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THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

No. 62308

**Before the Board of Disciplinary Appeals
Appointed by
The Supreme Court of Texas**

JOE JESSE PONCE, III,

APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

*On Appeal from the Evidentiary Panel
For the State Bar of Texas District 10-3
No. 201705565*

**BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE
(ORAL ARGUMENT REQUESTED)**

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TABLE OF CONTENTS

PAGE

IDENTITY OF PARTIES AND COUNSEL 1

INDEX OF AUTHORITIES 4

STATEMENT OF THE CASE..... 8

STATEMENT OF THE ISSUES 9

STATEMENT OF FACTS 10

SUMMARY OF THE ARGUMENT 15

ARGUMENT..... 17

I. The panel acted well within its discretion in rejecting Ponce’s explanations for his failure to file a responsive pleading, and thus, cannot satisfy the first element of the *Craddock* test..... 17

A. Ponce’s purported incorrect belief that his response to the grievance served as a responsive pleading lacks any credibility..... 20

B. Ponce cannot rely on an error by counsel to justify default where he did not retain counsel until long after the default occurred 21

II. Ponce admitted to a violation of Rule 1.14(b) and failed to establish any meritorious defense to warrant a new hearing..... 22

CONCLUSION AND PRAYER..... 25

CERTIFICATE OF COMPLIANCE 26

CERTIFICATE OF SERVICE 26

APPENDIX..... 27

<u>CASES</u>	<u>INDEX OF AUTHORITIES</u>	<u>PAGE</u>
<i>Comanche Nation v. Fox</i> , 128 S.W.3d 745 (Tex. App.—Austin 2004, no pet.)		22
<i>Comm'n for Lawyer Discipline v. Schaefer</i> , 364 S.W.3d 831 (Tex. 2012).....		20
<i>Craddock v. Sunshine Bus Lines, Inc.</i> , 134 Tex. 388, 133 S.W.2d 124 (1939)		17
<i>Darnell v. Comm'n for Lawyer Discipline</i> , BODA No. 59880, 2018 WL 4078979 (July 30, 2018).....		23
<i>Dir., State Employees Workers' Comp. Div. v. Evans</i> , 889 S.W.2d 266 (Tex. 1994).....		18, 20
<i>Dolgencorp of Texas, Inc. v. Lerma</i> , 288 S.W.3d 922 (Tex. 2009).....		17, 22
<i>Estate of Pollack v. McMurrey</i> , 858 S.W.2d 388 (Tex. 1993).....		18, 20, 22
<i>Fidelity and Guar. Ins. Co. v. Drewery Const. Co., Inc.</i> , 186 S.W.3d 571 (Tex. 2006).....		18
<i>In re R.R.</i> , 209 S.W.3d 112 (Tex. 2006).....		18
<i>Lynch v. Lynch</i> , 540 S.W.3d 107 (Tex. App.—Houston [1st Dist.] 2017, pet. denied)		19
<i>Sutherland v. Spencer</i> , 376 S.W.3d 752 (Tex. 2012).....		18

STATUTES

PAGE

TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.14(b) 23, 24

TEX. GOV'T CODE § 81.072(b)(7) 20

TEX. RULES DISCIPLINARY P. R. 2.10(B) 21

TEX. RULES DISCIPLINARY P. R. 2.17(B) 21

TEX. RULES DISCIPLINARY P. R. 2.17(C) 19, 22

TEX. RULES DISCIPLINARY P. R. 7.11 20

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JOE JESSE PONCE, III,
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V.

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APPELLEE

*On Appeal from the Evidentiary Panel
For the State Bar of Texas District 10-3
No. 201705565*

**BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE**

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits this brief in response to the brief filed by Appellant, Joe Jesse Ponce, III. For clarity, this brief refers to Appellant as “Ponce” and Appellee as “the Commission.” References to the record are labeled CR (clerk’s record), RR (reporter’s record), and App. (appendix to brief). References to rules

refer to the Texas Disciplinary Rules of Professional Conduct¹ unless otherwise noted.

¹ *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app A-1. (West 2017).

STATEMENT OF THE CASE

Type of Proceeding: Attorney Discipline

Petitioner / Appellee: The Commission for Lawyer Discipline

Respondent / Appellant: Joe Jesse Ponce, III

Evidentiary Panel: 10-3

Judgment: Judgment of Partially Probated Suspension

Violations found (Texas Disciplinary Rules of Professional Conduct): **Rule 1.05(b)(1)(ii):** Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly: (1) Reveal confidential information of a client or a former client to (ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.

Rule 1.14(b): Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

STATEMENT OF THE ISSUES

- I. Under Texas law, to obtain a new trial after a default judgment, a litigant must show that the default was neither intentional nor the result of conscious indifference, and set forth a meritorious defense.

Did the evidentiary panel act within its discretion in denying Ponce's motion for a new hearing where the evidence showed that he was specifically advised of his obligation to file an answer and where he admitted to one of the alleged disciplinary violations?

STATEMENT OF FACTS

Appellant, Joe Ponce III, appeals from a judgment of an evidentiary panel finding he violated Rules 1.05(b)(1)(ii) and 1.14(b) of the Texas Disciplinary Rules of Professional Conduct. (CR at 111-18) The panel found Ponce was in default because he failed to file a responsive pleading to the disciplinary petition. (*Id.*) Following an evidentiary hearing to determine the appropriate sanctions, the panel imposed a three-year, partially probated suspension with four months of active suspension. (*Id.*) Ponce filed a motion for a new hearing, arguing that the default should be set aside under *Craddock v. Sunshine Bus Lines, Inc.*, 134 Tex. 388, 133 S.W.2d 124 (1939). (CR at 131-41) The panel denied the motion, and this appeal followed. (CR at 182)

In early 2017, the complainant, Valerie Talamantes hired Ponce to represent her in a child custody dispute. (RR V.1 at 20, 30) Talamantes worked in advertising and marketing. (RR V.1 at 20-21) Ponce sought services from the company where Talamantes worked, and his account was assigned to Talamantes's friend, Amanda Melendez. (RR V.1 at 21, 44) Talamantes testified that Ponce shared with Melendez confidential and personal information related to her ongoing custody dispute and her

personal financial information. (RR V.1 at 23-26) Talamantes immediately contacted Ponce and expressed her displeasure that Ponce had shared her personal information with her friend. (RR V.1 at 27) She instructed him to withdraw from the case and requested confirmation once he had done so. (*Id.*) Ponce responded with an expletive and hung up. (*Id.*) In addition to the sharing of confidential information with Melendez, Talamantes testified that Ponce also shared personal confidential information with her supervisor and her mother. (CR at 26-29)

During the representation, Talamantes wrote five different checks to Ponce for legal fees. (RR V.1 at 30) Talamantes never received any billing statements from Ponce, but during the representation, Ponce would tell her he would not take additional action on her behalf unless she paid additional fees. (RR V.1 at 38) Talamantes requested an accounting of what services were provided based on the fees paid to Ponce, but he never provided one. (RR V.1 at 38-39)

For his part, Ponce denied that he told Melendez any client confidential information. (RR V.1 at 80-82) He admitted to asking her questions about Talamantes's personal life as part of his "investigation"

in the case, but denied that he ever volunteered any information. (RR V.1 at 94-95) He also admitted that he explained to Melendez that certain documents Talamantes previously showed to her were discovery requests, and that Talamantes needed to answer them, but provided no other information. (RR V.1 at 82-83, 94-95)

As for the failure to provide an accounting, Ponce testified that he did not comply with this request because he was afraid of Talamantes's boyfriend. (RR V.1 at 85-87; App. 2) Ponce believed he was owed an additional \$16,000 to \$18,000, and if he informed Talamantes of this, her boyfriend would become violent. (*Id.*) But he later acknowledged that an accounting did not have to include a bill for additional fees owed, and he conceded that he should have given an accounting as requested. (*Id.*)

Talamantes filed a grievance on September 11, 2017. (CR at 161-62) Ponce was informed of the grievance, and on January 31, 2018, sent a letter to the Office of the Chief Disciplinary Counsel (CDC) in which he generally denied committing misconduct. (CR at 163) On March 22, 2018, Ponce was hand delivered documents from CDC informing him that CDC found Just Cause. (CR at 6-9) Also enclosed was an election form for Ponce to specify whether he wished to proceed before an evidentiary

panel or district court. (*Id.*) Ponce never responded and by default pursuant to Rule 2.15, the matter was assigned to Evidentiary Panel 10-3. (CR at 30)

The Commission filed its Evidentiary Petition and Request for Disclosure on April 24, 2018. (CR at 24-32) Ponce was served with the documents in person on May 12, 2018. (CR at 35) Cover letters included with the documents specifically informed Ponce that he was required to file a responsive pleading and that failure to do so would result in a default pursuant to Rule 2.17(B). (CR at 29, 24) Ponce failed to file any responsive pleadings prior to the deadline, and took no other action for several months. (*See generally*, CR at 37-70)

The Commission moved for a default judgment and set a hearing for September 16, 2018. (CR at 37-70) Ponce was personally served with the motion for default judgment and notice of the hearing on July 12, 2018. (CR at 70) Counsel for Ponce filed a notice of appearance on August 29, 2018. (CR at 72) The hearing was reset for May 2, 2019. (CR at 78)

At the hearing on the motion for default, counsel for Ponce expressed that he had intended to file an answer on behalf of Ponce, but had apparently failed to do so, but that Ponce nonetheless intended to

contest the allegations. (RR V.1 at 8-10) The Commission pointed out that under Rule 2.17(B), a default becomes mandatory if the Respondent does not file a responsive pleading within the specified time, which elapsed long before Ponce retained counsel. (RR V.1 at 9, 15) The panel chair agreed and proceeded to hear evidence related to what sanction should be imposed. (RR V.1 at 15; CR at 87-88)

Following the panel's judgment of a partially probated suspension, Ponce filed a motion for a new hearing, arguing that the default judgment should be set aside under *Craddock*. (CR at 131-41) Ponce argued that his failure to file a responsive pleading was due to his mistaken belief that his letter response to the initial grievance served as a responsive pleading. (CR at 134) The Commission contested this contention, noting Ponce's 20 years of experience, and noting the fact that the documents served along with the evidentiary petition specifically noted that he was required to file a responsive pleading. (CR at 144-45; App. 1) Finally, the Commission attached evidence from a prior disciplinary case against Ponce where he filed an answer to the original petition. (CR at 169-71; App. 1). The panel denied the motion, and this appeal followed. (CR at 182, 185)

SUMMARY OF THE ARGUMENT

Ponce meets neither the first nor the second element of the *Craddock* test, and the panel acted well within its discretion in denying the motion for a new hearing. Under the first prong of *Craddock*, when the party opposing the motion for a new trial contests the defaulting party's explanation as to why the party failed to file a responsive pleading, the matter is left for the trier of fact. Here, the panel had a number of reasons to disbelieve Ponce's assertion that he incorrectly believed that his letter response to the initial grievance served as a responsive pleading to the disciplinary petition. These reasons included Ponce's previous experience with the disciplinary system, and the fact that the cover letter contained with the disciplinary petition specifically advised him of his obligation to file an answer, and that a default would be entered if he did not. Similarly, Ponce cannot rely on an error by counsel because he did not retain counsel until long after the default occurred pursuant to the Texas Rules of Disciplinary Procedure.

In addition, Ponce failed to set forth a meritorious defense to both disciplinary violations. While he generally denied that he divulged any client confidential information, he admitted that he failed to provide an

accounting when requested. He also acknowledged that his purported excuse for not doing so (fear of violence from his client's boyfriend) would not have prevented him from providing the requested accounting of what work was performed with the advance fees previously paid to him. The panel acted well within its discretion in denying the motion for a new hearing, and the Board should affirm.

ARGUMENT

The evidentiary panel acted well within its discretion in denying Ponce's motion for a new trial. As it has for decades, *Craddock v. Sunshine Bus Lines, Inc.*, 134 Tex. 388, 392, 133 S.W.2d 124, 126 (1939) governs the inquiry. The trial court (or here, panel) should grant a new trial if the defendant shows (1) that the default was neither intentional nor the result of conscious indifference, (2) a meritorious defense, and (3) that a new trial would cause neither delay nor undue prejudice. *Id.* Appellate courts review a trial court's refusal to grant a motion for new trial for abuse of discretion. *Dolgenercorp of Texas, Inc. v. Lerma*, 288 S.W.3d 922, 926 (Tex. 2009). When a defaulting party moving for new trial meets all three elements of the *Craddock* test, then a trial court abuses its discretion if it fails to grant a new trial. *Id.* Here, Ponce's appeal fails under first and second elements of the *Craddock* test, and the Board should affirm.

I. The panel acted well within its discretion in rejecting Ponce's explanations for his failure to file a responsive pleading, and thus, cannot satisfy the first element of the *Craddock* test.

The panel correctly denied the motion for new trial as Ponce failed to establish that his failure to answer was not intentional nor the result

of conscious indifference. In general, courts view this factor with a significant degree of leniency: “Generally, some excuse, although not necessarily a good one, will suffice to show that a defendant's failure to file an answer was not because the defendant did not care.” *Sutherland v. Spencer*, 376 S.W.3d 752, 755 (Tex. 2012) (quoting *In re R.R.*, 209 S.W.3d 112, 115 (Tex. 2006)).

This leniency, however, has its limits. A defendant satisfies his/her burden as to the first *Craddock* element when the factual assertions, if true, negate intentional or consciously indifferent conduct by the defendant *and the factual assertions are not controverted by the plaintiff*. See *Fidelity and Guar. Ins. Co. v. Drewery Const. Co., Inc.*, 186 S.W.3d 571, 576 (Tex. 2006) (emphasis added). In determining if the defendant's factual assertions are controverted, the court looks to all the evidence in the record. *Dir., State Employees Workers' Comp. Div. v. Evans*, 889 S.W.2d 266, 269 (Tex. 1994). When controverted, the question of whether the defendant's failure to act was intentional or the result of conscious indifference is a fact question to be resolved by the trial court (or here, panel). *Estate of Pollack v. McMurrey*, 858 S.W.2d 388, 391 (Tex. 1993). The trial court “may generally believe all, none, or part of a witness's

testimony...[and] can reasonably believe, based on contradictory evidence, that there was intentional or consciously indifferent conduct on the part of a defendant.” *Lynch v. Lynch*, 540 S.W.3d 107, 122 (Tex. App.—Houston [1st Dist.] 2017, pet. denied) (internal citations omitted).

Lawyer discipline cases have specific rules applicable to defaults. Rule 2.17(C) governs defaults in disciplinary proceedings before an evidentiary panel. TEX. RULES DISCIPLINARY P. R. 2.17(C). The Rules do not afford discretion when a Respondent fails to answer:

A failure to file an answer within the time permitted constitutes a default, and all facts alleged in the Evidentiary Petition shall be taken as true for the purposes of the Disciplinary Proceeding. Upon a showing of default, the Evidentiary Panel shall enter an order of default with a finding of Professional Misconduct and shall conduct a hearing to determine the Sanctions to be imposed. *Id.*

Here, Ponce offers two arguments: that he incorrectly believed that his response to the grievance constituted an answer, and that he hired a lawyer to represent him, and believed the lawyer would file all necessary pleadings. (App. Br. at 9-10) Neither explanation presents a viable argument.

A. Ponce's purported incorrect belief that his response to the grievance served as a responsive pleading lacks any credibility.

First, Ponce argues that his failure to file an answer should be excused because he incorrectly believed that his response to the grievance constituted his answer in a disciplinary proceeding. The Commission contested this contention, and it became a fact question to be resolved by the panel. *See Evans, Estate of Pollack, supra*. Factual determinations by an evidentiary panel are subject to the substantial evidence standard of review. TEX. GOV'T CODE § 81.072(b)(7); TEX. RULES DISCIPLINARY P. R. 7.11; *Comm'n for Lawyer Discipline v. Schaefer*, 364 S.W.3d 831, 835 (Tex. 2012).

Here, there was ample evidence for the panel to disbelieve Ponce's explanation that he believed his response to the grievance served as his answer. First, Ponce was previously a respondent in a disciplinary matter, and filed a responsive pleading even though he had previously responded to the grievance. This undercuts the notion that Ponce could have mistakenly believed that his response to the grievance served as an answer. Moreover, the cover letter served along with the disciplinary petition specifically informed him of his obligation to file an answer, and

the consequence if he failed to do so. Finally, even a cursory examination of the Texas Rules of Disciplinary Procedure shows that the response to a grievance and an answer to a disciplinary petition are decidedly different documents. *Compare* TEX. RULES DISCIPLINARY P. R. 2.10(B), *with* TEX. RULES DISCIPLINARY P. R. 2.17(B). There was ample evidence for the panel to find that Ponce’s explanation lacked credibility.

B. Ponce cannot rely on an error by counsel to justify default where he did not retain counsel until long after the default occurred.

Ponce’s arguments regarding his reliance on counsel to file an answer on his behalf cannot be squared with the timeline of counsel’s involvement in the case. Ponce was served with the disciplinary petition on May 12, 2018. (CR at 35) Per Rule 2.17(B), his answer was due on June 4, 2018. TEX. RULES DISCIPLINARY P. R. 2.17(B). As noted above, the documents alerted Ponce of his obligation to file an answer and the time in which the pleading must be filed. But Ponce’s counsel testified that Ponce did not contact him regarding this disciplinary matter until “late August 2018.” (CR at 137) Indeed, counsel filed a notice of appearance on August 29. (CR at 72) Regardless of whether counsel intended to file an answer on Ponce’s behalf, the time for doing so had already elapsed,

and per Rule 2.17(C), the panel was required to enter an order of default. Thus, Ponce cannot rely on error by counsel to satisfy the first element of the *Craddock* test.

II. Ponce admitted to a violation of Rule 1.14(b) and failed to establish any meritorious defense to warrant a new hearing.

Ponce cannot satisfy the second prong of the *Craddock* test because his motion for a new trial did not set up a meritorious defense to each of the alleged disciplinary violations. “The motion must allege facts which in law would constitute a defense to the cause of action asserted by the plaintiff and must be supported by affidavits or other evidence proving prima facie that the defendant has such meritorious defense.” *Pollack*, 858 S.W.2d at 392. Setting up a meritorious defense does not require proof “in the accepted sense.” *DolgenCorp*, 288 S.W.3d at 927–28. Rather, the motion sets up a meritorious defense if it alleges facts which in law would constitute a defense to the plaintiff’s cause of action and is supported by affidavits or other evidence providing prima facie proof that the defendant has such a defense. *Id.* If proven, a meritorious defense would cause a different—although not necessarily opposite—result on retrial. *Comanche Nation v. Fox*, 128 S.W.3d 745, 751 (Tex. App.—Austin 2004, no pet.).

Here, the panel’s judgment indicates that the sanction imposed was for “each act of professional misconduct.” (CR at 113); *Darnell v. Comm’n for Lawyer Discipline*, BODA No. 59880, 2018 WL 4078979 (July 30, 2018). To obtain a “different—although not necessarily opposite” result in a new trial, Ponce would have to establish a meritorious defense to the alleged violations of Rules 1.05(b)(1)(ii), *and* 1.14(b).

Here, as a defense to the Rule 1.05(b)(1)(ii) allegation that he revealed confidential information regarding his client’s personal life to her co-worker, Ponce essentially offers his self-serving statement denying that he did so. Assuming this to be adequate to establish a defense, he must still provide a defense to the Rule 1.14(b) allegation to obtain a different result.

Rule 1.14(b) provides, in relevant part, that when an attorney has accepted client funds, “upon request by the client or third person, [the attorney] shall promptly render a full accounting regarding such property.” TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 1.14(b). Ponce argues that he did not provide the requested accounting because he feared violence from his client’s boyfriend. But at the sanctions hearing, Ponce acknowledged this did not provide an excuse for refusing the

request of his client for an accounting. (RR V.1 at 86-87; App. 2) Even if Ponce is to be believed that he feared violence from his client's boyfriend if he submitted an accounting that showed she owed him additional fees, he was not required to do so under Rule 1.14(b). TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.14(b). Rule 1.14(b) addresses the need to provide an accounting for property of the client held by the attorney. *Id.* Thus, Ponce was only required to account for how he earned the fees his client had already paid. He acknowledged this at the sanctions hearing and acknowledged the violation of Rule 1.14(b). (RR V.1 at 86-87; App. 2) Without a meritorious defense to both disciplinary violations, Ponce cannot meet the second prong of the *Craddock* test, and the panel acted well within its discretion in denying his motion for a new trial. Accordingly, the Board should affirm.

CONCLUSION AND PRAYER

For these reasons, the Commission prays that the Board affirm the judgment of the District 10-3 Evidentiary Panel of the State Bar of Texas.

RESPECTFULLY SUBMITTED,

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/s/ Matthew J. Greer
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CERTIFICATE OF COMPLIANCE

Pursuant to the Board of Disciplinary Appeals Internal Procedural Rules, the foregoing brief on the merits contains approximately 2,962 words (total for all sections of brief that are required to be counted), which is less than the total words permitted by the Board's Internal Procedural Rules. Counsel relies on the word count of the computer program used to prepare this petition.

/s/Matthew J. Greer
MATTHEW J. GREER

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing brief of Appellee, the Commission For Lawyer Discipline has been served on Joe Jesse Ponce, III, by and through his attorney of record, Ed Stapleton 2401 Wildflower Drive, Suite C, Brownsville, Texas 78526, by email to stapletonstapleton@icloud.com on the 8th day of May, 2020.

/s/Matthew J. Greer
MATTHEW J. GREER
APPELLATE COUNSEL
STATE BAR OF TEXAS

No. 62308

Before the Board of Disciplinary Appeals
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COMMISSION FOR LAWYER DISCIPLINE,
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APPENDIX TO BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

The Commission for Lawyer Discipline attaches the following documents in support of the foregoing brief:

APPENDIX 1: Petitioner's Response to Respondent's Motion to Stay Judgment and Motion for New Hearing (CR at 143-180)

APPENDIX 2: Relevant portions of the testimony of Respondent, Joe Ponce, III. (RR V.1 at 85-87)

Appendix 1

June 27, 2019

**BEFORE THE DISTRICT 10 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 10-3
STATE BAR OF TEXAS**



**San Antonio Office
Chief Disciplinary Counsel**

COMMISSION FOR LAWYER DISCIPLINE, §
Petitioner §
§
§
§
vs. §
§
JOE JESSE PONCE III, §
Respondent §

FILE NO. 201705565

**PETITIONER’S RESPONSE TO RESPONDENT’S
MOTION TO STAY JUDGMENT AND MOTION FOR NEW HEARING**

TO THE HONORABLE EVIDENTIARY PANEL 10-3:

COMES NOW the Commission for Lawyer Discipline (“Petitioner”) and files this Response to Respondent’s Motion to Stay Judgment of Suspension and Motion for New Hearing (the “Motion”), and respectfully shows the following:

I.

This case was heard by the Evidentiary Panel on May 2, 2019. Petitioner’s Motion for Default Judgment was considered and was granted. After the parties presented additional evidence and argument regarding the proper sanction to be imposed, this Panel found a three year partially probated suspension should be imposed, with just four months beginning June 1, 2019 to be served as an active suspension and the remaining thirty-two months to be a probated suspension. A Judgment of Partially Probated Suspension was signed May 15, 2019¹. Respondent’s Motion was filed June 12, 2019.

¹ A copy of the Judgment of Partially Probated Suspension is attached as Exhibit A

II.

Default was Properly Granted

The evidence clearly demonstrated and the Evidentiary Panel properly found Respondent was in default. Respondent had been *personally served by a private process server*² on May 12, 2018. The Evidentiary Petition served on May 12, 2018 was accompanied by a letter explicitly reminding Respondent that he was required to file a responsive pleading admitting or denying each allegation of professional misconduct no later than 5:00 p.m. on the first Monday following the expiration of 20 days after receipt of the Petition³. Respondent failed to timely file any responsive pleading. Respondent's failure to file an answer within the time permitted constitutes a default, and all facts alleged in the Evidentiary Petition shall be taken as true. *See* TEX.R.DISC.P 2.17 C. Upon Petitioner's proper showing of Respondent's default, the Evidentiary Panel *shall enter an order of default with a finding of Professional Misconduct* and shall conduct a hearing to determine the Sanction to be imposed. *Id.* (emphasis added).

III.

Respondent's Alleged Accident in Failing to Respond

Respondent does not dispute he was personally served with the Evidentiary Petition and instructional letter on May 12, 2018. Instead, Respondent contends his failure to file a responsive pleading was accidental and that he operated under the impression that his initial written response to the grievance filed by Valerie Talamantes was his answer to the Evidentiary Petition. Respondent's impression is illogical and unsupported.

² See the Officer's Return attached as Exhibit B.

³ See the letter to Respondent dated April 24, 2018 attached as Exhibit C.

Valerie Talamantes filed a grievance against Respondent on September 12, 2017⁴ and Respondent submitted a written response to the grievance on February 1, 2018⁵. After completing an investigation, the Office of the Chief Disciplinary Counsel notified Respondent on March 22, 2018 that Just Cause had been found regarding the grievance complaint⁶. The Evidentiary Petition was served on Respondent on May 12, 2018, more than three months *after* he had submitted his written response that was required as part of the initial investigation. *See* TEX.R.DISC.P 2.10, 2.12, 2.14 D, 2.15 Respondent’s “impression” is contrary to the timing and content of the documents that were served on him in this proceeding before the Evidentiary Petition. It is also contrary to the default documents that were served on Respondent before he retained counsel⁷.

Respondent’s “impression” is inconsistent with the *pro se* Original Answer that Respondent filed in a prior disciplinary case on December 23, 2015 after serving an initial written response to the underlying grievance on December 29, 2014.⁸

IV.

Respondent’s Conscious Indifference

Conscious indifference is demonstrated by “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 *Johnson*, the defendant was personally served, but testified that he failed to read the portion of the document advising he was required to file an answer. *Id* at 652. The Court held that the defendant’s failure

⁴ See the first two pages of grievance attached as Exhibit D.

⁵ See the first page of Respondent’s response attached as Exhibit E.

⁶ See the Notice of Allegations and Election form (i.e., “Election Letter”) dated March 14, 2018 and hand delivered to Respondent on March 22, 2018 attached as Exhibit F.

⁷ See the Return of Service for the Notice of Default Setting, Motion for Default Judgment served on Respondent on July 12, 2018 attached as Exhibit G. The original Return of Service is filed in the Clerk’s record.

⁸ See the Original Answer signed and filed by Respondent on December 23, 2015 in Cause No. 2015-CI-13669 and the first page of the response to that grievance he submitted on December 29, 2014, both attached as Exhibit H.

to act under these circumstances constituted conscious indifference. *Id* at 653. The failure to answer by a party experienced with the legal process due to prior involvement in court proceedings has also been held to amount to conscious indifference. *Young v. Kirsch*, 814 S.W.2d 77, 81 (Tex. App.--San Antonio 1991, no writ). The defendant in *Young* was stockbroker and manager who had been sued on several occasions during his 20-year career.

Respondent testified at the sanctions hearing that he has practiced law for 20 years and had handled thousands of divorce cases involving child custody issues. Respondent's practice of law in these areas requires knowledge of and experience with civil procedure rules and knowledge that a formal answer must be filed for a defendant or respondent to challenge the facts alleged in any petition. Under these circumstances, Respondent's contention that he did not know a responsive pleading was required is incredulous. Respondent also testified before this Panel at the sanctions hearing that he had not complied with the terms of prior disciplinary judgements was because he had not bothered to read them. If Respondent had read the documents served on him on May 12, 2018, he would have known of the need to file a responsive pleading. The evidence before the panel supports the conclusion that Respondent's conscious indifference, not an accident, was the cause of the default.

V.

Appearance of Counsel

Respondent was in default, and all the facts alleged in the Evidentiary Petition were to be taken as true for this purposes of this proceeding, by his failure to file a responsive pleading by 5:00 p.m. on June 4, 2018. Petitioner's Motion for Default Judgment was filed on July 6, 2018 and was set for hearing on September 6, 2018. The Motion for Default Judgment and Notice of Default Setting were personally served on Respondent on July 12, 2018. Ten days before the

hearing set on the Motion for Default Judgment, counsel filed a Notice of Appearance for Respondent.⁹

Petitioner objects to and asks the panel to strike the affidavit of Respondent's counsel, Wade B. Shelton, attached to Respondent's Motion. Counsel was retained and appeared after Respondent's default and any of his beliefs, intentions or assumptions regarding an answer that was never filed are irrelevant and his opinions are not properly supported. Alternatively, Petitioner requests the panel strike those portions of the affidavit of Wade B. Shelton that are irrelevant or are opinions that are not properly supported.

After counsel appeared for Respondent, he was served on August 30, 2018 and December 13, 2018 with notices of hearings on the Petitioner's Motion for Default Judgment.¹⁰ Respondent's counsel admitted at the hearing on May 2, 2019 that these notices were sent to his correct e-mail and he could not dispute they were properly served. The attestation that Respondent's counsel thought a default had been forestalled is inconsistent with the record in this case.

Respondent continues to suggest that his answer to the underlying grievance and/or the Notice of Appearance of counsel and/or his physical presence at the hearing on May 2, 2019 serves as an answer. It does not. The complete absence of any timely filed responsive pleading or any filed responsive pleading at all completely moots the argument that the default was improperly granted.

⁹ See Notice of Appearance filed August 29, 2018 attached as Exhibit I.

¹⁰ See the First Amended Notice of Default Setting and Second Amended Notice of Default Setting both attached as Exhibit J.

VI.

Absence of a Meritorious Defense

Respondent has no meritorious defense to the Professional Misconduct alleged in this proceeding because he admitted under oath that the rule violations occurred. Respondent unequivocally conceded in his testimony that he never provided an accounting to Valerie Talamantes for the attorney's fees he was paid. In an effort to mitigate the sanction that might be imposed, Respondent testified the only confidential client information he disclosed to Amanda Melendez regarding his former client, Ms. Talamantes, was related to discovery requests that had been served in the custody case. Respondent cannot provide a meritorious defense to the allegations because he has admitted them. The explanations that Respondent offered for his conduct were already considered by the panel at the sanctions hearing.

VII.

Suspension should not be Stayed

Respondent further asks this Panel to stay his suspension so that he can appeal the Judgment of Partially Probated Suspension. For the reasons stated above, Respondent's appeal is not supported by law and not likely to be successful. Pursuant to TRDP 2.25, Respondent carries the burden of proof to establish that his continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public. Respondent has a significant disciplinary history that began in 2006 and has continued through this case. Respondent failed to comply with the terms of at least three of the prior disciplinary judgments. The professional misconduct in this proceeding occurred between February 1, 2017 and August 29, 2017, *the entire time while Respondent was already serving a probated disciplinary*

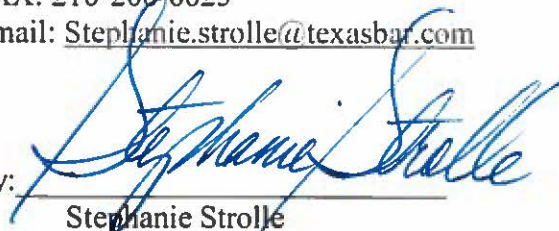
*suspension*¹¹ and had another disciplinary action pending against him in district court that resulted in the prior Judgment of Partially Probated Suspension.¹² This Evidentiary Panel carefully considered the evidence presented on May 2, 2019 and determined the appropriate sanction would include a period of active suspension, rejecting Respondent's argument that another fully probated suspension would be appropriate. Respondent cannot demonstrate that his continued practice of law does not constitute a threat to the welfare of his clients and to the public, and the Motion to Stay should be denied.

WHEREFORE, Petitioner pray that Respondent's Motion to Stay Judgment of Suspension and Motion for a New Hearing be in all things denied, and for general relief.

Respectfully submitted,

Office of the Chief Disciplinary Counsel
State Bar of Texas
711 Navarro, Suite 750
San Antonio, Texas 78205
Telephone: 210-208-6600
FAX: 210-208-6625
Email: Stephanie.stolle@texasbar.com

By:



Stephanie Stolle
State Bar No. 00785069

ATTORNEYS FOR PETITIONER

¹¹ Petitioner's Exhibit 4 admitted at the sanctions hearing is the Judgment of Probated Suspension signed November 25, 2013 in case S0071227508 which placed Respondent on probation for 4 years ending December 30, 2018.

¹² Petitioner's Exhibit 5 admitted at the sanctions hearing is the Judgment of Partially Probated Suspension signed July 6, 2017. The cause number on that Judgment reflects the disciplinary action was filed in 2015.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing First Amended Disciplinary Petition was served by the means indicated below on the 27th day of June, 2019:

Wade B. Shelton
Shelton & Valadez, P.C.
600 Navarro, Suite 500
San Antonio, Texas 78205
Via Email: wshelton@shelton-valadez.com


Stephanie Strolle

**BEFORE THE DISTRICT 10 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 10-3
STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER
DISCIPLINE,**
Petitioner

v.

JOE JESSE PONCE III,
Respondent

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FILE NO. 201705565

JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On May 2, 2019, came to be heard the above styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, JOE JESSE PONCE, III, Texas Bar Number 24014329, appeared in person and by his attorney of record, Wade B. Shelton.

Jurisdiction and Venue

The Evidentiary Panel 10-3, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 10, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Default

The Evidentiary Panel finds Respondent was properly served with the Evidentiary Petition and that Respondent failed to timely file a responsive pleading to the Evidentiary Petition as required by Rule 2.17(B) of the Texas Rules of Disciplinary Procedure. Accordingly, the Evidentiary Panel finds Respondent in default and further finds that all facts alleged in the Evidentiary Petition are deemed true pursuant to Rule 2.17(C) of the Texas Rules of Disciplinary Procedure.

Professional Misconduct

The Evidentiary Panel, having deemed all facts as alleged in the Evidentiary Petition true, finds Respondent has committed Professional Misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

The Evidentiary Panel, having considered the allegations as deemed true, the pleadings, evidence and argument of counsel, makes the following findings of fact and conclusions of law:

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
2. Respondent resides in and maintains his principal place of practice in Bexar County, Texas.
3. Valerie Talamantes hired Joe J. Ponce, III ("Respondent") on or about February 1, 2017 for representation in a child custody case. Ms. Talamantes terminated the representation on or about August 21, 2017 and asked Respondent to withdraw from the representation.
4. Respondent attended a business meeting with Amanda Melendez, a co-worker of Valerie Talamantes, on or about August 29, 2017. During the meeting, Respondent revealed to Amanda Melendez confidential information that Respondent had acquired during the course of and by reason of his representation of Ms. Talamantes.
5. Respondent failed to promptly render a full accounting for the funds paid to Respondent when Ms. Talamantes requested an accounting.
6. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees and direct expenses associated with this Disciplinary Proceeding in the amount of Four Thousand Two Hundred Twenty-Eight and 50/100 Dollars (\$4,228.50).

Conclusions of Law

The Evidentiary Panel concludes that, based upon the foregoing findings of fact, the Respondent has violated Texas Disciplinary Rules of Professional Conduct 1.05(b)(1)(ii) and 1.14(b).

Sanction

The Evidentiary Panel, having found Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is a Partially Probated Suspension.

Accordingly, it is ORDERED, ADJUDGED and DECREED that Respondent be suspended from the practice of law for a period of three years, beginning June 1, 2019 and ending May 31, 2022. Respondent shall be actively suspended from the practice of law for a period of four months beginning June 1, 2019 and ending September 30, 2019. The thirty-two month period of probated suspension shall begin on October 1, 2019 and shall end on May 31, 2022.

Terms of Active Suspension

IT IS FURTHER ORDERED that during the term of active suspension ordered herein, or that may be imposed upon Respondent by the Board of Disciplinary Appeals as a result of a probation revocation proceeding, Respondent shall be prohibited from practicing law in Texas; holding himself out as an attorney at law; performing any legal services for others; accepting any fee directly or indirectly for legal services; appearing as counsel or in any representative capacity in any proceeding in any Texas or Federal court or before any administrative body; or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

IT IS FURTHER ORDERED that, or before May 27, 2019, Respondent shall notify each of Respondent's current clients and opposing counsel in writing of this suspension.

In addition to such notification, IT IS FURTHER ORDERED that Respondent shall return any files, papers, unearned monies and other property belonging to current clients in Respondent's possession to the respective clients or to another attorney at the client's request.

IT IS FURTHER ORDERED that Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before June 4, 2019, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein.

IT IS FURTHER ORDERED that Respondent shall, on or before May 27, 2019, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing.

IT IS FURTHER ORDERED that Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), on or before June 4, 2019, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court.

IT IS FURTHER ORDERED that, on or before May 31, 2019, Respondent shall surrender his law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel's

Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of Texas.

Terms of Probation

IT IS FURTHER ORDERED that during all periods of suspension, Respondent shall be under the following terms and conditions:

1. Respondent shall not violate any term of this judgment.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep State Bar of Texas membership department notified of his current mailing, residence and business addresses and telephone numbers.
5. Respondent shall comply with Minimum Continuing Legal Education requirements.
6. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.
7. Respondent shall promptly respond to any request for information from the Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.
8. Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of Four Thousand Two Hundred Twenty-Eight and 50/100 Dollars (\$4,228.50). The payment shall be due and payable on or before December 1, 2019, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
9. Respondent shall comply with all other conditions of the Agreed Judgment of Probation signed November 19, 2012 for File No. S0071125641, the Judgment of Probated Suspension signed November 25, 2013 for File No. 0071227508, and the Judgment of Partially Probated Suspension signed July 6, 2017 in cause no. 2015CI13669.
10. Respondent shall make contact with the Chief Disciplinary Counsel's Offices' Compliance Monitor at 877-953-5535, ext. 1334 and Special Programs Coordinator at 877-953-5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

Probation Revocation

Upon information that Respondent has violated a term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals ("BODA") and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

BODA shall conduct an evidentiary hearing. At the hearing, BODA shall determine by a preponderance of the evidence whether Respondent has violated any term of this Judgment. If BODA finds grounds for revocation, BODA shall enter an order revoking probation and placing Respondent on active suspension from the date of such revocation order. Respondent shall not be given credit for any term of probation served prior to revocation.

IT IS FURTHER ORDERED that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Attorney's Fees and Expenses

IT IS FURTHER ORDERED Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of Four Thousand Two Hundred Twenty-Eight and 50/100 Dollars (\$4,228.50). The payment shall be due and payable on or before ^{December 1, 2019} ~~December 1, 2019~~ [due date], and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

IT IS FURTHER ORDERED that in the event of an unsuccessful appeal of this judgment by Respondent to the Board of Disciplinary Appeals (“BODA”), Respondent shall pay an additional Four Thousand and 00/100 Dollars (\$4,000.00) in attorney’s fees to the State Bar of Texas, due 30 days after the date of BODA’s decision. IT IS FURTHER ORDERED that in the event Petitioner is required to respond to an unsuccessful petition filed by Respondent for review by the Supreme Court of Texas, Respondent shall pay an additional Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) in attorney’s fees to the State Bar of Texas due upon the issuance of a mandate.

IT IS FURTHER ORDERED that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(Z) of the Texas Rules of Disciplinary Procedure. Any amount not paid shall accrue interest at the maximum legal rate per annum until paid and the State Bar of Texas shall have all writs and other post-judgment remedies against Respondent in order to collect all unpaid amounts.

Publication

This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 15th day of May, 2019.

**EVIDENTIARY PANEL 10-3
DISTRICT NO. 10
STATE BAR OF TEXAS**



RACHEL REUTER
Acting Panel Chair

May 14, 2018



RETURN OF SERVICE

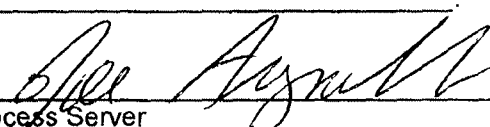
Commission for Lawyer Discipline v. Joe Jesse Ponce, III
File No. 201705565 (Talamantes)

San Antonio Office
Chief Disciplinary Counsel

CAME ON TO HAND ON THE 25 DAY OF April, 2018, AT
4:27 O'CLOCK P.M. AND EXECUTED BY DELIVERY TO THE WITHIN NAMED JOE
JESSE PONCE, III IN PERSON AT 12436 Vance Jackson # 913, San Antonio, TX 78230
ON THE 12 DAY OF
May, 2018, AT 9:08 O'CLOCK A.M. THE FOLLOWING DOCUMENT(S):

- **April 24, 2018, notice letter to Joe Jesse Ponce, III with enclosures, (1) the Evidentiary Petition and Request for Disclosure, (2) Order Assigning Evidentiary Panel with 2017-2018 District 10 Committee Roster**

NOT EXECUTED AS TO JOE JESSE PONCE, III FOR THE FOLLOWING REASON(S):

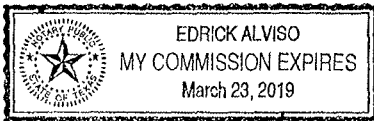


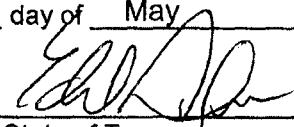
Process Server
Printed Name Joe Arguello
ID # PSC-3972 Exp.:7/31/19

VERIFICATION

BEFORE ME, a Notary Public, on this day personally appeared, Joe Arguello
known to me to be the person whose name is subscribed to the foregoing Officer's Return and, being
by me first duly sworn, declared that the statements contained therein are true and correct.

Given under my hand and seal of office this 14 day of May, 2018.

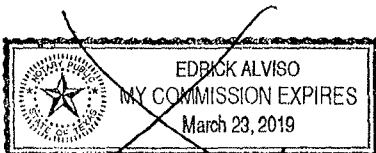




Notary Public, State of Texas

MEMORANDUM OF ACCEPTANCE OF SERVICE

I hereby accept the service of the above listed documents on the _____ day of _____, 2018.



JOE JESSE PONCE, III



STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

San Antonio Regional Office

April 24, 2018

Joe Jesse Ponce, III
12436 Vance Jackson # 913
San Antonio, Texas 78230

Via Private Process

Re: Commission for Lawyer Discipline v. Joe Jesse Ponce, III
Case No. 201705565; Complainant, Valerie Nichole Talamantes

Dear Mr. Ponce:

Petitioner's Original Evidentiary Petition has been filed against you alleging that you have committed acts and/or omissions of Professional Misconduct. This action will be conducted pursuant to Rules 2.17, *et seq.*, of the TEXAS RULES OF DISCIPLINARY PROCEDURE.

Enclosed is a copy of the Evidentiary Petition and Request for Disclosure. Pursuant to Rule 2.17B, you are required to file a responsive pleading either admitting or denying each specific allegation of professional misconduct no later than **5:00 p.m. on the first Monday following the expiration of twenty (20) days after your receipt of the Evidentiary Petition.**

Pursuant to Rule 2.17(D) your responses to discovery must be provided to the undersigned within fifty (50) days after service.

Sincerely,

Stephanie Strolle
Assistant Disciplinary Counsel

Enc: Evidentiary Petition and Request for Disclosure

Travis Park Plaza, 711 Navarro Street, Suite 750, San Antonio, Texas 78205
(210) 208-6600 Phone, (210) 208-6625 FAX



RECEIVED

OFFICE OF THE CHIEF DISCIPLINARY COUNSEL
STATE BAR OF TEXAS
GRIEVANCE FORM



ONLINE FILING AVAILABLE AT <http://cdc.texasbar.com>.

09/11/2017

I. General Information

Before you fill out this paperwork, there may be a faster way to resolve the issue you are currently having with an attorney.

If you are considering filing a grievance against a Texas attorney for any of the following reasons:

- You are concerned about the progress of your case.
- Communication with your attorney is difficult.
- Your case is over or you have fired your attorney and you need documents from your file or your former attorney.

You may want to consider contacting the Client-Attorney Assistance Program (CAAP) at 1-800-932-1900.

CAAP was established by the State Bar of Texas to help people resolve these kinds of issues with attorneys quickly, without the filing of a formal grievance.

CAAP can resolve many problems without a grievance being filed by providing information, by suggesting various self-help options for dealing with the situation, or by contacting the attorney either by telephone or letter.

I have _____ I have not contacted the Client-Attorney Assistance Program.

If you prefer, you have the option to file your grievance online at <http://cdc.texasbar.com>.

In order for us to comply with our deadlines, additional information/documentation that you would like to include as part of your grievance submission must be received in this office by mail or fax within (10) days after submission of your grievance. This information will be added to your pending grievance. Information received after that timeframe will be returned and not considered. Thank you for your cooperation in this matter.



NOTE: Please be sure to fill out each section completely. Do not leave any section blank. If you do not know the answer to any question, write "I don't know."

II. INFORMATION ABOUT YOU -- PLEASE KEEP CURRENT

TDCJ/SID #: _____

Name: Mr./Ms. Valerie Talamantes

Immigration #: _____

Address: 18802 Edwards Edge

City: San Antonio State: TX Zip Code: 78256

2. Employer: DexYP

Employer's Address: _____

City: _____ State: _____ Zip Code: _____

3. Telephone number: Residence: (210) 362-0542 Work: _____

Cell: (210) 362-0542x210

4. Email: valerienichole_1@msn.com

5. Driver's License #: 13803850 Date of Birth: 12/9/82

6. Name, address, and telephone number of person who can always reach you.

Name: Deborah Lund Address: 501 Probandt

Telephone: _____ San Antonio Texas 78204

7. Do you understand and write in the English language? Yes

If no, what is your primary language? _____

Who helped you prepare this form? _____

Will they be available to translate future correspondence during this process? _____

8. **Are you a Judge?** No

If yes, please provide Court, County, City, State: _____

Law Office of Joe J. Ponce III
P.O. Box 831063
San Antonio, Texas 78283
(210) 863-1955 Office
jjponcelaw@yahoo.com

STATE BAR OF TEXAS
SAN ANTONIO OFFICE

2018 FEB -1 P 4: 56

January 31, 2018

Craig Charlton, Investigator
Office of the Chief Disciplinary Counsel
State Bar of Texas
Travis Park Plaza
711 Navarro Street, Suite 750
San Antonio, Texas 78205

RE: 201705565 – Valerie Nichole Talamantes – Joe Ponce

Dear Mr. Charlton,

Please accept this letter as my initial response to the grievance filed against me by Valerie Nichole Talamantes. Any other information that you need in order to help you with your assessment with this matter will be presented to you upon request. I will be filing several documents to support my position within the next week. I am disappointed that Ms. Talamantes chose to file this grievance. However, I do not believe that I committed professional misconduct.



STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

HAND DELIVERY RECEIPT

I, JOE JESSE PONCE III, HEREBY ACCEPT THE FOLLOWING DOCUMENTS VIA HAND DELIVERY ON THIS DAY, 22 DAY OF MARCH, 2018:

Election Notice 201705565 Valerie Nichole Talamantes - Joe Jesse Ponce III, with enclosures, Respondent's Election and Principal Place of Practice Certification form.



JOE JESSE PONCE III

*Hand Delivered to Atty
Joe Ponce in an office,
711 Navarro, SATX on 3-22-18*



Travis Park Plaza, 711 Navarro Street, Suite 750, San Antonio, Texas 78205
(210) 208-6600 Phone, (210) 208-6625 FAX



STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

March 14, 2018

Via Hand Delivery

Joe Jesse Ponce III
P.O. Box 831063
San Antonio, TX 78283-1063

Re: 201705565 Valerie Nichole Talamantes - Joe Jesse Ponce, III

Dear Mr. Ponce:

The Office of Chief Disciplinary Counsel has completed its investigation of the above Complaint and determined on March 14, 2018 that there is Just Cause to believe that you have committed one or more acts of Professional Misconduct as defined by the Texas Rules of Disciplinary Procedure (TRDP).

In accordance with TRDP 2.14D, enclosed is a written notice of the acts and/or omissions engaged in by you and of the Texas Disciplinary Rules of Professional Conduct that the Chief Disciplinary Counsel contends have been violated by such conduct:

Valerie Talamantes hired Joe J. Ponce, III ("Respondent") on or about February 1, 2017 for representation in a child custody case. Ms. Talamantes terminated the representation on or about August 21, 2017 and asked Respondent to withdraw from the representation.

Respondent attended a business meeting with Amanda Melendez, a co-worker of Valerie Talamantes, on or about August 29, 2017. During the meeting, Respondent revealed to Amanda Melendez confidential information that Respondent had acquired during the course of and by reason of his representation of Ms. Talamantes.

Respondent failed to promptly render a full accounting for the funds paid to Respondent when Ms. Talamantes requested an accounting.

These alleged acts violate the following Texas Disciplinary Rules of Professional Conduct:

1.05(b)(1)(ii) - Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly: reveal confidential information of a client or a former client to: anyone else, other than the client,

**Travis Park Plaza, 711 Navarro Street, Suite 750, San Antonio, Texas 78205
(210) 208-6600 Phone, (210) 208-6625 FAX**

PONCE 165

the client's representatives, or the members, associates, or employees of the lawyer's law firm.

1.14(b) - Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Pursuant to TRDP 2.15, you must notify this office whether you elect to have the Complaint heard by an Evidentiary Panel of the District Grievance Committee or in a district court of proper venue, with or without a jury. **The election must be in writing and served upon the Chief Disciplinary Counsel's office no later than twenty (20) days after your receipt of this notice.** Failure to file a timely election shall conclusively be deemed an affirmative election to proceed before an Evidentiary Panel in accordance with TRDP 2.17 and 2.18.

Enclosed is a form in which to indicate your election and principal place of practice. It should be mailed to the undersigned at the address shown at the bottom of this letter. In making your election, you should be aware that an Evidentiary Panel proceeding is confidential unless a public sanction is entered and that a **private reprimand is only available before an Evidentiary Panel.** District court proceedings are public and a private reprimand is not an available sanction.

Sincerely,



Stephanie Strolle
Assistant Disciplinary Counsel

STS/lis

Enclosure: Respondent's Election and Principal Place of Practice Certification

COMPLAINT AGAINST

Joe Jesse Ponce, III

San Antonio, Texas

§
§
§
§
§

201705565 – [Valerie Nichole Talamantes]

**RESPONDENT'S ELECTION &
PRINCIPAL PLACE OF PRACTICE CERTIFICATION**

I, Joe Jesse Ponce, III, hereby elect: (Choose one of the following)

_____ District Court

_____ Evidentiary Hearing - District Grievance Committee

I, Joe Jesse Ponce, III, hereby certify that:

_____ (City), _____ (County),

Texas, is my principal place of practice and my physical address (no P.O. Box) is

_____.

Signed this _____ day of _____, 20____.

Joe Jesse Ponce, III

****RETURN THIS FORM WITHIN 20 DAYS OF RECEIPT OF ELECTION NOTICE****



San Antonio Office
Chief Disciplinary Counsel

RETURN OF SERVICE

Commission for Lawyer Discipline v. Joe Jesse Ponce
File No. 201705565 (Talamantes)

CAME ON TO HAND ON THE 6 DAY OF JULY, 2018, AT
3:53 O'CLOCK P.M. AND EXECUTED BY DELIVERY TO THE WITHIN NAMED JOE

JESSE PONCE IN PERSON AT 12436 VANCE JACKSON #913

SAN ANTONIO, BEXAR COUNTY, TX 78230 ON THE 12 DAY OF
July, 2018, AT 8:35 O'CLOCK A.M. THE FOLLOWING DOCUMENT(S):

- July 6, 2018, JOE JESSE PONCE with enclosures: (1) Notice of Default Setting; (2) Motion for Default Judgment; and (3) Cover letter with updated committee roster.

NOT EXECUTED AS TO JOE JESSE PONCE FOR THE FOLLOWING REASON(S):

Joe Arguello
Process Server

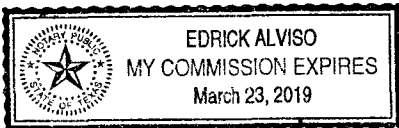
Printed Name Joe Arguello

ID # PSC 3972 EXP 7-31-19

VERIFICATION

BEFORE ME, a Notary Public, on this day personally appeared, JOE ARGUELLO known to me to be the person whose name is subscribed to the foregoing Officer's Return and, being by me first duly sworn, declared that the statements contained therein are true and correct.

Given under my hand and seal of office this 12 day of July, 2018.



Edrick Alvizo
Notary Public, State of Texas

MEMORANDUM OF ACCEPTANCE OF SERVICE

I hereby accept the service of the above listed documents on the _____ day of _____, 2018.

JOE JESSE PONCE





FILED
TRINA KAY MCKINNEY
DISTRICT CLERK
BEXAR COUNTY
15 DEC 23 PH 4:06
DEPUTY

NO. 2015-CI-13669

**COMMISSION FOR LAWYER
DISCIPLINE**
Plaintiff,

V.

JOE JESSE PONCE III
Defendant.

§ IN THE DISTRICT COURT
§
§
§
§ 37TH JUDICIAL DISTRICT
§
§
§ OF BEXAR COUNTY, TEXAS

BY *Alex Lewicki*

DEFENDANT'S ORIGINAL ANSWER

NOW COMES Defendant, Joe Jesse Ponce, named Defendant in the above-entitled and numbered cause, and files this Original Answer, and shows the Court:

PARTY IDENTIFICATION INFORMATION

The last three numbers of Joe Jesse Ponce III's driver's license number are 692. The last three numbers of Joe Jesse Ponce III's social security number are 692

GENERAL DENIAL

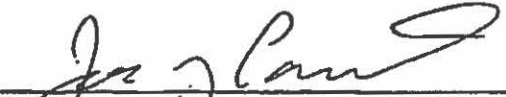
Defendant denies each and every allegation of Plaintiff's Original Petition, and demands strict proof thereof as required by the Texas Rules of Civil Procedure.

PRAYER

Defendant prays the Court, after notice and hearing or trial, enters judgment in favor of Defendant, awards Defendant the costs of court, attorney's fees, and such other and further relief as Defendant may be entitled to in law or in equity.



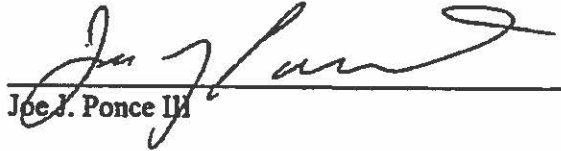
Respectfully submitted,

By: 

Joe J. Ponce III
Texas Bar No. 24014329
Law Office of Joe J. Ponce III
100 N. Santa Rosa, Ste. 709
San Antonio, Texas 79207
Email: jjponcelaw@yahoo.com
Tel. (210) 863-1955
Fax. (210) 340-4530
Attorney Pro Se

CERTIFICATE OF SERVICE

I certify that on December 23, 2015, a true and correct copy of Defendant's Original Answer was served by personal delivery on Troy J. Garcia at 711 Navarro, Suite 750, San Antonio, Texas 78205.



Joe J. Ponce III

Law Office of Joe J. Ponce III

**1924 North Main Street
San Antonio, Texas 78212**

(210) 448-4111 Office

(210) 225-1351 Fax

jjponcelaw@yahoo.com

STATE OF TEXAS
JUDICIAL OFFICE

DEC 29 P 3:17

December 26, 2014

Troy Garcia
Administrative Attorney
Office of the Chief Disciplinary Counsel
State Bar of Texas
711 Navarro Street, Suite 750
San Antonio, Texas 78205

RE: 2014055964

Dear Mr. Garcia,

I am writing you this letter as my response to the Grievance filed against me by the Chief Disciplinary Counsel in the above referenced matter. I am sincere when I state that I have taken this matter very seriously.

I have taken pride in my work as a lawyer, and I state that I am proud and honored to be a member of the State Bar of Texas. I acknowledge that I failed to respond to the Compliance Department of the State Bar by September 11, 2014. However this was not a conscious disregard to the officers of that department.

Since my hearing with the State Bar regarding this matter I having endured a tremendous financial strain that forced me to file for relief under Ch. 7 of the United States Bankruptcy Code. This strain was further enhanced because I have been in the middle of a very litigious custody fight with Marivel Martinez regarding our three year old daughter.

My practice has been very limited due to my hardship. My case load is very small and I have not had anything to report regarding my trust account for the last

FILED

August 29, 2018

BEFORE THE DISTRICT 10 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 10-3
STATE BAR OF TEXAS



San Antonio Office
Chief Disciplinary Counsel

COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner

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v.

FILE NO. 201705565

JOE JESSE PONCE III,
Respondent

NOTICE OF APPEARANCE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JOE JESSE PONCE, Respondent, by and through his Attorney of Record,
and files this his appearance of counsel and support thereof would show as follows:

Wade B. Shelton represents Respondent in this cause. Please forward all notices in this
matter to the undersigned at the address below.

Respectfully submitted,

SHELTON & VALADEZ
600 Navarro, Suite 500
San Antonio, Texas 78205
Ph: (210) 349-0515
Fx: (210) 349-3666

WADE B. SHELTON
State Bar No. 18211800
wshelton@shelton-valadez.com

#24078723



PONCE 173

From: [Bianca Balderas](#)
To: ["wshelton@shelton-valadez.com"](mailto:wshelton@shelton-valadez.com)
Cc: ["crivas@shelton-valadez.com"](mailto:crivas@shelton-valadez.com); [Stephanie Strolle](#)
Subject: Case No. 201705565; CFLD v. Joe Jesse Ponce - Notice of Default Setting 12/06
Date: Thursday, August 30, 2018 10:44:00 AM
Attachments: [First Amended Notice of Default Setting Filed.pdf](#)
[CFLD Motion for Default Judgment.pdf](#)

Mr. Shelton,

In regards to the above mentioned matter, please find attached the First Amended Notice of Default Setting along with Petitioner's Motion for Default Judgment.

Should you have any questions, please contact our office.

Thank you,

Bianca Balderas

Legal Assistant to Stephanie Strolle
State Bar of Texas
Office of the Chief Disciplinary Counsel
711 Navarro, Suite 750
San Antonio, TX 78205
Main: (210) 208-6600
Fax: (210) 208-6625
Direct: (210) 208-6636
bbalderas@texasbar.com



**BEFORE THE DISTRICT 10 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 10-3
STATE BAR OF TEXAS**



**San Antonio Office
Chief Disciplinary Counsel**

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

§
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v.

FILE NO. 201705565

**JOE JESSE PONCE III,
*Respondent***

FIRST AMENDED NOTICE OF DEFAULT SETTING

A hearing on Petitioner’s Motion for Default Judgment in the above matter is scheduled for **1:30 p.m. on Thursday, December 6, 2018**, at the offices of State Bar of Texas, 711 Navarro, Suite 750, San Antonio, Texas 78205.


Upon a showing of default, the evidentiary panel shall enter an order of default with a finding of professional misconduct and shall conduct a hearing to determine the sanction to be imposed. Additional evidence and/or testimony may be presented for the Evidentiary Panel’s consideration in rendering an appropriate disciplinary sanction.

SIGNED this 30th day of August, 2018.

Respectfully submitted,

STEPHANIE STROLLE
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel
State Bar of Texas
711 Navarro, Suite 750
San Antonio, Texas 78205
Telephone: 210-208-6600
FAX: 210-208-6625
Email: Stephanie.strolle@texasbar.com

By: 
Stephanie Strolle
State Bar No. 00785069

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing First Amended Notice of Default Setting was served upon the parties below by the means indicated on this the 30th day of August, 2018:

Wade Shelton
Shelton & Valadez
600 Navarro Street, Suite 500
San Antonio, Texas 78205
Via Email: wshelton@shelton-valadez.com


Stephanie Strolle

From: [Bianca Balderas](#)
To: ["wshelton@shelton-valadez.com"](mailto:wshelton@shelton-valadez.com)
Cc: [Stephanie Strolle](#)
Subject: Case No. 201705565; CFLD v. Joe Jesse Ponce - Notice of Default Setting 05/02/19
Date: Thursday, December 13, 2018 9:40:00 AM
Attachments: [Second Amended Notice of Default Setting Filed.pdf](#)
[CFLD Motion for Default Judgment.pdf](#)

Mr. Shelton,

In regards to the above mentioned matter, please find attached the Second Amended Notice of Default Setting along with Petitioner's Motion for Default Judgment.

Should you have any questions, please contact our office.

Thank you,

Bianca Balderas

Legal Assistant to Stephanie Strolle
State Bar of Texas
Office of the Chief Disciplinary Counsel
711 Navarro, Suite 750
San Antonio, TX 78205
Main: (210) 208-6600
Fax: (210) 208-6625
Direct: (210) 208-6636
bbalderas@texasbar.com

December 13, 2018

**BEFORE THE DISTRICT 10 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 10-3
STATE BAR OF TEXAS**



**San Antonio Office
Chief Disciplinary Counsel**

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

§
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v.

FILE NO. 201705565

**JOE JESSE PONCE III,
*Respondent***

SECOND AMENDED NOTICE OF DEFAULT SETTING

A hearing on Petitioner’s Motion for Default Judgment in the above matter is scheduled for **1:30 p.m. on Thursday, May 2, 2019**, at the offices of State Bar of Texas, 711 Navarro, Suite 750, San Antonio, Texas 78205.

Upon a showing of default, the evidentiary panel shall enter an order of default with a finding of professional misconduct and shall conduct a hearing to determine the sanction to be imposed. Additional evidence and/or testimony may be presented for the Evidentiary Panel’s consideration in rendering an appropriate disciplinary sanction.

SIGNED this 13th day of December, 2018.

Respectfully submitted,

STEPHANIE STROLLE
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel
State Bar of Texas
711 Navarro, Suite 750
San Antonio, Texas 78205
Telephone: 210-208-6600
FAX: 210-208-6625
Email: Stephanie.strolle@texasbar.com

By: 
Stephanie Strolle
State Bar No. 00785069

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Second Amended Notice of Default Setting was served upon the parties below by the means indicated on this the 13th day of December, 2018:

Wade Shelton
Shelton & Valadez
600 Navarro Street, Suite 500
San Antonio, Texas 78205
Via Email: wshelton@shelton-valadez.com


Stephanie Strolle

Bianca Balderas

From: Stephanie Strolle
Sent: Thursday, June 27, 2019 7:44 PM
To: Wade Shelton; Cynthia Rivas
Cc: Laura Urena; Bianca Balderas
Subject: CFLD v. Ponce; Response to Mtn to Stay and MNT
Attachments: Response to Motion for New Trial.pdf; Order_Setting_Stay_MFNT_Filed.pdf

Mr. Shelton,

Attached please find the Petitioner's Response to the Motion for Stay and Motion for New Hearing which has been filed today. A copy of your Motion and this Response have been forwarded to the panel members.

I know you were previously served with the Order Setting Hearing but have attached another copy as well. I will see you tomorrow at 1:30 p.m.

Stephanie Strolle

Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
San Antonio Region
711 Navarro, Suite 750
San Antonio, Texas 78205
(210) 208-6645 (Direct)
(210) 208-6625 (Fax)
sstrolle@texasbar.com

Appendix 2

1 Q. As far as Ms. Talamantes's complaint that you
2 did not give her an accounting, would you explain your
3 perspective to the ladies and gentlemen of the Panel?

4 A. A lot of it started with when the counselor
5 testified about her mom trying to -- it was pay the
6 children \$200.00 each to fabricate a story. It started
7 there. Her mom wanted me off the case, period. Valerie
8 was upset about the way things turned out and
9 specifically told me that she was not going to pay me
10 any more until she saw results. Okay. It wasn't the
11 way she said it. Because of that and the fact that her
12 boyfriend threatened to assault me in front of a group
13 of people at the courthouse, I just kind of kept on
14 working and I just didn't give her the accounting at the
15 end. I just wanted to get off the case and move on.

16 Q. Okay. So what is your perspective of making
17 the choice of not giving her that accounting when she
18 asked?

19 A. Well, I mean, it's easy in hindsight. It would
20 have been easy to, you know, go back, look at the notes
21 and give her the accounting, but what you don't
22 understand is how her boyfriend was -- is a very
23 threatening person. He had the protective orders, the
24 violations of the protective orders.

25 Q. Well, hold on for a moment because I think

1 it's -- that's interesting but not necessarily directly
2 where we need to go for a moment, Mr. Ponce. Let me ask
3 you this. Given the relationship as it disintegrated, I
4 suppose; is that fair?

5 A. It did.

6 Q. It certainly declined?

7 A. Uh-huh.

8 Q. Given the involvement of the boyfriend, if you
9 had given a -- submitted an accounting, in your
10 perspective, would it have also included the amount
11 owed?

12 A. Right now she'd probably owe me somewhere
13 between \$16,000 and about \$18,000.

14 Q. Okay. Did you fear antagonizing the already
15 antagonistic situation by saying, You owe me extra
16 money?

17 A. I did not want to submit anything because I was
18 afraid that her boyfriend was going to retaliate.

19 Q. Let me ask you this. Do you understand now
20 that an accounting, when requested by a client, does not
21 necessarily have to include money owed?

22 A. Yes. Yes, I do.

23 Q. Do you concede that you should have given her
24 an accounting of the work that you had done in a
25 reasonable time after she had requested it?

1 A. Yes, I do.

2 Q. Okay. Do you regret not doing that?

3 A. Right now, yes. I regret it right now. At the
4 time I was thinking about something else.

5 Q. All right. Can you tell the ladies and
6 gentlemen of the Panel what it is you're doing to try to
7 stabilize your situation in order to be able to be
8 compliant to the satisfaction of the State Bar?

9 A. Well, I'm still trying to work. I'm hoping I
10 can end up in somebody's office and maybe trade some
11 office space for some work. I've got --
12 Mr. Wennermark's paralegal contacted me because she
13 heard I was having problems now that Mr. Wennermark has
14 passed on. I know the lady very well. She's agreed to
15 help me out on a part-time basis as a paralegal. At the
16 end of the day it's almost impossible to be a lawyer,
17 trying to do everything, and I can't do it. As far as
18 managing the office, that's probably my biggest problem.
19 But I mean as far as lawyering goes, no, I think I'm
20 good, but just I'm having problems with managing an
21 office or managing the practice without an office. It's
22 hard.

23 Q. Did you ever address Ms. Talamantes with the
24 profanity that she attributed to you?

25 A. Absolutely not. She is completely lying to