

Appeal Number 53021

Before the Board of Disciplinary Appeals
Austin, Texas

Elene B. Glassman,
Appellant

v.

State Bar of Texas, Commission for Lawyer Discipline, District 4 Grievance Committee,
Evidentiary Panel 4-6
Appellee

ON APPEAL FROM EVIDENTIARY PROCEEDING H0051132998
HOUSTON, TEXAS

BRIEF OF APPELLANT

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Oral Argument Requested

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Board of Disciplinary Appeals appointed by the Supreme Court of Texas

BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPEAL NO. 53021

ELENE B. GLASSMAN

V. STATE BAR OF TEXAS COMMISSION
FOR LAWYER DISCIPLINE

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Designation of Terms and Abbreviations:
Clerk’s Record - CR

CR Volume 1 - CR I
 CR Volume 2 - CR 2
 Supplemental CR - CR Supp.
 Reporter's Record - RR
 RR Second Motion for Recusal December 2012 - RR Recusal 2
 RR Plea to the Jurisdiction March 13, 2013 - RR Juris
 RR Evidentiary Hearing, June 12, 2013 - RR EH
 RR Motion to Stay/Modify/Vacate/Stay Judgment - RR MVS
 Administrative Procedures Act - APA
 Appellant Appeal Number 14-09-00522 14th Court of Appeals - Appellant
 Appellant/Respondent - Respondent
 Appellee - Appeal Number 14-09-00522 14th Court of Appeals - Appellee
 Appellee/Complainant to Commission - Complainant
 Board of Disciplinary Appeals - BODA
 Commission for Lawyer Discipline - Commission
 Chief Disciplinary Counsel - CDC
 Evidentiary Panel - Panel
 Evidentiary Panel Proceedings Procedural Guide - Guide
 Evidentiary Proceeding H0051132998 - H0051132998
 Evidentiary Petition - Petition
 Public Information Act - PIA
 Robert's Rules of Order, Newly Revised Edition - Roberts Rules
 State Bar Act - SB Act
 State Bar Board Policy Manual - Manual
 State Bar Board - Board
 State Bar District 4 Grievance Committee - Grievance Committee
 Texas Business Organizations Code - TBOC
 Texas Disciplinary Rules of Professional Conduct - TDRPC
 Texas Rules of Civil Procedure - TRCP
 Texas Rules of Disciplinary Procedure - TRDP

ARGUMENT AND AUTHORITIES

Allegations in the Evidentiary Petition "Petition" in Evidentiary Proceeding H0051132998 filed December 21, 2011 and heard June 12, 2013 by State Bar District 4 Grievance Committee Evidentiary Panel "Panel" 4-6 are predicated on Texas Rules of Disciplinary Procedure "TRDP"

1.06 Definitions: (App. 1)

K "Disciplinary Petition" means a pleading that satisfies the requirements of Rule 3.01

V "Professional Misconduct" Acts or omissions by an attorney, individually or in concert with another person or persons, that violate one or more of the Texas Disciplinary Rules of Professional Conduct. "TDRPC"

The Petition, CR 1 0033-0036 alleges violations of TDRPC 3.01 and 3.02. This appeal is in accordance with TRDP 2.24 Appeals by Respondent or Commission

The following "Argument and Authorities" subjects will be addressed as indicated in the headings. However, the issues are not as discrete as the headings may

suggest. The headings include **Jurisdiction, Evidence, Procedural and Administrative Errors, and Abuse of Discretion.**

JURISDICTION: Pleadings and Proof

Questions of jurisdiction may be raised at any time, including the appeals process. There must be both pleadings and proof to sustain a valid judgment

Birdville ISD v. Deen 141 S. W. 2d 680, 686 (Civ. App.- Ft. Worth 1940)
Browning v. Prostek 165 S.W. 3d 336, 346 (Texas 2005) In this instance, Appellant/ Respondent "Respondent" raised jurisdictional issues, including but not limited to subject matter jurisdiction of State Bar District 4 before the Petition in H0051132998 was filed, at the inception and throughout the course of the proceedings. During the hearings on Respondent's Second Motion to Recuse and/or disqualify Evidentiary Panel 4C and Motion to Dismiss (CR 1 pgs. 0268 et seq) on December 14, 2012 , (RR Recusal 2 p. 5 – 13) and First Amended General Denial and Challenge to Jurisdiction, (CR 2 pgs.0460 et seq) March 13, 2013,(RR Juris p. 5, line 6 et seq. through p. 7) Respondent identifies statutes, rules, policy manuals and procedural guides that provide the procedures to be followed in order for an Evidentiary Panel to be properly convened and more procedures to be followed to establish the authority of an Evidentiary Panel to decide issues, grant recovery and issue judgment. Then, Mr. Hodges stops Respondent in the course of her presentation, says he will get back to Respondent, does not do so and Respondent is not allowed further opportunity to complete her presentation. Mr. Hodges says he has read the pleadings. If he had, it seems unlikely that he would have asked some of the questions he presented to Respondent about her additional points to be made.

Respondent points out that petitioner, Commission for Lawyer Discipline “Commission” has not adequately alleged subject matter jurisdiction ; Respondent questions whether it is possible to cure that defect. Commission (CR 1 0033 et seq) alleges legal conclusions, presents distortions and misstatements of facts that are not in issue, distortions and misconstructions of the language in the February 24, 2011 opinion of the 14th Court in Appeal Number 14-09-00522 That opinion, the opinion that was withdrawn on June 2, 2011, after the complaint signed by John Fason was signed and before it was filed with the State Bar, is not in the CR, nor did Commission offer it in evidence, a copy of the first page of a later opinion of the 14th Court, Petitioner’s Exhibit 9 in the Evidentiary Hearing RR EH Exh. 9 (App. 6) of June 12, 2013, shows at the top of the page that the February 24, 2011 opinion is withdrawn, which makes it moot/void as is also shown by the statement at the top of the page.

A case becomes “moot” “if” at any stage there ceases to be an actual controversy between the parties. *NCAA v. Jones* 1 S.W.3d 83 (Texas 1999); *Waco ISD v. Gibson* 22 S.W. 3d 849 (Texas 2000). *Waco, Id* addresses the responsibility for “ripeness” and “standing” components of jurisdiction, stating that they cannot be waived and can be challenged at any time.

When the February 24, 2011 opinion was withdrawn, there was no justiciable controversy, no basis for Commission to proceed with an investigation of the complaint signed by Fason on May 10, 2011. Commission did not offer the complaint by John Fason in evidence who did not amend his complaint or file any further documents. (RR EH p. 36) The question of a justiciable controversy was presented to Commission in the course of the investigation and was ignored.

In his testimony June 12, 2013, Mr. Fason (RR Evidentiary Hearing p. 35 - 36), Mr. Fason acknowledges that he signed the complaint on May 10, 2011 and mailed it promptly) Therefore, since the later opinion had not yet been issued, despite his efforts to remove his complaint from that opinion, his complaint based on the Opinion issued February 24, 2011 which, at that time had not been withdrawn. His testimony affirms that he filed it because he agreed with the 14th Court.

The Administrative Procedures Act "APA" section 2001.060 Record (App.4) The record in a contested case includes

(7) all staff memoranda or data submitted to or considered by the hearing officer of members of the agency who are involved in making the decision.

Petitioner did not prove, or even offer proof of standing or a justiciable controversy. The staff memoranda, correspondence to and from Respondent are

not included. Commission asserts that it is not governed by APA. APA Sec. 2001.001 and 2001.003 include the State Bar . Commission is a committee of the State Bar, State Bar Act, section 81.011 clearly states that the state bar is an administrative agency For other applicable purposes, the State Bar complies with the requirements in APA such as reporting, indexing etc.

Whether Commission is governed by APA or not, it is required to establish all elements of jurisdiction in order for an Evidentiary Panel to be properly created, qualified to hear a case, decide issues, grant recovery and issue judgment. Without the staff memoranda, proof of the filing of the complaint, documentation of the date the complaint was signed, correspondence with regard to the investigation etc. there is no basis for claiming “just cause” which is a condition precedent to an Evidentiary Petition.

Some missing steps are identified in Respondent’s Second Motion to Recuse CR 1 p. 0267 et seq Commission procedures require notice to Respondent of the complaint received and the opportunity for Respondent to reply. Commission has neither specifically alleged compliance with those requirements nor submitted documentation showing they occurred.

The State Bar is also a public corporation SB Act sec 81.011(App. 5) and is governed by the Texas Business Organizations Code, Chapter 23 Special Purpose

Corporations and Chapter 22 Nonprofit corporations and Texas Rules of Civil Procedure 53 and 54. There are no provisions in the State Bar Act that in any way remove the State Bar and/or Commission from the provisions of TRCP 53 and 54 applicable to Special Purpose Corporations and Nonprofit corporations. RR Juris p. 14 through 18 includes a statement that the panel “will have read” Respondent’s “Admission” and exhibits, but does not identify the document beyond that.

Respondent filed an Amended General Denial and Challenge to Jurisdiction , (CR 2. P 0460 et seq.) but there is no “Admissions” document filed by Respondent in CR.

Commission relies on case law that is not on point and distorts the legal standards. Efforts by Respondent through various pleadings, (App. CR Vol 1, Vol 2 Index) to require Commission to correct the pleadings were denied. CR Vol 1, Vol 2) All efforts by Respondent to require Commission to provide accurate information as to facts, interpretations of the opinion of the 14th Court, references to applicable law were denied.

Denial of Respondent’s efforts to have factual errors, insufficiencies in the pleadings and the references to applicable law corrected and/or clarified thwarted Respondent’s right to due process provided by the U.S. Constitution, Amendment 14 and the Texas Constitution Article 1, section 19.

In the Plea to Jurisdiction RR Juris p. 11 The misconception of Mr. Phifer is stated as his question , “Ma’am, did you not ask for an evidentiary proceeding yourself?” is irrelevant. In electing an Evidentiary Proceeding Respondent relied on the applicable standards for such proceedings as shown in the State Bar Act, TRDP, the State Bar Board Policy Manuals, “Manuals” the Evidentiary Panel Proceedings Procedural Guides, “Guides, ” additional applicable statutes and other statutory requirements as well as her state and federal constitutional rights.

EVIDENCE: TDRP 2.17 M

No evidence was offered or admitted as to what Respondent believed or might have believed when proceeding with Appeal 14-09-00522. Whether such “beliefs” were reasonable, has not been ascertainable. The 14th Court’s opinion is not relevant, nor is Mr. Fason’s testimony about his point of view with regard to Respondent’s motives for appealing.

The standard applicable to TDRPC 3.01 is that the lawyer reasonably believes that there is a basis for bringing the matter that is not frivolous. It is Commission’s burden of proof to provide admissible evidence showing there could be no meritorious basis for bringing the matter. Information in Appellant’s Amended Brief in 14-09-00522 provides case law and legal analysis that supports her position. *Browning v. Prostek, Id* There must be both pleadings and proof to

sustain a valid judgment. The Appellant's Brief from 14-09-00522 admitted into evidence RR EH Exh. 8 is not the complete document submitted to the 14th Court. The actual operative document is entitled "Amended Appellant's Brief" which was filed several days after Appellant's Brief was filed. The additional contents were not before the Panel. (App. 6) Cover page from Amended Appellant's Brief showing filing date)

Whether Appellant "believes" in the U. S. Constitution, Amendment 14 and the Texas Constitution Article 1, section 19 is not relevant; those rights guaranteed to Appellant without regard to her beliefs have not been accorded to her throughout the proceedings.

Comments to TDRPC 3.01, while not part of the rules, are helpful in understanding possibilities TDRPC 3.01 Contemplates. In order to establish subject matter jurisdiction, the pleadings must satisfy TDDRPC 3.01. (App. 1 TDRPC 1.06 K) Commission includes only the language of TDRPC 3.01 and some background information about the case. There has been no allegation or even a suggestion that Respondent submitted false pleadings, or, knowingly or unknowingly, presented facts that were not correct. Respondent's pleadings in Probate Court 1, 14th Court of Appeals, Evidentiary Proceeding H0051132998 have been predicated on facts in the records (CR and RR) that are not in issue.

Everything in Appellant's Amended Brief in 14-09-00522 is supported by case law and legal analysis derived from the applicable case law.

In the Evidentiary Hearing of June 12, 2013, Mr. Fason acknowledged relevant facts RR Evidentiary Hearing p.14 et seq. with regard to the Appeal in 14-09-00522; Mr. Fason was the complainant and only witness in behalf of Commission who testified as to anything that was before the 14th Court in 14-09-00522. He acknowledged that he did not prove subject matter jurisdiction. Perhaps others surmised that if they were dealing with the same facts and law that their motives in pursuing their claims would be frivolous and have attributed their point of view to Respondent.

Language of the opinion from 14th Court addresses the question of the likelihood that I would prevail. The comments to TDRPC 3.01 point out that likelihood of prevailing is not a criteria for what is frivolous as defined by TDRPC although, based on the opinion of the 14th Court, that does seem to be the point of view of the 14th Court.

In the absence of proof of all elements of jurisdiction, including a properly convened Evidentiary Panel, sufficient allegations in Commission pleadings to comply with the conditions precedent as provided in TRCP 53 and 54, proof of standing and existence of a justiciable controversy (elements of subject matter

jurisdiction) the tribunal has no authority to proceed to hear the matter, adjudicate issues, grant recovery or issue judgment.

The language of the Chair of Evidentiary Panel 4-6 RR Plea to Jurisdiction p. 4 line 16 et seq states that the panel “will have read” the “admission” with the attached exhibits. There is no admission but CR Vol 2, p. 0460 et seq is the Amended Motion Challenging Jurisdiction that was before Panel 4-6 for the hearing.

The questions and comments of members of Evidentiary Panel 4-6 RR p. 12, 13, and again on p. 26 reveal that either they had not read the materials and/or that they did not comprehend the jurisdictional questions and distinctions in aspects of jurisdiction, specifically, jurisdiction to convene for purposes of conducting business, sufficiency of pleadings with regard to allegations of jurisdiction, and subject matter jurisdiction..

Members of Evidentiary Panel 4-6 repeatedly assert that Appellant’s election to have an administrative proceeding as is provided in the State Bar Act section 81.072 is all that is needed, despite the many provisions about the proper procedures stated in the State Bar Act, TRCP , APA, PIA, TRDP, Manuals, and Guides. The same confusion is shown on the part of Mr. Riley in the Evidentiary Hearing of June 12, 2013 RR, p. 73.

The 14th Court opinion acknowledges absence of proof of jurisdiction in the record from Probate Court 1, Cause numbers 350,750 and 350,750-403. The 14th Court describes the appeal as a “collateral attack” on the judgment of Probate Court 1 but it does not acknowledge the distinction between a collateral attack that is within the standards of *White v. White* 179 S.W.2d 503(Texas 1944) and the facts before it with regard to the collateral attack being considered in 14-09-00522. There are cases cited in Appellant’s brief to the 14th Court that are on point. *Browning, Id* The 14th Court disregards the burden of proof disregards the burden of proof that extensive and consistent case law in Texas predicated on the Texas) and U.S. Constitution Fourteenth Amendment places specifically on plaintiffs. The opinion of February 24, 2011, was withdrawn, declared moot thus became null and void, which made the grievance that was predicated on it moot. In the later opinion the 14th Court never addressed the actual questions presented, which, by definition, since they are predicated on absence of jurisdiction cannot be frivolous.

Commission admitted evidence showing the later opinion; its purpose was not presented. The Appellant’s Brief admitted by Commission is not the document that was before the 14th Court for purposes of its determinations. The purpose of the Appellant’s Brief was not presented.

While disregarding the particular form of the collateral attack and an analysis of the facts, law etc. the 14th Court also disregards the consistent body of case law in Texas that does not support anything that confers, waives, estops, or in any way agrees to existence of subject matter jurisdiction. Nonetheless, the 14th court asserts, without any supporting authority, that there is a judicial admission of jurisdiction by Appellant. There is no judicial admission, and there was no evidence offered or admitted that supported the claim of judicial admission. The criteria for judicial admission are delineated in *Miller v. Gann* 822 S.W. 2d 283 (Civ App – Houston 1991) Those criteria were not even claimed to have been met in the opinion of the 14th Court. Additionally, jurisdiction cannot be judicially admitted. Jurisdiction is a question of law; a party cannot judicially admit a question of law. There is no evidence establishing standing or justiciability; essential elements to support subject matter jurisdiction.

There must be proof of standing and justiciability to activate authority to adjudicate at the outset of each case as jurisdiction is never presumed. *Reis v. Reiss v. Reiss* 118 S. W.3d 439 (Tex. 2003) *Dubai Petroleum v. Kazi*, 12 S.W. 3d 71(Tex 2000).

ADMINISTRATIVE AND PROCEDURAL ISSUES:

Agency rules are subject to the same constitutional limitations as legislative enactments. *Black v. Dallas County Bail Bond Board* 882. S. W. 2d 434 (Civ. App – Dallas, 1994) Agency has no authority to adopt rule that is inconsistent with existing state law. *Board of Regents of University of Texas v. ARCO Oil & Gas* 876 S.W. 3d 473 (Civ. App.-Austin, 1994)

TRCP govern except where in conflict with specific provisions of the Bar Rules. *Greenspan v. State* 618 S.W. 2d 939 (Civ App – Ft. Worth, 1981)

Administrative Agency can adopt only such rules as are authorized within its statutory authority (GA – 0845)

Evidentiary Hearings are to be conducted with proper procedures; Mr. Phifer, Mr. Almaguer and other members of the Evidentiary Panel did not seem to understand that an election to have an Evidentiary Hearing does not excuse Commission from compliance with all of the necessary procedures it is required to follow. RR Plea to Jurisdiction p. 13, Line 6 et seq shows the point of view of Mr. Riley, Chair of Evidentiary Panel 4-6. Mr. Riley asserts that the panel has been duly formed; Appellant challenged that and no proof that it was duly formed was ever provided. Statements that are not sworn testimony is not evidence.

In a Texas court, judges must be properly qualified, which includes being properly appointed or elected and then take their oath of office as specified by the laws of Texas. All of that is public information. Members of State Bar Grievance Committees must be properly appointed, attend an annual Organizational Meeting which is properly called and conducted, including training and distribution of Evidentiary Panel Proceedings Procedural Guides as provided by the State Bar Board Policy Manuals, Parts IV and VI (App. 7 Manual Part VI, Grievance Committees) as well as by provisions in the State Bar Act section 81.072 , TRDP 2.04 Organizational Meeting of Grievance Committees. TDRP 2.05 Oath of Committee Members, 2.06 Assignment of Committee Members, 2.07 Duties of Committees In his comments during the hearing on the Plea to Jurisdiction , RR Juris pgs 12 - 13 responding to Respondent's position Mr. Riley states what he hears, which is not consistent with what Appellant has presented. As reflected in RR Plea to Juris p. 14 lines 15 through p. 15 line 5 2 members of the Evidentiary Panel, Mr. Phifer and Mr. Almaguer make statements again showing they do not understand the jurisdictional issues being presented.

RR Plea to Jurisdiction p. 21 line 24 through p. 22 line 6 shows that counsel for Appellee also "believes" that CLD has no further obligation to comply with the

procedures and evidence necessary to activate jurisdiction despite the clear language in the State Bar Act and the TDRP as well as in the Manuals.

RR Plea to Jurisdiction p. 16 line 22 through p. 18 demonstrates the circular confusing communication problems. Mr. Riley refers to an order that is not in the Clerk's Record, an order for which there is nothing in the record showing there was such an order. There is nothing in the orders from the Scheduling Conference of February 13, 2013, CR Vol 1 0420 et seq and Vol 2 p. 0447 , 0452 with the terms Mr. Riley claims are in an order and there are no other orders from that date or any other date with such provisions. Further, the documentation with regard to the Revised Scheduling Order shows Mr. Riley signed it although Respondent had not yet received it.

Mr. Riley insists the panel gave Respondent 30 days to come up with some evidence to support Respondent's challenge to the jurisdiction of Evidentiary Panel 4-6. The order from the Scheduling Conference of February 13, CR Vol 1 p. 0452 does not say what Mr. Riley and Mr. Phifer claim it says; they relied on the incorrect, unsubstantiated statement anyway. RR Plea to Jurisdiction p. 26 shows that despite the absence of an order with the terms stated by Mr. Riley on p. 17, (RR Juris. P. 17)Mr. Phifer then insists that it is Respondent's duty to bring evidence and has had 30 days to do so.

Further, it is not the responsibility of a respondent to do that, it is Petitioner's affirmative duty to prove the elements of jurisdiction. When questions of jurisdiction are raised it is the responsibility of the tribunal to read the record. *Birdville, Id, Dubai, Id*

No evidence of vital facts necessary to establish the authority of Panel is in the pleadings or the proof. Both pleadings and proof are essential to activate the jurisdiction of the tribunal. The potential jurisdiction of Panel was not activated. If a court having potential jurisdiction enters a judgment when its potential jurisdiction is not activated and the defect is apparent on the record, the judgment is void. *Reed. v. Gum Keepsake Diamond Center* 657 S.W. 2d 524, 525 (Tex. App – Corpus Christi [13th Dist.] 1983)

The Evidentiary Hearing Report /rendition CR Vol 2 p. 0864 et seq) does not even show a quorum. Where a judgment does not conform to the pleadings and the proof, the judgment is void.

Through discovery, (CR 1, 2 Pleadings Index) Respondent requested the documents that would show whether or not Evidentiary Panel 4-6 was properly authorized to conduct an Evidentiary Hearing; those requests were denied. CR 1 and 2,

During the Evidentiary Hearing of June 12, 2013 RR p. 73 Mr. Riley stated his point of view about the responsibility for proving jurisdiction. That is, he does not think it is the affirmative duty of a Petitioner to prove the elements of jurisdiction unless they are challenged. Proving jurisdiction is the affirmative duty of a petitioner; sufficient facts must be in the Petitioner's pleadings to establish jurisdiction and those facts must be established by proof. A judgment is never considered final if Court lacks subject matter jurisdiction *Reiss v. Reiss, Id., Dubai, Id. Metropolitan Transit Authority v. Jackson* 212 S.W. 3d 97 (Tex. App – Houston [1st Dist.] 2006) . There is no statute of limitations applicable to a “void” judgment. The matter remains on the docket to be tried.

Everything that flows from absence of jurisdiction is void. In the Plea to Jurisdiction, Mr. Riley refers to his understanding that I want the Evidentiary Panel to declare the judgment in 350,750 void. RR Plea to Juris p. While the Evidentiary panel could have done that, Respondent presented that information to point out that the judgment is “void” whether it is declared void or not. A tribunal can disregard a void judgment without declaring it void. A judgment that is not supported by the necessary proof of the subject matter jurisdiction of the court activating the authority to adjudicate is void and of no legal force or binding effect. Void – of no legal effect. Black's Law Dictionary, 9th Edition, 1709 (2009). Void

judgment – a judgment that has no legal force or effect, the invalidity of which may be asserted by any party who's rights are affected at any time and any place, whether directly or collaterally Black's Law Dictionary, 9th Edition, 921.

APA 2001.007 requires that the text of all rules, letters, opinions, or compliance manuals etc. shall be generally accessible to the public on an internet site. Manual states explicitly that the State Bar is within the Public Information Act. State Bar Act sec. 14 requires the use of Roberts Rules.

Abuse of Discretion

Issuance of a void order is abuse of discretion *Custom Corporates, Inc. v. Security Storage Inc.* 207 S.W. 3d 835, 837 (Civ. App – Houston [14th Dist]2006) *Browning, Id* A trial court cannot act when there is no jurisdiction. Reviewing court cannot find jurisdiction when it does not exist. *In re Bokelah* 21 S.W. 3d 784, 93 (Tex. App. – Houston [14th Dist] 2000.

There is no discretion to refuse to set aside a void judgment; there is a duty to do so at any time that notice is brought to the attention of the court. *Metropolitan Transit Authority v. Jackson* 212 S. W. 3d 797, 798; *Middleton v. Murff* 889 S. W. 2d 212 (Tex. 1985) The Motion to Modify/Stay/Vacate brought the void judgment of June 18, 2013 to the attention of Evidentiary Panel 4-6.

Abuse of discretion is a basis for recusal/disqualification as is display of such a high degree of favoritism or antagonism as to make fair judgment impossible. Panel 4-6 members displayed such favoritism and antagonism which is reflected throughout the record by their statements of their opinions derived from extrajudicial sources. *Ludlow v. Deberry* 959 S. W. 2d. 265, 271 (Tex app. – Houston [14th Dist])

Mr. Phifer described his personal experience RR Juris p.25, line 18 et seq) with regard to briefing a question in the course of litigation. Mr. Riley stated his opinion that there is no duty of a petitioner to prove up jurisdiction unless it is challenged. Respondent did challenge several elements of jurisdiction, submitted Special Exceptions, sought discovery; all such requests were denied. Mr. Phifer and Mr. Riley displayed reliance on extrajudicial sources.

The 14th court opinion claims that Appellant knew there was jurisdiction in Probate Court 1 while also acknowledging that Petitioner had not submitted proof of jurisdiction. Until there is proof, based on evidence admissible in the particular proceeding, a “fact,” jurisdiction or any other fact, is not known. If the 14th court is saying Appellant had “personal knowledge” that would not be relevant. TRCP 301 requires that a judgment must conform to the pleadings and the proof. Evidence that is not properly admitted is not proof. Facts, including jurisdiction

must be established through evidence properly offered and admitted. In this instance, Respondent objected to documents offered by Commission who laid no predicate. The availability of those documents for consideration by the Evidentiary Panel, whether Appellant objected or not are further points of error and show that there was no substantial evidence as contemplated in the TRDP provisions as to appeals to BODA.

The evidence offered during the Evidentiary Hearing, to which Respondent objected, RR EH Exh 1- 4 were admitted over Appellants objections their relevance was not established. Those to which Appellant did not object were also admitted but that does not prove the accuracy of the contents for purposes of the considerations of Evidentiary Panel.

Commission has the burden of proof as to all material allegations. TRDP 2.17 M. Commission presents a judicial admission to establish "in personam" jurisdiction. RR EH p. 11. Nothing further as to any element of jurisdiction is presented. TRDP 2.17 M The Evidentiary Hearing Report CR 2 p. 0864 does not include elements sufficient to show subject matter jurisdiction. At the bottom of the last page of the Evidentiary Hearing Report CR 2 p. 0864 Office of Chief Disciplinary Counsel is instructed by Mr. Riley as to the contents of the Judgment to be prepared. The Judgment signed June 18, 2013 does not conform to the

pleadings, the proof, TRCP 301 the terms of the Evidentiary Hearing Report/rendition, the instructions from Mr. Riley.

The rendition is the first words spoken or written *Comet Aluminum v. Dibrell* 450 S. W. 2d 56, 58 (Tex. 1970). A rendition cannot be revised. *Escobar v. Escobar* 711 S.W. 2d 230.(Tex. 2000) The Evidentiary Hearing Report is the only information available Office of Chief Disciplinary Counsel for purposes of preparing a judgment.

In an Evidentiary Proceeding, Commission can present evidence; whether that includes proof of subject matter jurisdiction is irrelevant as nothing was presented except the judicial admission (RR EH p. 11) which, at best, shows in personam jurisdiction; Respondent has not challenged in personam jurisdiction. Judgment of June 18, 2013 (CR. 2 p.0889) specifically recites subject matter jurisdiction thereby demonstrating that subject matter jurisdiction is an element of jurisdiction and that Commission recognizes the responsibility to prove it.

The admission of evidence over Respondent's objections was error and was prejudicial; the decision of Panel 4-6 should be reversed.

Of some relevance is that Exhibit 8, identified by Petitioner as Appellant's Brief in 14-09-00522 which shows a filing date of April 30, 2010 is not an

accurate copy of “Appellant’s Brief” but it is a public document, therefore admissible as a public document; that does not make it relevant for purposes of Evidentiary Panel 4-6 considerations as it was not the document that was before the 14th Court in 14-09-00522 for purposes of consideration by the 14th Court. It does not include all of the argument and authorities, a complete list of authorities. “Amended Brief of Appellant” filed May 3, 2010, (App. 7) is a copy of the document that was supposed to be before the 14th Court, the contents of which are not acknowledged in the opinion issued February 24, 2011 or the later opinion.

The documents offered and admitted as public records prove only that they are public records. That does not mean the contents have any probative value or relevance with regard to particular issues before the Evidentiary Panel. There is nothing in the record of the Evidentiary Hearing RR clarifying the purpose of the evidence admitted at the outset of the hearing. That does not give it weight for any purpose as to any fact relevant for purposes of TRDCP 3.01 or TRDCP 3.02 or any other possible purpose within the responsibilities of Evidentiary Panel 4-6.

Nor is there anything in the Record instructing panel members as to what they may and may not consider for what purposes. The Procedural Guide 2012 tips to the Chair p. 12 and 13 (App. 8) reminds the Chair to give such instructions and the Procedural Guide further indicates that the proceedings are to be conducted as

though in District Court. Guide 2012. The page numbers in Guide 2013 could be a little different; the content relevant for purposes of H0051132998 is the same. Respondent's requests for physical copies were refused. All copies of manuals and guides except for Guide 2012 were provided electronically in response to Public Information Requests. Guide 2012 was provided to Respondent after a request from the Office of CDC to the Houston Office of the State Bar.

The 2012 Guide p. 12 (App. 8) says, "The Panel Chair shall admit 'all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing. generally in accord with the Texas Rules of Evidence. TRDP 2.17L The necessity of the evidence admitted was not mentioned. Admission of the evidence to which Appellant objected does not meet even fundamental standards of the Texas Rules of Evidence. This is not a question of "strict compliance" but of non compliance, actually complete disregard. A brief that has been superseded may be a public document is neither probative nor relevant evidence .

TRDP modify Texas Rules of Evidence for purposes of Evidentiary Proceedings; what Panel has done is not within those modifications as there was no predicate presented to establish anything other than admissibility. Thus, if after the Evidentiary Hearing, Panel met and considered the evidence that had been

admitted, especially the evidence to which Respondent had objected, Panel did so inappropriately and any decisions flowing from such violations of the standards for what may be considered in an Evidentiary Proceeding supports Respondent's positions with regard to reversal , declaring the judgment of June 18, 2013 void or granting a new Evidentiary Hearing.

That is particularly relevant as to the question of disbarment. Some of the evidence before the panel was not admissible. Based on the rendition and judgment there is no way to know whether the Panel even met and if they did, what evidence they considered. Findings of fact are predicated on proof. APA 2001.141 specifically requires that the basis in the record for findings of facts be stated TRDP 2.17 P includes findings of fact as part of the decision.

An opinion issued by a court, while a public document, is not, just by virtue of being a public document, probative or relevant evidence. The Chair of Evidentiary Panel 4-6 simply took "judicial notice" of the documents, overruling Appellant's objections which clearly stated that most of them were irrelevant.

State Bar District 4 Grievance Committee does not comply with the provisions in the State Bar Act, PIA, TRDP, APA. While the "Commission for Lawyer Discipline" i.e. the body appointed in accordance with the provisions of the State Bar Act, is not considered a "governmental body" and claims exemption

from the provisions of PIA, the State Bar Grievance Committees are “committees of the State Bar” as specifically indicated in the Manuals Part VI and are specifically governed by all of the standards for all State Bar committees.

The Manuals are reviewed and published at least annually. They have been published at least annually since 2006. There have been some changes from year to year but nothing since 2006 indicates that the documents Respondent requested through the proper discovery process are confidential within the criteria in the State Bar Act, the TRDP, the exemption of Commission from PIA as created and defined in State Bar Act Sec. 81.076 That exemption does not apply to the State Bar Grievance Committees or the Evidentiary Proceeding Panels.

The presumption of PIA is that records are public unless within an exception. Denying access to a party to records that are required by the State Bar and TRDP that will show whether the requirements of the State Bar Act and TRDP with regard to prerequisites necessary to convene an Evidentiary Panel that will sit as a tribunal is a violation of basic due process.

Administrative Procedures Act sec. 2001.060 Record delineates what must be included in the Record. It is not in conflict with the provisions of TRDP 2.17 N Record of the hearing, TRDP 2.17 P Decision

Evidentiary Panel 4-6 has not adhered to the provisions in their oaths of office TDRP 2.05 with regard to the TRDP duties as to the U.S. Constitution and laws of the United States and of the state of Texas or to the requirements in the Guide that states on p. 12 as a “Panel Chair Tip.’

“It is important to ensure that evidentiary hearings encompass the same procedural formality as a district court trial. ...” (App. 8)

TDRPC 3.02 a position that “unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter. “

The record from 14-09-00522 demonstrates the basis for the delays which were not caused by Appellant but by the Court Reporter who took a few months to prepare the transcript of the Bench Trial in 350,750 on June 9, 2006. An additional brief delay was caused because the 14th Court misplaced a stack of transcripts filed by the Court Reporter. Part of the delay is shown in the record to have been caused by John Fason’s requests. RR from 14-09-00522.

Again the comments as to the TDRPC are helpful. Section one even points out that delays can be appropriate ways of achieving the legitimate interests of the client. There are no allegations and no evidence to show any benefit to Appellant from those delays. There was no evidence offered or admitted indicating there was

any benefit to Appellant created by the delays. CLD again reached a conclusion that is not supported by relevant or probative evidence.

Again, CLD has failed to factor in the facts that are established in the record and are not in issue. Appellant had to proceed pro se with Appeal 14-09-00522 and to seek a determination by Probate Court 1 that she was without sufficient resources to pay costs or attorneys fees. All of that was occasioned by the errors on the part of Probate Court 1 as has been pointed out repeatedly in the course of the Evidentiary Proceeding.

It is Appellant who had increased burdens of litigation, not Appellee. Those burdens continued and increased throughout the Evidentiary Proceeding H0051132998 during which counsel for Commission knowingly or unknowingly, consciously or unconsciously, caused unreasonable delays as shown by the evidence and the Clerk's Record. Throughout the Evidentiary Proceeding there were attempts to impose additional burdens on Respondent in complete disregard of the TRDP 2.17 M rules placing the burden of proof on Petitioner.

Knowingly or unknowingly, intentionally or unintentionally, the entire record from Probate 1, Cause Number 350,750 and 350, 750-403 through Appeal 14-09-00522 and H0051132998 is replete with misstatements, inaccuracies as to the applicable facts and applicable law and rules.

Some errors, documents not included in the record, oversights, inaccuracies, in the record, have been brought to the attention of Evidentiary Panel 4-6, throughout the Evidentiary Proceedings. In response to Respondent's first inquiry about internal rules, particularly Recusal, Counsel for CLD clearly stated that there were no recusal procedures, (App. 9) intentionally delaying the proceeding for several months and then, when confronted with information he could not ignore, well aware of the proper procedures, intentionally delayed again with regard to the second and third requests for Recusal.. CR 1, 2 CR Supp. Pleadings Index

As acknowledged by Mr.Riley in the hearing on the Plea to Jurisdiction of February 13, RR Juris p. 22 line 25 et seq) it was Respondent who initiated the efforts to move the matter along by requesting a scheduling conference as indicated in the initial scheduling order (CR 2, p. 0452)

John Fason's testimony does not establish facts with regard to the causes of the delay. He was not an "expert witness" his testimony as to his point of view admitted that he had no knowledge of the sources of the delays. He shared his personal experience. Respondent was sworn in at the inception of the Evidentiary Hearing; all of her comments are testimony.

Mr. Fason's testimony reveals his absence of knowledge and cannot qualify as a "preponderance" of evidence for purposes of 2.17 M Burden of Proof.

The State Bar is a public corporation and an administrative agency of the judicial department of Texas. State Bar Act sec. 81.011 The Texas Business Organizations Code, “TBOC” Chapter 23 applies to the State Bar. As a corporation organized for a special purpose, operated not for profit, as provided in Chapter 23 it is governed by Chapter 22 of the TBOC.

TRCP, 53 and 54 apply to the State Bar, the “Petitioner in Fact” with regard to H0051132998 as the Commission on Lawyer Discipline is a “committee of the State Bar”. State Bar Act 81.076. As a committee of the State Bar, to proceed either in court or with Evidentiary Proceedings, Commission must comply with applicable requirements in TDRP. The Supreme Court has “administrative control” State Bar Act section 81.011 over discipline of attorneys licensed in Texas; that does not extend beyond administrative matters to eliminate compliance by the State Bar, Commission with Texas statutes including but not limited to the TRCP unless specifically so provided in the State Bar Act. There are no provisions of the State Bar Act that excuse Commission from TRCP 53 and 54. *Greenspan Id*

The Evidentiary Petition does not provide sufficient allegations to comply with TRCP 53 Special Act or Law Respondent filed the necessary pleadings to bring Commission within TRCP 54 Conditions Precedent Petitioner’s pleadings do not aver generally that all conditions precedent have been performed, nor did Petitioner prove those elements challenged by Appellant.

Evidentiary Petition remains insufficient as defined by TRCP 54. Appellee did not aver compliance with all applicable conditions precedent, no evidence as to those conditions precedent was offered or admitted. Commission had the burden of proof by a preponderance of the evidence TRDP 2.17 as to all material allegations TRDP 2.17. Appellee has not established

compliance with all of the requirements necessary for proceeding with an Evidentiary Proceeding, a properly appointed Grievance Committee State Bar Act section (app) a State Bar District 4 Grievance Committee Organizational Meeting for 2011 or 2012 , an election at each Grievance Committee Organizational Meeting of a Chair for each of the years 2011 through 2013. There was no evidence offered or admitted to show compliance with TRCP 54 nor has proof been offered or admitted to show compliance with State Bar Act section 14 Procedures for Meetings which mandates that Roberts Rules as set forth in section 14 be followed. Though sought by Appellant in the discovery process, Appellee has not produced minutes of Organizational Meetings, agendas, lists of attendees, or other documentation in accordance with the provisions of the State Bar Board Policy Manuals for 2011, 2012, 2013 The State Bar Board Policy Manuals Part 4 State Bar Committees for the years 2011 through 2013 describe the procedures to be followed for all State Bar Committees, 4.04 (App. 7) for the years 2011 through 2013 state specific policies and procedures committees are to follow. There are specific provisions about Organizational Meetings, agendas, notices etc. The Public Information Act “PIA” Texas Government Code, Title 5, Subtitle A, Ch. 552.230 (App.) applies to the State Bar as is acknowledged in the State Bar Board Policy Manuals section 9.03 et seq. PIA acknowledges that the presumption is in favor of public access to information . The only exception that is relevant for purposes of H0051132998 is State Bar Act section 81.072 which does not apply to the records Appellant sought through discovery, which records as to other State Bar Committees are available through the State Bar website as required by APA Id

State Bar Board Policy Manuals Part VI Disciplinary System, part 6.04 (App 7)for the years 2011-2013 specifically brings Grievance Committees within the provisions applicable to

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State Bar Board Policy Manuals Part VI Disciplinary System, part 6.04 (App 7)for the years 2011-2013 specifically brings Grievance Committees within the provisions applicable to

all State Bar Committees. The State Bar Act section 14 requires that all meetings of State Bar Committees be conducted in accordance with Roberts Rules.

Commission also denies that it is governed by the Texas Administrative Procedures Act, Texas Government Code, Title 10, Chapter A. Chapter 2001 states public policy for Texas with regard to practice and procedure for state agencies. The State Bar Act section 81.011 (App. acknowledges that it is an administrative agency of the judicial department of government. Petitioner has failed and refused to comply with applicable provisions of APA sections which are not in conflict with the State Bar Act or TRDP. APA section 2001.006 (a) (1) "State Agency" applies to the State Bar Commission on Lawyer Discipline. APA section 2001.004 applies to all available formal and informal procedures. APA section 2001.007 "Certain Explanatory Information Made Available through Internet" has not been implemented by the State Bar and/or Commission for Lawyer Discipline with regard to availability of rules, letters, opinions as mandated by APA section 2001.004. The Evidentiary Panel Proceedings Procedural Guides and State Bar Board Policy Manuals are not readily available to respondents as required by APA. Counsel for Commission denied their existence. The Evidentiary Panel Proceedings Procedural Guides include specific provisions with regard to recusal which Commission did not follow with regard to Appellant's requests for recusal. Appellant's Second Motion for Recusal was denied but H0051132998 was transferred. Transfer does not eliminate Appellant's objection to the denial of recusal.

The State Bar Board Policy Manual Part VI (B) (App 7) provides that the purpose of the Grievance System is to clear the name of an attorney who has not committed professional misconduct. Counsel for Commission and Evidentiary Panel 4-6 made no effort at all to comply

with VI (B) and counsel for Commission has specifically stated that his obligation is to prove misconduct.

The 14th court opinion acknowledges that there is an absence of proof of jurisdiction, and disregards the body of law providing that jurisdiction cannot be waived, conferred, created by estoppels or agreement. There is a peculiar statement in the 14th court opinion that is repeated by Commission with regard to the knowledge of Appellant as to subject matter jurisdiction of Probate Court 1 being relevant. That is completely inconsistent with the legal standards. Having conveniently bypassed the standards applicable to subject matter jurisdiction, the 14th Court then relies on a case that is not on point as to the facts before it. *White, Id* In his testimony before EP 4-6, the witness also relies on that language as though somehow if the 14th Court wrote it, that makes it applicable even though the 14th Court did not mention the cases on point that are cited in Appellant's brief, i. e. including but not limited to *Browning Id* which is also cited in this brief.

There is insistence by a witness for Commission that the 14th court rejected Appellant's position; that did not happen. A careful reading of Appellant's brief and the opinions of the 14th Court shows nothing addressing the position stated by Appellant predicated on facts that are not in issue and supported by relevant case law.

Instead, the 14th court disregarded the extensive and consistent body of case law applicable to the question of proof of subject matter jurisdiction being the responsibility of the party making the claims and allegations, alleging is not proof and a Petitioner cannot shift the responsibility for proving subject matter jurisdiction. *Metropolitan Transit. Id, Dubai Petroleum, Id.*

Aside from all of that TDRP 2.17M states specifically that Petitioner has the “burden of proof” and must prove all material allegations “by a preponderance of the evidence.” Other than in personam jurisdiction there was no proof of any of the elements of jurisdiction including conditions precedent to provide for the convening of the Grievance Committee, the procedures for establishing a proper Evidentiary Panel, “subject matter jurisdiction” offered by anyone who would have the standing and authority to provide such proof. Commission is a “committee” of the State Bar. State Bar is a Texas Non profit, subject to all of the requirements as provided in TBOC Chapters 23 and 22. Petitioner did not comply with the requirements of TRCP 53 and 54. Those matters were brought to the attention of Evidentiary Panel 4-6 and Petitioner in the Amended Plea to Jurisdiction CR 2, p. 0460, RR Juris, the plea was denied.

Petitioner is also governed by the APA”and has failed to comply with those requirements as follows:

APA section 2001.060 requires that “all” documents be included in the Clerk’s Record. Commission has not included relevant documents in the record submitted to BODA, specifically, the documents that preceded the decision by Commission to proceed even though an investigation would show that the opinion about which the complaint was submitted had been withdrawn by the 14th court, making the issues presented in the complaint moot.

Based on facts that are not in issue, although Commission conveniently did not send the relevant documentation to BODA, Commission had no basis for filing the Evidentiary Petition. At the Evidentiary Hearing on June 12, 2013, Petitioner attempted to create an illusion with regard to the question of whether the prerequisites of “subject matter jurisdiction” were met.

There was no evidence offered or admitted by anyone qualified to do so, to establish standing or a justiciable controversy, both of which must be not only alleged but established by proof.

RR Juris p. 22, line 21 Mr. Phifer seeks clarification as to the meaning of “justiciability” then later tells us he has extensive experience with jurisdiction.

TDRP provides for findings of fact and conclusions of law TRDP P. APA sec 2001.141 states specific requirements for the findings of fact and conclusions of law. The rendition of June 12, 2013 makes no findings of fact, simply concludes without reference to any support in the record that Appellant violated TDRP 3.01 and 3.02. There is no evidence as to what Appellant “believed” when filing the appeal. There are stated conclusions by members of the panel as to what they “thought” Appellant believed. There is an attempt to comprehend one element of Appellant’s position but the record reveals that the panel members simply did not know the legal standards and relevant case law did not persuade them. Mr. Riley’s guidance of Panel 4-6 is predicated on his lack of knowledge of the mandatory requirement for a plaintiff to establish subject matter jurisdiction.

Proof of subject matter jurisdiction is an affirmative duty of the Petitioner, it cannot be waived, established by agreement or conferred. In other words, no one other than the Plaintiff can establish subject matter jurisdiction. No witness qualified to establish standing and/or a justiciable controversy was called. There was no one present at any time, in any of the hearings in H0051132998 who could have qualified to testify for purposes of establishing standing or existence of a justiciable controversy.

Petitioner did establish “in personam” jurisdiction and apparently thought that was sufficient. During the hearing on the Plea to Jurisdiction, when Mr. Riley stated his understanding of the responsibility for proving jurisdiction, Appellant’s response was “That is not correct.” Then Mr. Riley responded with “It’s not?” at which point counsel for Petitioner interrupted, a pattern that continued each time Petitioner attempted to complete elements of her presentation. Additionally, various members of the Panel revealed their own confusion about the distinction in the jurisdiction of the State Bar to discipline attorneys and the compliance by the State Bar, Commission with all of the various applicable statutes, (State Bar Act, APA, PIA) rules (TRDP, TDRPC) and guidelines that have been promulgated by the Commission itself (Guides, Manual.)

The provisions for confidentiality with regard to Evidentiary Proceedings TRDP 2.10 do not include the records of Organizational Meetings of State Bar Committees, including the Grievance Committees. Manual part IV includes specific responsibilities for committees and subcommittees. Manual Part VI, (App 7) states specifically that the Grievance Committees are within the requirements for State Bar Committees and have additional responsibilities.

The relationship between the State Bar and the Supreme Court of Texas is carefully and explicitly delineated in the State Bar Act and clarified in the TDRP. As stated in the State Bar Act, the Supreme Court has “administrative” control with regard to attorney discipline. The Supreme Court does not have the authority to modify legal standards for corporate entities such as the State Bar which is governed by the State Bar Act and is within the provisions of TBOC thus within TRCP 53 and 54 which are relevant to the question of the sufficiency of petitioner’s pleadings on two points. Whether there is just cause and whether all of the requirements for

Grievance Committee membership and panel appointments have been met. Respondent repeatedly challenged the jurisdictional points; the issues did not seem to be comprehended by opposing counsel or Evidentiary Panel 4-6.

Further, TDRP 2.17 M is quite specific about Commission having the “burden of proof.” Petitioner has not met that burden as to subject matter jurisdiction with regard to Evidentiary Proceeding H0051132998. On the record, Mr. Riley, Chair of Evidentiary Panel 4-6 reveals his lack of knowledge about the applicable law with regard to proof of subject matter jurisdiction RR EH p. 73 lines 12 through 22. There is no case law to support Mr. Riley’s assertion and there is extensive and consistent case law imposing the responsibility for proving subject matter jurisdiction on the Petitioner. There was no one present at the Evidentiary Hearing of June 12, 2013 who could have provided the proof of subject matter jurisdiction. As a corporate entity, the State Bar has the same obligations as any other corporate entity before a tribunal. A corporate entity cannot establish standing to bring a matter and existence of a justiciable controversy, which are elements of subject matter jurisdiction, without presentation to the tribunal of a properly qualified witness who can attest to the necessary facts and, as may be appropriate identify evidence offered in support of the claim of subject matter jurisdiction. Further, Respondent must have the opportunity to examine the evidence offered and to cross-examine the witness. Other than in some limited exceptions that do not apply to grievance matters, a corporation cannot appear before a tribunal just by filing documents. *American Express v. Monfort* 545 S.W.2d 49(Civ. App. – Houston [14th Dist] 1976). In the limited exceptions to that standard, the pleadings must meet the requirements of the particular claims. Commission has not even met those requirements.

Mr. Riley and other members of Evidentiary Panel 4-6 have confused what they may consider usual from their personal experience with what the rules and case law require. In the transcript from the hearing of March 13, 2013 (RR p. 17) Mr. Riley refers to an order that is not in the Clerk's Record and is unknown to Respondent. Even if the order were to exist, Mr. Riley has no jurisdiction to impose the obligations of proof of jurisdiction by Commission on Respondent. Although Mr. Riley and panel members assert their credentials, they were not sworn in as witnesses; no evidence was offered or admitted to establish that they were properly qualified "in strict accordance" with the provisions of the State Bar Act and TRDP. The language of TRCP 53 and 54 is clear and unambiguous. Petitioner failed to allege as required by TRCP 53. Additionally, Appellant sought compliance with TRCP and Petitioner did not comply.

Undeterred by facts and law, in the Evidentiary Hearing of June 12, 2013, having established "in personam" jurisdiction, counsel for Petitioner proceeds as though "subject matter jurisdiction" has been shown. RR Evidentiary Hearing p. 1. The various documents offered do not establish "subject matter jurisdiction" which must be established by the Petitioner. To reach its position, the 14th Court completely ignored a well documented line of reasoning supported by case law based on facts that were not in issue. *Browning, Id.*

The State Bar of Texas is a public corporation and an administrative agency. State Bar Act 81.011 The rules of an administrative agency are subject to the same constitutional limitations as legislative enactments. *Black v. Dallas County Bail Bond Board* 882 S.W.2d 434 (Tex. App.- Dallas, no writ) APAspecifically includes all administrative agencies in Texas The U. S. Constitution, Amendment 14 guarantees due process. "A fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison* 349 U.S. 133, 136 (1955). This applies to

administrative agencies which adjudicate as well as to court. *Gibson v. Berryhill* 411 U.S. 564, 569 (1973)

An order entered without due process is void *In re Taylor* 130 S.W. 3d 448, 449 (Tex. App. – Texarkana 2004) An order is void if it is beyond the jurisdiction “power” of the court to enter it or if it deprives Appellant of liberty or property without due process. The judgment filed June 18, 2013 is beyond the jurisdiction of the Evidentiary Panel to enter it “and” it deprives Respondent of her property rights in her license to practice law all of which violates the 14th Amendment of the U. S. Constitution and the Constitution of Texas Article 1, sections 13, 19.

The rendition of June 12, 2013 CR 2 p. 0864 does not comply with fundamental requirements set forth in the State Bar Act and the TDRP as to presence of a quorum for deliberations and presence of a quorum at the time of voting. A court reporter must be present for all hearings and announcement of an oral rendition. There was no oral rendition, no hearing was held to announce the decisions of Evidentiary Panel 4-6. Thus, the Evidentiary Hearing Report CR 2 p. 0864 meets the criteria for a rendition as stated in *Comet Aluminum Co. v. Dibrell* 450 S. W. 2d 56 (Tex. 1970) and *Escobar v. Escobar*. 711 S.W.2d 56 (Tex. 1986)

If a trial court does not analyze or apply the law correctly it commits abuse of discretion. *Mitchell Energy Corp. v. Ashworth* 943 S.W. 2d 436, 437 (Texas 1997). State Bar District 4 Grievance Committee and Evidentiary Panel 4-6 have clearly abused discretion. *Walker v. Packer*. 827 S.W. 2d 833, 843 (Tex. 1992) Appellant is entitled to have the Judgment of June 18, 2013 declared void as it is based on a rendition that is void on its face, entered in total disregard of the applicable law, entered without due process, entered in disregard even of the terms of the rendition as written, disregard of the instructions from Mr. Riley and clearly abuses discretion.

State Bar Act is quite specific about jurisdiction to disbar; an Evidentiary Panel does not have jurisdiction to disbar “unless” the respondent concurs. Appellant/Respondent was given no notice of a question of disbarment, has not concurred and does not concur. In the rendition CR 2, p. 0864 Evidentiary Panel 4-6 has attempted to claim that authority and whoever prepared the judgment of June 18, 2013 not only included disbarment but additional provisions that are not shown in the defective rendition and fails to show findings of fact to support the conclusions of law. APA and TRDP

The Evidentiary Hearing Report CR 2. P. 0864 is the rendition. In the absence of an oral rendition, the Evidentiary Hearing Report is the only source of information available to the Office of Chief Disciplinary Counsel for purposes of complying with the instruction in the Evidentiary Hearing Report to prepare a judgment in accordance with the terms of the Evidentiary Hearing Report. “The first words spoken or written by a judge are the rendition” *Comet Aluminum Co. Id.* A judicial error is an error which occurs in the rendering as opposed to the entering of a judgment *Escobar Id.* citing *Comet, Id.* 450 APP When deciding whether a correction is of a judicial or a clerical error, we look to the judgment actually rendered, not the judgment that should or might have been rendered. *Escobar, Id* citing *Coleman v. Zapp* 151 S.W. 1040 (Tex. 1912)

State Bar Act section 81.072 authorizes and mandates the Supreme Court of Texas to establish procedures in addition to those in section 81.072. Section 81.072 (j) defines a quorum for panels in Evidentiary Proceedings; a minimum of 3 members, at least 1 public member for each attorney member. 81.072 (k) provides that a member of a panel may vote only if the member is present at the hearing at which the vote is taken. 81.072 stipulates that members of

Grievance Committees must be appointed in "strict accordance" with the rules promulgated by the Supreme Court of Texas; i.e. TRDP

TRDP provide specific provisions for Grievance Committees which include an annual organizational meeting, duties of a Grievance Committee Chair with regard to conducting organizational meetings, elections and appointments of Grievance Committee members to Evidentiary Panels.

State Bar Act, Article II Section 14 provides that all proceedings of the State Bar, the State Bar Board, "...and or all other committees and sections shall be governed by the most recent edition of Roberts Rules of Order, Newly Revised."

The State Bar Act states that Commission is a "committee of the State Bar." Manuals Part IV specifically provide that Roberts Rules apply to all meetings of all committees, that there must be notices of meetings, with agendas, minutes of meetings etc. Respondent sought discovery of records of State Bar District 4 Grievance Committee CR 1, 2 Organizational Meetings including dates, attendees, minutes etc. The specific requirements for such records is stated in the Manuals section 4. Section 6 of the Manuals specifically brings the Grievance Committees within the requirements for all State Bar committees. Evidentiary Panels 4C (4-3) and 4-6 are the 2 District 4 Evidentiary panels involved in Evidentiary Proceeding H0051132998. Appellant has challenged the compliance by District 4 with the provisions of the State Bar Act and TRDP.

The Grievance Committee and Panel 4-6 seem to have confused the confidentiality/privilege of the "Commission;" the body delineated in the State Bar Act and the

Grievance Committees. Respondent did not request anything that would be within the stated term of confidentiality/privilege of the Commission described in the State Bar Act.

Respondent repeatedly asserts that TBOC Chapters 22 and 23, apply to the State Bar which is a “public corporation.” State Bar Act. Chapter 23 describes special purpose corporations or those created by Special Statute, which is reflected in the State Bar Act. Since the State Bar is nonprofit, it is governed by TBOC Chapter 22.

TRCP 53 and 54 apply to the State Bar. Respondent challenged the pleadings of Commission as to sufficiency within TRCP which apply to all pleadings TRDP and TRCP 53 and 54 which apply to the State Bar, Commission a committee of the State Bar. Respondent specifically sought to have Commission comply with the conditions precedent as provided in TRCP 53 and 54.

For members of a State Bar Grievance Committee assigned to an Evidentiary Panel to convene as a tribunal for purposes of adjudicating in Evidentiary Proceedings, the State Bar Act provisions and the TRDP provisions must be followed. Manual specifically states that PIA applies.

Commission pleadings are not sufficient to support a judgment. TRCP 301 requires that Petitioner must both plead and prove the necessary elements in order to be entitled to a judgment. Commission pleadings do not allege facts with sufficient certainty to inform Respondent of the claims. Commission alleges violations of TDRPC 3.01 and 3.02)but provides no facts that support or even purport to support the allegations. The allegations present conclusions only.

In the course of the Evidentiary Hearing, Commission submitted evidence improperly admitted by judicial notice RR EH p. 14 et seq over Respondent's objection, without compliance with an opportunity for Respondent to complete her objections. Further, there was nothing offered or admitted to demonstrate the relevance of the documents which, in fact, are not relevant. That a document is a public record does not automatically establish relevancy for all purposes. No predicate for relevancy was stated, no witness identified the document, no testimony was offered as to any of the documents and Respondent had no opportunity to challenge whatever Commission might have thought the documents established with regard to the issues in Evidentiary Proceeding H0051132998.

There was no evidence offered by Commission with regard to conditions precedent, subject matter jurisdiction, facts necessary to inform Appellant of anything whatsoever with regard to Appellant's "reasonable beliefs" as required by the terms of TRCP and TRDP.

Counsel for Commission not even attempt to prove "subject matter jurisdiction" perhaps believing that proof of "In personam jurisdiction" includes subject matter juris. RR EH p. 11 Proof of "subject matter jurisdiction" is a prerequisite to empower a tribunal to determine facts, adjudicate issues and grant recovery. A judgment that is not supported by proof of subject matter jurisdiction is void. *Dubai Petroleum, Id, Metropolitan Transit, Id*

Inquiry for a judgment nunc pro tunc proceeding is what judgment was rendered, not what judgment should have been rendered. *Jenkins v. Jenkins* 16 S.W.3d 473 at 482 (Tex. App. – El Paso 2000) A proceeding under motion of Judgment Nunc Pro Tunc has as its only purpose to speak truly the judgment as rendered *Scott v. Scott* 408 S.W. 2d 136. Judgment is rendered when

the trial court officially announces its decision in open court or by written memo filed with the clerk *Cook v. Cook* 243 S.W.3d 800 (Tex. App.- Ft. Worth 2007)

The Judgment signed and filed June 18, 2013 does not conform to the ruling/rendition. Neither the Evidentiary Hearing Report/rendition filed June 12, 2013 nor the proposed Judgment signed June 18, 2013 was served on Respondent in accordance with TRCP 21 and APA Section 2001.142 Notification of Decisions and Orders Respondent's opportunity to object to entry of the Judgment of June 18, 2013 before it was signed and filed was precluded. CR Vol. 2 p. 0438 RR, M/V/S August 14, p. 18 Exhibit C does not show a mailing or other delivery to Respondent of the Evidentiary Hearing Report nor does Exhibit C indicate mailing of a proposed judgment to Respondent, also required by TRCP 21 and APA 2001.142

The errors in the rendition i.e. absence of information as to both elements necessary to show a quorum of panel members present for deliberations and voting TRDP 2.07 APP , assessment of disbarment despite the specific provisions of State Bar Act section 81.078 are sufficient to establish judicial error and a void judgment.

It is particularly difficult to establish by references to CR or RR that which did **not** occur but that is the pattern throughout EP H0051132998 which is clearly demonstrated by the errors and omissions with regard to the disregard of procedural requirements and the defects in the Evidentiary Hearing Report, the significant and numerous discrepancies between the rendition and the judgment, the denial of the Motion to Modify/Stay/Vacate despite the clear evidence supporting the Motion and the absence of any other evidence and the procedural disregard as to the Motion for Judgment Nunc Pro Tunc.

The Evidentiary Panel Proceedings Procedural Guide, May 2012 p. 12 Panel Chair Tip points out that an evidentiary exhibit is not available for consideration unless and until it is offered into evidence. The denial of Respondent's Motion for Judgment Nunc Pro Tunc without the requested hearing precluded Respondent's opportunity to offer evidence to support the motion specifically the Judgment signed and entered June 18, 2013. In the absence of any evidence the Panel had no basis for any decision with regard to the Motion for Judgment Nunc Pro Tunc and the decision denying Nunc Pro Tunc is void for lack of jurisdiction of the panel to make such a determination.

TRDP and the State Bar Board Policy Manual list the authority of the Panel Chair with regard to admitting evidence, scheduling hearings. There are no provisions that a Motion may be decided on submission. The Motion for Judgment Nunc Pro Tunc is dispositive in that the correction of the clerical errors will produce a void judgment leading to dismissal of EP H0051132998; the entry of the Judgment with the clerical errors is also dispositive.

Based on the evidence and analysis of the applicable law, the Evidentiary Panel could reach only one decision; the Judgment of June 18, 2013 is void and should be vacated. Further, correction of the errors in the Judgment of June 18, 2013 by Nunc Pro Tunc would also produce only one result, a void judgment.

TRDP 2.17 P Decision requires that a finding of professional misconduct include findings of fact, conclusions of law and the Sanctions to be imposed. There are no findings of fact in the Evidentiary Hearing Report. Further APA section 2001.142 requires that findings of fact be supported by evidence. The Judgment asserts conclusions of law without a showing of findings of fact based on evidence.

The rendition of June 12, 2013 reveals judicial error on its face including the absence of the necessary elements to show presence of a quorum for deliberations and the decision, absence of findings of fact and conclusions of law, disbarment in disregard of the State Bar Act section 81.078

The Judgment of June 18, 2013 is void; a void judgment is a nullity. Any court can declare a void judgment void. Black's Law Dictionary, 9th Edition "Void"

The numerous clerical errors and provisions in the Judgment of June 18, 2013 that are completely unrelated to the Evidentiary Hearing Report of June 12, 2013 suggest that the document was prepared from a form in a computer data base that is inappropriate for purposes of following the instructions to the Office of Chief Disciplinary Counsel with regard to the Evidentiary Hearing Report of June 12, 2013. Use of an incorrect form is a clerical/ministerial error, clerical/ministerial errors are correctable by Nunc Pro Tunc. TRCP 316

The clerical errors in the judgment signed June 18, 2013 were not the result of judicial reasoning or determination. The cause of the mistake is not controlling in determining whether error in judgment is clerical or judicial *Lone Star Cement Corp v. Fair* 467 S.W.2d 402(Tex. 1971) but reliance on an incorrect form could result in such blatant discrepancies between the rendition and the judgment;

The alternative explanation is that one or more individuals made decisions about what to include in conscious, knowing disregard of the terms of the rendition.

There is no statute of limitations with regard to correction of clerical errors. The only question is whether the error is clerical or judicial. A judicial error is one that involves judicial

reasoning and/or determination. An additional purpose and benefit of nunc pro tunc can be to avoid delay and the expense of appeal. The judgment as signed and entered includes clerical errors that provide Commission with relief to which it is not entitled in law or in equity.

There is no fact question as to what the rendition of June 12, 2013 shows and does not show. It shows that Mr. Riley signed and filed the Evidentiary Hearing Report on June 12, 2013. It shows the typewritten information of the Evidentiary Proceeding Number, the names of the parties, names of all Evidentiary Panel 4-6 panel members identifying those who are attorneys and those who are public members. It shows handwritten entries with conclusions of law unsupported by findings of fact. Immediately above Mr. Riley's signature, it shows the request that the Office of Chief Disciplinary Counsel prepare a judgment in accordance with the provisions in the Evidentiary Hearing Report.

It does not show that the panel convened, deliberated or voted. It does not show which, if any, panel members were present to deliberate or to vote. The transcript from the Evidentiary Hearing of June 12, 2013 shows "dismissal" at 4:46 p.m. RR Evidentiary Hearing p. 1. There is nothing to show that at the time of filing, anyone other than Mr. Riley had any knowledge of the contents of the Evidentiary Hearing Report, which is the rendition. It does not show the presence of a proper quorum as provided in the State Bar Act and TRDP.

Clerical errors are mistakes or omissions that prevent judgment entered from reflecting judgment rendered. *Operation Rescue-Nat'l Planned Parenthood, Inc.*, 937 S.W.2d 60 (Tex. App.- Houston, [14th Dist.] 1996).

TRCP 316 provides that clerical mistakes in the record of any judgment are correctable by nunc pro tunc. Either the differences in what the rendition provides and what is included in the Judgment filed June 18, 2013 are clerical errors or they are intentional attempts to disregard the instructions in the Evidentiary Hearing Report. The Judgment document appears to be based on a form from the computer files of the Houston Office of the State Bar. It does not show who prepared the actual document that was signed by Mr. Riley and filed June 18, 2013 as the Judgment.

If the errors were clerical, they are correctable by Nunc Pro Tunc. If they were intentional, there was abuse of discretion by Mr. Riley in signing the incorrect document. It is apparent from the record RR that even when provided with accurate analysis of legal standards supported by case law, as Chair of Evidentiary Panel 4-6 he did not meet his obligations as stated in the Oath of Office in the State Bar Act and the responsibilities set forth in the Guide. Nor did he comply with the applicable provisions in the Manual as the Chair of Evidentiary Panel 4-6.)

Throughout the record, at each juncture that would have allowed Appellant to establish the facts that are not in issue, opposing counsel interrupted objecting, the Chair sustained the objections while overruling Appellant's objections.

Case law provides that if there is, at any time, absence of a justiciable controversy, the matter becomes moot. Petitioner not only failed to allege sufficient facts to establish a justiciable controversy, the withdrawal on June 2, 2011 of the opinion issued by the 14th Court on February 24, 2011 rendered the grievance submitted by Mr. Fason moot. In his testimony of June 12, 2013, when confronted with the facts, Mr. Fason's responses do not eliminate the facts that

rendered the matter moot as of the withdrawal of the opinion of February 24, 2011. RR EH p.14 et seq.

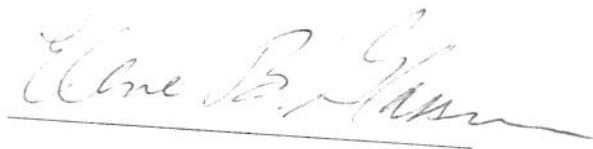
PRAYER

Wherefore, Premises Considered, Relator prays that BODA grant this Appeal from State Bar of Texas District 4 Grievance Committee Evidentiary Panel 4-6 in Evidentiary Proceeding H0051132998, find reversible error as to admitted evidence in the Evidentiary Hearing, specifically Exhibits 1 through 4, 9 and 10, find the Evidentiary Hearing Report/rendition of June 12, 2013 void, vacate or reverse the Judgment of June 18, 2013 and dismiss Evidentiary Proceeding H0051132998 or to correct the Judgment of June 18, 2013 as provided by nTRCP 316 nunc pro tunc to comply with the instructions in the Evidentiary Hearing Report of June 12, 2013 which will produce a void judgment and dismissal of Evidentiary Proceeding H0051132998 or that this matter be remanded for a new Evidentiary Hearing before a properly authorized tribunal.

Relator further prays that the Board of Disciplinary Appeals declare the rendition of June 12, 2013 void and the judgment of June 18, 2013 void and order Evidentiary Proceeding H0051132998 in all things dismissed.

Relator prays for all other relief to which she is entitled.

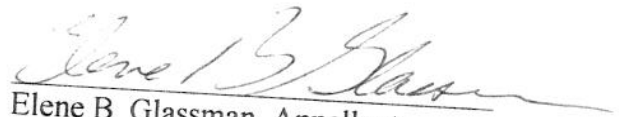
RESPECTFULLY SUBMITTED



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Tel. 713 523 6464
Email: ebglassman@gmail

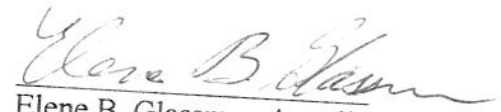
CERTIFICATE OF COMPLIANCE WITH APPELLATE RULE 52.3(j)

Elene B. Glassman, Relator hereby certifies that she has read this Appellant's Brief and concluded that every factual statement in it is supported by competent evidence included in the appendix or record, as required by Appellate Rule 52.3 (j)


Elene B. Glassman, Appellant

CERTIFICATE OF COMPLIANCE WITH APPELLATE RULE 9.4(i)

Elene B. Glassman, Appellant hereby certifies that this document contains ¹²¹⁰⁸~~12,132~~ words as indicated by the word-count function of the computer program used to prepare it and excluding the caption, identity of parties and counsel, statement regarding oral argument table of contents, index of authorities, statement of the case, issues presented, signature, proof of service, certification, certificate of compliance and appendix as provided by Appellate Rule 9.4 (i).

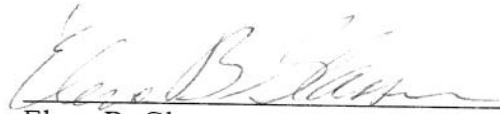

Elene B. Glassman, Appellant

BODA APPEAL 53021

CERTIFICATE OF SERVICE

I certify that on the 24th day of March, 2014 a true and correct copy of the foregoing Appellant's Brief in BODA Appeal 53021 was served on the Office of Chief Disciplinary Counsel electronically and by certified mail addressed to:

Ms. Cynthia Hamilton
Senior Appellate Counsel
State Bar Card No. 00790419
Office of the Chief Disciplinary Counsel
P.O. Box 12487
Austin, Texas 78711


Elene B. Glassman

APPENDIX

1. TDRP 1.06
2. TDRPC 3.01 and 3.02
3. First page, 14th Court Opinion of June 2, 2011
4. APA sec. 2001.060
5. State Bar Act sec. 81.011
6. Cover page Amended Brief of Appellant NO. 14-09-0522 CV with May 3, 2011 file date
7. State Bar Board Policy Manual, Part 6
8. Evidentiary Panel Proceedings Procedural Guide pgs. 12-13
9. Copy of electronic correspondence of April 14, 2012

1.05 Texas Disciplinary Rules of Professional Conduct: Nothing in these rules is to be construed, explicitly or implicitly, to amend or repeal in any way the Texas Disciplinary Rules of Professional Conduct.

1.06 Definitions:

- A. "Address" means the address provided by the attorney the subject of a Grievance as shown on the membership rolls maintained by the Clerk of the Supreme Court at the time of receipt of the Grievance by the Chief Disciplinary Counsel.
- B. "Board" means the Board of Directors of the State Bar of Texas.
- C. "Chief Disciplinary Counsel" means the person serving as Chief Disciplinary Counsel and any and all of his or her assistants.
- D. "Commission" means the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- E. "Committee" means any of the grievance committees within a single District.
- F. "Complainant" means the person, firm, corporation, or other entity, including the Chief Disciplinary Counsel, initiating a Complaint or Inquiry.
- G. "Complaint" means those written matters received by the Office of the Chief Disciplinary Counsel that, either on the face thereof or upon screening or preliminary investigation, allege Professional Misconduct or attorney Disability, or both, cognizable under these rules or the Texas Disciplinary Rules of Professional Conduct.
- H. "Director" means a member of the Board of Directors of the State Bar of Texas.
- I. "Disability" means any physical, mental, or emotional condition that, with or without a substantive rule violation, results in the attorney's inability to practice law, provide client services, complete contracts of employment, or otherwise carry out his or her professional responsibilities to clients, courts, the profession, or the public.
- J. "Disciplinary Action" means a proceeding brought by or against an attorney in a district court or any judicial proceeding covered by these rules other than an Evidentiary Hearing.
- K. "Disciplinary Petition" means a pleading that satisfies the requirements of Rule 3.01.
- L. "Disciplinary Proceedings" includes the processing of a Grievance, the investigation and processing of an Inquiry or Complaint, presentation of a Complaint before a Summary Disposition Panel, and the proceeding before an Evidentiary Panel.
- M. "District" means disciplinary district.

- N. "Evidentiary Hearing" means an adjudicatory proceeding before a panel of a grievance committee.
- O. "Evidentiary Panel" means a panel of the District Grievance Committee performing an adjudicatory function other than that of a Summary Disposition Panel with regard to a Disciplinary Proceeding pending before the District Grievance Committee of which the Evidentiary Panel is a subcommittee.
- P. "Evidentiary Petition" means a pleading that satisfies the requirements of Rule 2.17.
- Q. "General Counsel" means the General Counsel of the State Bar of Texas and any and all of his or her assistants.
- R. "Grievance" means a written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyer, or lawyer Disability, or both, received by the Office of the Chief Disciplinary Counsel.
- S. "Inquiry" means any written matter concerning attorney conduct received by the Office of the Chief Disciplinary Counsel that, even if true, does not allege Professional Misconduct or Disability.
- T. "Intentional Crime" means (1) any Serious Crime that requires proof of knowledge or intent as an essential element or (2) any crime involving misapplication of money or other property held as a fiduciary.
- U. "Just Cause" means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed, or suffers from a Disability that requires either suspension as an attorney licensed to practice law in the State of Texas or probation.
- V. "Professional Misconduct" includes:
1. Acts or omissions by an attorney, individually or in concert with another person or persons, that violate one or more of the Texas Disciplinary Rules of Professional Conduct.
 2. Attorney conduct that occurs in another state or in the District of Columbia and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.
 3. Violation of any disciplinary or disability order or judgment.

- N. "Evidentiary Hearing" means an adjudicatory proceeding before a panel of a grievance committee.
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- T. "Intentional Crime" means (1) any Serious Crime that requires proof of knowledge or intent as an essential element or (2) any crime involving misapplication of money or other property held as a fiduciary.
- U. "Just Cause" means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed, or suffers from a Disability that requires either suspension as an attorney licensed to practice law in the State of Texas or probation.
- V. "Professional Misconduct" includes:
1. Acts or omissions by an attorney, individually or in concert with another person or persons, that violate one or more of the Texas Disciplinary Rules of Professional Conduct.
 2. Attorney conduct that occurs in another state or in the District of Columbia and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.
 3. Violation of any disciplinary or disability order or judgment.

Texas Disciplinary Rules of Professional Conduct

III: ADVOCATE

3.01 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or contrvert and issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous

3.02 Minimizing the Burdens and Delays of Litigation

In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter

Motion for Rehearing Denied; Motion for Rehearing En Banc Denied As Moot; Memorandum Opinion of February 24, 2011 Withdrawn; Affirmed and En Banc Opinion filed June 2, 2011.

In The
Fourteenth Court of Appeals

NO. 14-09-00522-CV

ELENE B. GLASSMAN, Appellant

V.

MERYL B. GOODFRIEND, Appellee

On Appeal from Probate Court No. 1
Harris County, Texas
Trial Court Cause No. 350,750-403



EN BANC OPINION

Appellant Elene B. Glassman's motion for panel rehearing is denied, and her motion for rehearing en banc is denied as moot. On its own motion, this court grants en banc rehearing to secure uniformity in the court's precedent regarding the legal standard for imposing sanctions under Texas Rule of Appellate Procedure 45.

Glassman appeals from a final order in garnishment obtained by appellee, Meryl B. Goodfriend, to satisfy an underlying judgment. Glassman, an attorney, appears *pro se* in this appeal. Goodfriend contends this appeal is frivolous and requests sanctions. We affirm the final order in garnishment and assess \$2,500 in sanctions against Glassman.

BACKGROUND

Glassman and Goodfriend are sisters. Their parents established an inter vivos trust with Glassman appointed as trustee. Under its provisions, the trust was to be discharged and the assets distributed equally to Glassman and Goodfriend upon the last surviving parent's death. In 2004 (after the last parent died), Goodfriend filed a petition to compel an accounting, which she later amended to also compel distribution of trust assets, alleging Glassman had failed to comply with

Sec. 2001.060. RECORD. The record in a contested case includes:

- (1) each pleading, motion, and intermediate ruling;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on them;
- (5) proposed findings and exceptions;
- (6) each decision, opinion, or report by the officer presiding at the hearing; and
- (7) all staff memoranda or data submitted to or considered by the hearing officer or members of the agency who are involved in making the decision.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

State Bar Act

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 81.011. GENERAL POWERS. (a) The state bar is a public corporation and an administrative agency of the judicial department of government.

(b) This chapter is in aid of the judicial department's powers under the constitution to regulate the practice of law, and not to the exclusion of those powers.

(c) The Supreme Court of Texas, on behalf of the judicial department, shall exercise administrative control over the state bar under this chapter.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 3.01, eff. Sept. 1, 1987.

NO. 14-09-0522-CV

In the Fourteenth District Court of Appeals
Houston, Texas

Elene B. Glassman,
Appellant

v.

Meryl B. Goodfriend,
Appellee

ON APPEAL FROM PROBATE COURT 1
HARRIS COUNTY, TEXAS

AMENDED BRIEF OF APPELLANT

Elene B. Glassman, pro se
State Bar No. 08016000
1715 West Main, #1
Houston, Texas 77098
Telephone: (713) 523 6464

Oral Argument Requested

Part VI. DISCIPLINARY SYSTEM

6.01 Policy, Purpose and Application

6.01.01 Purposes. The purposes of the State Bar grievance system are as follows:

(A) to discipline attorneys who have committed professional misconduct as defined by the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure;

(B) to clear the name of an attorney who has not committed professional misconduct; and

(C) to protect the public.

6.01.02 Application. Insofar as any of the provisions of this Part VI. of the Policy Manual may conflict with the Texas Disciplinary Rules of Professional Conduct or the Texas Disciplinary Rules of Procedure, such Rules shall apply. Terms used herein shall have the same meaning ascribed to them as in the Texas Rules of Disciplinary Procedure, unless a different meaning is apparent from the context.

6.02 Commission for Lawyer Discipline Liaisons

The chair of the Discipline/Client Attorney Assistance Committee shall serve as the liaison to the Commission on behalf of the Board.

6.03 Chief Disciplinary Counsel

6.03.01 Selection and Compensation. The Commission shall select an attorney to act as Chief Disciplinary Counsel. Subject to §9.01 of this Policy Manual, the compensation of the Chief Disciplinary counsel shall be authorized and approved by the Commission.

6.03.02 Administration of Disciplinary System. The Office of the Chief Disciplinary Counsel shall administer the attorney discipline and disability system in accordance with the Texas Rules of Disciplinary Procedure and as directed by the Commission.

6.03.03 Filing of Complaints. Allegations of professional misconduct against any member of the State Bar shall be filed with the Office of the Chief Disciplinary Counsel.

6.03.04 Ethics Opinions. The Chief Disciplinary Counsel shall maintain as a service to the members of the Bar, a toll-free Attorney Ethics Helpline, operated from 8:00 a.m. to 5:00 p.m., Monday through Friday. The Ethics Helpline is designed to assist members of the State Bar who have questions about their ethical obligations to clients, courts, and the public under the Texas Disciplinary Rules of Professional Conduct. The advice shall be given

orally to members of the State Bar, but such advice shall not be binding on grievance committees or the State Bar. No advice may be given to a member of the State Bar if the advice relates to a matter that is pending in the disciplinary system. No opinions on ethical or unauthorized practice of law matters shall be given to non-members of the State Bar of Texas.

6.03.05 Grievance Committee Training. The Office of Chief Disciplinary Counsel shall conduct annual training sessions for all grievance committee members. The training shall include, among other topics, structure of the attorney discipline system, grievance procedure, and committee organization, duties and authority with appropriate references to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. In addition, members shall be provided with a procedural guide on conducting evidentiary hearings.

6.03.06 Grievances Against Attorneys in the Chief Disciplinary Counsel Staff. If a grievance is filed against any attorney member of the staff of the Chief Disciplinary Counsel, the following procedure shall apply:

(A) The classification of the grievance will be determined in the same manner as any other grievance.

(B) If the grievance is classified as a complaint, or the Board of Disciplinary Appeals reverses the classification of the grievance as an inquiry, the matter will be sent to a regional office outside the region where the attorney practices for investigation and determination of Just Cause.

(C) If no Just Cause is determined, a transfer may be requested from the Board of Disciplinary Appeals for consideration of the matter by a summary disposition panel outside the region where the attorney practices.

(D) If Just Cause is determined, and the attorney does not elect district court, a transfer may be requested from the Board of Disciplinary Appeals for the case to be filed with an Evidentiary Panel outside the region where the attorney practices. The Commission shall appoint a Special Assistant Disciplinary Counsel to handle the case.

6.03.07 Lawsuits Related to Disciplinary Matters. Notwithstanding any other provisions in the Policy Manual, the Chief Disciplinary Counsel shall be counsel for the State Bar and such related entities and individuals in lawsuits arising out of or pertaining to a disciplinary matter. In such cases, the Chief Disciplinary Counsel shall keep the Executive Director fully informed of all matters relating to such lawsuits, and shall seek the advice of the Executive Director relating to the retention of outside counsel.

6.04 Grievance Committees

6.04.01 General. All grievance committees shall be duly organized and shall carry out the duties of office in accordance with the Texas Rules of Disciplinary Procedure and this Policy Manual.

6.04.02 Nomination and Appointment. Each Elected Director of the State Bar shall nominate, and the President of the State Bar shall appoint, the members of the grievance committees within the District that coincides with the Director's district. The Elected Director shall certify that he or she has explained the importance of the position to each nominee, and that the nominee has agreed in writing to participate actively in the work of the committee and fulfill the duties of such office. If an Elected Director fails to make such nominations timely, the President shall proceed to make the required appointments without such recommendations. The appointment of grievance committee members does not require ratification by the Board.

(A) Diversity. It is in the best interest of the public and the lawyers of Texas for the racial, ethnic, and gender makeup of the district grievance committees to fairly represent as closely as reasonably practicable, the racial, ethnic, and gender makeup of the districts they serve. Directors are encouraged to make their district grievance committee appointments so as to continue the fulfillment of this goal and to ensure that lawyer members reflect the various sizes of practice groups.

(B) Lawyer Members. In making recommendations for appointments of lawyer members to grievance committees, each Director shall recommend for appointment only those persons who are licensed to practice law in the State of Texas and members in good standing of the State Bar and who have not been convicted of a misdemeanor involving theft, a felony, or a crime involving moral turpitude. No person may serve as a grievance committee member while he or she is a member of the Board or an active judge subject to Canon 4H of the Code of Judicial Conduct.

(C) Public Members. In making recommendations for appointments of public members to grievance committees each Director shall recommend for appointment only those persons representative of the general public who are not licensed to practice law and who do not have other than as consumers a financial interest in the practice of law, and who have not been convicted of a misdemeanor involving theft, a felony, or a crime involving moral turpitude. No person may serve as a grievance committee member while he or she is a member of the Board.

(D) Financial Interest. For purposes of disqualification of a person for recommendation for appointment as a public member to a grievance committee, the phrase "financial interest in the practice of law" shall include:

(1) the spouse of a lawyer;

(2) any employee of a lawyer, private law firm, or professional legal corporation;

(3) any person who acquires the majority of his or her annual gross income from or through a lawyer, law firm, professional legal corporation by way of professional or consultant fees; and

(4) the spouse of any person listed in (2) and (3) above.

(E) Background Check. Each person seeking to serve as a grievance committee member shall, prior to nomination, submit to the Chief Disciplinary Counsel a written consent to the performance of a criminal background check as a prerequisite to nomination.

6.04.03 Defense of Grievance Committee Members in Lawsuits Related to Their Service. The State Bar shall defend, at the expense of the State Bar, the present and former members of its district grievance committees in civil litigation which has been initiated as the result of the member's committee service. The State Bar, by undertaking the defense of a committee member, cannot and does not assume any obligation to satisfy a judgment rendered against the member or to contribute money toward any settlement agreed upon by the member or any of the parties to the lawsuit. In defending grievance committee members in lawsuits related to their service, the following procedures apply:

(A) Grievance Committee Member to Promptly Notify State Bar. Promptly upon receipt of a citation and petition that alleges conduct on the part of a present or former district grievance committee member as the basis for a claim, the member shall forward a copy of the petition and citation to the Chief Disciplinary Counsel's office in Austin, Texas, together with a request for representation in the matter in question.

(B) Review. Upon receipt of a copy of a request for representation, the Chief Disciplinary Counsel shall:

(1) send a copy of the request to the Director or Directors in whose district the grievance committee member serves or served, the Chair of the Commission, the President, the Executive Director, the Chair, and the Chair of the Discipline/Client Attorney Assistance Program Committee; and

(2) review the allegations made therein and both the Chief Disciplinary Counsel and the Executive Director shall make an initial determination as to whether or not the allegations pertaining to the committee member appear to be within the course and scope of the committee member's duties.

(C) Determination. If the Chief Disciplinary Counsel and

the Executive Director conclude that the allegations relate to conduct solely within the course and scope of the member's duties, the Chief Disciplinary Counsel shall offer to defend such allegations, and shall notify the member of this determination.

(D) Notification of Partial Inability to Defend. If the Chief Disciplinary Counsel and the Executive Director conclude that some, but not all, of the allegations made in the petition relate to conduct within the course and scope of the member's duties, the Chief Disciplinary Counsel shall offer to defend such allegations and shall notify the member of the Bar's inability to defend the case as a whole.

(E) Notification of Total Inability to Defend. If the Chief Disciplinary Counsel and the Executive Director conclude that none of the allegations relate to conduct within the course and scope of the member's duties, the Chief Disciplinary Counsel shall promptly notify the committee member that the State Bar is prohibited from defending any of the allegations.

6.04.04 Decline of Defense by Member. If the Chief Disciplinary Counsel offers a defense, and the committee member declines such representation, the committee member shall be solely responsible for securing legal representation in the matter and the cost thereof.

6.04.05 Notification to Member. In the notification to the member, the Chief Disciplinary Counsel shall also advise the member of the importance of notifying his or her insurance carrier(s) of the claims being made, and of the need to seek legal representation with respect to those allegations which the State Bar is prohibited from defending.

6.04.06 Notification of Bar Leadership. The Chief Disciplinary Counsel shall also send a copy of the determination to the persons listed in Subsection 6.04.03(B) above.

6.04.07 Review of Determination. If the Director or Directors in whose district the grievance committee member serves or served, the President, the Chair, or the chair of the Discipline/Client Attorney Assistance Program Committee disagrees with the determination made by the Chief Disciplinary Counsel and the Executive Director as to the scope of the defense offered, then any of them may request a review thereof by the Executive Committee or by the Board. The Executive Committee or the Board may, after consultation with the Executive Director and Chief Disciplinary Counsel, affirm, reverse or revise such determination.

6.04.08 New Allegations in the Course of Lawsuit. When allegations in a lawsuit against a committee member are changed during the course of litigation, the Chief Disciplinary Counsel and the Executive Director

shall follow the same procedure for review, determination and notification as set out above, and the decision shall be reviewable by the Executive Committee or Board in the same manner as set forth above.

6.04.09 Authority of Chair of Committees and Panels.

The chair of a grievance committee, the chair of a panel thereof, or anyone designated to act as a panel chair in the panel chair's absence by the chair of the committee or a majority of the panel members in attendance at the hearing, may conduct the evidentiary panel proceeding or summary disposition docket. In an evidentiary panel proceeding, the presiding panel chair shall have authority, consistent with the Texas Rules of Disciplinary Procedure, to:

(A) administer oaths and affirmations;

(B) make rulings upon motions and other requests;

(C) rule upon offers of proof, receive relevant evidence, and examine witnesses;

(D) regulate the course of the hearing and ensure that all members have taken the required oath;

(E) hold or provide for the holding of conferences to settle or simplify the issues;

(F) receive and consider oral or written arguments on facts or law;

(G) adopt procedures consistent with the Texas Rules of Disciplinary Procedure and modify them from time to time as occasion requires for the orderly disposition of proceedings; and

(H) perform acts and take measures, consistent with the Texas Rules of Disciplinary Procedure, as necessary to promote the efficient and timely conduct of the hearing.

6.04.10 Restrictions. Grievance committee members shall not:

(A) give opinions on ethical or unauthorized practice of law matters while serving on the committee, other than through the member's role on the committee;

(B) represent any Complainant or Respondent in any disciplinary matter pending or filed during the member's term of service on the grievance committee;

(C) testify in any capacity in connection with any disciplinary matter pending or filed during the member's term of service on the grievance committee; or

(D) counsel any Complainant or Respondent or any attorney representing any Complainant or Respondent in

any disciplinary matter pending or filed during the member's term of service on the grievance committee.

6.04.11 Removal of Grievance Committee Members.

The President may remove, for cause, grievance committee members, with the concurrence of the Director or the majority of the Directors in whose District the grievance committee member serves. The President shall remove from a grievance committee any member who during his or her term of service has been convicted of a misdemeanor involving theft, a felony, or a crime involving moral turpitude. The Chief Disciplinary Counsel shall keep the Commission, the President, and the appropriate Director(s) informed as to any problems with either attendance or performance of grievance committee members.

"Cause" for the purpose of recommending the removal of a grievance committee member shall include:

- (A) when a member has two absences from meetings of the grievance committee or panel thereof within any twelve-month period;
- (B) when a member of a committee neglects or breaches the duties for that office;
- (C) when a sanction has been imposed on a lawyer committee member during the term of service;
- (D) when it is learned that a member made a material misrepresentation regarding his or her eligibility to serve;
- (E) when it is learned that a member is or has become ineligible to serve;
- (F) when a member is charged with or indicted for a misdemeanor involving theft, a felony, or a crime involving moral turpitude; or
- (G) when a member has become incapacitated or is unable to fulfill the duties of committee membership.

6.04.12 Grievances Against Grievance Committee Members.

If a grievance is filed against any grievance committee member, the following procedure shall apply:

- (A) The classification of the grievance will be determined in the same manner as any other grievance. If the grievance is classified as an inquiry and dismissed, the committee member will continue to serve.
- (B) If the grievance is classified as a complaint, or the Board of Disciplinary Appeals reverses the classification of the grievance as an inquiry, the matter will be sent to a regional office outside the region where the committee member serves for investigation and determination of Just Cause. The committee member shall be eligible to continue to serve during the investigation of the grievance.

(C) If no Just Cause is determined, a transfer may be requested from the Board of Disciplinary Appeals for consideration of the matter by a summary disposition panel outside the region where the committee member serves.

(D) If Just Cause is determined, and the committee member does not elect district court, a transfer may be requested from the Board of Disciplinary Appeals for the case to be filed with an Evidentiary Panel outside the region where the committee member serves. The committee member shall be immediately placed on leave from further service until resolution of the complaint.

(E) If the complaint is dismissed at any stage, the member will automatically resume committee service for the remainder of the term.

(F) If any sanction or a referral to the Grievance Referral Program is agreed to or imposed, then the member may be removed for cause.

6.04.13 Reporting Misconduct. Each grievance committee member has the duty to forward immediately to the Chief Disciplinary Counsel any information concerning an attorney having been charged with, indicted for, or convicted of barratry, any felony involving moral turpitude, any misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property, or otherwise subject to the compulsory discipline procedures of the Texas Rules of Disciplinary Procedure.

6.05 Disqualifications

6.05.01 Disqualification of Officer or Board Member as Counsel. No Officer or member of the Board shall counsel or represent any Complainant or Respondent in any disciplinary proceeding or action, pending or filed during the term of the affected person's service as an Officer or member of the Board.

6.05.02 Disqualification of Committee Members. A grievance committee member is disqualified to sit as a panel member for either a summary disposition hearing or an evidentiary hearing if a district judge would, under similar circumstances, be disqualified. Further, a grievance committee member may be recused if the Respondent or Complainant is represented by a member, associate, employee, or shareholder of the law firm or professional corporation of the Director who nominated the grievance committee member.

6.06 Notice of Reinstatement Hearings

Texas Rules of Disciplinary Procedure §11.04 requires that notice of a petition for reinstatement be published in the *Texas Bar Journal*. The notice is a condition precedent to the hearing of an application for reinstatement.

- (A) The notice shall be published not less than thirty days

- ◆ Complainant may have counsel present, but may not present evidence, question witnesses, or present argument to the Panel. (TRDP 2.17J; 2.17L)
- ◆ **EVIDENTIARY RULINGS.** The Panel Chair makes all rulings on the admissibility of evidence. The Panel Chair shall admit "all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the Texas Rules of Evidence." (TRDP 2.17L) "[N]o ruling upon the evidence shall be a basis for reversal solely because it fails to strictly comply with the Texas Rules of Evidence." (TRDP 2.17L)

PANEL CHAIR TIP

It is important to ensure that evidentiary hearings encompass the same procedural formality as a district court trial. It may be beneficial, prior to the beginning of each hearing, to remind the other panel members of the applicability of the rules of evidence and specifically how that governs their consideration of certain evidence.

E.g., an evidentiary exhibit is not available for consideration unless and until it is offered into evidence; statements made during opening statements or closing arguments are not "evidence" that can be considered in a panel member's decision-making.

Note: Handling of Exhibits. At the end of the hearing, all original exhibits should be given to the court reporter for safekeeping.

- ◆ **ALTERNATIVE DISPUTE RESOLUTION.** Upon motion or otherwise, the Evidentiary Panel Chair may order the Commission and the Respondent to participate in mandatory alternative dispute resolution as provided by Chapter 154 of the Civil Practice and Remedies Code or as otherwise provided by law when deemed appropriate. (TRDP 2.17K)

DECISION. After conducting the Evidentiary Hearing, the Evidentiary Panel must issue judgment **within 30 days**. The Evidentiary Panel may:

- find Professional Misconduct and impose sanctions;
- find no Professional Misconduct and dismiss the case; or
- find that the Respondent suffers from a disability and forward the finding to the Board of Disciplinary Appeals. (TRDP 2.17P)

Note: If the panel finds Professional Misconduct, the judgment must include findings of fact, conclusions of law, and the sanction to be imposed. See "Imposition of Sanctions" (p. 13).

Typically, after deliberating in private, the Panel Chair will announce the panel's decision on the record. The Panel Chair will be provided a Hearing Report to complete which includes the panel's findings of misconduct and sanction imposed. (See p. 26).

If misconduct is found, the judgment will be drafted by the Commission's lawyer and sent to the panel with a copy to the Respondent. The Panel Chair signs the judgment.

If the panel finds no Professional Misconduct, the Commission's lawyer will draft a judgment of dismissal which is sent to the panel with a copy to the Respondent. The Panel Chair signs the judgment of dismissal.

PANEL CHAIR TIP

It is the responsibility of the Panel Chair to direct the panel's deliberations so that decisions are made timely, the hearing report is prepared promptly, and a judgment is entered within 30 days of the panel's decision.

DEFAULT. If Respondent fails to answer timely, the Commission will seek a default. The Commission will file a motion for default, and the matter will be set for a default hearing. (TRDP 2.17C)

Upon a showing of default, all facts alleged in the Evidentiary Petition are taken as true and Professional Misconduct found. A sanctions hearing is held to determine the appropriate sanction. This hearing can be held immediately or at a later date. (TRDP 2.17C)

IMPOSITION OF SANCTIONS.

BIFURCATED HEARING. The Evidentiary Panel may, in its discretion, conduct a separate hearing on sanctions after Professional Misconduct is found. (TRDP 2.18)

In determining the appropriate sanctions, the Evidentiary Panel shall consider:

- Nature and degree of the Professional Misconduct
- Seriousness of and circumstances surrounding the Professional Misconduct
- Loss or damage to client
- Damage to the profession
- Assurance that those who seek legal services in the future will be insulated from the type of Professional Misconduct found
- Profit to the attorney
- Avoidance of repetition
- Deterrent effect on others
- Maintenance of respect for the legal profession
- Conduct of Respondent during the course of the Disciplinary Proceeding
- Respondent's disciplinary history, including any private reprimands

GM il

Elene Glassman <ebglassman@gmail.com>

H0051132988 CLD v. Glassman

4 messages

Elene Glassman <ebglassman@gmail.com>
To: Tim Bersch <tbersch@texasbar.com>

Tue, Apr 24, 2012 at 3:40 PM

Mr. Bersch,

Thank you for the email.

I still do not know my travel plans. The trip is a gift from my children. My guess is that they are looking for a special fare; those often require travelling mid week and staying 6 or 7 days so it is likely that I will be leaving June 6th, maybe June 5th.

Have you checked on a July hearing date? I have not yet actually requested a hearing but I will.

While I consider your suggestion about August, I would appreciate more information about the internal procedures of the Grievance Committee. I suppose I can contact the State Bar for that information but if you have it, perhaps you will allow me to see it and make copies of what I find relevant.

In court, matters of recusal are not heard in the court in which the matter is pending. How does that work in this situation? Who hears recusals? I did not call the "Objections" requests for recusal except as to Ms. Wylie; further amendment may be the way to do this.

CLD discovery in this matter is due tomorrow. I lost several days trying a different medication prescribed by my cardiologist which caused many difficulties. The confusion and disorientation is subsiding; I would appreciate another extension of time.

I am also preparing a request for discovery from CLD.

If necessary, I will submit a motion for the extension. Please let me know if that is necessary.

Elene Glassman

Tim Bersch <Tim.Bersch@texasbar.com>
To: Elene Glassman <ebglassman@gmail.com>

Tue, Apr 24, 2012 at 6:12 PM

Ms. Glassman,

July is problematic for a hearing because the Panel 4C's normal hearing date is the first Wednesday of the month, and the first Wednesday of July is July 4, so no hearing will be held. It might be possible to schedule a hearing on another day that month, but it is always difficult to coordinate the schedules of all concerned. That is another reason that I think it is better to schedule the hearing on the Challenge to Jurisdiction in August or September.

Again, I urge you not to request a hearing on your Objection to Assignment of Evidentiary Panel. By the time the hearing can be held, the issue will be moot.

As far as the standards for disqualification or recusal of a panel member are concerned, I refer you to Rule 2.06 of the Texas Rules of Disciplinary Procedure. All of the information about the functioning of Grievance Committees is found in the TRDP.

For the moment, I'll extend the deadline for you to respond to Petitioner's Requests for Disclosure until April 30, 2012. Since I am not making you respond to my discovery, I ask you not to send discovery to me. If you refrain from doing that, and if we agree to set the hearing on the Challenge to Jurisdiction in August or September, I'll extend the deadline for you to respond until after the hearing.

Tim Bersch

[Quoted text hidden]

Elene Glassman <ebglassman@gmail.com>

To: Tim Bersch <Tim.Bersch@texasbar.com>

Wed, Apr 25, 2012 at 11:58 AM

Mr. Bersch,

Thank you, April 30th for disclosure helps, I expect to have it ready by then.

The issues will not be moot but much may change by August or September. I do not quite understand your request that I not seek discovery. I can file it and extend the same courtesies to you that you have extended to me but then I will be protected. I do not want to risk the situations I encountered in 2008.

TDRP does not provide the actual procedures I have requested. The issues of disqualification and/or recusal (they seem to be synonymous) have been brought to the attention of the panel. Who hears recusal/disqualification?

Elene Glassman

[Quoted text hidden]

Tim Bersch <Tim.Bersch@texasbar.com>

To: Elene Glassman <ebglassman@gmail.com>

Wed, Apr 25, 2012 at 4:19 PM

Ms. Glassman:

The issues WILL be moot after July 1. Catherine Wylie will no longer be on the District 4 Grievance Committee, so there will be no need for you to try to keep her from being involved in this proceeding. The members of all six evidentiary panels will have been appointed by a committee chairperson who is someone other than Catherine Wylie, so there will be no need for you to try to keep anyone appointed by her from serving on the evidentiary panel in this proceeding.

Let's just wait til July, then set a hearing on your Challenge to Jurisdiction.

Tim Bersch

-----Original Message-----

From: Elene Glassman [mailto:ebglassman@gmail.com]
[Quoted text hidden]