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LAW OFFICE OF
ALFREDO A. SOZA
ATTORNEY AT LAW

119 EAST 4TH STREET
ODESSA, TEXAS 79761

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December 27, 2012

Office of the Chief Disciplinary Counsel
Attn: Troy Garcia
126 E. Nueva, Suite 200
San Antonio, TX 78204

7011 0470 0001 9984 7585-

Dear Mr Garcia:

Enclosed is my request for rehearing and notice of appeal if rehearing is denied

Sincerely



Alfredo A. Soza

Copy to:

Angelica Feliz Abalos
520 N. Lee
Odessa, TX 79761

FILED
By: _____
JAN 22 2013
Board of Disciplinary Appeals
appointed by the
Supreme Court of Texas

FILED

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San Antonio Off

**BEFORE THE DISTRICT 15 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 15-4
STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER
DISCIPLINE
Petitioner**

**S0011226607 (Jimenez)
S0041227014 (Fitzgerald)**

V.

**ALFREDO A. SOZA
Respondent**

**MOTION FOR REHEARING AND
NOTICE OF APPEAL IF REHEARING IS
DENIED and REQUEST FOR DISCOVERY**

Comes now Alfredo A. Soza and brings this motion for Rehearing and if it is denied than this is Alfredo A. Soza's notice of appeal

1. Points at issue in regards to the Motion for Rehearing:
 - A. Respondent was served with an Amended Petition on September 19, 2012 with a request for disclosure in which Respondent had 50 days to disclose. Prior to the expiration of the 50 days Respondent was served with a Motion for Default Judgment.
 - B. Committee ruled that Respondent had defaulted prior to the date for the Request for Disclosure. The Committee then ruled that all allegations were true by default. Because the Committee had ruled that Respondent had defaulted no further evidence was necessary. Although the allegations were ruled to be true the counsel for the Grievance Committee, Troy Garcia gave additional evidence in which he perjured himself in the following manner:
 - i. Troy Garcia testified that Respondent's actions had caused a delay in Bradley Fitzgerald's appeal when in fact the Mandate from the 11th Court of Appeals was dated February 29, 2012. This is an essential fact that if Troy Garcia obviously didn't know than he should have known. Even if he didn't know he should have answered the Committee's question as follows "I don't know" instead of yes it did or probably did.
 - ii. Troy Garcia testified that I had done nothing in the case of Santiago Jimenez when in fact I not only attended his pre-trial in the case but am still his attorney of record.

C. The Judgment in this case does not give the Respondent notice that he has 30 days to appeal or request a re-hearing by the committee. In fact the sanctions begin prior to 30 days after the Respondent was served by the Judgment.

D. The Committee reviewed evidence that was introduced by Troy Garcia that occurred after having been served with the Petition and it was not disclosed in the 1st Amended Petition which Respondent alleges is the only live pleading in the case. Thus denying Respondent of Notice to any of those allegations.

2. Prayer

Respondent request a rehearing in the matter and if that is denied than the Respondent gives his notice of appeal.

3. Request for Discovery

Respondent Requests transcripts of all the hearings in regards to Sanctions against Respondent including but not limited to the hearing on November 15, 2012.

Respectfully Submitted

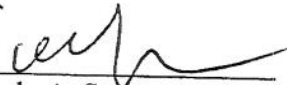


Alfredo A. Soza (Pro Se)
3812 E. Everglade
Odessa, TX 79762
Phone 432-978-3603

Certificate of Service

A copy of this Motion was served by US Mail CMRRR on December 27, 2012.

~~on~~ to Dist OFFICE of the Chief Disciplinary
Counsel & Committee Chair


Alfredo A. Soza

ALFREDO A. SOZA
ATTORNEY AT LAW
119 E. 4TH STREET
ODESSA, TX 79761

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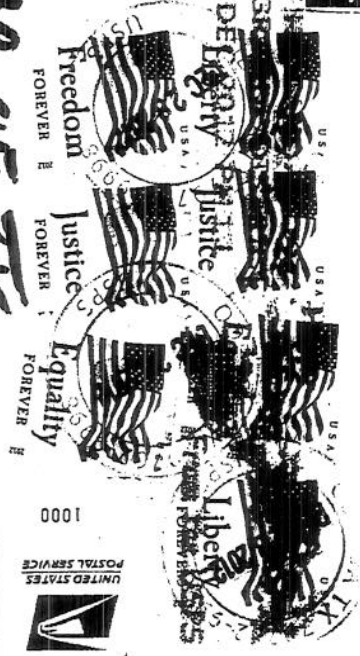
STANLEY CRIBARI
SAN ANTONIO OFFICE

STATE BAR OF TX

126 E. Nuey
San Antonio

78204-83001@1740

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NOTIFY SENDER OF NEW ADDRESS
STATE BAR OF TEXAS 750
711 NAVARRO ST STE 750
SAN ANTONIO TX 78205-1740
RC: 78205174075 *2810-18590-28-40



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**BEFORE THE DISTRICT 15 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 15-4
STATE BAR OF TEXAS**

**State Bar of Texas
San Antonio Office**

**COMMISSION FOR LAWYER
DISCIPLINE,
*Petitioner***

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V.

**FILE NO. S0011226607
FILE NO. S0041227014**

**ALFRED A. SOZA,
*Respondent***

**PETITIONER'S RESPONSE TO RESPONDENT'S
MOTION FOR REHEARING**

TO THE DISTRICT 15-4 EVIDENTIARY PANEL:

COMES NOW Petitioner, COMMISSION FOR LAWYER DISCIPLINE, and responds to the Motion for Rehearing and Notice of Appeal if Rehearing is Denied and Request for Discovery, and would show as follows:

**I.
Judgment**

This disciplinary proceeding and the Petitioner's Motion for Default Judgment was heard by the Evidentiary Panel on November 15, 2012. Respondent attended the hearing and conceded the default judgment. The Evidentiary Panel concluded that a proper showing of default had been made, that Respondent was in default and an order of default with a finding of professional misconduct was entered. See TRDP 2.17(C). The Evidentiary Panel then proceeded to conduct a hearing to determine the appropriate Sanctions to be imposed, and determined that Respondent should be suspended from the practice of law for a period of 2 years, partially probated, with 90 days active suspension. Responded was also ordered to pay restitution to Santiago

Jimenez in the amount of \$5,000.00 and attorney fees to the State Bar in the amount of \$1,720.00. Said Judgment was signed on November 20, 2012.

**II.
Respondent's Motion Not Sufficient**

Post-judgment motions in a disciplinary proceeding must comport with the provisions of the applicable Texas Rules of Civil Procedure pertaining to motions for new trial or motions to modify judgments. See TRDP 2.22. A motion for new trial must be filed within 30 days after the date the judgment was signed. Tex.R.Civ.P. 329b(a). In the present matter, the judgment was signed on November 20, 2012. Respondent's motion for new hearing was due on or before December 20, 2012. Respondent delivered his Motion for Rehearing to the U.S. Postal Office on December 28, 2012, over a week after the deadline had expired, and it is therefore untimely. (Exhibit A) As such, Respondent's motion was filed after the plenary power of this Evidentiary Panel had expired and it has no jurisdiction over this disciplinary proceeding. In addition, the Factual allegations in a Motion for New Trial following a default judgment must be verified. *Zuniga v. Zuniga*, 13 S.W.3d 798, 803 n.4 (Tex.App. – San Antonio, 1999, no pet.) See also Tex.R.Civ.P. 324(b)(1). Respondent has not filed a verified motion in this matter.

**III.
The Craddock Test**

To receive a new trial after a default judgment, a defendant must meet the hurdles enumerated in *Craddock v. Sunshine Bus Lines, Inc.*, 133 S.W.2d 124 (Tex.1939). See *Perez v Commission for Lawyer Discipline*, 2008 WL 2454106

(Tex.App.—Corpus Christi 2008, no pet.) Respondent must first show that his failure to answer or appear was not the result of conscious indifference, but was due to mistake or accident. *Craddock*, 133 S.W.2d at 126. Second, he must set up a meritorious defense to his alleged misconduct. *Id.* Finally, he must assert that a new trial would cause neither delay nor undue prejudice. *Id.* He must also show that he is ready to proceed to trial and to pay the expenses incurred in obtaining the default judgment. Whether to grant a new trial is within the discretion of the trial court when a default has been taken. *Id.*

IV. Conscious Indifference

Conscious indifference has been interpreted to mean “a failure to take some action which would seem indicated to a person of reasonable sensibilities under the same circumstances.” *Johnson v. Edmonds*, 712 S.W.2d 651, 652-653 (Tex.App. – Fort Worth 1986, no writ.). In the *Johnson* case, the defendant was personally served, but testified that he failed to read the portion requiring him to file an answer. *Id.* at 652. The Court held that the defendant’s failure to act after being personally served, in spite of any misunderstanding about the requirement for an answer, constituted conscious indifference. *Id.* at 653.

The evidence admitted at the evidentiary hearing held November 20, 2012 clearly demonstrates Respondent was personally served with the Evidentiary Petition and failed to file an answer. The evidence is also clear that Respondent was again personally served with a copy of the Petitioner’s Motion for Default Judgment and notice of the hearing on November 6, 2012 but he failed to take any action regarding the motion filed or the hearing set. In fact, any appearance made by Respondent at the

default hearing was the result of the persistence of panel members who went out of their way to locate and persuade Respondent to appear. In the *Young* case, the respondent was only a stockbroker who had been served before and the court held that since he was familiar with the legal processes his failure to act amounted to conscious indifference. *Young v. Kirsch*, 814 S.W.2d 77, 81 (Tex. App.--San Antonio 1991, no writ). Respondent is not a lay person, but rather a licensed attorney. He was personally served on at least two occasions with notice of the disciplinary proceedings and had no misunderstanding of the need to answer or to appear at the hearing, or the consequences of his failure to take action. Respondent cannot demonstrate his failure to answer or appear was the result of anything other than his conscious indifference, and the motion should be denied.

**V.
Meritorious Defense**

Notably, Respondent fails to assert that he has a meritorious defense to the allegations of professional misconduct. At the sanctions phase of the hearing, the evidentiary panel heard testimony directly from Respondent that overwhelmingly established the findings that Respondent had violated TRDP 1.01(b)(1) and 1.03(a). Mr. Jimenez's legal matter was pending for months without any communication or progress made by Respondent and without any disposition. In fact, Respondent admittedly stopped calling or visiting Mr. Jimenez altogether. Respondent is not entitled to a new evidentiary hearing because he has no meritorious defense, and has not attempted to establish one, to the allegations of professional misconduct.

**VI.
Counsel Did Not Testify**

Troy Garcia did not testify at the hearing and certainly did not commit perjury. Counsel did present argument in support of the motion for default and regarding the appropriate sanction to be imposed.

**VII.
Conclusion**

On its face, Respondent's motion is untimely and should be denied. In addition Respondent's motion is insufficient to meet the Craddock elements and the evidentiary panel should not grant the Respondent a hearing on his frivolous motion for a new trial.


WHEREFORE, premises considered, Petitioner respectfully PRAYS that Respondent's Motion for a New Trial be in all things DENIED.

Respectfully submitted,

LINDA A. ACEVEDO
Chief Disciplinary Counsel

TROY J. GARCIA
Assistant Disciplinary Counsel

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FAX: 210-208-6625

By: 

TROY J. GARCIA
State Bar No. 24055527
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

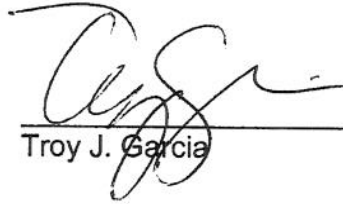
This is to certify that the above and foregoing Motion has been served on Respondent on this the 8th day of January, 2013, by the means indicated below:

Alfredo A. Soza
119 East 4th Street
Odessa, Texas 79761

~~VIA FAX: (432) 332-5002 TG~~

VIA CM/RRR# 2012 101000

2012
036



Troy J. Garcia

ALFREDO A. SOZA
ATTORNEY AT LAW
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CERTIFIED MAIL



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SHREVEPORT OFFICE
SAMANTHINO OFFICE

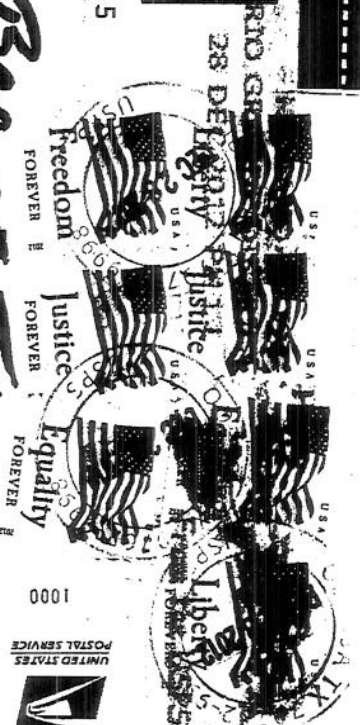
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SAN ANTONIO TX 78205-1740

78205-1740

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ALL-STATE LEGAL
PETITIONER'S EXHIBIT
"A"

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