ...*" (emphasis added)

quotes extensively from Weslease's charged *allegations* but largely ignores that Mr. Sharpe dutifully and **successfully** defended this application. Judge Pittman correctly *denied* Turnover Application 1 on **November 16, 2022** [ECF No. 95].

For some reason, the ***Report*** treats this denial as mere comity. It was of course much more. As Judge Pittman astutely noted, the issue of the reach of "turnover orders" is a murky issue under Texas law. Texas courts are "deeply troubled" by the extent that turnover orders can affect the rights of non-judgment debtors. As Judge Pittman also noted, the Texas courts were equally troubled that the turnover statute was being misused to decide ***issues of title***, even though the statute did not provide the authority to decide the *substantive rights* of the parties properly before it, let alone the rights of strangers to the judgment. Thus, the matter was left to the duplicative trial that was incongruously scheduled in Judge O'Connor's court.

Obviously, these very cloudy legal issues also deeply troubled Mr. Sharpe (who diligently research the law on the subject) in his vigorous representation of his client's rights. Since Judge Pittman held "the same reservations", it was decreed that the relief sought by Weslease in Turnover Application 1 could not be granted by Judge Pittman but might be obtainable the identical collection effort that Weslease was pursuing in yet another court, Judge O'Connor's court.[11] [**Case No. 4:22-CV-01013-O**]

6. **November 2023:** ***payback of the H&B advance.***

A week after the Judge Pittman *denied* Weslease's Turnover Application 1, the less than benevolent Behans learned of Mr. Sharpe's firm's generosity in paying H&B's delinquent fees in the *Equinor* litigation – even though Mr. Sharpe had never billed Lindale or the Behans for the payment or insisted on repayment. [App. 3 at 11] The Behans insisted upon repaying Mr. Sharpe's

[11] See footnote 4, supra.

firm, and, in **November, 2023** (when the Houston Court of Appeals affirmed the large judgment in the *Equinor* case) unilaterally wired $100,000 to Mr. Sharpe's firm from an unencumbered River North Farm's account to reimburse Mr. Sharpe's firm for the payment his firm had made to Haynes & Boone two years earlier – again, even though Mr. Sharpe had never billed or demanded repayment of such sum from anyone. [App. 3 at 12]

7. **January 2024:** ***Confusion arises by Turnover Application 2.***

As the ***Report*** fleetingly notes, Weslease had followed the rather questionable practice of doubling down by filing a "nearly identical" request for a turnover order ("Turnover Application 2") in Judge O'Connor's court.[12] In this ***third*** case before a third court, Mr. Sharpe again ***successfully*** defeated Weslease's Turnover Application 2 – as was his job.

Again, while the ***Report*** extensively quotes from Weslease's application in the first turnover application, it largely ***ignores*** that this "nearly identical" [***Report*** at p. 7] application dealing with the same property.

Like its twin (Turnover Application 1), Turnover Application 2 met the same fate. It was flatly denied by Judge O'Connor in **January 2024**, via a directed verdict. [ECF No. 94]. The ***Report*** strangely devotes very few words (precisely, one sentence) to this very pivotal event, since this decision involved almost identical issues and parties.[13] [***Report*** at p. 7] Immediately prior to granting the directed verdict, Judge O'Connor announced that there was "***no evidence*** that River North [Farms] [another affiliate of the busted Behans] was a judgment debtor to [Weslease]," and

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[12] See footnote 4, supra.

[13] As the Fifth Circuit recently held, "[u]nder res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." [Citations omitted] Res judicata bars an action when four elements are met: (1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions." ***Pie Development LLC v. Pie Carrier Holdings,*** -F.3rd-, No. 24-60155 (5th Cir. Feb. 3, 2025) (Attached as App. 8]]

"even if the Behans wholly owned the stock of River North Farms, there was **no evidence** that River North Farms' corporate veil should be pierced or that it operated as the Behans' alter ego." [App. 3 at 18].

In the advocate-mind of Mr. Sharpe, certainly, this judgment by Judge O'Connor on identical issues must have some *preclusive effects* on future disputes.[14] The direct result of the judgment was that the River North Farms was immediately able to effectuate a sale of the referenced real estate located in Azle, Texas and release the proceeds to Amarillo National Bank – another substantial creditor of the Behans and their empire of entities. *This permission will become peculiarly important as the saga drags on.* Again, the ***Report*** barely mentions it.

8. **February 2024:** ***Turnover Application 3.***

Weslease, undeterred by its defeat in Judge O'Connor's court and any preclusive effect of the O'Connor judgment and its previous loss before Judge Pittman, then glibly returned to Judge Pittman in round three of its collection efforts. In **February 2024**, Weslease filed a ***third*** application for a turnover order ("Turnover Application 3"), asking now that Judge Pittman order that the Behans to turn over their stock in River North Farms [ECF No. 112] – which, apparently, Weslease had neglected to (but certainly could have) ask Judge O'Connor in Turnover Application 2.[15]

The stock certificates of River North Farms, however, were then inconveniently and undisputably in the actual or constructive possession of Amarillo National Bank which had held the certificates and also held the voting rights to that stock since 2014 under a prior lending arrangement with the heavily indebted Behans.[16]

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[14] See footnote 12, supra.

[15] See footnote 4, supra.

[16] The ***Report*** grudgingly acknowledges this truth in a terse footnote – after claiming the opposite in the text – when its states that "[t]he Behans filed a declaration from Clint Latham with an appendix in support of their response to

Mr. Sharpe again dutifully defended the debtors (which could hardly be classified as "vexatious"). This time the debtors lost. After vigorous briefing and a hearing, Judge Pittman signed a turnover order on ***March 20, 2024*** [ECF No. 137], finally granting this third turnover application, and stating that the order would serve "as a muniment of title" evidencing Weslease's ownership of 100% of the stock of River North Farms.[17] (This of course seemed to contravened Judge Pittman's earlier proclamation that turnover applications could not be used to decide issues of title and the fact that the turnover statute has no language authorizing an issuing court to transfer property to a judgment creditor.)

As was his duty, Mr. Sharpe dutifully filed an appeal, claiming the relief was beyond the reach of any turnover statute and was precluded by Judge O'Connor's previous judgment. Despite the appeal, Mr. Sharpe (who was not ordered to do anything) worked diligently to attempt to bring his clients into compliance with the appealed turnover order.

9. **April 2024:** ***Gate codes.***

Having finally prevailed on its multiplicity of applications, Weslease felt the winds in its sails. Claiming dissatisfaction with the debtors' response to the court's turnover order, Weslease filed a motion for enforcement of the turnover order with Judge Pittman. [ECF No. 111] Strangely, the motion did not seek compliance with anything compelled by the turnover order but sought access to real property in Hood County that was owned by a non-judgment debtor, River North Farms. As was his duty, Mr. Sharpe brought this disconnect to the Court's attention, suggesting that it was a matter that Weslease should resolve with Amarillo National Bank, its putative "co-

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Weslease's turnover application. In the declaration Mr. Latham stated that ANB held a security interest in River North for a debt owed by both the Behans and River North." [***Report*** at p. 7]

[17] Additionally, the turnover order directed that the Behans provide a complete list of all property interests and liabilities owned or owed by the Behans or River North.

owner" of River North's stock. Unimpressed by the debtors' arguments, Judge Pittman, on **April 5, 2024**, entered an enforcement order that required the debtors (in their opinions) to do things that were not requested in the motion – at least in the advocate-mind of Mr. Sharpe.[18] Again, as was his duty, Mr. Sharpe filed an appeal of this order, *but the order was timely complied with.*

10. Confusion reigns.

By April 2024, things were now confused – at least in Mr. Sharpe's very technical, adversarial mind.

Judge O'Connor had entered a final judgment that River North Farms was not a judgment debtor and not an alter ego of the Behans.

Weslease, however, now claimed to own the stock of River North via a turnover order – even though Amarillo National Bank indisputably held the stock with the voting rights to the stock and had been assigned the Behans' the River North Farms stock certificates years before.

The Behans, moreover, incongruously (but arguably because Amarillo National Bank had possession of the stock with its voting rights) remained officers and directors of River North Farms, with fiduciary duties to protect the property of River North Farms, even though Judge Pittman had nominally awarded title to the ownership of the River North Farms stock to Weslease via a turnover order, with the stock certificates held by Amarillo National Bank and the voting rights to that stock also being held by the Amarillo National Bank.

Mr. Sharpe, moreover, persistently held the opinion (as advocates are known to do) that title issues could not be resolved by turnover proceedings, and thus ownership could not be conveyed *via* a turnover order.

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[18] The debtors were required to provide to Weslease gate codes, keys, or anything else necessary for Weslease to access the River North Farms property, and to turn over all financial records of all entities, corporations, partnerships, or real property in which either Behan had any stake or interest since January 2017 and awarded attorneys' fees.

11. Sharpe mistakenly over-reacts.

Faced with these swirling conundrums, Mr. Sharpe – perhaps mistakenly – reacted. Weslease filed "quit claims" to River North Farms' property in its capacity as nominal "co-owner" of the stock of River North. Mr. Sharpe, in turn, filed two actions (in Parker and Tarrant County) on behalf of River North Farms. These filings were authorized by River North Farms' titular "officers and directors" (*i.e.*, the Behans) to quite the title of parcels of realty owned by River North Farms. This action, even if ill-conceived, is not unethical, particularly given the bizarre situation created by multiple decisions rejecting or sustaining Weslease's multiple claims, seemingly reaching opposite conclusions, regarding the breadth or the effects of turnover orders, and the highly confused status of the stock ownership of River North Farms between two creditors (Weslease and Amarillo National Bank) of River North Farms and the busted Behans.

***12.* May 2024: the explosion.**

Regardless, Mr. Sharpe's (perhaps) over-zealous protection of his clients, of course, resulted in an explosion.

Weslease filed a "show cause" motion on **May 16, 2024**. [ECF No. 157]. On May 21, the Court held a hearing.

Mr. Sharpe asked Tim Davis, of the prestigious firm of Jackson Walker to assist Mr. Sharpe in defending the post-judgment proceedings. Mr. Davis agreed. Jackson Walker employed an associate who had previously served as a law clerk to Judge Pittman (a fact unknown to Mr. Sharpe until shortly before the hearing). This associate was assisting Mr. Davis. The attorney-in-charge sadly could not appear at the May 21 hearing and sent his associate instead – a situation Judge Pittman obviously found offensive even though former law clerks frequently appear before judges who they formerly served.

For some reason, the ***Report*** remarkably *centers* on this innocent substitution (of an associate for the partner-in-charge) as a basis for *disbarring* Mr. Sharpe – even though Mr. Sharpe had nothing to do with the substitution and did not learn of it until days before!

On the same day (May 21, 2024), the Court entered an order that Sharpe turnover to Weslease all documents relating to his representation of River North Farms, pay a sanction fine, and ordered that Mr. Sharpe dismiss the quite title actions that Sharpe had filed on behalf of River North.

This order was timely complied with but also appealed.[19]

13. **May 21, 2024: *The Charging Order.***

On the same date – May 21 – an obviously perturbed Judge Pittman surprisingly entered a separate order (the "Charging Order"), charging Mr. Sharpe with "unbecoming conduct" in violation of Local Rule 83.8(b), violation of Fed. R. Civ. P 11, and violation of 28 U.S.C. § 1927. The order alleged, in a conclusory fashion, that

1) Mr. Sharpe failed to "act in accordance with the final judgement" entered in by Judge Pittman in May 2022. Mr. Sharpe, of course, was not a party to the judgment except in his role as the trial and appellate counsel of the judgment debtors.
2) Mr. Sharpe failed to "act in accordance with" the court's March 2024 turnover order and failed to rectify "deficient behavior" after the April 4, 2024, show-cause hearing. Again, Mr. Sharpe was not the subject of the turnover order or the show cause order, except in his role as counsel.

[19] The tenuous line between "criminal" and "civil" contempt and the way frustrated trial judges must deal with motions to enforce was extensively discussed in a recent *en banc* decision of the Fifth Circuit. ***M.D. v. Abbott,*** -- F3d --, No. 24-40248 (October 11, 2024) *reh. denied* (Feb. 11, 2025).

3) Mr. Sharpe failed to "act in accordance with" the court's April 2024 second turnover order and failed to rectify "deficient behavior" after the April 4, 2024, show-cause hearing. Again, Mr. Sharpe was not the subject of the second turnover order except in his role as counsel.

4) Mr. Sharpe made some unstated "false representations" to the court concerning the "ownership and possession of various entities and physical property" pertaining to his clients.

5) And, finally, that Mr. Sharpe had "taken affirmative actions to prevent Plaintiffs from assessing" documentation and property "to which they are legally entitled".

The Court noted that it already "strongly appeared" to the Court that Mr. Sharpe had "engaged unethical behavior", and that the Court had already concluded that Mr. Sharpe's undescribed "actions" to "avoid his clients' fulfillment of the judgment and his refusal to comply with this Court's orders" were "squarely in line with actions that [were] both unreasonable and vexatious". In accordance with past practices in this District, Judge Pittman appointed, under Local Rule 83.8(g), a very competent special prosecutor (who was subsequently replaced by the current, equally competent Special Prosecutors) to investigate the matter and present evidence at a hearing (*now* schedule for March 14, 2025.)

14. September 2024: *The disgorgement "motion" and the blundering Behan sale.*

The summer of 2024, as the ***Report*** notes, was occupied by a series of motions filed by the jubilant Weslease serially attacking the Behans, and now Mr. Sharpe. By the end of August 2024, Weslease, realized the hobbled condition of Mr. Sharpe to act as an advocate for the debtors or even defend himself.[20] The creditor thus piled on (as was their right), and brought yet another post-

[20] Mr. Sharpe represents the debtors on an hourly rate basis. He has not been paid and is owed hundreds of thousands of dollars in unpaid fees. [App. 3 at 35]

judgment proceeding in Judge Pittman's court, entitled "Motion for Disgorgement".[21] [ECF No. 202]

This "motion" (not suit) sought, *inter alia*, disgorgement of the $100,000 that had been reimbursed to Mr. Sharpe by the Behans (via River North Farms) almost a year earlier (in November 2023) based upon his payment of H&B's fees – way back in 2021 – in the *Equinor* litigation. This "disgorgement claim" seemed to be somewhat of a perversion of a normal *Burrows v. Arce* [22]claim – with the very notable twists that the *non-assignable* claim was brought by *a non-client* [23]against an *adverse attorney* (via a sanctions motion or post judgment collection motion) for actions that occurred in another case three years earlier. It was most definitely not brought by a client against an erring lawyer for a breach of fiduciary duty in the separate *Equinor* lawsuit.

Regardless, Judge Pittman held a hearing on this "motion" on September 25, 2024. No evidence was presented, and the motion was merely argued (after a rather ominous warning from the court). [App. 3 at 31]

On the same day as filing its motion for disgorgement, Weslease also brought another motion for enforcement, arguing that Mr. Sharpe had violated the Court's orders by supposedly signing a contract to sell real estate on behalf of River North Farms on August 9, 2024. As previously pointed out to the Panel [ECF No. 32], this "real estate transaction" involved real property in Azle, Texas that was owned by River North Farms. The property was part of the very same tract that was the subject of the suit in Judge O'Connor's court.

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[21] Respondent respectfully submits that a claim for "disgorgement" of attorneys' fees is normally a separate action brought against a fiduciary under the state-law precedent of ***Burrows v. Arce***, 997 S.W.2nd 229 (Tex. 1999), and is not normally a post-judgment collection tool (outside of the bankruptcy context).

[22] See footnote 20.

22 Weslease was not even a putative "owner" of River North Farms – either at the time of the 2021 advancement or the November 2023 repayment.

Contrary to the ***Report's*** supposition, Mr. Sharpe had absolutely nothing to do with this confused transaction and certainly did not "facilitate it". [ECF No. 32] Because of his attorney-client relationship, he obviously could not comment on this at the hearing. Had he been able to comment, Mr. Sharpe would have related that Mr. Sharpe's first knowledge of this contract was when his fast-moving clients called Mr. Sharpe and told Mr. Sharpe that the Behans were having difficulty ***closing the contract of sale***. [App. 4 at 9]

Prior to this surprising call, Mr. Sharpe had no knowledge of River North Farm's action by its officer Dale Behans actions. He had no knowledge or role in the solicitation of the prospective sale; he had no knowledge or role in the drafting of the contract; he had no knowledge or role in the closing of the contract. Mr. Sharpe, far from facilitating the transaction, immediately and unequivocally communicated that that the ill-conceived transaction had to be either rescinded, or the agreement of Weslease had to be secured for the transaction to close. Mr. Sharpe repeated the same instructions to the putative purchaser's attorney when he received an unsolicited call from that attorney. Mr. Sharpe was no more than an innocent bystander that, far from facilitating the transaction, affirmatively sought to stop it. [App. 4 at 10]

15. The Disciplinary Action Stalls.

In the interim, the now severed disciplinary action against Mr. Sharpe had somewhat stalled. The initial special prosecutor appointed by Judge Pittman had, for very valid reasons, declined the appointment. [ECF No. 3] A equally prestigious lawyer was appointed as a replacement [ECF No. 5] but, again for very valid reasons, had been temporarily delayed in moving forward. To expedite the process another prestigious lawyer was added as co-prosecutor. [ECF No. 9] As matters moved forward to a planned December 12, 2024, hearing, Mr. Sharpe filed a motion to refer the disciplinary matter to the Chief Judge of the Northern District for appointment of panel

of judges to determine the matter. [ECF No. 13] The motion was granted on November 6, 2024 [ECF No. 16], and this Panel was appointed on November 8, 2024. [ECF No. 18].

16. November 7, 2024: the parting surprise.

After Judge Pittman entered the order referring this matter to Chief Judge Godbey, the very next day (November 7) Judge Pittman entered two orders that changed the course of everything.

First, in the **Weslease II** case, the court granted, in part, the Weslease August "disgorgement" claim that had been heard in September. [ECF No.251] This required that Mr. Sharpe (an 84-year-old solo practitioner working with the assistance of his wife) pay into the registry of the court the $100,000 payment which he had been paid by the Behans a year earlier (November 2023) to reimburse his firm for the payment of Haynes & Boone delinquent fees in June, 2021 for their services in the *Equinor* litigation. This was of course no small financial feat for a solo practitioner who is eighty-four years old, who had an elderly wife to support and a defense to man in this disciplinary action.

Secondly, and more importantly, in this severed case (which a day earlier had referred to Judge Godbey for reassignment), Judge Pittman entered a *post referral* order "temporarily (but indefinitely) suspending" Sharpe's right to practice in the Northern District of Texas until this Panel ruled otherwise. [ECF No. 17] The basis of this *post-referral* action was Judge Pittman's analysis that the three-year old Haynes & Boone payment was somehow an impermissible "business transaction" between Sharpe and the Behans that transgressed TEX. R. PROF. CONDUCT 1.08(a) – without any reference to Rule 1.08(d)(1), or the issue of standing. There had never been any mention of this unconnected event (that occurred in another case three years earlier) in any "show cause" order –the litmus of proper due process notice. *See e.g.*, ***In re Smith***, 100 F. Supp. 2d 299 (N.D. Tex. 2000). This order of course put a screeching halt not only to a significant portion

of Mr. Sharpe's livelihood, but any further advocacy by Mr. Sharpe on behalf of his beleaguered clients.[24]

17. The blunder of December 2024.

By the end of November 2024, the elderly Mr. Sharpe was literally in a daze. He was approaching 85. Both he and his elderly wife were suffering, physically, financially, and emotionally. He was under financial pressure because of his many nonpaying clients, including the Behans. He faced a "disgorgement judgment" of more than $100,000, and he was "temporarily suspended" from practicing law in the Northern District of Texas. Life was very trying.

Mr. Sharpe had moved this Panel to lift the November 7 "temporary suspension" – without response from the Special Prosecutors. [ECF No. 19] The motion was of course ultimately denied by this Panel on separate grounds. [ECF No. 29] Similarly, Judge Pittman's ruling that Mr. Sharpe must pay $100,000 in "disgorgement" damages was placed in serious doubt by the Fifth Circuit's *dicta* in its declination of a stay. The appellate court's opinion specifically noted that it was substantially likely that the disgorgement award was erroneous, and that the Court's analysis of Rule 1.08(a) was flawed. ***Weslease 2018 v. Sharpe,*** No. 24-10998, p.4-5 (5th Cir., November 18,2024) (The decision is attached as App. 9)

While these glimmers of hope were budding, the recently appointed receiver (Mr. Forshey) for River North Farms petitioned to dispose of the property of River North. [ECF No. 258]. Various creditors of River North had filed responses to the petition that questioned the propriety of the receiver's request. For some totally *unfathomable* reason, the dazed Mr. Sharpe felt that it was

[24] Sharpe's subsequent misreading of the suspension was perhaps buoyed by the Sixth Amendment concerns that are always raised when a chosen counsel is disqualified from representing his client by court-imposed sanctions. *See generally,* ***United States v. Gonzales***, 548 U.S. 140 (2006); ***Gibb v. Paluk***, 742 F.2d 181 (5th Cir. 1984). It was also perhaps buoyed by the Fifth Circuit's recent rejection of Judge Pittman's reading of Rule 1.108(a).

incumbent upon him to file a similar response on behalf of the penurious Behans to provide clearly unwanted assistance to Judge Pittman in resolving the request.

Thus, after reading and re-reading the temporary suspension, and after conferring with his paralegal and elderly wife, Mr. Sharpe somehow convinced himself that the first sentence of the last paragraph of the temporary suspension somehow exempted the cases that Mr. Sharpe was then "active in" from the suspension's prohibitions. He thus put pen to paper and filed a wholly superfluous pleading. Sharpe's unwanted surplusage was instantly struck by Judge Pittman *sua sponte* on the very same day of its filing. [ECF No. 276]

There is no rationale for Mr. Sharpe's ebullient, elderly reading of the temporary suspension, other than that he was reeling from the onslaught, and his feeling of the need to intrude in a matter that wholly lacked any need (or, wish) for his intrusion. Mr. Sharpe should **not** have filed the needless response that Judge Pittman *sua sponte* and instantly struck. It was a blunder. It was stupid. Mr. Sharpe subsequently expressed his contrition and remorse to Judge Pittman for an unintentional error, and apologized to the Court for Mr. Sharpe's pointless, but largely inconsequential blunder. He fully complied with the sanction ordered by Judge Pittman for this mishap.

Mr. Sharpe's blunder, while inexcusable, was stupidly innocent. It was not purposeful, not contemptuous, and not made in bad faith. It was simply dumb. Moreover, since the blunder was instantly resolved by the Court's striking order, without expense to any party, and the filing was largely replicative of the prior creditor filings, it was thus largely inconsequential. Adhering to his own maxim that sanctions must be "limited to 'deter repetition' of offending conduct", ***Anteras Reinsurance Co., Ltd. V. Nat'l Tran. Assocs., Inc.***, 2024 U.S. Dist. LEXIS 118653 (N.D. Tex., 2024), Judge Pittman imposed a $5,000 sanction for the violation of the "temporary suspension".

The fine was paid, and Mr. Sharpe has withdrawn from the fray – never to return. There will be no repetition of Mr. Sharpe's conduct, as he awaits the Panel's pending decision.

RESPONSE TO THE REPORT

Responding to the ***Report*** is difficult, not because of its content, but because of the deep admiration I hold, and the friendship I enjoy, with its authors. Nonetheless, it is their job to report and my job to point out where they are wrong. That is the adversarial process that is the heart of our system of justice.

If The World Were "According to Sharpe", It Would Be a Better Place

The most glaring error of the ***Report*** is the unwarranted and unneeded attack on Mr. Sharpe's character, under the colorful heading "The World According to Sharpe".[25] It is doubtful that this Panel seeks the Special Prosecutors' pseudo-psychological analysis of Mr. Sharpe's personality. Regardless, the analysis presented by the ***Report*** is clearly wrong.

The thinly veiled, but misdirected, purpose of this needless section is obviously to focus on the Panel on irrelevancies, prejudice the Panel, and divert the Panel from the substantive. Reading these immaterial appraisals – unsupported by any real evidence – leaves the misimpression that Shelby Sharpe is either a pompous Pharisee who glowers at others with self-adulation and arrogant disgust, or a distasteful television shyster that practices law for the money while holding the courts in disdain.

Mr. Sharpe is not the stereotype that is miscast by the ***Report.*** The Panel will see and hear Mr. Sharpe, and they will disagree with the Special Prosecutors' unneeded swipe – no matter the result the of this proceeding. Mr. Sharpe is admittedly opinionated; but an arrogant, back-swiping

[25] Apparently, this is a not so humorous "take off" from the John Irving novel, *The World According to Garp*, or the movie by the same title starring the late Robin Williams.

gossip – never. The affirmation of his long-time pastor [App. 5] will certainly dispel that faulty notion.

Mr. Sharpe has led an admirable life. He has pursued his career with character and honor. After sixty years, his record is unblemished. He is a devoted family man who has been a wonderful husband for sixty-two years, and a hard-working father, grandfather and great-grandfather. His wife of sixty-two years now assists in his practice to make ends meet. All his actions are rooted in his deep Christian Faith. He has devoted large portions of his professional career representing churches and similar faith-based organizations, such as the Southern Baptist Convention or the Episcopal Diocese of Fort Worth. Frequently, he has done so without compensation or at greatly reduced rates. He is renowned for his legal scholarship on "Faith based" constitutional and ecclesiastical issues.

Mr. Sharpe has always led a humble life that was measured and disciplined in accordance with his Faith. An excellent student athlete at the University of Texas, he followed by attending the University of Texas School of Law and then received the honor of clerking for the legendary Chief Justice Calvert on the Texas Supreme Court. Throughout his career, he has prided himself in being a true student of the law and a servant of the Bar, standing as a beacon of his Faith and the Rule of Law. He has held many honorary roles in the Bar dedicated to the honorable practice of law. For sixty years, he has devoted his life to being a vigorous, dedicated advocate for his clients' interest. To belittle such an exemplary life is appalling and sad. If the world were composed of Shelby Sharpes, it would be kind, decent, honorable, and gentle. Sadly, it is not.

PRIVATE, OPINIONATED CHATTER BETWEEN PROFESSIONAL COLLEAGUES IS NOT A VIOLATION TRPC, § 8.02(A) AND IS CERTAINLY NOT UNETHICAL ACT WARRANTING DISBARMENT

One wonders: How often have we heard a colleague, in a private conversation, attribute his or her loss in court to "home-cooking" or the irascibility or lack of intellect of the sitting judge? Or, how many times, during the last year, have we seen some sixty-second legal "expert" critique the actions of a judicial officer or judge involved in a politically charged trial as lacking in integrity? Alas, there are times in most lawyers' careers when they encounter judges who (rightly or wrongly) outraged them, causing them to believe that rulings were profoundly wrong, or that the judge's rulings were moved by political or personal views, or that the judge was partial to an opposing party or counsel, or so hostile to the lawyer or the lawyer's client as to deprive the proceeding of justice. That is simply the nature of an adversarial system of justice. Contests always have losers and normally they are not happy.

The private expression of these emotive opinions that are endemic to an adversarial system is not the subject of Rule 8.02(a) of the Texas Rules of Professional Conduct. Instead, Rule 8.02(a) deals with ***the purposeful defamation of a jurist***. The Rule does not deal with expressions of opinion, it does not deal with private expressions of those opinions, and it does deal with mere critiques. The Rule states that a lawyer shall not make a false statement of fact concerning the "qualifications or integrity" of a judge when he *knows* that statement is false. For example, if a lawyer stated on his on podcast that a judge "was paid off", and the lawyer knew that the charge was false, that would violate the Rule. If the lawyer, on the other hand, expressed the opinion that a judge's rulings were wrong and one-sided, that would not violate the Rule.

In essence, the Rule prevents libel (which might otherwise be immune due to the immunity surrounding in-court statements.). The Rule is judged by the same *Sullivan* standard that a libel

claim against the press corps would be judged when that ignoble group attacks a public figure. *See e.g.*, ***Garrison v. Louisiana***, 379 U.S. 64 (1979) (prosecutor could not be held liable for defamation for describing judge as lazy or indifferent to vice cases unless there was an showing of "actual malice" as required by *Sullivan*); ***In re Snyder***, 472 U.S. 634, 638 (1985)(a lawyer who was "totally disrespectful to the federal courts and judicial system" and "exhibited an unlawyerlike rudeness" could not be sanctioned for "a single incident of rudeness or lack of professional courtesy" when that occurred in the context of a private letter); ***Standing Committee v. Yagman***, 55 F.3d 1439 (9th Cir. 1995) (lawyer who publicly assailed the judge as "ignorant", "a buffoon", and a "right-wing fanatic" who was also "antisemitic" could not be punished because the statements were *mere opinion or "rhetorical hyperbole"* that could not be proven either "true or false". Moreover, the statements were related to the jurist competence, not his qualifications or integrity.).

This Rule is thus *very strictly construed* because 1) it treads so very near to First Amendment "freedom of speech" rights, and 2) it might impede lawyers from discharging their equal duty to promote the public interest of assuring professional independence from of parochial concerns. TEX. R. PROFESSIONAL CONDUCT, *Preamble,* ¶ 8. The application of the Rule has thus largely been limited to 1) bombastic, irresponsible court filings, 2) disrespectful statements made in open court, 3) pronouncements made in elections, or 4) widely published, knowingly false statements that were intended for broadcast by mass media. It is always limited to knowingly false statements of disparaging facts – not the incorrect opinions of the speaker. It is never utilized to punish statements made in private conversations between friends and colleagues, and it has never been used to disbar a private speaker who expressed his opinions to a friend or colleague.

Here, the ***Report*** claims that Mr. Sharpe violated Rule 8.02(a) by engaging in rude chatter with a fellow lawyer in a private electronic communication during February 2024. These vague opinions were that Judge Pittman seemed unlearned in the law and seemed to have undergone a personality change. There were no communications from Mr. Sharpe stating that Judge Pittman was a "loose cannon". His statements to a fellow lawyer with whom he had been working was that Judge Pittman "does not always follow "the finer points" is not derogatory and certainly not a breach of any ethical rule. Likewise, the statement that Judge Pittman that Mr. Sharpe had "no idea of what had happened to Judge Pittman" was a denial of knowledge and an expression of concern.

Perhaps few would agree with Mr. Sharpe's opinionated assessments of Judge Pittman, … least of all the author of this ***Response***. Judge Pittman is both very stable and very learned. Yet, everyone would also recognize that Sharpe's opinions were formulated from the viewpoint of a disappointed loser. Regardless, as ***Snyder*** and ***Yagman*** clearly illustrates, such private, opinionated chatter is *not* the grist of an 8.02(a) violation, does not meet the *Sullivan* standard, and should never be the basis of disbarment.

Again, like the "World According to Sharpe", this section of the ***Report*** deals with a prejudicial immateriality that is clearly designed to prejudice the Panel's determination.

AN IMMATERIAL STATEMENT OF FACT THAT IS TRUE OR NOT KNOWINGLY FALSE DOES NOT VIOLATE TRPC 3.303 AND IS NOT THE BASIS OF DISBARMENT

The ***Report*** then shifts Rule 3.303.

Specifically, the ***Report*** *states* that the investigation of the Special Prosecutor's "revealed that Mr. Sharpe did not satisfy his burden of candor with the Court under Texas Disciplinary Rule of Professional Conduct Rule 3.03(a)(1), which provides that a lawyer shall not ***knowingly*** "make a ***false statement of material fact*** or law to a tribunal." [***Report*** at p. 17] ***According*** to the ***Report***,

"there are three instances in which Mr. Sharpe *misled* the Court during the *Weslease* litigation." [Id.]

As an initial matter, it is well to note that Mr. Sharpe has no "burden" to prove anything in this disbarment proceeding. It is the burden of the Special Prosecutor's to prove, by clear and convincing evidence, that Mr. Sharpe, in essence, *defrauded* the court on some material issue of fact. As to each of the so-called "three instances", the Special Prosecutors must prove by clear and convincing evidence 1) that Mr. Sharpe made a statement of fact (not opinion) to Judge Pittman, 2) that the statement of fact was "false", 3) that the falsely stated fact was "material" to some issue, and that 4) Mr. Sharpe knew that the statement was false when made.

None of the three instances cited by the ***Report*** remotely satisfy this high burden.

First, the ***Report*** claims that "[d]uring the course of the enforcement proceeding on February 29, 2024, Mr. Sharpe told Judge Pittman that [Amarillo National Bank] had "control" of River North." Obviously, the "control" of an entity is a matter of opinion subject to many variables. It is not a matter of fact, particularly given the confused facts of this case. Even if this statement was a matter of fact, it was true. It was certainly not knowingly false. Amarillo National Bank did in fact hold the share certificates of River North and held the voting rights to those shares. That certainly seems to be "control". As even the ***Report*** admits, Amarillo National Bank was at least co-owner of River North. [***Report*** at p. 20] Finally, obviously, Mr. Shape's opinions on the "control" of River North were apparently less than "material" to Judge Pittman since he subsequently gave a "muniment of title" to Weslease in the March 2024 "turnover" order.

The ***Report*** continues that, "[i]n a hearing on April 5, 2024, Judge Pittman was led to believe that no attorney of the Behans had contacted ANB to inform it of the status of the proceedings." This of course relates to Judge Pittman's state of mind, not a statement by Mr.

Sharpe. Regardless, how is this in anyway "material"? Obviously, Amarillo National Bank had been contacted since it submitted an affidavit showing its secured position. Someone must have secured the affidavit.

The ***Report*** also states, "Judge Pittman also was told that the Behans could not provide access codes to the River North property because that information was under ANB's control." Again, this is a mere statement of opinion based upon the debtor-creditor relationship of River North Farms and Amarillo National Bank. There is nothing false in such statement, and certainly not knowingly false.

The ***Report*** concludes this "instance" by stating "[t]his information provided by Mr. Sharpe to the Court was not accurate", and "[t]hus, the [mis]impression given by Mr. Sharpe to the Court [was] that ANB was not being kept apprised of the litigation's status …". It is difficult to imagine how the state of reporting or information available to Amarillo National Bank had any materiality to any matter before Judge Pittman. The issue was whether was whether Weslease would get access to property without the cooperation of Amarillo National Bank, and it did get such access. The status of Amarillo National's informational level, or its ownership or control were immaterial.

The second so-called "instance" cited by the ***Report*** is even more benign. According to the ***Report***, Mr. Sharpe purportedly knowingly stated that he was unaware that a former law clerk of Judge Pittman was on the defense team he hired from Jackson Walker. First, it is very hard to devein the materiality of this "misstatement" even if it had been made. As we are certain the Panel knows, it is hardly uncommon for former law clerks to appear before the courts that they formerly served. Unless such an appearance transgresses a rule of employment, it is entirely permissible. Secondly, Mr. Sharpe did not *know* of the law clerk's appearance on his defense team from Jackson & Walker until four days prior to the hearing. The lead counsel he had hired was unable to attend

the pivotal hearing, leaving the matter to his associate. Moreover, that appearance of the former law clerk seems totally immaterial as Judge Pittman ruled against Mr. Sharpe on every point.

The final instance is the grossly over-blown instance where Mr. Sharpe's firm paid Haynes & Boone's past due fees in the *Equinor* litigation. The *material* facts related to this instance are simple: (1) The elderly Mr. Sharpe was lead counsel in the *Equinor* litigation being pursued by Lindale in Houston in 2021; (2) Haynes & Boone were acting as his valuable co-counsel; (3) Lindale was behind in paying Haynes & Boone its hourly fees in June 2021; (4) this non-payment was causing distress to Ms. Liberato who was Mr. Sharpe's friend and needed co-counsel; (5) the anxiety of Ms. Liberato caused embarrassment and distress to Mr. Sharpe; thus (6) Mr. Sharpe dug into his firms coffers to pay the litigation expense of local counsel on behalf of the client. All the parsing done in the ***Report*** cannot alter these basic facts. All were true and were wholly immaterial to any action by Mr. Sharpe in the later *Innovative Sand* lawsuit.

MR. SHARPE DID NOT KNOWINGLY VIOLATE TURNOVER ORDER NO. 3 AND ANY TECHNICAL VIOLATION IS NOT A BASIS FOR DISBARMENT

The ***Report*** next basis for disbarment is the claim that the claim that Mr. Sharpe knowingly violated the turnover order entered by Judge Pittman on March 24, 2024. The rebuttal to this claim has been dealt with above, but to summarize:

1. Judge Pittman correctly *denied* the Weslease Turnover Application No. 1 on **November 16, 2022** [ECF No. 95]. The court emphasized that the issue of the reach of "turnover orders" is a murky issue under Texas law and that Texas courts are "deeply troubled" by the extent that turnover orders can affect the rights of non-judgment debtors. Obviously, these very cloudy legal issue also deeply troubled Mr. Sharpe who was trying to represent his client's rights.

2. Judge O'Connor then *denied* Weslease's Turnover Application No. 2 in **January 2024**, via a directed verdict. [ECF No. 94], announcing that 1) River North [Farms] was *not* a judgment debtor to Weslease, and 2) River North Farms' corporate veil should not be pierced and River North was not operated as the Behans' alter ego." [App. 3 at 18]. In the advocate-mind of Mr. Sharpe, certainly, this judgment by Judge O'Connor and these findings must have some *preclusive effects* on future disputes. Indeed, the direct result of the judgment was that the River North Farms was immediately able to effectuate a sale of real estate located in Azle, Texas and release the proceeds to Amarillo National Bank.

3. As the ***Report*** concedes, Amarillo National Bank was "co-owner" of the stock of River North – even after the entry of the of the March 24 "muniment of title" turnover order. It held the certificates of ownership and the voting rights to 100% of the stock ownership. [***Report*** at p. 20]

4. Dale Behan and Linda Behan were incongruously never removed as the officers and directors of River North by the shareholder owning the voting rights to its stock, Amarillo National Bank.

5. When Weslease sought entry on River North property, Sharpe, as counsel for the Behans, naturally required the consent of River North's co-owner, Amarillo National Bank, who *de jure* controlled the property. Hence, the "gate code" controversy of April 2024.

6. Similarly, when Weslease quit-claimed River North property to itself, without the consent of Amarillo National Bank, Mr. Sharpe – perhaps mistakenly but certainly understandably – felt that the confused situation required the clarification of quiet title action to protect the Behans, who for some reason were still the officers and directors of River North. Mr. Sharpe's actions, even

if incorrect, were certainly not malevolent nor intended as mere obstruction. Yet, the May 21 resolution of this matter was the inception of this disciplinary proceeding.

7. Mr. Sharpe did not violate any court orders by "signing" a contract to sell real estate on behalf of River North Farms on August 9, 2024, nor did Mr. Sharpe make any knowingly false statement to any putative purchaser of River North Farm's property of in material fact [in purported violation of TEX. R. PROF. CONDUCT, 4.01(a)].

8. Mr. Sharpe, obviously, did not sign any contract for sale. This "real estate transaction" involved real property in Azle, Texas that was owned by River North Farms. The property was part of the very same tract that was the subject of the suit in Judge O'Connor's court. Contrary to the ***Report's*** supposition, Mr. Sharpe had absolutely nothing to do with this confused transaction and certainly did not "facilitate it". [App. 4 at 6]

9. Because of his attorney-client relationship, he obviously could not comment on clients' activities that he learned of *post facto* at any hearing.

10. Had he been able to comment, Mr. Sharpe would have related that Mr. Sharpe's first knowledge of this contract was when his fast-moving clients called Mr. Sharpe and told Mr. Sharpe that the Behans were having difficulty ***closing the sale***. Prior to this surprising call, Mr. Sharpe had no knowledge of the Behans' actions. He had no knowledge or role in the solicitation of the prospective sale; he had no knowledge or role in the drafting of the contract; he had no knowledge or role in the closing of the contract.

11. Mr. Sharpe, far from facilitating the transaction, immediately and unequivocally told his clients that the ill-conceived transaction should be rescinded unless approved by Weslease. Mr. Sharpe repeated the same advice to the putative purchaser's attorney when he received an unsolicited call from that attorney. Sharpe was no more than a late arriving, innocent bystander.

Far from facilitating the transaction, he affirmatively sought to stop it. Yet, this event now underlies the Special Prosecutors' attempts to disbar Mr. Sharpe. With the deepest respect, this is wrong

MR. SHARPE DID NOT VIOLATE TRPC 1.08(A) BY HIS JUNE 2021 PAYMENT OF FEES TO H&B IN THE *EQUINOR STATE-COURT LITIGATION*

The ***Report*** remakes the tired argument that Mr. Sharpe somehow violated Rule 1.08(a) by advancing money in June 2021 to pay the delinquent fees to H&B in the unrelated *Equinor* litigation that Lindale was pursuing in state court in Houston. While this was the basis of the temporary suspension imposed on Mr. Sharpe on November 7, 2024, by Judge Pittman, the validity of that basis has largely been dispelled by the Fifth Circuit's *dicta* in denying a stay of the disgorgement award. Any "strict construction" of Rule 1.08(a) clearly cannot ignore this *dicta*.

The alleged "ethical violation" supposedly occurred in June 2021 -- months before *Weslease II* was even filed. The events occurred in a case where Weslease was not even remotely a party – either directly or derivatively. The alleged illicit "business transaction" with a client consisted of Mr. Sharpe's firm gratuitously paying the delinquent fees owed to its co-counsel in unrelated, state court litigation that resulted in the client securing a $24 million judgment and keeping it on appeal. Obviously, no party that was privy to the alleged "business transaction" has any complaint about the professional and magnanimous act performed by Mr. Sharpe's firm. Yet, the ***Report*** improvidently seized upon this remote unrelated event in its attempts to disbar Mr. Sharpe. With the deepest respect, this is again wrong

The Respondent respectfully submits that Special Prosecutors (like Judge Pittman) misread Rule 1.08. The Rule exists to prevent conflicts between the client's interest (here, Lindale Pipeline) and the lawyer's (Mr. Sharpe) interests. A "business transaction" thus occurs when an attorney places himself in a position wherein the exercise of his professional judgment on behalf of his

clients would be affected by his own financial interest. *See, e.g.*, ***Wiener, Weiss & Madison v. Fox***, 971 F.3rd 511 (5th Cir. 2020). Where a lawyer advances litigation expenses (particularly when no repayment is contingent or even expected) in devotion to the successful conclusion of the client's litigation, no such conflict exists. Indeed, Rule 1.08 expressly allows such an advancement of "expenses of litigation" in the express exceptions set out in Rule 1.08(d)(1).

MR. SHARPE SHOULD NOT BE DISBARRED FOR HIS MEANINGLESS STUPIDITY IN DECEMBER 2024

Finally, the ***Report*** (understandably) resorts to Mr. Sharpe's stupid, but meaningless, reappearance in the *Innovative Sand* litigation in December 2024 while "temporarily suspended". Obviously, Mr. Sharpe should **not** have filed the needless response that Judge Pittman *sua sponte* and instantly struck. It was a blunder, but it was largely an inconsequential blunder. Mr. Sharpe's blunder, while inexcusable, was stupidly innocent. It was not purposeful, not contemptuous, and not made in bad faith. It was simply dumb. Moreover, since the blunder was instantly resolved by the Court's striking order, without expense to any party, and the filing was largely replicative of the prior bank filings, it was largely inconsequential. It is simply not the basis for *disbarment*.

Mr. Sharpe has already been sanctioned by Judge Pittman for this blunder, and Mr. Sharpe has fully complied with the sanction ordered by the court. In sum, if the ***Report*** were followed, he will be punished twice for an inconsequential blunder.

MR. SHARPE SHOULD NOT BE DISBARRED

The ultimate sanction in the Panel's arsenal is the death penalty of disbarment. It is the atom bomb of discipline – ending a career in infamy. The ***Report***, as an almost casual after-thought, suggests this extreme measure with no supporting argument and no mention of any mitigating factors. One would have hoped that, given the intellect and integrity of the learned Special Prosecutors, they would have brought to the attention of the Panel 1) every aspect that would

impact upon the Panel's decision to impose this death sanction as the least possible measure adequate to remedy any misdeed, and 2) every factor that would mitigate against the imposition of this harshest of sanctions. TEX. R. PROF. CONDUCT, 3.09(d).[26] Yet, the ***Report*** is mute on both fronts.

As we all know, the Panel must exercise its absolute authority to mete out sanctions with restraint and discretion. Disciplinary powers "may be exercised only if essential to preserve the authority of the court and the sanction must employ" the ***least possible measure*** adequate to this purpose. ***Natural Gas Pipeline of Am. v. Energy Gathering, Inc.***, 86 F.3d 464, 467 (5th Cir. 1996). In other words, the sanction must "be tailored to fit the particular wrong." ***Topalian v. Ehrman***, 3 F.3d 931, 936 n.5 (5th Cir. 1993) The ***Report*** does no such tailoring – it simply suggests the death penalty.

Appropriate factors the Panel must consider are: 1) the precise conduct being punished; 2.) the precise expenses caused by the violation; and 3) the least severe sanction adequate to achieve the purpose of the rule relied upon to impose the sanction. ***Id.*** at 936. Likewise, the Panel must consider the *duty violated*, the *attorney's mental state*, the *actual or potential injury caused* by the attorney's misconduct, and the *existence of aggravating or mitigating circumstances*. ***In re Sealed Appellant 1***, *supra* at 194 F.3rd at 673.

Sadly, the ***Report*** gives no attention to any of these matters. It treats the death penalty of disbarment as *ipse dixit*. The ***Report*** does not provide any analysis or justification for its terse recommendation that Mr. Sharpe be sentenced to reputational death after 60 years of distinguished service at the Bar without a blemish on his record. As stated, this is sadly surprising, given the distinction of the ***Report's*** authors.

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[26] The cited rule requires a prosecutor to, inter alia, make known to the defense and the tribunal "all mitigating information known to the prosecutor".

On the other hand, perhaps it is not startling. It is no secret that Mr. Sharpe is 85 years old. He has the responsibility of caring for life-long spouse (or, *vice versa*). Mr. Sharpe's health is rapidly declining and, understandably, he is easily fatigued. His financial condition is dire and declining by the hour. Everyone on both sides knows that Mr. Sharpe's sole wish is to complete his few remaining cases (none of which are in the Northern District of Texas), shepherd his few remaining clients to capable hands and retire – far from the clamor of such draining cases as *Innovative Sands* or such needy clients as the non-paying Behans.

Nonetheless, Mr. Sharpe wants to depart with the honor he deserves. He does not wish his name to be cast in dishonor by a cruel disbarment that frankly serves no purpose other than a sardonic exercise of power. Losing arguments are not ethical violations. Most of the charges leveled at Mr. Sharpe are questionable. Some border on the inane. All are surrounded by compelling mitigating circumstances. The greatest injury that was inflicted was the self-inflicted injury that Mr. Sharpe inflicted upon himself. He has already paid fines of $10,000 and is facing a so-called "disgorgement" judgment of more than $100,000. He has already been "temporarily suspended" for months, causing him to withdraw from his few remaining cases in this District which he will never enter again. This was all incurred in fighting for the rights of non-paying, very difficult clients. In his ensuing despair, Mr. Sharpe has made the difficult decision to never practice law again.

So, is not enough … enough? We shall ask that the Panel to exercise it wise discretion and authority (i.e., power) to deal with the situation correctly. Please let this elderly gentleman fade away without further approbation or scorn. After sixty-years of dedicated service, he is entitled to this very minimal accolade. Otherwise, we set the precedent for "killing all the lawyers" and assuring that all the "nice [old] guys end up" in last place.

Respectfully Submitted,

/s/ Marshall M. Searcy, Jr.
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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I certify that on this 21st day of February 2025, a true and correct copy of the foregoing was served electronically on all counsel of record who are deemed to have consented to electronic service via electronic mail.

/s/ Marshall M. Searcy, Jr.
Marshall M. Searcy, Jr.

CERTIFICATE OF COMPLIANCE

I additionally certify that on this 21st day of February 2025, a paper copy of this motion was sent via CMRRR in accord with Judge Means' Local Rule.

/s/ Marshall M. Searcy, Jr.
Marshall M. Searcy, Jr.

EXHIBIT

I

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

In Re: J. Shelby Sharpe **Case No. 4:24-MC-00007-X**

DECLARATION OF DALE BEHAN

(1) My name is Dale Behan. My home address is 159 Waggoner Court, Fort Worth, Texas 76108. I am over the age of 18 years, have no criminal record and am competent to give this sworn testimony under penalty of perjury based on my personal knowledge of the facts set out hereon. I submit this declaration in connection with the proceedings herein against J. Shelby Sharpe.

(2) I am a client of Mr. Sharpe who has been representing me, my wife Linda Behan, and entities in which we are either officers and directors or are managers who has provided representation for almost 8 years.

(3) I have read the report compiled and written by two lawyers: Geffrey W. Anderson and Stephen Fahey, who were appointed by Judge Mark T. Pittman to investigate Mr. J. Shelby Sharpe.

(4) Relating to the Azle property sale: Mr. Sharpe had NOTHING-ZERO to do with the contract- ZERO to do with the buyer's deposit etc. Luke McCallum with 2 Mac Realty, the broker who was handling the transaction for River North Farms, was totally responsible for negotiating all issues pertinent to the deal. Mr. Sharpe was simply brought into this discussion as the deal was terminated due to Weslease filing and illegal Quit Claim deed on the property in question. The accusations made regarding Mr. Sharpe's involvement concerning the deposit made by the buyers are totally FALSE.

(5) On page 6/ the authors make a lot of to do about the Behans fraudulent transfer of 54 acres in Tarrant County to River North Farms INC. to avoid the Judgement debt owed to Weslease. The property in question was acquired June 29,2005, by Dale and Linda Behan/then transferred to the Western Company of Texas on Nov 7, 2005,/then transferred to River North Farms INC on July 11, 2011// A DECADE(10 YEARS)-BEFORE THE WESLEASE ISSUE. Mr. Sharpe was not involved in any of these transactions because he did not even know about them or us at that time.

(6) The authors include in their report Mr. Sharpe's comments about Judge Pittman. In the four years my wife and I have been involved with Judge Pittman, I have NEVER heard Mr. Sharpe say anything derogatory about the Judge-ending almost every conversation with 'Let's just remember that the Judge is God's Servant/Deacon and we must respect his position- even reciting this after Judge Pittman just out of the blue read to myself and my wife and Mr. Sharpe our Miranda Rights.(A FIRST FOR ALL THREE OF US – AT 84, 77, &76)

(7) As it relates to the INFAMOUS $100,000 transfer and payment over which the authors lament constitutes GROSS LAWYER CRIMINALITY and GROSS MISCONDUCT of the highest order, a little simple factual background information here to reveal the reality of this issue and how totally absurd the accusations made against Mr. Sharpe really are: Mr. Sharpe began serving as lead counsel for Lindale Pipeline beginning in Sept of 2020- in the litigation concerning Equinor. In this, Lindale was the Plaintiff and Mr. Sharpe was instrumental in procuring Mr. Jerry Glas with Deutz and Kerrigan in New Orleans as trial

counsel as well as Lynne Liberto, a longtime friend and associate at Haynes and Boone to work with them at trial; looking forward to serving as Lindale's Appellate Counsel if Lindale won at trial in Houston. Following the trial in May 2021, in which Lindale Pipeline received a judgement against Equinor of more than $24MM, Haynes & Boone required significant money about $250K, from Lindale to precede with the Appellate process. Lindale already owed H&B significant money and did not have the resources to fund this. Mr. Sharpe, being a friend of Ms. Liberto and having much compassion for Ms. Liberato and her standing within her firm, took it upon himself to help both Lindale and her, having Jeremy Markum, his office manager, at the time to wire almost $100,000 of the firm's savings account directly to Haynes & Boone. No bill for the money was ever received from the Sharpe firm for this payment by Lindale or us or any company we are related. My wife and I did not discover that this payment had been made until over a year later when we were informed by our accountant who made this payment. I then called Mr. Sharpe to inquire about this- he reluctantly told me that he

felt some obligation in the matter since he had brought Ms. Liberato into help with the trial and appeal so he decided to have the firm help with this situation. I simply told Mr. Sharpe that when we got some money down the road we would try and pay the Firm back. HIS RESPONSE: "Well, Dale, the Firm did not do this expecting to be repaid- Lynne was in a very difficult situation- the Firm was in a position to help-that's all. This is about as humble as humble can be-something that is totally not normal-out of the ordinary-but more than refreshing; is very reassuring to a client who lacks resources and it restores one's appreciation for the old adage- "Simply doing the right thing for the right reason".

Signed this 19th day of February.

Dale Behan

EXHIBIT

J

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

WESLEASE 2018 OPERATING, LP	)	CASE NO. 4:20-CV-00776-P
	)	
	)	FORT WORTH, TEXAS
vs.	)	
	)	AUGUST 15, 2025
INNOVATIVE SAND	)	
SOLUTIONS, LLC, ET AL	)	1:35 P.M.

VOLUME 1
TRANSCRIPT OF SHOW CAUSE HEARING
BEFORE THE HONORABLE MARK T. PITTMAN
UNITED STATES DISTRICT COURT JUDGE

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Proceedings reported by mechanical stenography, transcript produced by computer.

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P R O C E E D I N G S

(August 15, 2025, 1:35 p.m.)

THE COURT: Okay. The Court will now be in order. This is the case of Weslease 2018 Operating, LP, vs. Innovative Sand Solutions, LLC, et al, Case Number 4:20-CV-776-P

Beginning with counsel for plaintiff, can you introduce yourself, and then I'll allow the counsel for receiver to introduce himself --

MR. FORSHEY: Your Honor --

THE COURT: -- or actually the receiver.

MR. FORSHEY: Bobby Forshey, the receiver, here with my partner, Suzanne Rosen, and our other lawyer, Mary Taylor Stanberry.

THE COURT: Thank you for coming down, Mr. Forshey, and good to see you ladies.

Who else do I have?

MR. BRYAN: Good afternoon, Your Honor. Justin Bryan on behalf of Weslease 2018 Operating, LP.

THE COURT: All right. And who do I have representing Mr. Sharpe?

MR. SHARPE: Mr. Sharpe.

THE COURT: Mr. Sharpe, are you representing yourself in this matter?

MR. SHARPE: Yes, Your Honor.

THE COURT: Okay. As you know, we did, out of abundance of caution, we got Mr. Searcy's motion requesting a withdrawal, if one was necessary; and we granted that at Document Number 471. So, thank you for coming down.

Before we get into the substance of today's hearing, let me make some comments for the record. We're here today on a motion to show cause that was filed by the receiver appointed by the Court in this case, Mr. Forshey; that's at Document Number 459. After receiving that order *(sic)*, the Court, at Docket Number 2 *(sic)*, entered an order based on those allegations that Mr. Sharpe appear today and show cause. That order was entered back on the 11th day of August, and that brings us here today.

The Court has had an opportunity to review the various motions that have been filed over the last several days, I've also reviewed the appellate record. As you-all know, this case alone numbers into almost 500 different filings, it's something I've been dealing with one way or another in various matters for about five years now. So, I've only been on the bench for six, and five of them have been dominated by this case. Indeed, 12 years as a judge in three different spots, this has dominated about half my time.

So, I say this to say that I am very familiar with this case and the parties involved, as well as the attorneys. So, at this time, out of abundance of caution, though I am

taking judicial notice of everything in the docket on this case for Cause Number 4:20-CV-776-P, that also includes the various appeals and the filings therein. I've reviewed all of those. I believe, as matters of public record, I can take judicial notice of those as well. The appeals in this case, as I said, number about 12, and I have had a chance to review the records in all of those.

I would also like to take judicial notice of all of the proceedings and filings that took place in the In Re: Shelby Sharpe disciplinary matter, and that Case Number is 4:24-MC7-X. That was a three-judge panel that ultimately made the decisions in that case and disciplinary actions against Mr. Sharpe, consisting of the Honorable Brantley Starr, as head of that three-judge panel, also with the Honorable Terry Means, and the Honorable James Wesley Hendrix.

After I received the motion to show cause, in an abundance of caution, due to the fact that Mr. Sharpe is concurrently under disciplinary action from the panel that he cannot make an appearance in the district court on behalf of the Behans, or any of their related entities, or anything related to the Weslease case, and he can't represent any new clients without seeking permission of the panel, I wanted to be sure that I did not step on the toes of the three-judge panel, and make sure I did have jurisdiction to hear this

case.

And as a result of that, at the filing ECF Number 463, I filed a notice and request for clarification to the panel, asking them to clarify whether I had jurisdiction to hear the matters outlined in the show cause order *(sic)*. The panel promptly responded at ECF Number 63, in the disciplinary case, 4:24-MC7, and also gave me notice in this case, that I did have jurisdiction to go forward on these allegations.

And to make that clear, the Court does find that it has jurisdiction and it is not stepping on the toes of the panel to go forward and address the allegations contained in the motion to show cause.

So that's where we are. Those are some preliminary things for me. Have you all had a chance to visit as to who should go first or do you have an agreement? Typically in show cause hearings, the allegations, as we've done in this case, have been outlined based on the receiving of the motion to show cause in ECF Number 462. The Court outlined all of these new allegations against Mr. Sharpe.

Typically in disciplinary proceedings, and as required by Local Rule, I believe it's 83, we do have to give notice of any allegations of misconduct, possible sanctioning, sanctionable conduct, and give an opportunity to show cause to the person who's been alleged to be involved in the conduct;

and that's what we did at ECF Number 462.

And typically, at least in my experience over here, is that means that, Mr. Sharpe, you get to go first and respond to the allegations. But if you-all have a better idea or better way to proceed, I'm all ears.

Do you have a suggestion, either one of you?

MR. FORSHEY: Your Honor, Bobby Forshey.

I had assumed, since it was a show cause, that Mr. Sharpe would, in fact, go first, and then I would be given an opportunity to present our evidence.

THE COURT: Mr. Sharpe, that was my understanding. And, of course, once Mr. Forshey goes, we'll allow you to respond as well. But I do think, given the situation procedurally that we're in, that you have the opportunity to respond to the motion to show cause, Mr. Forshey can make his presentation, and then we'll turn it back over to you.

Are you agreeable to do that?

MR. SHARPE: Yes, Your Honor.

THE COURT: Okay. Well, then, I'll turn it over to you. It's your opportunity, after receiving that Court's order, that you show cause today to be able to respond to those allegations. You may do so at this time.

MR. SHARPE: Thank you, Your Honor.

As I understand the charges, the first one is that I have, since the order from the three-judge panel, practiced

law in the Northern District of Texas by filing an emergency motion in the Fifth Circuit.

I think that, first of all, it shows that the emergency motion was filed in the Fifth Circuit. It was also filed under Rule 8(2)(D), which says that if it's impracticable to go before the district court, and there's a two-step process, that you don't have to do that, you can just proceed; and so, I did.

And the Fifth Circuit, after receiving the emergency motion, asked Mr. Forshey for a response. And if the Circuit had not been satisfied that I had at least met the requirements of the two-step process, they would have dismissed it and told me to come before you, which they did not do.

The other thing that I understand --

THE COURT: The Fifth Circuit would have done that?

MR. SHARPE: Yes, Your Honor.

THE COURT: Okay.

MR. SHARPE: And the other thing is, that I have a conflict of interest based upon some litigation in Arkansas and me having filed the emergency motion in the Fifth Circuit.

I have nothing to do with the proceeding in the Arkansas case. It's a circuit court case up there, which is state court. In fact, I learned about the case after the notices of appeal had been filed, which I did not prepare or

assist in any way. And I don't see that there's a conflict with the emergency motion, because the Behans are not even involved in that. It's the owners of the other 50% interest in the Arkansas limited liability company.

So, I have reviewed the language of Rule 1.07 and 1.08, and I just don't see that there is a conflict of interest.

So, that's my opening statement, Your Honor.

THE COURT: Okay. All right. Thank you, Mr. Sharpe.

I'll turn it over to Mr. Forshey.

MR. FORSHEY: Thank you, Your Honor.

As a preliminary, I'd like to offer into evidence our Exhibits 1 through 16.

THE COURT: Is there any --

MR. SHARPE: No objection, Your Honor.

THE COURT: Okay. Hearing no objection, Receiver's Exhibits 1 through 16 will be admitted at this time.

MR. FORSHEY: And then I'd like to call Mr. Sharpe to the witness stand, please.

THE COURT: Mr. Sharpe, if you'd please approach the witness stand.

(Witnesses approaches the stand)

THE COURT: If you would, please, before you take a seat, would you raise your right hand.

(Witness sworn)

THE COURT: Okay. Take a seat.

J. SHELBY SHARPE,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FORSHEY:

Q. Would you state your name for the record, sir?

A. James Shelby Sharpe.

Q. Mr. Sharpe, I'm Bobby Forshey. You're familiar with me, I act as a receiver in this case appointed by Judge Pittman, are you not?

A. Yes.

Q. Okay. Now, today I want to ask you some questions about an appeal to the Fifth Circuit, and it's Case Number 25-10905 in the circuit court.

Are you familiar with that appeal?

A. Not by number.

Q. Well, if it's the one that involves Laura Davis, Whitney Martin, Annalisa Anderson, Christianson Anderson, and William Dale Behan, would that help?

A. Yes, sir. And I'm aware of that.

Q. And for the record, that's Appeal Number 25-10905.

Do you have any reason to disagree with that?

A. No.

Q. Now, I'm going to ask you some questions about your

dealing with the people that you've represented, which I'm going to call collectively the appellants; is that okay?

A. Yes. That's fine.

Q. I'm going to ask some questions of you about your discussions with them. And I'm going to be asking you, basically, did the discussions take place. I'm not trying to elicit any type of privileged information or anything you may have told them privileged, okay?

A. Correct.

Q. So, my questions are not asking for anything privileged. And if you think it is, then please pipe up and tell me, and we'll address that, okay?

A. Yes.

Q. Would you look at Exhibit Number 2, please?

A. Okay.

Q. Now, that's an appeal by a lady named Laura Davis.

Do you see that?

A. I do.

Q. Who is Laura Davis?

A. She's a lady who lives in Baton Rouge, Louisiana, and my client in the Fifth Circuit.

Q. How did you come to know Ms. Davis?

A. I possibly could have met her some years ago, I can't say for certain. But I was contacted after this notice of appeal was filed.

Q. Okay. Have you ever met Ms. Davis face to face before?
A. If I had, it would have been several years ago.
Q. Have you ever talked to her directly on the telephone?
A. No.
Q. Have you had any email exchanges with her?
A. No.
Q. All right. Now, did she approach you about representing her in the appeal; that is, Ms. Davis?
A. I think it was one of the other clients that I represent in the Fifth Circuit.
Q. Okay. Which of the other clients was that?
A. I think it was William Dale Behan.
Q. Okay. So, did Mr. William Dale Behan approach you about representing all the appellants?
A. Yes.
Q. All right. So, you -- did you have any direct contact with Laura Davis about being her lawyer in the appeal?
A. Before I sent her the fee agreement letter, no.
Q. Okay. Now, do you have a fee agreement with them? Do you have a written agreement?
A. I have a signed written agreement by each one of them.
Q. All right. And what is the fee agreement with them?
A. To represent them concerning this appeal, and that's it.
Q. That's it?

A. Yes, sir.
Q. Okay. Did you quote for them a billing rate in there?
A. Yes, sir.
Q. And what is that?
A. 650 an hour.
Q. Do you intend to charge them that 650?
A. Yes, sir.
Q. Okay. Have you invoiced them yet?
A. No. It hadn't gone through a cycle where there would be an invoice.
Q. All right. Now, the notice of appeal was filed August 1, 2025. Do you agree with that?
A. If that's what it shows.
Q. Okay. Do you disagree with that?
A. No.
Q. Then look back at Exhibit 7. That's a declaration you did for the judge -- the three-judge panel, correct?
A. Yes.
Q. Now, I'd like for you to look at the next page, paragraph 6.

Do you see that?

A. Yes.
Q. Now, it says there: As the panel is aware, I'm trying to end my law practice as soon as possible due to my age and declining physical ability.

Was that a true statement when you did that?
A. It's true then, and it's true now.
Q. And it looks like the declaration was done the 29th day of May 2025; is that correct?
A. That's what it says.
Q. All right. So, having told the panel that you were looking at winding down, then you accepted this appeal that was commenced August 1, 2025; is that correct?
A. That is correct.
Q. Why did you take that then, Mr. Sharpe, if you're winding down your -- your practice?
A. I felt it was an appeal that needed to be taken.
Q. Okay. But now you've said here that you're worried about your age and declining physical ability, correct?
A. That's correct.
Q. Okay. And doesn't that affect your ability to do an appeal to the Fifth Circuit, sir?
A. Not as long as my mental capacity is not affected.
Q. I see. You think your mental capacity has remained intact?
A. Yes, sir.
Q. All right. Now, look on the next page over there, it's paragraph 10. Am I reading that correctly, that you had previously represented the Arkansas limited liability company called Hermitage Newark, LLC?

A. Yes.
Q. And you acknowledge that that is a company in which Linda and Dale Behan own interest, correct?
A. Yes.
Q. Okay. And I think they also -- you say in there, that they're managers -- both members and a manager of the company?
A. They were at that time, to my knowledge.
Q. All right. Are they still to this time, to your knowledge, are they still members and managers?
A. I don't know.
Q. Have you received any information to contradict what you said in paragraph 10 of your declaration?
A. I have not.
Q. Okay. So, to your knowledge, they are still members and managers of the company called Hermitage Newark, LLC?
A. At the time of that, yes.
Q. Okay.
A. I don't know what's happened since.
Q. Okay. But you don't have anything to contradict that, is what I'm asking you?
A. That's correct.
Q. Would you agree that that company, Hermitage Newark, it's an affiliated company with the Behans, both Linda and her husband?
A. Well, they're members of it, yes.

Q. Okay. Now, let's go over and look at Exhibit 8, which is the emergency motion for a stay pending appeal.

Do you see that?

A. Yes, sir.

Q. Now, did you prepare and file that?

A. Every bit of it.

Q. Before you filed the motion -- and I'm going to call what we've marked as Exhibit 8 the stay motion; is that okay?

A. Yes.

Q. Before you filed the stay motion, did you ask any authorization from Laura Davis to file that?

A. Did I do it verbally?

Q. Did you do it in any way?

A. Yes. I -- I told them -- I told all of my clients that's what I was going to do, after I received the fee agreement letters. When I received those, I told them that I was going to file an emergency motion.

Q. Okay. So, from what you're saying, it sounds like you counseled with Laura Davis, and each of the appellants, about filing this stay motion that's marked as Exhibit 8?

A. After I received the fee agreement letters, yes.

Q. Well, of course.

I'm just trying to find out, you gave them advice about filing Exhibit 8; is that correct?

A. Right, which is a motion in the Fifth Circuit.

Q. Okay. And the advice you gave them, I would take it, since it was filed, that you advised them to do it? I'm not asking why you told them, but you advised them to file this motion?
A. They told me they wanted to do whatever could be done to try to get the order stayed, that was my instructions.
Q. Okay. But the question I asked you is, Did you advise them to file the stay motion we've marked as Exhibit 8?
A. I told them I was, yes.
Q. That's not the question.

Did you advise them, to tell them, that you thought they ought to file that motion that we've marked as Exhibit 8?
A. I'm sorry, repeat your question. I'm not quite understanding what -- what your question is.
Q. Okay. Exhibit 8 is the stay motion.
A. Right.
Q. And you've told me that you filed that?
A. Correct.
Q. And you've told me --
A. With their approval.
Q. And you told me you did it with their approval, correct?
A. Yes. That's correct.
Q. Now, the question I made is a narrow and direct one. Did you advise them, your clients, the appellants, to file the

stay motion that we've marked as Exhibit 8; yes or no?

A. No.

Q. You didn't advise them to file that?

A. No.

Q. Did you tell them that they should file it?

A. No.

Q. What did you tell them then about that? What did you tell them?

A. I recommended that they authorize me to file it.

THE COURT: I'm sorry, is there a difference between recommending somebody to do something and advising them, in your mind, as an attorney?

THE WITNESS: Based on what the Court said, I would agree with that.

THE COURT: Well, I'm asking you, not what I said.

THE WITNESS: Well, I --

THE COURT: What's the difference between recommending and advising in your mind?

THE WITNESS: I'd say that recommending and advising could be synonyms.

THE COURT: So, is the answer to the question that Mr. Forshey asked you about advising, is that the same? Did you advise the appellants to file this motion, or did you recommend, and what's the difference between the two, based on your answer, if any?

THE WITNESS: I would say, as a practical matter, none.

THE COURT: Okay. Thank you.

Q. (By Mr. Forshey) So, based on what you just told Judge Pittman, would you agree that in this context recommend and advise are basically synonyms for the same thing?

A. I would agree.

Q. Okay. Now, let's go back and look at Exhibit Number 16, which is a copy of Federal Rule of Appellate Procedure 8.

You're familiar with that rule, aren't you, sir?

A. Very familiar with it.

Q. Okay. Now, you look at Rule 8(a)(1), and it says: A party must ordinarily move first in the district court for the following relief: A stay of the judgment or order of the district court pending appeal.

Do you see that?

A. Yes. That's what it says.

Q. And then below that, in 8 -- let's see, in 8(a)(2), it says that you can file it directly in there, in the Court of Appeals, but you must show that moving first in the district court would be impracticable.

Did you see this?

A. Yes.

Q. All right. Now, did you advise the appellants or

recommend, we're going to use that as your synonym, did you advise or recommend to them that they file the stay motion first in the Fifth Circuit?

A. Did not discuss it.

Q. That didn't come up?

A. Did not.

Q. So, in this instance, they had to simply -- they had to depend on your exercise of your professional judgment as to whether to file that in the district court or the Fifth Circuit in the first instance, correct?

A. Correct.

Q. And you, in exercise of your discretion as their lawyer, decided to file it in the Fifth Circuit first?

A. Correct.

Q. And you decided not to file it in the district court, because you thought that that was "impracticable"?

A. Based on the two-step test, yes.

Q. Okay. Now, you agree that under Rule 8(1)(A), the stay motion ordinarily should have been filed first before Judge Pittman?

A. That's ordinarily.

Q. Okay. Now, what -- tell me, in your view, other than you couldn't practice in the Northern District, what was impracticable about filing it first with Judge Pittman?

A. The speed that we needed to move to -- since the order

was involving a sale.
Q. Okay.
A. In fact, it's set out in length -- in my emergency motion, I set out a whole section in there on the two-step process and how the circumstances complied with it.
Q. Okay. Isn't it true that that order got entered like on May the 24th -- pardon me, on July the 24th; isn't that when it got entered?
A. I don't remember. I don't remember when it was.
Q. Okay. Well, it had been entered for at least two weeks before you filed the stay pending appeal, hadn't it?
A. Correct.
Q. So, basically, if there was any delay in asking, it was you waiting to file it, correct?
A. That's incorrect.
Q. All right. Now, look at -- let's go back and let's look at Exhibit Number 9. And what I want to call your attention to -- we've attached copies there of the sealed memorandum opinion, and that's page 81; page 81 of Exhibit 9.

Now, are you familiar with that order that was entered, the sealed memorandum opinion and order?
A. Yes.
Q. All right. Now, I'd like you to go back and look at pages 20 and 21 of that order.

THE COURT: This would be page 101 and 102 of the

filing?

Q. *(By Mr. Forshey)* Yes. It's 100 and 101 at the top, sir.

A. I found it.

Q. All right. Now, the first one says, Sharpe's sanctions, this is on page 20, and it says you're going to withdraw from any and all litigation in the Northern District involving Dale or Linda Behan.

Do you see that?

A. Yes, sir.

Q. And you agree with me, that Hermitage Newark is an affiliated company with the Behans?

A. If by that you mean they own an interest in it, then, yes, I would agree that that's affiliated.

Q. Well, wouldn't you agree that somebody that owned a 50% membership interest and was a manager, that the company was affiliated with them?

A. I would say they're owners and -- I'm not sure -- affiliated could be used for that. I -- I would not use that word, but I would use -- I understand what you're saying, and I agree with that.

Q. Well, let me -- paragraph 1 up here on page 20 of the first order, basically says that you've got to withdraw from things that involve associated companies or affiliated companies, or any other entity that bears any meaningful relationship to the Behans.

A. In the Northern District.
Q. Do you see that?
A. Yes. In the Northern District.
Q. All right. Would you agree that Hermitage Newark meets that definition?
A. It's -- it's affiliated with them, yes.
Q. Okay. Now, with respect to Hermitage Newark, the appeal that your clients, the appellants, are making, it involves the sale of 100 acres of land owned by Hermitage Newark, correct?
A. That's my understanding.
Q. And you assert that these people are members in Hermitage Newark?
A. Yes.
Q. All right. Had you ever represented any member -- any of those five appellants at any time before, in any matter?
A. No.
Q. Had you ever represented any of these five appellants in any manner, or any matter before the Northern District of Texas?
A. No.
Q. Now, I'd like you to look at what's at the top of page 101 to Exhibit 9, paragraph 4. And it says that Sharpe shall not represent or take on any new client in the Northern District of Texas without the express prior approval of this

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panel.

Do you see that?

A. Yes, sir.

Q. Did you ever ask the panel for any type of approval to represent the appellants in this matter?

A. No. Because I was not going to represent them in the Northern District.

MR. FORSHEY: Your Honor, I want to object. I mean, the question was just yes or no. It wasn't --

THE COURT: Yes, sir. If you can, give us a yes or no answer.

THE WITNESS: No.

MR. FORSHEY: Okay.

THE COURT: Thank you.

Q. *(By Mr. Forshey)* Now, the fact was, you're the one that read Federal Rule of Appellate Procedure 8(a) and made the determination not to file the motion for stay here before Judge Pittman, correct?

A. Yes.

Q. And you made that determination based upon the facts of this case here, correct?

A. Yes.

Q. And your testimony is, you didn't take that up with your clients, you just decided that and you did it?

A. Based on their representations in the fee agreement

letter, yes.
Q. Well, the representations -- they retained you to represent them in the appeal, right?
A. That's correct.
Q. All right.
A. And to make all decisions necessary concerning it.
Q. So, one of the decisions you made concerning the appeal was that, although the rule said you file in the first instance before Judge Pittman, you decided not to do that, correct?
A. That's correct.
Q. And you made the decision to go to the Fifth Circuit?
A. That's correct.
Q. All right. Now, the motion for the stay, it was filed on the afternoon of August the 8th; is that correct?
A. That's what the file mark shows.
Q. Well, do you disagree with that?
A. No.
Q. Okay. That's when it got filed, correct?
Now, on Exhibit 9, back on page 78, is a copy of an email I sent you. Would you look at that?
A. Which exhibit are we talking about?
Q. Exhibit Number 9, sir, page 78.
A. My Exhibit 9 is the emergency motion.
Q. Okay. My Exhibit 9 is the receiver's response.

THE COURT: And if you go to page 79, Mr. Sharpe, up there at the top, do you see where it has the Docket Number from the Fifth Circuit, Case 25-10905, Docket 44, it has page 78 and 79.

Do you see that?

THE WITNESS: I see the page numbers, yes. But --

THE COURT: I want to make sure you know what you're looking at.

THE WITNESS: But mine --

THE COURT: Maybe it might be a good idea for one of Mr. Forshey's associates to point out where he needs to look. If not, I can do it.

(Attorney approaches the witness)

THE WITNESS: Thank you very much.

THE COURT: Thank you, ma'am.

Q. (By Mr. Forshey) Now, was that an email chain there between you and myself, correct?

A. Yes.

Q. It starts out with an email on August 6, 2025, at 3:13 p.m. from you to me, telling me that you're going to file an emergency motion for a stay, correct?

A. Yes.

Q. And then I bounce back to you, it looks like six minutes later, and told you that I'm opposed to the stay?

A. Yes.

Q. Now, on the day of August 7th -- and this looks like it was at 7:35, it looks like that I bounced back and told you: The sale has been fully closed and consummated, as a consequence any motion for stay pending appeal is now moot.

Do you see that?

A. Yes.

Q. Did you receive that email?

A. I did.

Q. And you bounced back to me and said: Thanks for the information, correct?

A. Correct.

Q. Now, when you filed Exhibit 8, the stay motion, you knew the sale had already closed, didn't you?

A. If your email was correct, yes.

Q. Okay. You didn't -- did you have any reason to think it wasn't correct?

A. I did not.

Q. Okay. Where in that motion, Exhibit 8, did you tell the Fifth Circuit that the sale had already closed?

A. It's not in the motion.

Q. You didn't tell them?

A. Correct.

Q. Don't you think that's something that they might have wanted to know, Mr. Sharpe?

A. When I filed the motion, no.

Q. You don't think -- you're filing an emergency motion for a stay pending appeal, correct?
A. Correct.
Q. And your emergency underlying that is you're afraid the sale is going to close, and my appeal and everything is going to be moot; is that correct?
A. I don't agree that it would necessarily be moot.
Q. Well, you wanted to get some action done before the sale closed, correct?
A. I was wanting to get the order stayed, and that could have included the thing closing, or it not closing. And the Fifth Circuit does have the power to deal with something on a broader basis, if chooses to.
Q. Okay. What was the emergency, then, other than the sale closing? What was the time emergency? Tell me.
A. Well, the time emergency had to do with when the order was entered, when the notices of the appeal were filed, when I got fee agreement letters, that time frame that had gone by meant that I needed to move really fast. Because, had I been representing them in the Northern District, I would have had the notice of appeal filed the day after the order was entered and it move quicker.

So, I did advise my clients that because of that time lag in between, that the motion might not be granted.
Q. Okay. Tell me, though -- you haven't given me any

emergency. What was the emergency, other than the closing of the sale? Tell me.

A. I wanted to stop the property changing hands.

Q. That's it? You wanted to stop the sale from closing, correct?

A. Well, that's part of the sale.

Q. So, if you had a stay pending appeal, it couldn't be closed, and that would stop the property from changing hands, correct?

A. Yes.

Q. And that was the emergency, wasn't it?

A. Yes.

Q. And the emergency didn't exist, because the sale had already closed, correct?

A. Not necessarily.

Q. Well, the sale closed, that took away your big emergency, didn't it, sir?

A. Well, that was part of it. But the funds hadn't been -- I didn't know whether the funds had been distributed, or if they were being held in escrow waiting to see what might be happening with the Fifth Circuit on the emergency motion.

Q. I see. And you could have certainly, then, simply asked me, Have the funds been distributed, and I would have told you, Yes.

You didn't do that, did you?

A. No, sir.
Q. Okay. So, you filed the emergency motion for a stay pending appeal, after you've already been told the stay *(sic)* has closed; is that answer yes?
A. Correct.
Q. Okay. Now, the order we're talking about, it's 100 acres of land in Independence County, Arkansas.
Do you agree with that?
A. Yes.
Q. And have you ever heard of a group called Invenium?
A. Yes.
Q. And who is Invenium?
A. As far as I know, it was a company that had a lien on the Hermitage Newark property. And I think the principal of that may be a fellow in Florida. I think that's correct.
Q. Okay. Look back at Exhibit Number 15, would you, sir?
A. Okay.
Q. Now, that is a declaration -- it's covered up, different stuff at the top -- but it was filed at ECF 249, in this lawsuit 776.
Do you see that?
A. Yes, sir.
Q. All right. Now, who prepared that declaration for Mr. Behan *(sic)* to sign?
A. I did.

Q. And then you filed it ECF in the papers in this cause, in the pleadings in this cause, correct?
A. Yes.
Q. Now, look over on page 3 of that, paragraph C -- yeah, C, as in cat.
A. Yes.
Q. Would you read that into the record for me, please?
A. Hermitage Newark 50% interest. The value of the interest is nominal at best, because the indebtedness to Pinnacle Bank of $600,000 and to Invenium Capital Partners in excess of 10 million.
Q. Okay. When you prepared that declaration, did you believe that information was correct?
A. Absolutely.
Q. Do you believe it's correct today?
A. I don't know.
Q. Do you have any reason to believe that it's changed since you did this declaration on August *(sic)* 30, 2024?
A. I only know what -- I was given the information at that time. I don't know what may have changed since.
Q. Okay. So, you're saying, on October 30 of 2024, Invenium had a debt for 10 million, but you can't say after that what happened?
A. Correct. And that was the information I had.
Q. All right. How much did the land sell for that you

were -- the subject of the appeal?
A. I don't know.
Q. Okay. It's in the record. But if I tell you $440,500, are you going to disagree with that?
A. If you tell me, no.
Q. Okay. Accepting the purchase price was $440,000, are you aware that Invenium had a first lien mortgage against that property?
A. I knew they had a lien, I could not have told you what the amount was.
Q. Okay. Now, here the amount says it's in excess of 10 million in Exhibit 15, correct?
A. That's what I knew at the time that I was asked to prepare it.
Q. Now, if the property is being sold for 440,000, and Invenium has a lien for 10 million, doesn't that mean that Newark, or Hermitage Newark, is more than $9 million out of the money?
A. Yes, sir.
Q. Now, your clients in this appeal, they're acting in the capacity as members of Newark, or Hermitage Newark, correct?
A. Yes.
Q. If Newark is out of the money by $9 million, they're out of $9 million out of the money, correct?
A. If it's going to be sold for that amount.

Q. You agree with that, though? They were millions of dollars out of the money on that sale?
A. On that contract, yes.
Q. All right. Now, why -- why were the appellants -- why are they appealing a sale when they're millions of dollars, admittedly, out of the money?
A. They didn't want the property of -- Newark's property sold.
Q. Okay. Are you aware that the Judge gave them multiple opportunities to come before the Court and bring that up?
A. No. I can't say as I am familiar with that.
Q. So, you don't know about that?
A. Correct.
Q. All right. Now, the issue is, you're saying they don't want it sold?
A. That is correct.
Q. Now, the Judge has already ordered it sold and they're millions of bucks out of the money. What was the economic justification for your appeal?
A. They did not want the property sold, because they were hoping to, in time, develop it and maybe get more money for it than what was being proposed by you; that would be my guess. They didn't tell me.

MR. FORSHEY: Your Honor, I'd ask that you take judicial notice -- do you remember the interim order that you

entered on this matter?

THE COURT: Yes, sir.

MR. FORSHEY: And Mr. Behan came in, and he made this the same thing about it's worth more. And there was an order entered that if anybody thought it not -- it was worth more as a sand project, they needed to come forth and put their money up; and they didn't do it.

Would the Court take judicial notice of that?

THE COURT: I remember that well, and I do take judicial notice.

MR. FORSHEY: Okay.

THE COURT: I believe that was the first of three hearings that we had on this.

Q. (By Mr. Forshey) All right. Now, other than the fact that your clients wanted to develop it as a sand project, as opposed to selling it, is that the only economic rationale that underlies that appeal?

A. I don't know what all their thinking was on what they could do with the property, they have not shared that with me.

Q. Okay. I want to know what Shelby Sharpe knew.

A. I'm sorry, what?

Q. I want to know what Shelby Sharpe knew.

All you knew is they didn't want to sell the property and they wanted to try to develop it as a sand deal; is that accurate?

A. That's all I know.
Q. That's all you know?
A. That is all I know.
Q. And so, based on what you knew before, you understood that that property was under water by 9 million?
A. I knew it had a lot of liens against it, that a sale of it was not going to produce any money for the judgment.
Q. But based on the purchase price of the sale, we've agreed it was $9 million underwater, correct?
A. Yes.
Q. So, if they were going to make a sand project out of it, they had to start 9 million in the red and try to dig out -- no pun intended -- that's true, isn't it?
A. Yes.

MR. FORSHEY: Thank you. Pass the witness, Your Honor.

THE COURT: Does the attorney for Weslease have any questions?

MR. BRYAN: If it pleases the Court, Your Honor, I do have one brief question.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. BRYAN:

Q. Good afternoon, Mr. Sharpe.
Can you hear me okay, sir?

A. Yes, sir.
Q. How did Mr. Behan promise to pay you your fees for this new engagement?
A. Are you referring to William Dale Behan?
Q. Yes, sir.
A. We didn't discuss how he was going to do it. They just agreed that they would pay me an hourly rate, and I would send them a statement at the end of each month itemizing what I had done, and I expected them to pay. But I didn't ask them how they were going to do it. I've never asked any client that.
Q. Since you have an expectation to be paid; is that right, sir?
A. I always have an expectation to be paid when I am working for any client. And there's an hourly rate, unless I'm taking something pro bono.
Q. How do you believe you will be paid?
A. I have no idea. I don't know about their economic situation.

MR. BRYAN: Thank you, Your Honor.

I have no further questions.

THE COURT: It's interesting, that answer that you gave. So, you were working for free for your clients in this case?

THE WITNESS: I have never been working for free for any client in this case.

THE COURT: Well, the reason why I ask is, I was looking back at the filings from the disciplinary case, and in a filing that was made by you, or at least by your attorney in that case, back on January the 30th, 2025, it refers -- well, it has the following sentence, it says: Mr. Sharpe respectfully suggests that any such impression is inaccurate, and any conflicts cited do not relate to his conduct. Instead, there is, perhaps, an unintended conflation of Mr. Sharpe's advocate role with the dodgy conduct of his clients.

So, you were referring to your clients as dodgy, that would be Dale and Linda Behan?

THE WITNESS: That's Mr. Marshall's language; that is not my language.

THE COURT: Filed on your behalf. He was representing you, wasn't he?

THE WITNESS: He was representing me, and I don't question his language. The only thing I ever asked for him to do was be factually accurate, which he is.

THE COURT: Okay. All right. But you know that that document, filed on your behalf, refers to Mr. and Mrs. Behan as engaging in dodgy conduct; is that right?

THE WITNESS: That was filed by Mr. Marshall, yes --

THE COURT: Okay.

THE WITNESS: -- on my behalf.

THE COURT: I'm sorry. I don't mean to interrupt you.

On page 6 of that document, it says: Mr. Sharpe is 84 years old, with his long and noble career running well past its twilight hours.

Do you remember him making that statement?

THE WITNESS: I remember seeing it, yes.

THE COURT: Okay. Now, in the response to the special prosecutor's report filed on February the 21st of 2025, that's at Document Number 36, a brief filed on your behalf referred to this as being your farewell appearance in this court; is that right?

THE WITNESS: I thought it was.

THE COURT: Okay. You weren't intending on taking on any new clients?

THE WITNESS: I have not taken on any new clients in the Northern District of Texas.

THE COURT: Well, you stated earlier, in the response to the declaration that was shown to you by Mr. Forshey, that you weren't planning on taking on any new cases, but you decided to in this case; is that right?

THE WITNESS: No. In the Northern District I planned on taking no new, because otherwise I would have had to ask for permission, which I would have done. But I have had nothing that I would be handling in the Northern District

of Texas.

THE COURT: Well, at page 35 of the same brief filed back in February, Mr. Searcy represented this to the panel, it says, in describing some of the things that had happened in this case: This was all incurred in fighting for the rights of nonpaying, very difficult clients. In his ensuing despair, Mr. Sharpe has made the difficult decision to never practice law again.

So, was Mr. Searcy incorrect?

THE WITNESS: I would not -- yes, he's incorrect, the way he said it.

THE COURT: So, that's two times it's been represented to the panel that you were going to shut down your career and not take on any clients.

Let me read you, in that same case, disciplinary hearing Docket Number 58, this was filed as recently as June of this year. This was a motion Mr. Searcy filed on your behalf for partial reconsideration of the disciplinary opinion.

Again, it's referred to your career as being dwindling, there on the very first paragraph. But on page 3, it says: Mr. Sharpe's client, the "Aggie" master's degree holder, should also feel a deep sense of shame. It was constantly the practice of his client to parasitically sponge off a staunchly loyal and kind old man and allow Mr. Sharpe to

take the heat for his client's financial irresponsibility, as he -- meaning, I assume, Dale Behan -- "wheeled and dealed" in transactions that Sharpe knew nothing of until the transactions landed in the ditch.

Did you review Mr. Searcy's filings on your behalf? I just read some statements from all three of them.

THE WITNESS: I reviewed for typos and for legal argument. Mr. Searcy has a colorful way of trying to say some things that I would not approve, but since he --

THE COURT: You signed off on them, though, didn't you? You said it's okay to file those?

THE WITNESS: Yes.

THE COURT: Okay. I had the luxury of learning to practice law under Mr. Searcy. And in my experience, working with him for several years, he wouldn't file anything unless he got the client to sign off on it; but that's an aside.

One of the things that I was interested in, is I took a look at the questioning that you came under at that March the 14th, 2025, hearing in front of the three-judge panel.

You remember swearing and saying you had testified under oath that day, don't you, when Mr. -- I believe Mr. Fahey asked you some questions, and then Mr. Searcy asked you some questions, and then the three judges asked you some questions.

You remember that day, don't you?

THE WITNESS: Yes, sir.

THE COURT: Swearing you'd to tell the truth?

THE WITNESS: Yes.

THE COURT: At that hearing in front of the disciplinary panel, you testified under oath that you would not be adding any new cases, and you would not engage in any litigation, except for completing the appeals you were -- that were pending on -- at the Fifth Circuit.

Have you filed any new cases, or participated in any litigation, other than completing the appeals that were pending at the Fifth Circuit on April the 16th of 2025?

THE WITNESS: In the Northern District of Texas, no.

THE COURT: All right. I'll ask you, what about any other litigation?

THE WITNESS: Yes. I have taken a couple of matters.

THE COURT: Okay. Let me read your testimony. This is in response to Mr. Searcy's questioning, this is at -- on the transcript of that hearing -- I'm going to make it part of the record in these proceedings. This is on page 69, beginning at line 20, Mr. Searcy asked you the following, it says: Candidly, do you ever intend to enter into the -- any appearance in the Northern District of Texas again? And here's your answer: I'm not adding any new cases; I'm not

going to be adding anything in the Northern District.

But here's the follow-up question, it says: Other than completing the appeals that are now pending in the Fifth Circuit, do you have any other plans to engage in any other litigation? Answer: No.

Indeed, you had a hearing this morning, didn't you? That was one of the reasons why you needed a continuance of the hearing, you had a hearing this morning in front of Judge Gallagher; is that correct? That's over in the -- I believe 96th District Court.

THE WITNESS: That's incorrect, Your Honor.

THE COURT: You didn't have a hearing this morning?

THE WITNESS: No. Because it got cancelled by Judge Gallagher on Wednesday.

THE COURT: I wish I would have known that and you would have told me, I wouldn't have had to cancel my vacation.

But anyway, no doubt that you are concurrently representing clients in the 96th Judicial Court versus the Arlington Board of Retailer -- Realtors; is that right?

THE WITNESS: Correct.

THE COURT: And it's fair to say you have, and you are currently representing, not only the Behans, but also new clients in new appeals at the Fifth Circuit, and you've -- including the one that we're here talking about today, and those have been instigated since your testimony on March the

14th of 2025?

THE WITNESS: Those matters occurred after that.

THE COURT: And you're -- despite what you said in front of the judges, that you were -- Other than completing the appeals that are now pending at the Fifth Circuit, do you have any plans to engage in any other litigation? Answer: No.

So, despite what you told them, you're continuing to take on new cases; fair to say?

THE WITNESS: Only because it's a very close friend.

THE COURT: Well, would it be fair to say that -- I took a look at the Tarrant County District Clerk's Office, at the public record, and since you made that statement, you filed at least three new cases, here in Tarrant County alone.

Number one, *Moreno vs. S2 Forest Ridge*, LP, Case Number 17-364302-25. According to the docket down there that was filed an May 5th of 2025 -- oh, no, I'm sorry. I've got too many numbers here *Moreno vs. S2 Forest Ridge, LP*, Case Number 17-364302-25, filed May the 6th of 2025.

Number two, *Dombroski vs. UNT Health Science Center, et al*, Case Number 67-364268-25, filed on May the 5th of 2025.

And three, *Tanika Grover vs. Tom Nail and Tanning*, Case Number 352-366879-25, filed on July the 22nd of 2025.

So, that's at least three that I was able to find, just going on the website for the Tarrant County District

Clerk. The Court takes judicial notice of those that are a matter of the public record that have been filed since you made that statement back in March of 2025.

Is that correct?

THE WITNESS: That's correct.

THE COURT: All right. I also took the liberty of checking the public record for Texas Courts of Appeals. Based on my review of the public record, which I, again, take judicial notice of, this is available at the Texas Courts' website, at least in the year 2024 or late -- I'm sorry, at least either continue to be pending or that were filed at some point during late 2024 or this -- the remainder of this year, the following appeals: That would be 02-24-540, that was filed back in December of '24, and recently disposed of, that's at the Second Court of Appeals, my old stomping grounds, *James P. Amrick vs. Patricia Anne Campbell*.

There is a few cases at the Texas Supreme Court, I bet you're familiar with them. 24-09-62, *Tony's Concrete Work vs. Shelly Goad and Daniel Goad*. That's continuing to be reviewed, it's at the petition for review stage at the Supreme Court.

Then 24-425, that's the famous *Equinor Energy vs. Lindale Pipeline*. As I believe everybody knows, that's currently in the stage of submitting full briefing.

Other cases we have at the Supreme Court were

24-0236, *In Re: William W. Gothard, Jr.* There's a couple of different numbers for that. That's currently pending.

In fact, despite what you told the panel, in the matter of *In Re: Gothard and Institute Basic Life Services*, you filed a motion for rehearing this week, didn't you, Mr. Sharpe? That was filed August 13th of 2025, at 5:03, with the Texas Supreme Court.

So, was it correct when it was represented to the three-judge panel that you were winding down your practice, and: Other than completing the appeals that are now pending at the Fifth Circuit, do you have any other plans to engage in any other litigation? Answer: No.

There's an outstanding question, Do you have an answer?

THE WITNESS: At the time I gave the answer, that was absolutely correct.

THE COURT: Well, I could go and read the dates on all of these, but I think you get my point. Looks like you have a very, very active practice. And you're continuing to take on new representations, and you consistently have been in the Fifth Circuit, in Tarrant County, and in various Texas Courts of Appeal.

THE WITNESS: May I respond?

THE COURT: And you stated to me that you had reviewed Mr. Searcy's filings, and you had signed off on them,

and I read you your exact words before the panel.

I don't have any more questions for you. If you would like to step down and make your presentation, you may do so.

THE WITNESS: May I, while I'm still under oath, respond --

THE COURT: You may.

THE WITNESS: -- to the Court concerning the litigation and those appeals?

THE COURT: Yes, sir.

THE WITNESS: Every one of those appeals had started -- the cases had started well before May 14. And it was -- and once you get started, you've got to see them all the way to the end.

The only cases that I have taken since May 14th had to do with very close friends. One, a high school friend of mine. And one, the Arlington thing, very close friend. And then the Tanika Grover, that is a -- also a very close friend and also our office manager.

THE COURT: Don't you think it might have been a good idea to have told the three-judge panel, when it was represented in at least three briefs you filed down there, and your testimony, and the declaration that you filed that you're winding down your practice, weren't taking new cases, don't you think it might have been important to have told them that?

Might have affected what type of discipline they decided to give you, don't you think?

THE WITNESS: I told them correctly what I was doing, and that's what I was planning on doing. Those cases that are still in progress that occurred before that, that is a part of the winding down. And I am definitely winding down, and hoping to finish at least within the next -- let's see, this is August, I hope to finish by no later than July of getting all these cases out of the way.

THE COURT: All right. I don't have any more questions. You may step down, and we'll be happy to hear from you. Thank you, sir.

MR. FORSHEY: May I ask the Court, there's one other exhibit I want to make sure the Court takes notice of, and that's Exhibit 10, Your Honor, which are our time records.

THE COURT: Yes, sir. I want to hear your presentation on that. Why don't we, at the end of the hearing, you can tell me what's been incurred with regards to the pleadings and the motions and the hearing that we have today.

All right. Mr. Sharpe, do you have a response?

MR. SHARPE: Yes, Your Honor.

I think the testimony before you of whether or not I've been practicing in the Northern District of Texas since I was ordered not to is, I have not been practicing in the

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Northern District, period.

The only thing I have done is at the Fifth Circuit; the emergency motion shows that. Also, the declarations from my clients reflect that I had nothing to do with what was going on. In fact, their only appearance before you was when they filed the notices of appeal.

As far as conflict of interest, 107 and 108, a suit in Arkansas involving my clients is nothing like the appeal to the Fifth Circuit, which doesn't even involve the Behans. So, I can't see where there's a conflict of interest.

And the things that the Court read with respect to testimony that I gave before the three-judge panel, at the time it was given it was absolutely correct. The fact that things have developed since then involve friends. And those cases, by the way, are going to be short-lived cases. They're not going to be an extended thing. And I could do --

THE COURT: One of the things you represented to the panel, and Mr. Searcy then represented, was you intended to wrap up by the end of the year. Is that -- now, I used to be a judge down on the other side of town, and I'd like to think I ran a pretty tight docket. But, man, it would be tough for me to dismiss of three new cases by the end of the year, especially when they were filed May, June, and July.

So, you think Judge Gallagher, Judge Wilkinson, and Judge Fahey will be over and done with those by then?

MR. SHARPE: Let's put it this way, based on the conference with Judge Gallagher, the case that was filed this year will be over with by September; so, that's pretty fast. The other one --

THE COURT: Well, he can use that in his campaign speech. They'll love that at the campaign meetings. I sure am glad I don't have to do that anymore.

MR. SHARPE: I understand, Your Honor. But every one of those cases is going to be over very, very quickly. And if not, then somebody else is going to have to step in, because physically I will not be probably going much beyond the end of the year. But I'm going only as long as I can continue to be of some help.

THE COURT: All right. Well, I appreciate that.

Do you have any additional argument you'd like to make?

MR. SHARPE: Your Honor, the only thing I would say is, based on the charges and the show cause order of practicing in the Northern District, everything before you absolutely is I have not done that. There's not been anything to the contrary.

With respect to there being a conflict of interest, the undisputed thing before you, there's no conflict of interest. Those were the two things I was charged with and nothing else, and that's what I've responded to.

Thank you, Your Honor.

THE COURT: Okay. Thank you.

Mr. Forshey?

MR. FORSHEY: Your Honor, may I make this as a proffer? If he wants me to take the stand and be crossed, I'll be happy to do that. But it would be more efficient to do a proffer.

THE COURT: Well, Mr. Sharpe, what do you prefer?

MR. SHARPE: It doesn't matter. Whatever is convenient for him.

THE COURT: Okay. Well, I appreciate your candor and courtesy.

J. ROBERT FORSHEY,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY NARRATIVE:

Your Honor, Exhibit 10 is our time records from the weekend. Those are times that were incurred by me and Ms. Stanberry. Since then, on a very conservative basis, I have incurred eight hours, at 725 an hour, for 6,000 additional hours *(sic)*. And that is very, very conservative, because we had to do our response that we filed with you, we had to put the witness and exhibit list together, we had to prepare for this hearing and put everything together. We would assert that those would be reasonable fees to be

sanctioned against Mr. Sharpe for what he did.

I would also want to point out to the Court that --

THE COURT: Would that -- would that include the time present today?

MR. FORSHEY: On a very conservative basis. Yes, sir.

THE COURT: I'm sorry, if you said that.

Go ahead, sir.

MR. FORSHEY: The motion was filed on Friday afternoon, and it requested a ruling by the next Monday morning. My wife and I had come back from dinner about 7:00 p.m. pacific, and I found, to my great surprise, an email from the Fifth Circuit that said, You need to file a response by 10:00 a.m. Sunday.

I called and talked to one of the clerks. And I want to tell you, this young lady could not have been better, and she looked us up, and we were able to get a motion in and get more time.

The time entries on there probably would have been less if we hadn't had to do a -- a fire drill. So, basically, the way that was filed forced us to do a fire drill to comply with that. And it also, I think, Your Honor -- the idea of candor to a tribunal, to file a motion on emergency that there was going to be a sale closed, when you know the sale has already closed, is, to me, just the utmost, in terms of a lack

of candor to the tribunal. I mean, the Fifth Circuit should have known that that sale had already closed.

And then we've got the other problem, why was this thing even filed? He admits, and we've all seen this from day one, that his clients are millions of bucks out of the money. There's Invenium -- and remember, River North, who I represent, is owed $714,000. There is no way that they are not huge amounts out of the money. Why do you file an appeal for a sale on something when you're $9 million out of the money?

That would include my presentation and my proffer, Your Honor.

THE COURT: One last time, before I ask Mr. Sharpe if he has any questions for you, do you -- one more time, tell me the total that you're requesting as a sanction in fees.

MR. FORSHEY: It would be everything that appears in Exhibit 10, Your Honor.

THE COURT: Okay.

MR. FORSHEY: Plus eight hours at $725 per hour, which is $100 under my usual published billing rate, and that would come up with $6,000; and that's just me. I'm not necessarily trying to collect here for Ms. Rosen or Ms. Stanberry.

THE COURT: So, $6,000 would be the total amount, and that's conservative based on your testimony?

MR. FORSHEY: Yes. Well, plus the entries that are here.

THE COURT: Okay. All right then.

MR. FORSHEY: And what we had to do, is those were just raw entries, because the prebills won't be ready for months or weeks. So, what I did is I pulled out the raw entries. And so, if you add the total amounts on each of them, it comes up to something around $12,000, Your Honor. If you want me to, I'll be happy to add that for you.

THE COURT: I think that I can take care of it. I appreciate your testimony.

Let me ask you another question -- do you want to continue making any argument? I'd like to ask you a question.

The Fifth Circuit is adamant that in these type of proceedings that the court consider the least severe sanction to correct the conduct so it doesn't occur again. This has, obviously, been a very involved case for all of us. There have been -- I've said it before, it's been exhausting to the Court.

I've tried verbal admonishments, I've tried the threat of contempt, I've tried monetary sanctions. I referred this matter to a three-judge panel and they came back with their decisions.

We had a follow-on hearing, as you know about and Mr. Sharpe knows about, when being under temporary suspension

he made a filing in violation of an order, and he's ordered to take the model professional responsibility exam. He's still under that obligation.

Mr. Sharpe did take it, and failed that exam the first time. I think the next time it's offered is next Thursday. So, I'm anxious to see whether Mr. Sharpe passes that to comply with the earlier sanction.

We also, during the pendency of the disciplinary action in front of the three-judge panel, it was discovered in my Court, based on the testimony of Mr. Behan, that Mr. Sharpe had been representing -- despite the order, had been representing and advising his clients in the Northern District of Texas. And that was referred to the panel, and they took that up. And here we are again.

And again, I take very seriously the Fifth Circuit's admonition that I consider the least severe sanction to correct the conduct.

Do you have a request, or do you have a suggestion as to what that would be, assuming the Court finds that this is sanctionable conduct as it's been described in the motion to show cause and the order?

MR. FORSHEY: Yes, sir. I do, Your Honor.

THE COURT: Okay.

MR. FORSHEY: The biggest problem with this is it forces me to spend a bunch of money responding to pleadings

that are -- should not be filed. And even though we think they're frivolous, we still have to respond to them and to do that.

My request would be for the Court to, one, make a finding that by making the decisions about filing in the Fifth Circuit, as opposed to coming to you, that involved the practice of law. He didn't advise his clients, he just decided what to do and he did it. Under the panel opinion, that clearly is practicing law. He stuck with that, he didn't appeal from that, and that's final.

Second, I would ask the Court to, basically, enjoin him from any further violation of the panel orders.

And finally, to suspend him from practice, period, in the Northern District for some time.

THE COURT: I think it's well worth noting -- and this is, again, taking judicial review of all the appeals, in the motion that Mr. Sharpe filed, the emergency motion, in describing his reasoning for not filing with the district court first under Federal Rule of Appellate Procedure Rule 8, he didn't tell the Fifth Circuit that he had been suspended from practice in the Northern District, nor did he inform them that the property had already been sold.

I do appreciate the argument. Mr. Sharpe, I'll give you the last word.

MR. SHARPE: Can I ask a few questions of

Mr. Forshey?

THE COURT: Oh, sure. Thank you, sir.

Mr. Forshey, you gave your proffer, so --

MR. SHARPE: He can just stand here at the -- he doesn't have to go up to the witness stand.

THE COURT: Okay. As long as everybody is fine with that and Monica can hear, that's fine with me.

CROSS-EXAMINATION

BY MR. SHARPE:

Q. Mr. Forshey, how much practice have you done in the Fifth Circuit?

A. Quite a number.

Q. Have you ever sought an emergency motion in the Fifth Circuit?

A. You know, I can't remember one. If there was, I can't recall it.

Q. Okay. Are you aware that emergency motions in the Fifth Circuit are almost usually ruled upon without ever asking for a response?

Are you aware of that?

A. No. I don't believe that would be true.

Q. Okay. That's your belief, okay.

A. That's my belief.

Q. And when they ask for a response, it usually means they're going to grant the emergency motion.

Are you aware of that?

A. No. I do not -- I'm not aware of that, and that sounds very counterintuitive to me.

Q. But that's your experience?

A. Yes.

MR. SHARPE: No further questions.

THE COURT: All right. I'll give you the last word, Mr. Sharpe. If you'd like to say anything else, I'd like to hear from you.

MR. SHARPE: Your Honor, it's very clear that the discussion has been on what I have done in the Fifth Circuit, which is not a part of the charge against me.

Also, having extensively practiced in the Fifth Circuit, and having watched other emergency motions, most of them rarely ask for a response. That is rare.

THE COURT: Well, I'm -- that hasn't been my experience in the years I've been a judge or a law clerk.

In fact, one of my colleagues out in West Texas, Judge Hendrix, was recently commended by the Fifth Circuit, in the fact that he had an emergency TRO in one of these immigration cases and he did ask for a response. And Judge Ho commended him, as did the initial panel.

But you've been practicing a lot longer than I have. But that's not my -- my experience, indeed, on any of the three courts I've been on, to grant even an emergency motion

without a response. But, as I said, you've been doing this a lot longer than I have.

Go ahead, sir.

MR. SHARPE: Well, it's just simply based upon the number of years I have been involved in that, that it's rarely asked.

But the thing is this, the charge -- the first charge is practicing in the Northern District of Texas. To say filing the emergency motion is practicing in the Northern District of Texas, that is not accurate under the law, period.

And you do acknowledge, and so has Mr. Forshey, that it is not absolutely required that you go to the district court first. That's normally what happens, but it's not required. That's why they put the other part of the rule in there that says if it's impracticable, and there's a two-part test which was laid out.

And I do know, from my years of practice before the Fifth Circuit, plus having had as a co-counsel Charles Clark, who was chief judge at the Fifth Circuit for a long time, knowing from discussions with him about the practice, a lot of times that two-step is not found to have been done, and it's just simply denied immediately. And you have to go back -- if you want a stay, then you have to go back to the district court.

So, I have not done anything in the district court.

I did not have clients until I was retained to help them at the Fifth Circuit. I did nothing by way of filings or participating before this court. And there is nothing that shows there's a conflict of interest, and that that would even be sanctionable conduct.

Thank you, Your Honor.

THE COURT: One second, I have a couple of questions for you.

MR. SHARPE: Sure.

THE COURT: I looked at your bar profile. And you're -- obviously you're admitted to the State Bar of Texas; is that right?

MR. SHARPE: Correct.

THE COURT: All right. I've -- I've noticed, at least your bar profile says, you're admitted to the following Federal courts -- if there are any other state courts or Federal courts that I haven't identified in this list that you're admitted to, I know you're going to tell me.

You're admitted to the United States Supreme Court, the Fifth Circuit, the Sixth Circuit, the Tenth Circuit, the Federal Circuit, the Eastern and Western Districts of Arkansas, and the Texas Eastern and Northern Districts.

Have I identified all the Federal courts that you're admitted to?

MR. SHARPE: No, Your Honor. I'm also in the

Southern District.

THE COURT: Okay. Are you in the Western District as well?

MR. SHARPE: No. No, Your Honor.

THE COURT: Okay. Any other courts?

MR. SHARPE: No. Texas is the only state court. All my others are all Federal.

THE COURT: Okay.

MR. SHARPE: Federal districts and circuits.

THE COURT: Again, these are *Brady* matters before the Court today, and these are serious allegations. And I have a duty to consider what the least severe sanctions should be, and I need to take that under consideration.

I suspect that I'll have something out on this one way or another early next week. But I appreciate everybody for coming down on a Friday afternoon. And I'm very sorry to hear your hearing got cancelled this morning, Mr. Sharpe.

All right. We'll stand adjourned.

Thank you.

(Proceedings Adjourned)

REPORTER'S CERTIFICATE

I, Monica Willenburg Guzman, CSR, RPR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 21st day of August, 2025.

/s/Monica Willenburg Guzman
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