



FILED

8/9/23

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

No. 67898

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

---

DEREK ALFONSO QUINATA,  
*Respondent/Appellant*

v.

COMMISSION FOR LAWYER DISCIPLINE  
*Petitioner/Appellee*

---

On Appeal from the District 17 Grievance Committee, Evidentiary Panel 17-1, State Bar of  
Texas, Cause No(s): 202203728, 202204951, and 202204943

---

APPELLANT'S BRIEF

---

**Derek A. Quinata, Pro Se**  
State Bar No. 24072292  
4745 Rutherford Drive  
El Paso, Tx 79924  
Telephone: (915) 667-6966  
Facsimile: (915) 242-0700  
Email: [quinata\\_d@yahoo.com](mailto:quinata_d@yahoo.com)

**ORAL ARGUMENT REQUESTED**

## IDENTITY OF PARTIES AND COUNSEL

### **APPELLANT**

Derek A. Quinata, *Pro Se*  
State Bar No. 24072292  
4745 Rutherford Drive  
El Paso, Tx 79924  
Telephone: (915) 667-6966  
Facsimile: (915) 242-0700  
Email: [quinata\\_d@yahoo.com](mailto:quinata_d@yahoo.com)

### **APPELLEE**

COMMISSION FOR LAWYER DISCIPLINE  
STATE BAR OF TEXAS  
P.O. Box 12487  
Austin, Texas 78711

### **COUNSEL FOR APPELLEE**

George Smith  
Assistant Disciplinary Counsel  
Office of the Chief Disciplinary Counsel  
State Bar of Texas  
9311 San Pedro Ave., Suite 1000  
San Antonio, TX 78216  
Telephone: (210) 208-6600  
Facsimile: (210) 208-6677

Michael G. Graham  
Appellate Counsel  
Office of the Chief Disciplinary Counsel  
State Bar of Texas  
P.O.Box 12487  
Austin, Texas 78711  
Email: [Michael.graham@texasbar.com](mailto:Michael.graham@texasbar.com)

**TABLE OF CONTENTS**

<u>CONTENT</u>	<u>PAGE</u>
IDENTITY OF PARTIES AND COUNSEL.....	2
TABLE OF CONTENTS.....	3
INDEX OF AUTHORITIES.....	4-5
STATEMENT OF THE CASE.....	6
STATEMENT OF JURISDICTION.....	7
ISSUES PRESENTED.....	8
STATEMENT OF FACTS.....	9
SUMMARY OF THE ARGUMENT.....	10
ARGUMENT AND AUTHORITIES.....	11-13
I.    The Evidentiary Panel 17-1 abused its discretion and capacity on ruling on a cause number that it was never appointed to, thus making all orders void and invalid.....	
II.   Service effectuated via email is invalid, when no proof of “(1) ownership of email, (2) regular use of email, (3) or that email notice was in fact confirmed are not found, nor presented,in the record.....	
III.  Motions for Substituted Service are invalid, when the motion is defective and the affidavit supporting is also defective.....	
IV.  The Evidentiary Panel’s sanctions against Appellant are excessive and inappropriate when the circumstances do not warrant such results.....	
PRAYER FOR RELIEF.....	13
CERTIFICATE OF SERVICE.....	14
CERTIFICATE OF COMPLIANCE.....	14
APPENDIX.....	

INDEX OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Garrels v. Wales Transp., Inc.</i> , 706 S.W.2d 757, 758 j(Tex.App.-Dallas 1986, no writ).....	11
<i>Cf. Lewis v. Ramirez</i> , 49 S.W.34d 561, 565 (Tex. App.-Corpus Christi 2001, no pet.).....	12
<i>Pao v. Brays Vill. E. Homeowners Ass’n, Inc.</i> , 905 S.W.2d 35, 38 (Tex.App.-Houston [1 <sup>st</sup> dist.] 1995, no writ).....	12
<i>Fidelity &amp; Guar. Inc. Co. V. Drewery Const. Co., Inc.</i> , 186 S.W.3d 571, 576 (Tex. 2006).....	11
<i>Gotcher v. Barnett</i> , 757 S.W.2d 398, 401 (Tex. App. Houston [14 <sup>th</sup> Dist.] 1988, no writ).....	11
<u>STATUTES AND OTHER AUTHORITIES</u>	
<b>BODA’s Internal Procedural Rule 4.02(g)</b> .....	<b>11</b>
<b>BODA’s Internal Procedural Rule 4.01(c)</b> .....	<b>12</b>
<b>TEX. R. CIV. P. 324</b> .....	<b>13</b>
<b>TEX. R. CIV. P. 239</b> .....	<b>13</b>
<b>TEX. R. CIV. P. 239(a)</b> .....	<b>11</b>
<b>TEX. R. DISCIPLINARY P. 2.17.O</b> .....	<b>12</b>
<b>TEX. R. DISCIPLINARY P. 2.17.C</b> .....	<b>13</b>
<b>TEX. R. DISCIPLINARY P. 2.21</b> .....	<b>11</b>
<b>TEX. R. DISCIPLINARY P. 2.23</b> .....	<b>12</b>
<b>TEX. R. DISCIPLINARY P. 15.01.A</b> .....	<b>13</b>
<b>TEX. R. DISCIPLINARY P. 15.02</b> .....	<b>11</b>
<b>TEX. R. DISCIPLINARY P. 15.08.2</b> .....	<b>13</b>
<b>TEX. R. DISCIPLINARY P. 15.09C2</b> .....	<b>13</b>

## **STATEMENT OF THE CASE**

### **Nature of the Case:**

This case is about whether the District 17 Grievance Committee, Evidentiary Panel 17-1 abused its capacity by ruling on a case (Geiger) for which it was never appointed to preside over, whether service is deemed proper via email without satisfying the proper requisits, whether a motion for substituted service is valid, when the motion and affidavit supporting are both defective, and whether the sanctions imposed on /appellant are appropriate given the circumstances.

### **Tribunal:**

District 17 Grievance Committee, Evidentiary Panel 17-1

### **Trial Court Disposition:**

The District 17 Grievance Committee, Evidentiary panel 17-1, entered a Default Judgment of Disbarment against Appellant.

## **STATEMENT OF JURISDICTION**

The Board of Disciplinary appeals has jurisdiction over this matter pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure because this is an appeal from a judgment entered by the District 17 Grievance Committee, Evidentiary Panel 17-1

## **ISSUES PRESENTED**

ISSUE 1: Whether any order signed by an Evidentiary Panel chairperson, of whom was never appointed to hear the cause for which the order pertains to, is deemed invalid?

ISSUE 2: Whether any notice provided via email is deemed invalid, when no proof of “(1) ownership of email, (2) regular use of email, (3) or that email notice was in fact effectuated are not found in the record?

ISSUE 3: Whether a Motion for Substituted Service is deemed invalid, when the motion is defective and the affidavit supporting is also defective?

ISSUE 4: Whether the Evidentiary Panel’s sanctions against Appellant are excessive and inappropriate?

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

Comes now, Derek Alfonso Quinata, Appellant in the above-styled and numbered matter, and files his Appellant's Brief in this cause. In support of same, Appellant would respectfully show the Board as Follows:

### **STATEMENT OF THE FACTS**

This is a disciplinary appeal from the decision of the Evidentiary Panel 7-1 for the District 17 Grievance Committee, State Bar of Texas.

Complainant Geiger filed a Complaint against Appellant with the Office of the Chief Disciplinary Counsel. On August 18<sup>th</sup>, 2022, the Office of the Chief Disciplinary counsel determined that there was Just Cause to believe that Appellant committed one or more acts of Professional Misconduct. On October 24<sup>th</sup>, 2022, the Commission of Lawyer Discipline's Evidentiary Petition alleging Professional Misconduct against Appellant as a result of alleged violations of TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT 1.03(a), 1.15(d), 8.04(a)(7), 8.04(a)(8) was filed.

Complainant Nelson filed a Complaint against Appellant with the Office of the Chief Disciplinary Counsel. On September 20<sup>th</sup>, 2022, the Office of the Chief Disciplinary counsel determined that there was Just Cause to believe that Appellant committed one or more acts of Professional Misconduct. On October 24<sup>th</sup>, 2022, the Commission of Lawyer Discipline's Evidentiary Petition alleging Professional Misconduct against Appellant as a result of alleged violations of TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT 8.04(a)(7), 8.04(a)(8) was filed.

Complainant Armendariz filed a Complaint against Appellant with the Office of the Chief Disciplinary Counsel. On September 27<sup>th</sup>, 2022 the Office of the Chief Disciplinary counsel determined that there was Just Cause to believe that Appellant committed one or more acts of Professional Misconduct. On October 24<sup>th</sup>, 2022 the Commission of Lawyer Discipline's Evidentiary Petition alleging Professional Misconduct against Appellant as a result of alleged violations of TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT 1.15(d), 8,04(a)(8)was filed.

On March 6<sup>th</sup>, 2023, a Motion for Default Judgment was filed on behalf of the Commission and the Office of the Chief Disciplinary Counsel. Plaintiff alleges that Appellant was served Notice of Default Hearing setting such hearing on March 24<sup>th</sup>, 2023. The Default hearing was scheduled on April 12<sup>th</sup>, 2023. On April 12<sup>th</sup>, 2023 an Order of Default judgment was signed and filed, by Evidentiary Panel 17-1. On April 14<sup>th</sup>, 2023 a Judgment of Disbarment was filed.

All notice was done via email. Confirmation as to these emails were not present on the record. Motions for Substituted service was ordered on the 6<sup>th</sup> of December for the Evidentiary



Petition and related motions, on the 21<sup>st</sup> of March, 2022 for the Notice of Default hearing, and on the 28<sup>th</sup> of April for notice of Judgment of Disbarment.

## SUMMARY OF THE ARGUMENTS

The judgment of Disbarment should be ruled void and the Board should return these complaints to be held on their merits to the Evidentiary Panel of appointment. Appellant was never provided due process by way of proper service. Attempted service via email, was never validated as an appropriate means of service, nor was confirmation of receipt ever produced for the record. The motions for Substituted service were invalid in that the supporting affidavit was lacking and the motion alleged falsely requisits that were not present on the affidavit. Additionally, the Evidentiary Panel 17-1 was never appointed to hear the Geiger case, and since the cases were joined, all orders containing the Geiger case are invalid and void. Lastly, the Judgment of Disbarment is excessive and doesn't fit the violations.

## ARGUMENT AND AUTHORITES

### **I. The Evidentiary Panel 17-1 abused its discretion and capacity on ruling on a cause number that it was never appointed to, thus making all orders void and invalid.**

The Motion for Default Judgment and the Evidentiary Petition both are defective in that, Evidentiary Panel 17-1 does not have jurisdiction to rule on the Geiger case (202203728). There was never an order appointing Panel 17-1 to preside over said case. Considering, the motions, orders entailed in this record all include the Geiger case, any orders are deemed to be invalid and void on their face. There is no way to modify said orders, to not include the Geiger case, since it can be inferred that the Geiger case was taken into consideration when determining any and all rulings by the Panel 17-1

According to Rule 2.17 of the Texas Rules of Disciplinary Procedure, the Committee Chair of the District 17 is required to assign an evidentiary Panel to hear the complaints stated within 15 days of Respondents election/default to the evidentiary process. This was not done on the Geiger case. The assignment was never executed. Therefore, the Panel Chair signed orders where she had no authorization to do so.

### **II. Service effectuated via email is invalid, when no proof of “(1) ownership of email, (2) regular use of email, (3) or that email notice was in fact confirmed are not found, nor presented, in the record.**

#### Improper notice to Respondent

Texas law imposes no duty on the plaintiff to notify a defendant before taking a default judgment when the defendant has been properly served with the citation and petition, and has

failed to answer or otherwise appear. *Wilson v. Wilson*, 132 S.W.3d 533, 536 (Tex. App.-Houston [1<sup>st</sup> Dist.] 2004, pet. Denied); *Novosad v. Cunningham*, 38 S.W.3d 767, 772-73 (Tex. App.-Houston [14<sup>th</sup> Dist.] 2001, no pet.).

However, if a default judgment is entered without notice to a defendant, it must be set aside because the defendant has been deprived of his due process rights under the Fourteenth Amendment of the federal constitution. *Peralta v. Heights Medical Center Inc.*, 485 U.S. 80, 108 S. Ct. 896, 99 L. Ed. 2d 75(1988); *LBL Oil Co. v. International Power Services Icl*, 777 S.W.2d 390, 390-91 (Tex. 1989); *Matsushita Electric Corp. v. McAllen Copy Data Inc.*, 815 S.W.2d 850, 853 (Tex. App.-Corpus Christi 1991, writ denied).

In this instant case, every Certified mail, was returned not signed by Appellant. No proof of receipt was produced for the record. No proof that emails were ever received by Appellant.

In fact, Respondent has a history of not responding to emails due to the conspicousness of emails. There is simply no way to ascertain the subject matter or seriousness of such notice from the heading of the emails.

### **III. Motions for Substituted Service are invalid, when the motion is defective and the affidavit supporting is also defective.**

Rule 106 of the Texas Rules of Civil Procedure provides in pertinent part:

(b) Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted... at the location named in such affidavit but has not been successful, the court may authorize service

- (1) By leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or
- (2) In any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the Respondent notice of the suit.

TEX. R. CIV. P. 106(b) (emphasis added).

Where "in personam jurisdiction is based upon substituted service, the record must affirmatively show strict compliance with the statute authorizing such service." See *Garrels v. Wales Transp., Inc.*, 706 S.W.2d 757, 758 j(Tex.App.-Dallas 1986, no writ) (citations omitted). Otherwise, when the record does not reflect strict compliance, ser I e and the return of the citation renders the attempted service of process void and invalid. See *id.*

In the instant case, Plaintiff will argue that they have strictly complied with all of the requirements of Rule 106(b) and that their motion(s) for substituted service were proper in being

granted. With regard to two of the requirements under the Rule, Respondent agrees that the affidavits(s) submitted with plaintiff's motion specifically disclose attempts to serve process in person; however, these affidavit(s) do not satisfy the argument of diligent due process, nor do they make any mention that service by attaching process to defendant's door would comply with Rule 106(b). *Cf. Lewis v. Ramirez*, 49 S.W.3d 561, 565 (Tex. App.-Corpus Christi 2001, no pet.) (holding a conclusory statement of "numerous attempts" made to effect service of process to lack sufficient particularity under Rule 106(b)); *Pao v. Brays Vill. E. Homeowners Ass'n, Inc.*, 905 S.W.2d 35, 38 (Tex.App.-Houston [1<sup>st</sup> dist.] 1995, no writ)(sanctioning a trial court's order allowing service to be effected by attaching process"to the entry door").

However, the court has not been presented with evidence that 4745 Rutherford, El Paso, Tx 79924, is a place where Respondent can probably be found. In *Garrels*, the court held that "before the trial judge orders substituted service under [R]ule 106, there must be evidence of probative value that the location stated in the affidavit is the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found." *Garrels*, 706 S.W.2d at 759 (emphasis added)(citing *Smith v. Commercial Equipment Leasing Co.*, 678 S.W.2d 917, 918 (Tex. 1984)("the settled rule in this state is that the manner of service must strictly comply with the rules")

In this instant case, on the Motion to Substitute, supporting affidavit, dated December 5<sup>th</sup>, 2022, the process server states that she attempted to leave a voicemail, for the first time, on December 5<sup>th</sup>. There was no allotted time for Respondent to call back and make an appointment, as this motion's affidavit was filed same day. There was no attempt to locate Respondent at his work address.

### **Defects in Motion and Supporting Affidavit**

Plaintiff, George Smith states in his motion for substituted service, all three of them, that the supporting affidavits state a location where Respondent will probably be found. This is a misstatement done to procure the granted order. The supporting affidavit makes no mention of any location where she feels Respondent may be found.

#### **IV. The Evidentiary Panel's sanctions against Appellant are excessive and inappropriate when the circumstances do not fit.**

TRDP 15.01.A provides that the "purpose of lawyer discipline proceedings is to protect the public and administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the profession." TEX. R. DISCIPLINARY P. 15.01.A. As it relates, to the imposition of sanctions, TRDP 15.02 states that "[i]n imposing a sanction after a finding of Professional Misconduct, the disciplinary tribunal should consider the following factors: (a) the duty violated; (b) the Respondent's level of culpability; (c) the potential or actual injury caused by the Respondent's misconduct, and; (d) the existence of aggravating or mitigating factors. *Id.* At 15.02.

In cases involving prior disciplinary orders, absent aggravating or mitigating circumstance<sup>3</sup>s, and upon application of the factors set out in Rule 15.02, a suspension is generally appropriate when a “Respondent has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.” Id. At 15.08.,2. However, a public reprimand is generally an appropriate sanction in cases involving disciplinary orders when a respondent attorney “(a) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system or the profession.” Id. Further, mitigating circumstances may justify a reduction in the degree of discipline to be imposed. Pursuant to rule 15.09.C.2, examples of mitigating factors include: personal or emotional problems; timely good faith effort to make restitution or to rectify consequences of misconduct; and character or reputation. Id. At 15.09.C.2(c), (d), and (g).

Here, the sanctions imposed on Appellant do not serve the purposes of the lawyer discipline process. TEX. R. DISCIPLINARY P. 15.01.A. First and foremost, the findings of Professional Misconduct against Appellant set out in the Default Judgment, are not based entirely upon the allegations of Appellant’s failure to comply with the 2022, May 6<sup>th</sup> Judgment, but are primarily to his failure to timely submit his Answers to the complaints which make up the basis for the Evidentiary Petition in the present case, which was the result of Appellant’s accident or mistake, not Appellant’s intentional conduct. See Document No. 33. Additionally, throughout the duration surrounding these complaints, Appellant continued practicing law and dutifully represented his clients without issue. Furthermore, there is no evidence to suggest that Appellant would not continue to properly discharge his professional duties to his clients, the public, the legal system , or the profession.

Based on the information outlined above, it is clear that disbaring Appellant from practicing law is an excessive sanction that is not appropriate under these circumstances. Depriving Appellant of his livelihood is a severe punishment that is inconsistent with facts of this case and with the sanctioning instructions outlined in Chapter 15 of the Texas Rules of Disciplinary Procedure.

### **PRAYER FOR RELIEF**

The record in this Evidentiary Proceeding establishes multiple violations of Appellant Derek Alfonso Quinata’s rights to due process guaranteed him by the Fourteenth Amendment of the United States Constitution. As demonstrated hereinabove at further length at ARGUMENT AND AUTHORITY for the issues, as stated, the TEXAS RULES OF DISCIPLINARY PROCEDURE as promulgated, the chair of a Committee having proper venue shall appoint an Evidentiary Panel to hear the Complaint. Here, the record shows that no Evidentiary Panel was ever appointed to preside over the Geiger case (202203728). The Motion for Substituted Service, the Original Evidentiary Petition, and the Motion for Default Judgment, along with all Orders resulting thereof should be held invalid and void on their face.

For all of these reasons, Appellant Derek Alfonso Quinata respectfully requests that the Board of Disciplinary Appeals reverse and remand the Evidentiary Panel's Default Judgment of Disbarment and return this matter for further proceedings before the Evidentiary Panel, or in the alternative, that the Board of Disciplinary Appeals enter an order modifying the sanctions against Appellant, and grant such other and further relief at law or equity to which Appellant may be justly entitled.

Respectfully Submitted,

/s/ Derek A. Quinata  
Derek Alfonso Quinata, *Pro Se*  
State Bar No. 24072292  
4745 Rutherford Drive  
El Paso, Tx 79924  
Telephone: (915) 667-6966  
Facsimile: (915) 242-0700  
Email: [quinata\\_d@yahoo.com](mailto:quinata_d@yahoo.com)

### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this APPELLANT'S BRIEF was served on each attorney of record or party in accordance with the BOARD OF DISCIPLINARY APPEALS INTERNAL PROCEDURAL RULE 1.05 (c ) and TEXAS RULE OF APPELLATE PROCEDURE 9.5, on August 9<sup>th</sup>, 2023, as follows:

Michael G. Graham  
Appellate Counsel  
Office of the Chief Disciplinary Counsel  
State Bar of Texas  
P.O.Box 12487  
Austin, Texas 78711  
**Via Email:** [Michael.graham@texasbar.com](mailto:Michael.graham@texasbar.com)

George Smith  
Assistant Disciplinary Counsel  
Office of the Chief Disciplinary Counsel  
State Bar of Texas  
9311 San Pedro Ave., Suite 1000  
San Antonio, TX 78216  
**Via Email:** [George.smith@texasbar.com](mailto:George.smith@texasbar.com)

/s/ Derek A. Quinata  
Derek Alfonso Quinata, *Pro Se*

**CERTIFICATE OF COMPLIANCE**

Pursuant to the Board of Disciplinary Appeals INTERNAL PROCEDURAL RULES, the foregoing brief on the merits contains satisfactory the number of words allotted, which is less than the 15,000 total words permitted by the Board's INTERNAL PROCEDURAL RULE 4.05(d). Appellant relies on the word count of the computer program used to prepare this brief.

/s/ Derek A. Quinata  
Derek Alfonso Quinata, *Pro Se*