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

SUPPLEMENTAL BRIEF OF APPELLANT

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Oral Argument Requested

BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPEAL NO. 53021

ELENE B. GLASSMAN V. STATE BAR OF TEXAS COMMISSION FOR LAWYER DISCIPLINE

IDENTITY OF PARTIES AND COUNSEL

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Reporter's Record – RR

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Appellee/Complainant to Commission - Complainant

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Commission for Lawyer Discipline – Commission

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Evidentiary Petition – Petition

Public Information Act – PIA

Robert's Rules of Order, Newly Revised Edition – Roberts Rules

State Bar Act – SB Act

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State Bar Board – Board

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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 "H0051132998" State Bar District 4 Grievance Committee "GC" Evidentiary Panel "Panel" 4-6 are predicated on Texas Rules of Disciplinary Procedure "TRDP" 1.06 Definitions:

K "Disciplinary Petition" means a pleading that satisfies the requirements of TDRP 3.01 (TRDP 2.17 A Evidentiary Petition and Service includes the same provisions as TRDP 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"

Petition, (App. 1;CR 1 0033-0036) alleges violations of TDRPC 3.01 and 3.02. This appeal is in accordance with TRDP 2.24. "Argument and Authorities" topics are **Jurisdiction, Evidence, Procedural and Administrative Errors, Abuse of Discretion.** They are not as discrete headings may suggest.

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. Prostok* 165 S.W. 3d 336, 346 (Texas 2005) Appellant/Respondent "Respondent" raised jurisdictional issues, including subject matter jurisdiction of GC throughout

H0051132998. During hearings on Respondent's 2d Motion to Recuse and/or disqualify Panel 4C and Motion to Dismiss and First Amended General Denial and Challenge to Jurisdiction, (App. 2: CR 1 pgs. 0268 et seq;RR Recusal 2 p. 5 – 13; CR 2 pgs.0460 et seq; RR Juris p. 5, line 6 et seq. through p. 7) Respondent refers to statutes, rules, State Bar Board Policy Manuals "Manuals" and Evidentiary Panel Proceedings Procedural Guides "Guides;" required procedures to convene Panel and required procedures to establish authority of Panel to decide issues, grant recovery and issue judgment. Mr. Hodges, 2012 GC Chair, hearing Second Motion to Recuse, interrupts Respondent during her presentation, says he will get back to her, does not do so; there is no opportunity to complete her argument. (RR Recusal 2 p. 13, line 19 – 24) Mr. Hodges says he has read the pleadings. (RR Recusal 2, p. 13 , line 20-21) If he had, it seems unlikely that he would have asked Respondent the questions concerning additional points. Alleging sufficient facts to establish subject matter jurisdiction is a requirement of law. *Birdville Id. Browning, Id.* TRDP 2.17A 7 requires that Petition include "Any other matter that is required or may be permitted by law…"

Commission for Lawyer Discipline "Commission" has not adequately alleged subject matter jurisdiction.(App.1)Commission did not and cannot cure that defect, Petition is void. Commission offered no evidence proving subject matter jurisdiction.

On three occasions (App. 3: RR Juris p. 22 line24 et seq; RR EH p. 10, line 17 through p. 11 line 14, RR EH p. 98) Commission asserts that "in personam" jurisdiction is "subject matter" jurisdiction. Further, (RR EH p. 10 line 17 et seq) Petitioner does not even prove "in personam" jurisdiction. Reading language from pleadings into the record, is not a judicial admission, (criteria for proof of judicial admission,*Miller v. Gann* 822 S.W. 2d 283, 288 [Tex App. 1991]) and in *Horizon/CMS Healthcare Corp. v. Auld* 34 S.W.3d 887 [Tex. 2000] 985 S.W. 2d 216, 233 (Civ App.-Ft. Worth) 1999 even of "in personam" jurisdiction and there is no evidence offered to support "in personam" jurisdiction. Apparently, neither Commission nor Panel comprehend the responsibility for proving jurisdiction, all elements of jurisdiction i.e. compliance with the "strict accordance"(State Bar "SB"Act. 81.072[l])requirements of appointing and empowering GCs and Panels, in personam jurisdiction, subject matter jurisdiction and jurisdiction to enter particular orders.

Commission (App 1,) alleges only legal conclusions, with distortions and misstatements of undisputed facts, distortions and misconstructions of language 14th Court in 14-09-00522 and does not "prove" each and every allegation. Commission alleges the complaint was filed on or about May 5, 2011; it was signed May 10, 2011, filed, June 8, 2011, by that time the opinion of February 24, 2011 was void/moot.

The complaint is not in CR, Commission did not offer it in evidence, a copy of the first page of a later opinion of the 14th Court, Petitioner's Exhibit 9 (App. 4; RR EH Commision Exh. 9), shows the February 24, 2011 opinion is withdrawn.

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. *NCAA, Id.* Respondent hereby challenges them again. Withdrawal of the February 24, 2011 opinion left no basis for Commission to investigate the complaint signed by Mr. Fason. When the February 24, 2011 opinion was declared "void" the effect was an absence of a decision by the 14th Court for some period of time; thus an absence of a justiciable controversy. *NCAA Id.* Mr. Fason's opinion does not prove "just cause." It is not based on facts relevant to the violations alleged. Conclusions of the 14th Court and Mr. Fason without consideration and/or analysis of the cases cited at the inception of Appellant's brief in Appeal Number 14-09-00522 *Browning, Id.* eliminates validity of their conclusions. Withdrawal of the opinion of February 24, 2011 eliminated whatever Mr. Fason may have believed was relevant; in the absence of that opinion,

he would not have submitted the complaint. Commission and Panel assert that the later opinion says things it does not say.

Mr. Fason's complaint is not in evidence; he did not file further documents. (App. 5: RR EH p. 35-37) The absence of a justiciable controversy was presented to Commission and Panel at every juncture; it was ignored or decided based on criteria that are not correct. (RR EH p. 94 line 14 et seq)Respondent now raises it again.

On May 10, 2011, (App. 5), the later opinion in Appeal Number 14-09-00522 "14-09-00522" had not yet been issued, (App. 5) Mr. Fason's complaint was based on the void/moot Opinion of February 24, 2011; an opinion no longer valid by the time the complaint was filed. (App. 7 RR EH p. 67 through p. 71 line 3) The Chair, Mr. Pfifer and Commission do not distinguish between "allegations" in pleadings and "admission." Unsworn allegations are not proof and do not constitute admissions. Commission reads from pleadings and claims that proves "subject matter" jurisdiction. (App 3: RR EH p. 97 through p. 98 line 18) Commission cites authority that is not applicable to the undisputed facts of the case, repeating the 14th Court's errors. Mr. Fason's testimony (App. 5) reveals his attempt to mislead Panel. The complaint has no basis at all. Petition (App. 1)lacks allegations within TRCP 45 et seq as to "fair notice" to Respondent. There is no compliance with TRCP 301 as to "pleadings and proof;" no evidence "proving" relevant facts.

There are attempts to shift the burden of proof to Respondent; Chair does that as well (App. 8; RR EH p. 63 lines 2-5) TRDP 2.17 M; TDRPC 3.01

Appellee's Brief in 14-09-00522 describes Appellant's appeal as a "collateral attack" and the 14th Court says it is a collateral attack but does not distinguish among categories of collateral attacks.The undisputed facts support Appellant's premises. The particular legal standards applicable in a situation in which the underlying judgment and the judgment being challenged i.e. the garnishment that gave rise to 14-09-00522 are in the same court. A collateral attack in a court other than the one that issued the original judgment is distinguished from 14-09-00522. That distinction is not addressed by the 14th Court; Commission proceeds as though it does not exist. Misconceptions of members of Panel, including the Chair are in the record (RR EH p.61 et seq.) Mr. Phifer (p. 67 line 25 et seq) reveals that he thinks an allegation in a document is somehow proof (P. 73, Line 12 et seq) Mr. Riley (Panel Chair) states his belief that one does not have to prove jurisdiction unless it is challenged. Jurisdiction is never presumed. *Reiss v. Reiss* 118 S. W.3d 439 (Tex. 2003) *Dubai Petroleum v. Kazi,* 12 S.W. 3d 71(Tex 2000); *Metropolitan Transit Authority v. Jackson* 212 S.W. 3d 97 (Tex. App – Houston [1st Dist.] 2006) Commission's statements (App. 9: RR EH p. 94, line 24 through p. 99 line 13) are replete with

inaccuracies as to facts and law. (App. 7) Respondent presented and again presents case law supporting her position.

Commission claims a difference in "beliefs" of the parties citing only *Alfonso v. Skadden* 251 S.W.3d 52 (Texas 2008) which is not on point and relies on *White v. White* 179 S.W. 2d 503, also not on point.(App. 6.)(RR EH p. 102 line 16 through p.103 line 5)

When Respondent is presenting facts, Chair claims she is presenting argument. Commission and Panel do not distinguish between facts as stated (RR EH p.61 line 25 through p. 63 line 11) that refer to cases and argument. Chair (RR EH p. 63 line 2 – 5) confuses facts with his personal idea of "legal argument." In closing argument, Respondent is again not allowed to present her legal arguments. Commission cites *Alfonso, Id.* and *White, Id*; while Respondent is distinguishing them from 14-09-00522, beginning explication, she is interrupted by Mr. Pfifer who asks questions that are irrelevant. Mr. Almaguer (RR EH p. 103 line 6 through 14) claims that is not argument. Respondent was again thwarted in her appropriate presentation of her argument and authorities, denied opportunity for a meaningful hearing.

Each time Respondent presented something that was not what Commission and/or Panel "believed" Respondent was interrupted, Commission was allowed to speak inappropriately. Panel treated Commission as more of counsel to Panel than as

Commission. At one point, Panel asks Commission what authority Panel has. Commission's response is not supported by authority.There was no "arms length" relationship between Commission and Panel.

Mr. Phifer asks if Respondent found any cases overruling *White, Id.* (RR EH p. 107 line 2 et seq) Since *White, Id* is not on point as to Respondent's issues, whether it has been overruled is irrelevant. *White, Id* is about collateral attacks in "sister courts" i.e. courts of equal sovereignty. 350,750-403 is an attack in the "same court" that issued the underlying judgment. The relevance of that undisputed fact distinguishing Respondent's appeal from the *White, Id* position has been disregarded in 14-09-00522 and in H0051132998. It has not been analyzed or refuted; it has not been mentioned.[1]

Neither Appellee's Brief nor the opinion of the 14th Court responds to *Browning, Id.* and the cases cited by *Browning, Id.* Instead, the 14th Court claims a judicial admission can support "subject matter jurisdiction." There was no judicial admission and a judicial admission cannot determine a question of law. The flaws in the reasoning of Appellee, the 14th Court and Commission are multiple (1) subject

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[1] A discussion of collateral attacks including those in the same court that issued the underlying judgment is found an article by Professor Gus Hodges in 41 Tex. L. Rev. 163, (1962) The facts before the 14th Court in 14-09-00522 are within the exception to the general rule.

matter jurisdiction is a question of law (2) it is the responsibility of Petitioner to establish subject matter jurisdiction in each case (3) a judicial admission cannot confer jurisdiction (4) there was no judicial admission; criteria for judicial admission; *Miller v. Gann, Id.* Nothing before the 14th Court or before Panel qualifies as judicial admission even if subject matter jurisdiction could be established by judicial admission (5) allegations in pleadings are not proof *Birdville, Id* (6) a judgment not supported by proof of subject matter jurisdiction is "void." *Metropolitan, Id. Dubai, Id* . (7) what a party to litigation, a jury, a judge, a tribunal "knows" is only that which is established by properly admitted evidence. Guide 2012 Evidentiary Hearing. (App. 2) A jury or, in this instance, Panel, may look only to the evidence admitted to determine questions of fact.

ADMINISTRATIVE AND PROCEDURAL ERRORS

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 or 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. Staff memoranda, correspondence to and from Respondent, are not included. Commission does not prove 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. SB Act, section 81.011 an administrative agency. For other applicable purposes, the State Bar complies with the requirements in APA such as reporting, indexing etc. Effective 2003, there were changes to SB Act. There is nothing in SB Act as modified in 2003 removing the State Bar as an Administrative Agency from requirements of APA, nor are there reported cases addressing that issue.

Whether Commission is governed by APA or not, it is required to establish all elements of jurisdiction for Panel to be properly created, qualified to hear a case, decide issues, grant recovery and issue judgment. Attorney General Opinion (GA 0845) Without staff memoranda, proof the complaint was filed, documentation of the date the complaint was signed, correspondence with regard to the investigation, etc. combined with the "void/moot" "opinion" of February 24, 2011 (App. 5) nothing supports a finding of "just cause" a condition precedent to filing Petition. Mr. Fason testified that he agreed with a void opinion; there is no proper allegations or support for Commission's claims.

Missing steps in procedures Commission is required to follow are identified in Respondent's Second Motion to Recuse (App. 2) Commission procedures TRDP 2.17 A. 4. and A.7 require notice to Respondent of the complaint received with "fair notice" and the opportunity for Respondent to reply. Absence of "fair notice"

precluded the opportunity for Respondent to reply. Respondent would have had to "guess" as to which, if any, facts were in Commission's mind. Commission has neither specifically alleged enough to provide fair notice, nor submitted evidence showing fair notice occurred. TRCP 301 requires both pleadings and proof. The U.S. Constitution, Amendment 14 and the Texas Constitution Article 1, sec. 19. Mandate due process.

The State Bar is a public corporation SB Act sec 81.011; Texas Business Organizations Code,"TBOC" Chapter 23 Chapter 22 and Texas Rules of Civil Procedure "TRCP" 53 and 54. No provisions in SB Act in any way remove State Bar and/or Commission from provisions of TRCP 53 and 54. Mr. Riley (RR Juris p. 14 through 18) states that the panel "will have read" Respondent's "Admission" and exhibits, but does not identify the document beyond that. (CR 2 p. 0450 et seq shows Respondent's Amended General Denial and Challenge to Jurisdiction), there is no"Admissions" document. Respondents requests through various pleadings, (App. 9: CR Vol 1, Vol 2 Index) for corrected pleadings, to strike Commission pleadings, admissions, interrogatories etc. were improperly denied.(App.9) All efforts by Respondent to obtain accurate information as to facts, interpretations of the opinion of the 14th Court, references to applicable law were improperly denied. (App. 10: CR 1 p. 0302, 0381,0425, CR 2 p. 0455, 0457, 0642, 0759) Respondent's right to due

process, U.S. Constitution, Amendment 14 and Texas Constitution Article 1, section 19 has been thwarted throughout H0051132998.

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. Electing an Evideniary Proceeding, Respondent relied on compliance with applicable standards for such proceedings in SB Act, TRDP, State Manuals, Guides, (produced at least annually by the Office of Chief Disciplinary Counsel) that are required to be distributed to GC Members, (Manual Part VI) TBOC, TRCP, TRE, additional applicable statutes, other statutory requirements her state and federal constitutional rights.

EVIDENCE: TDRP 2.17 M, TRCP 53 and 54;

No evidence was offered by Petitioner about what Respondent believed or might have believed when proceeding with 14-09-00522. Commission did not meet the standards of TRDP 2.17 M. Appellant's Brief in 14-09-00522 specifically cites *Browning, Id.,* a Supreme Court of Texas case that provides a basis for supporting Respondent's decision to appeal but it is not about Respondent's "beliefs." It is predicated on undisputed facts and legal standards that neither the 14th Court nor Commission have mentioned. The void/moot 14th Court opinion is not relevant as to the standards in TDRPC 3.01 and 3.02, Respondent objected to admission of the later

opinion; no predicate was established showing relevance. Mr. Fason's testimony about his point of view with regard to Respondent's motives for appealing is just that, his "point of view" which is not probative or relevant TRDP 2.17 M and TDRPC 3.01.

The standard applicable to TDRPC 3.01 is whether 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. *Browning, Id* and the cases cited in *Browning, Id.* refute the position of the 14th Court and Mr. Fason's "opinion." Supplemental Brief of Appellant from 14-09-00522 admitted into evidence (RR EH Exh. 8) is not the complete document submitted to the 14th Court. The operative document is "Supplemental Brief of Appellant." The additional contents were not before Panel. The document admitted as a public document, is not relevant or probative evidence as to an adjudicative fact. TRE 201 (a), TRE Article IV, 401 et seq.

U. S. Constitution, Amendment 14 and Texas Constitution Article 1, section 19 rights guaranteed to Appellant without regard to her beliefs, have not been accorded to her throughout the proceeding.

Comments to TDRPC 3.01, while not part of the rules, are helpful in considering possibilities TDRPC 3.01contemplates. No facts are alleged that have anything to do with the language of TDRPC 3.01. Commission includes only the reference to TDRPC 3.01 and some background information about the case tainted by Commission's distortions of the facts and law. There is 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, 14-09-00522, H0051132998 were predicated on undisputed facts in those records (CR and RR). Everything in Appellant'sAmended Brief in 14-09-00522 is supported by analysis of the applicable law derived from applicable cases.

In the Evidentiary Hearing Mr. Fason acknowledged relevant facts (App. 11; RR EH p.11 et seq.) with regard to 14-09-00522. Mr. Fason was the only witness in behalf of Commission testifying about anything that was before the Court in 14-09-00522. He also testified that he did not prove subject matter jurisdiction in 350,750-403. Respondent pursued her appeal based on relevant applicable case law of precedential significance which was cited in Supplemental Brief of Appellant in 14-09-00522 and also presented in H0051132998.

Language of the opinion in 14-09-00522 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 In the absence of proof of all elements of jurisdiction, including a properly convened 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) Panel had no authority to proceed to hear the matter, adjudicate issues, grant recovery or issue judgment.

The language of the Chair of Panel 4-6 (RRJuris p. 4 line 16 et seq) states that the panel "will have read" the "admission" with the attached exhibits. There is no admission; (CR Vol 2, p. 0460 et seq) only the Amended Motion Challenging Jurisdiction that was before Panel 4-6 for the hearing.

The questions and comments of members of Panel 4-6 (RR Juris 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 to conduct business, sufficiency of allegations of jurisdiction in pleadings, ripeness, standing and justiciability..

Members of Evidentiary Panel 4-6 repeatedly assert that Appellant's election to have an Evidentiary Proceeding as provided in SBAct section 81.072 is all that is needed, despite the many provisions about the proper procedures stated in SB Act,

TRCP, APA, Public Information Act,"PIA" TRDP, Manuals, and Guides, all of which Panel is required to follow. The statement by Panel Chair, Mr. Riley, in Evidentiary Hearing(EH RR p. 73.) shows he does not know that proof of subject matter jurisdiction is the responsibility of Petitioner. *Birdville, Id. Dubai, Id. Metropolitan Id.*

The February 24, 2011 opinion was withdrawn, (App. 4)declared moot thus became null and void. The effect of the withdrawal was that there was nothing with which Mr. Fason could support his position which had nothing to do with the criteria of TDRPC 3.01 and 3.02. The 14th Court never addressed the actual questions presented, which, since they are predicated on absence of proof of jurisdiction and absence of proof of subject matter jurisdiction is clear, cannot be frivolous.

Panel admitted Commission's offer of evidence showing the later opinion; its purpose was not presented. It seems that Commission and Panel Chair do not distinguish between admissibility of public records because they are public records and relevance for determination of adjudicative facts. TRE 201, 401. Respondent specifically objected to Exhibits 1 through 4, 6, 7, 9, and 10. (App. 11: RR EH p. 11 through 14) Appellant's Brief admitted by Panel is not the document that was before the 14th Court for purposes of its determinations. The purpose of offering Appellant's Brief was not presented.

Disregarding facts supporting the attack on the judgments in 350,750 and 403 and 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. One cannot "agree" to or "admit" a question of law. *Dolenz v. Central Dallas Appraisal District* 259 S.W.3d 331 (Civ. App.- Dallas, 2008)[2] Nonetheless, the 14th court asserts, without supporting authority, that Appelant has judicially admitted subject matter jurisdiction. There is no judicial admission, which, by definition, would confer some sort of authority on a party to determine a "question of law" and there was no evidence offered or admitted supporting the claim of judicial admission. Criteria for judicial admission; *Miller v. Gann*, Id. The claim of judicial admission in 14-09-00522 is based on pleadings, not evidence. Mr. Pfifer places a value on those documents that is not consistent with legal standards. The only "facts" upon which Commission relies are not "facts" they are allegations in pleadings; they do not become facts unless established by proof. No witness qualified to establish standing and/or a justiciable controversy was called. There was no one present at any time, in any of

[2] Appellant contends the Trial Court erred in dismissing case for want of jurisdiction because appellees admitted in their responses to requests for admission that the court had jurisdicti. We disagree, subject matter jurisdiction cannot be conferred by judicial admission In re A.C.S. 157 S.W. 3d 15 (Tex.App.-Waco 2004, no pet.)

the hearings in H0051132998 who could have qualified to testify for purposes of establishing standing or existence of a justiciable controversy.

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 a rule 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 by its statutory authority, Attorney General opinion (GA – 0845)

Evidentiary Hearings are to be conducted with proper procedures; members of Panel did not seem to understand that an election to have an Evidentiary Hearing does not excuse Commission or GC from compliance with all of the necessary required procedures.(RR Juris p. 13, Line 6 et seq) shows the point of view of Mr. Riley,Chair of 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 provided. The decision to have an Evidentiary Proceeding is based on reliance that the procedures will be followed.Although Panel members claim they are properly appointed, no evidence supports their statement. Statements that are not sworn testimony are not

evidence. The Organizational Meetings are supposed to be within Manuals and TRDP standards, as well as being in compliance with SB Act sec. 14 requiring that meetings be conducted in accordance with Roberts Rules, most recent edition. Guide 2012 p. 12 (App. 12) Manuals, Parts IV and VI are specific about the procedures for GCs. To preside in a Texas court, judges must be properly qualified, which includes being properly appointed or elected; they must take an oath as specified by the laws of Texas. All of that is public information. Members of GCs must be properly appointed, attend an annual Organizational Meeting which is properly called and conducted, receive training and receive Guides, Manuals, Parts IV and VI (Manual Part VI, GCs) as well as by provisions in SB Act section 81.072 , TRDP 2.04 TDRP 2.05 2.06, 2.07. Respondent has the right to know whether all of that has occurred. 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. Two members of Panel, Mr. Phifer and Mr. Almaguer show they do not understand the jurisdictional issues being presented. (RR Plea to Juris p. 14 lines15 through p. 15 line 5)

(RR Plea to Jurisdiction p. 21 line 24 through p. 22 line 6) shows that Commission also "believes" Commission has no further obligation to comply with

the procedures and evidentiary criteria necessary to activate jurisdiction in SB Act, TDRP, TRE.

(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 CR, nothing in the record show such an order. There is nothing in the orders from the Scheduling Conference (CR Vol 1 0420 et seq and Vol 2 p. 0447 , 0452)with terms Mr. Riley claims are in an order; there are no other orders from that date or any other date with such provisions. Mr. Pfifer asserts Respondent had 30 days, another example of absence of proper procedures, absence of reliance even on what CR shows, absence of evidence. Documentation with regard to the Revised Scheduling Order (CR 0447, 0452, 0455) shows Mr. Riley signed it although Respondent had not yet received it and had no opportunity to respond to it.

The order from the Scheduling Conference (CR Vol 1 p. 0452) does not say what Mr. Riley and Mr. Phifer claim it says; they relied on their beliefs anyway. (RR Plea p. 26) shows that despite the absence of an order with the terms stated by Mr. Riley (RR Juris. P. 17)Mr. Phifer insists that it is Respondent's duty to bring evidence and has had 30 days to do so another instance of attempting to shift the burden of proof TRDP 2.17 M to Respondent.

It is not the responsibility of a respondent to do that, it is Petitioner's affirmative duty to prove the elements of jurisdiction. *Birdville, Id, Dubai, Id*

No statement of vital facts i.e. subject matter jurisdiction, necessary to establish authority of Panel is in the pleadings and there is no proof of those vital facts. Both pleadings and proof are essential to activate jurisdiction of a tribunal. 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 (App. 13)CR Vol 2 p. 0864 et seq) does not show a quorum, a meeting, findings of fact including subject matter jurisdiction. Findings of fact must be supported by the record, including properly admitted evidence. A judgment that does not conform to the pleadings and the proof, is void.

During the Evidentiary Hearing (RR EH 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 at the outset of

the hearing, those facts must then be established by proof. A judgment is never considered final if the Court lacks subject matter jurisdiction *Reiss v. Reiss, Id., Dubai, Id., Metropolitan, Id.* 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 hearing, Mr. Riley refers to his understanding that I want Panel to declare the judgment in 350,750 void. (RR Plea to Juris p.13 line 13 et seq) At that point Mr. Riley attempts to impose on Respondent the burden of proof as to jurisdiction; that burden of proof is the responsibility of Commission. Respondent did not seek 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 not supported by necessary proof of subject matter jurisdiction of the court activating he 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. Manuals and Guides are not available. Manual states explicitly that the State Bar is within PIA. SB Act sec. 14 requires Roberts Rules. Commission's comments about justiciability (App 3) are not responsive to the question of justiciability. Being licensed in Texas does not prove subject matter jurisdiction. Commission refuses to follow required procedures, claims Commission is not bound by "evidentiary procedures act." If such an act exists, Respondent has not seen it. Commission's assertions as to APA and TBOC make no sense. Commission has not met TDRP requirements.

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, Id.* 798; *Middleton v. Murff* 889 S. W. 2d 212

(Tex. 1985) The void judgment was brought to Panel's attention in Motion to Vacate/Modify/Stay. (App. 14 RR Motion VMS; CR 2 p.)

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. . *Ludlow v. Deberry* 959 S. W. 2d. 265, 271 (Tex app. – Houston [14th Dist]) Panel 4-6 members displayed such favoritism and antagonism throughout the record with statements of their personal opinions from extrajudicial sources. They then relied on their extrajudicial sources.

Mr. Phifer described his personal experience (RR Juris p.25, line 18 et seq) about 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 challenged several elements of jurisdiction, submitted Special Exceptions, (App 15 CR 2, p. 0642) requested disclosure and discovery (App. 16 CR 1, p.0302; all her requests were denied.) The 14th court opinion of February 24, 2011 claims Appellant knew there was jurisdiction in Probate Court 1 while acknowledging that Petitioner in 350,750 had not submitted proof of jurisdiction. Until there is proof, based on admissible evidence, 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. Evidence not properly admitted is not proof.

Respondent objected to documents offered by Commission without a predicate. Availability of those documents for consideration by Panel, whether Respondent objected or not, are further points of error; there was no substantial evidence as required in TRDP 2.24.

Evidence offered during the Evidentiary Hearing, (App. 17 RR EH Exh.1-4, 6, 9, 10. 14; App. 11.) was 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 Panel.

Commission presents what is claimed to be a judicial admission. (App. 16 RR EH p. 11.) If it qualifies as a judicial admission, it shows "in personam" jurisdiction. Nothing further as to any element of jurisdiction is presented. TRDP 2.17 M The Evidentiary Hearing Report (App. 13: CR 2 p. 0864) does not show a quorum or subject matter jurisdiction. At the bottom of the last page (App. 17)Office of Chief Disciplinary Counsel "CDC" is instructed about contents of the Judgment to be prepared. The Judgment does not conform to the pleadings, proof, the terms of the rendition, instructions. TRCP 301.

Rendition is the first words spoken or written *Comet Aluminum v. Dibrell* 450 S. W. 2d 56, 58 (Tex. 1970). Rendition cannot be revised. *Escobar v. Escobar* 711 S.W. 2d 230.(Tex. 2000) The rendition is the only information available to Office of

CDC for purposes of preparing a judgment. No proof of subject matter jurisdiction was presented. Judgment (App. 14 CR. 2 p.0889) specifically recites subject matter jurisdiction, demonstrating that Commission recognizes responsibility to prove it.

The admission of evidence over Respondent's objections is reversible error, prejudicial, and produced an improper judgment; the decision of Panel 4-6 should be declared void. H0051132998 should be in all things dismissed. Several evidentiary rulings were erroneous, those errors were reasonably calculated to result in the improper judgment. Tex. R. App. P. 44.1 (a). The pattern of erroneous evidentiary rulings is pervasive, Commission did not prove "just cause,"authority for Panel to convene, allege and/or prove subject matter jurisdiction, grant complete discovery, special exceptions, require responses to admissions and interrogatories, all of which culminated in the Judgment that should be declared void..

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 Panel. There is nothing in the record of the Evidentiary Hearing (App. 11 RR EH p. 11 line 15 et seq) clarifying the purpose of the evidence admitted at the outset of the hearing. Respondent presented appropriate objections, all of which were overruled. That evidence is admitted as a

public document does not give it weight for any purpose as to any fact relevant for purposes of TRDCP 3.01 or TRDCP 3.02.

Nothing in the record instructs panel members as to what they may and may not consider for what purposes. Guide 2012 tips to the Chair p. 12 and 13 (App. 12) reminds the Chair to give such instructions; Guide further indicates that proceedings are to be conducted as though in District Court. The results show those standards were not followed. The provisions of TRDP, TDRPC, Guides and Manuals impose specific evidentiary obligations on Panel in conducting H0051132998. (Page numbers in Guide 2013 could be a little different; the content relevant for purposes of H0051132998 is the same.) All copies of Manuals and Guides except for Guide 2012 were provided electronically in response to PIA requests. A physical copy of Guide 2012 was provided to Respondent after a request from the Office of CDC to the Houston Office of the State Bar. Commission denied their existence (App. 18 April 2012 emails)

The 2012 Guide p. 12 (App. 12) 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 TRE, TRDP 2.17L The necessity, relevance, probative nature of the evidence admitted was not mentioned. Admission of the evidence to which Appellant objected does not meet even fundamental standards of

TRE. This is not a question of "strict compliance" but of non compliance, actually complete disregard. A superseded brief may be a public document but is neither probative nor relevant evidence .

TRDP modify TRE for purposes of Evidentiary Proceedings; what Panel has done is not within those modifications; there was no predicate presented to establish relevance. Thus, if, after the Evidentiary Hearing, Panel met and if Panel considered the evidence that had been admitted, especially evidence to which Respondent had objected, Panel did so inappropriately, 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, void Judgment, nunc pro tunc or new Evidentiary Hearing.

That is relevant for the question of disbarment. Some of the evidence before Panel was not admissible. Findings of fact are based 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.

The Chair of Panel 4-6 took "judicial notice" of the documents, overruling Respondent's objections clearly stating that most of them were irrelevant. TRE 201, 401 et seq. GC did not comply with provisions in the SB Act, PIA, TRDP, APA. "Commission for Lawyer Discipline" i.e. the body appointed in accordance with the

provisions of the SB Act, is not a "governmental body" and claims exemption from the provisions of PIA, the GCs are "committees of the State Bar" Manuals Part VI and are governed by all standards for all State Bar committees.

Manuals are reviewed and have been published at least annually since 2006.. There have been changes from year to year; nothing since 2006 indicates the documents Respondent requested are confidential within criteria in SB Act, TRDP, the exemption of Commission from PIA as created and defined in SB Act Sec. 81.076. The exemption does not apply to GCs or Panels.

The presumption of PIA is that records are public unless within an exception. (App. 19 Public Information sec. 552.001 et seq) Denying access to records required by the State Bar and TRDP that will show whether requirements of SB Act and TRDP, prerequisites to convening a Panel that will sit as a tribunal, is a violation of basic due process.

APA 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; TRDP 2.17 P

Panel 4-6 has not adhered to terms in their oaths of office TDRP 2.05 with regard to duties as to the U.S. Constitution,laws of the U.S. and of Texas or to the requirements in the Guide, Id p.12.

"It is important to ensure that evidentiary hearings encompass the same procedural formality as a district court trial. …" (App. 12 Guide p.12-13)

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 several months to prepare the transcript of the Bench Trial in 350,750. 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.(CR from 14-09-00522.) Mr. Fason testifies to facts as to the timeline, he does not testify to anything showing unnecessary delay. Under oath, Respondent testifies to what happened (RR EH p. 63 et seq) There was nothing refuting her testimony; it is the preponderance of the evidence.

Comments as to the TDRPC 3.02 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, no evidence offered or admitted showing any benefit to Appellant from those delays. Commission again reached a conclusion that is not supported by relevant or probative evidence.

Commission did not consider undisputed facts established in the record. Respondent had to proceed pro se with 14-09-00522 and to seek a determination by Probate Court 1 that she was without sufficient resources to pay costs or attorneys fees. Respondent attempted to explain that during H0051132998; she was interrupted each time.

Appellee, not Appellant increased burdens of litigation. 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 relevant facts, applicable law and rules.

Commission caused unreasonable delays in H0051132998 as shown by the evidence and CR. Some errors, documents not included in the record, oversights, inaccuracies, in the record, were brought to the attention of Panel 4-6 throughout H0051132998. In response to Respondent's first inquiry about internal rules, particularly recusal, Commission clearly stated that there were no recusal procedures, (App. 18) intentionally delaying H00511132998 for several months. When confronted with information he could not ignore, Commission intentionally delayed again with regard to the second and third Requests for Recusal.(CR 1, 2 CR Supp. Pleadings Index) Commission (RR EH p.57 line 25 et seq) "blames"Respondent for

Commission decisions, delays and errors. There is a pattern by Commission of "blaming" Respondent. Commission caused delay well beyond the 180 days in TRDP 2.17 O. Panel did not require Commission to show good cause, Panel and Commission shrugged off the delays.

As acknowledged by Mr.Riley in the hearing in the Plea to Jurisdiction (RR Juris p. 22 line 25 et seq) Respondent initiated the efforts to move the matter along by requesting the scheduling conference as indicated in the initial scheduling order (CR 2, p. 0452) That handwritten point is not included in the revised order.

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; that did not stop him.

Mr. Fason's testimony acknowledges 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 TBOC Chapter 23 applies to the State Bar. As a corporation organized for a special purpose, operated not for profit, Chapter 23 it is governed by TBOC Chapter 22.

TRCP, 53 and 54 apply to the State Bar, H0051132998 "Petitioner in Fact." Commission is a "committee of the State Bar." SB 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 and TRCP. The Supreme Court has "administrative control" SB Act section 81.011 over discipline of attorneys licensed in Texas; that does not extend beyond administrative matters to eliminat compliance by the State Bar, i.e. Commission, with statutes, TRCP unless specifically provided in SB Act. There are no provisions of the SB Act excusing Commission from TRCP 53 and 54. *Greenspan Id*

Commission's allegations are insufficient to comply with TRCP 53. Respondent filed the necessary pleadings to bring Commission within TRCP 53 and 54 or be struck. (CR Conditions Precedent) Commission states that it is not governed by TBOC or APA not distinguishing non governmental body "Commission" and GCs which are committees of the State Bar as stated in Manuals, offering no relevant authority for support of the stance.

TRDP 2.17 M Commission has not met the burden of proof for proceeding with H0051132998, a properly appointed GC, SB Act, TRDP, GC Organizational Meeting for 2011 or 2012, election at each GC Organizational Meeting of a Chair for each of the years 2011 through 2013. No evidence was offered or admitted to show

compliance TRCP 54 nor has proof been offered or admitted to show compliance with SB Act section 14 Roberts Rules. Though requested by Respondent through discovery, Commission has not produced minutes of Organizational Meetings, agendas, lists of attendees, or other documentation in accordance with the provisions of the Manuals for 2011, 2012, 2013. Manuals Part IV 2011 through 2013 include procedures for all State Bar Committees,4.04 for the years 2011 through 2013 state specific policies and procedures. There are specific provisions about Organizational Meetings, agendas, notices etc. PIA applies to the State Bar, Manuals section 9.03 et seq. PIA says presumption is in favor of public access to information.(App. 19)The only exception relevant for H0051132998 is SB Act section 81.072 which does not apply to the records Respondent requested, records of other State Bar Committees are available through the State Bar website as required by APA.

Manuals Part VI 2011-2013 says GCs are governed by terms applicable to all State Bar Committees. SB Act section 14 requires meetings of State Bar Committees to be conducted in accordance with Roberts Rules.

Commission denies being governed by APA; Chapter 2001 states public policy for Texas with regard to practice and procedure for state agencies SB Act section 81.011 says it is an administrative agency of the judicial department of government Commission has failed and refused to comply with applicable provisions of APA

which are not in conflict with SB Act or TRDP. APA section 2001.006 (a) (1) "State Agency" applies to Commission. APA section 2001.004 applies to all available formal and informal procedures. APA section 2001.007 has not been implemented by State Bar and/or Commission to provide availability of rules, letters, opinions as mandated by APA section 2001.004 Guides and Manuals are not readily available to respondents as required by APA and fundamental due process. Commission denied their existence (App 18) Guides include provisions about 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 which was error.

Manual Part VI (B) provides that the purpose of the Grievance System is to clear the name of an attorney who has not committed professional misconduct. Commission and Panel 4-6 made no effort at all to comply with VI (B) and Commission has specifically stated the belief that the goal of Commission is to prove misconduct, disregarding Manual. Supposedly, H0051132998 is evidentiary, not adversarial.

Conveniently bypassing standards applicable to subject matter jurisdiction, the 14th Court relies on a case that is not on point. *White, Id.* In testimony before Panel

4-6, the witness 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 cases on point cited in Appellant's brief, i. e. including but not limited to *Browning Id* which is also cited in this brief. The 14th Court may consider likelihood of prevailing a proper criteria for determining whether an appeal is frivolous; that is not the standard in TDRPC 3.01.

A member of Panel 4-6 14th said 14th Court rejected Appellant's position; that did not happen. A careful reading of Supplemental Brief of Appellant and the opinion of the 14th Court shows nothing addressing the position stated by Appellant predicated on undisputed facts and supported by relevant case law.

TDRP 2.17M "...Petitioner has the 'burden of proof' and must prove all material allegations 'by a preponderance of the evidence.'" There was no proof of any of several elements of jurisdiction including conditions precedent to provide for the convening of GC, establishing a proper Panel, "subject matter jurisdiction" offered by anyone who would have standing and authority to provide such proof. Those matters were brought to the attention of Panel 4-6 and Commission in the Amended Plea to Jurisdiction (CR 2, p. 0460, RR Juris), which was denied.

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. Commission conveniently did not send the relevant documentation to BODA, Commission had no basis for H0051132998. At the Evidentiary Hearing Commission attempted to create an illusion with regard to the question of whether the prerequisites of "subject matter jurisdiction" were met. (RR Juris p. 22, line 21) Mr. Phifer seeks clarification as to the meaning of "justiciability" then tells us he has extensive experience with jurisdiction.

TDRP 2.17 P provides for findings of fact and conclusions of law APA sec 2001.141 is more specific. The rendition has no findings of fact, there are no references to any support in the record that Respondent 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 Commission, a witness and members of the panel as to what they "thought" Appellant believed. The record reveals that Panel did not know the legal standards and refused to rely on relevant case law and statutes. Mr. Riley's guidance of Panel 4-6 is flawed; his reliance on extrajudicial sources violates his duty to instruct Panel, including himself as to subject matter jurisdiction.

Commission apparently thought "in personam" jurisdiction was sufficient. During the hearing on the Plea to Jurisdiction, when Mr. Riley stated his understanding of the responsibility for proving jurisdiction, Respondent's response was "That is not correct." Then Mr. Riley responded with "It's not?" at which point Commission interrupted, a pattern that continued each time Petitioner attempted to complete elements of her presentation. (RR EH p. 73 line 12 et seq) Various members of Panel revealed their confusion about the distinction in the jurisdiction of the State Bar to discipline attorneys and compliance by Commission with all of the applicable statutes, (SB Act, APA, PIA) rules (TRDP, TDRPC) Guides.

Provisions for confidentiality with regard to Evidentiary Proceedings TRDP 2.10 do not include records of Organizational Meetings of State Bar Committees, including the GCs. Manual part IV includes terms for committees and subcommittees. Manual Part VI, states that GCs are subject to the requirements for State Bar Committees and have additional responsibilities.

The relationship between the State Bar and the Supreme Court of Texas is in the SB Act; it is clarified in TDRP. The Supreme Court has "administrative" control of attorney discipline. The Supreme Court does not have the authority to modify legal standards for corporate entities including State Bar. SB Act and provisions of TBOC, TRCP 53 and 54 are relevant for the question of sufficiency of Commission's

pleadings on two points; whether there is just cause and whether all requirements for GC members and panel appointments have been met.

Commission has the "burden of proof." TRDP 2.17 M. Commission did not meet that burden as to subject matter jurisdiction in H0051132998. Mr. Riley, Chair of Panel 4-6 reveals his lack of knowledge about the applicable law with regard to proof of subject matter jurisdiction(RR EH p. 73 Id.)

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 to the tribunal without calling a qualified witness to attest to necessary jurisdictional facts and, as may be appropriate identify evidence offered in support of subject matter jurisdiction. Respondent must have the opportunity to examine evidence offered and to cross-examine witnesses. 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, pleadings must meet requirements of the particular claims. Commission has no basis for an exception.

Mr. Riley and other members of Panel 4-6 confused what they may find usual with what rules and case law require. In the jurisdiction hearing(RR Juris p. 17) Mr.

Riley refers to an order unknown to Respondent that is not in CR. Mr. Riley has no jurisdiction to impose obligations of proof of jurisdiction on Respondent. Assertion of credentials by panel members is not evidence. No evidence was offered or admitted to establish that Panel members were properly qualified "in strict accordance" with the provisions of the SB Act 81.072 and TRDP. Commission did not comply with TRCP 53; Respondent's request for compliance with TRCP 53 and 54 was denied.

Undeterred by facts and law, having claimed proof of "in personam" jurisdiction, Commission calls it "subject matter jurisdiction."(RR EH p. 1.) The various documents offered do not establish "subject matter jurisdiction."

The State Bar of Texas is a public corporation and an administrative agency. SB Act 81.011 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) APA 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 of the court to enter it or if it deprives a party of life, liberty or property without due process. The judgment is beyond the jurisdiction of Panel to enter it "and" deprives Respondent of her property rights, violating the U. S. Constitution, Amendment 14 and the Texas Constitution Article 1, sections 13, 19.

The rendition (App 13) does not comply with fundamental requirements in the SB Act and TDRP for a quorum for deliberations and 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 to announce the rendition. The Evidentiary Hearing Report (App 13) meets the criteria for a rendition. "The first words spoken or written by a judge are the rendition", *Comet Aluminum Co. v. Dibrell* 450 S. W. 2d 56 (Tex. 1970); *Escobar v. Escobar.* 711 S.W.2d 56 (Tex. 1986.) Judicial error is an error which occurs in rendering as opposed to entering a judgment *Escobar Id.* citing *Comet, Id.* 450 To decide whether a correction is of a judicial or a clerical error, we look to judgment actually rendered, not judgment that should or might have been rendered. *Escobar, Id* citing *Coleman v. Zapp* 151 S.W. 1040 (Tex. 1912)

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). GC and Panel have abused discretion. Denial of discovery unreasonably limited Respondent's preparation of her case. *Walker v. Packer*. 827 S.W. 2d 833, 840 (Tex. 1992) Appellant is entitled to have Judgment declared void. It is based on a rendition void on its face, entered in total disregard of the absence of admissible evidence to support it, total disregard of TRCP 301, applicable law, without due process, disregard even of terms of the rendition, disregard of instructions from Mr. Riley.

SB Act is specific about jurisdiction to disbar; Panel does not have jurisdiction to disbar in H0051132998. In the rendition (App 13) Panel attempted to claim that authority. Whoever prepared the judgment included disbarment, presence of a quorum and additional provisions not in the defective rendition; no findings of fact support the conclusions of law. APA, Id. and TRDP, Id.

At a minimum, admissible "relevant and probative" evidence is necessary to support disbarment. Before that can be determined, findings of fact as to violations of TDRPC are necessary. Without findings of fact, there is no basis for sanctions.

The Evidentiary Hearing Report (App 13) is the rendition; the only source of information available to the Office of CDC for purposes of preparing a judgment in accordance with the rendition. SB Act sec.81.072 authorizes and mandates Supreme

Court to establish procedures in addition to those in section 81.072. Section 81.072(j) defines a quorum for Panel 81.072 (k) A member of a panel may vote only if the member is present at the hearing at which the vote is taken. TRDP provide specific provisions for GCs including an annual organizational meeting, duties of a GC Chair for conducting organizational meetings, elections and appointments of GC members to Panels.

SB Act, Article II Sec.14 says 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."

Commission is a "committee of the State Bar." SB Act, Manuals Part IV specifically provide that Roberts Rules govern meetings of all committees, there must be notices of meetings with agendas, minutes of meetings etc. Respondent sought discovery of records of GC (CR 1, 2) Organizational Meetings with dates, attendees, minutes etc. Those specific requirements are in Manuals Parts IV and VI. Part VI brings GCs within requirements for all State Bar committees. Evidentiary Panels 4C (4-3) and 4-6 are the 2 Panels involved in H0051132998. Respondent challenged compliance by GC with SB Act, TRDP, and Manuals.

GC and Panel have not distinguished confidentiality/privilege of "Commission;" the body created in SB Act and confidentiality of GCs. Respondent did not request anything within the confidentiality/privilege of Commission.

TBOC Chapters 22 and 23, apply to State Bar. Respondent challenged sufficiency of Commission's pleadings TRDP 2.17 A, TRCP 53 and 54 requesting Commission's compliance with conditions precedent. For members of a GC assigned to a Panel to convene as a tribunal to conduct business SB Act provisions and TRDP provisions apply. Manual says PIA applies to SB.

Commission pleadings are not sufficient; TRCP 301 Evidence was improperly admitted by judicial notice (App 11) over Respondent's objection, without an opportunity for Respondent to complete her objections. Nothing was offered or admitted establishing relevance of the documents which, in fact, are not relevant. Texas Rules of Evidence "TRE" 201, 202. TRE 401 et seq. Documents offered have nothing to do with "adjudicative facts;" they are irrelevant, inadmissible and prejudicial. That a document is a public record does not establish relevancy for all purposes. No predicate for relevancy was stated; Respondent had insufficient notice or opportunity to challenge whatever Commission might have thought the documents established with regard to H0051132998.

Commission did not prove "subject matter jurisdiction"(RR EH p. 11) a prerequisite to empower a tribunal to determine facts, adjudicate issues and grant recovery. A judgment 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 motion for 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 does not conform to the rendition. Neither the rendition nor the proposed Judgment was served on Respondent in accordance with TRCP 21 and APA Section 2001.142 Respondent's opportunity to object to entry of the Judgment before it was signed and filed was precluded. (CR Vol. 2 p. 0438 RR, M/V/S p. 18) Petitioner's Exhibit C does not show a mailing or other delivery to Respondent of the rendition nor does Exhibit C indicate mailing of a proposed judgment to Respondent, also required by TRCP 21 and APA 2001.142

Errors in the rendition are sufficient to establish judicial error and a void judgment. It is difficult to establish by references to CR or RR that which did **not** occur; throughout H0051132998 that is demonstrated by the many errors and omissions disregarding procedural requirements, the safeguards of Respondent's rights. In addition to defects in the rendition, there are 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. Absence of other evidence and procedural disregard as to Nunc Pro Tunc support reversal.

Guide (App 12) says an evidentiary exhibit is not available for consideration unless and until it is in evidence. 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. Panel had no basis for any decision with regard to the Motion for Judgment Nunc Pro Tunc; the decision denying Nunc Pro Tunc is void for lack of jurisdiction of Panel to make such a determination.

TRDP and Manual describe authority of the Panel Chair for 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. Respondent had the right to a hearing.

Based on evidence and analysis of the applicable law, the Panel could reach only one decision; Judgment is void and should be vacated. Correction of errors by Nunc Pro Tunc would also produce a void judgment.

The face of rendition (App 13) shows judicial error; absence of necessary elements showing presence of a quorum for deliberations and decisions, absence of findings of fact, disbarment without findings of fact, reliance on non probative, irrelevant improperly admitted documents. Chair (App 20 RR EH p. 51, line 9 et seq) actually coaches Commission. No testimony or proper evidence was offered as to disbarment; judicial notice does not establish relevance or probative value. Appellant's objection to disregard of judicial notice procedures (RR EH p. 34 line 24 et seq) was overruled. Being in "the file"does not show admissibility, relevance or probative value.

The Judgment 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 that are completely unrelated to the rendition 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 CDC. Using an incorrect form is a clerical/ministerial error, correctable by Nunc Pro Tunc. TRCP 316

Clerical errors in the judgment were not the result of judicial reasoning or determination. 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). Reliance on an incorrect form could result in such blatant discrepancies between the rendition and the judgment. The alternative is that someone made decisions about what to include, disregarding the terms of the rendition.

There is no statute of limitations to correct clerical errors. The question is whether the error is clerical or judicial. A judicial error is one that involves judicial reasoning and/or determination. The judgment as signed and entered includes clerical errors providing Commission with relief to which it is not entitled in law or in equity.

There is no fact question as to what the rendition shows and does not show. Mr. Riley signed and filed it. It includes typewritten information of the Proceeding number, names of the parties, names of all Panel 4-6 members identifying the attorneys and the public members, handwritten entries with conclusions of law unsupported by findings of fact, the request that Office of CDC prepare a judgment in accordance with the provisions in the Evidentiary Hearing Report.

There is nothing showing a Panel quorum convened, deliberated or voted, which, if any, panel members were present for any purpose. Evidentiary Hearing "dismissal" was at 4:46 p.m. (RR Evidentiary Hearing p. 1.)

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 Nunc Pro Tunc. Differences in the rendition and the Judgment are clerical errors or intentional disregard of the instructions. The Judgment document appears to be produced from a form; it does not show who prepared it.

Intentional disregard by Chair is abuse of discretion.Apparent from RR, when provided with accurate analysis of legal standards supported by case law, as Chair of Panel 4-6 he did not perform his duties.(Manual Part VI) When Respondent identified undisputed facts, Commission objected, Chair mistakenly sustained those objections and mistakenly overruled Respondent's objections.

Respondent requests oral argument.

PRAYER

Respondent prays that BODA declare Judgment void for absence of jurisdiction; (1)subject matter jurisdiction, (2) jurisdiction of GC Panel 4-6 to conduct

jurisdiction of GC Panel 4-6 to conduct business in H0051132998, reversible error and/or abuse of discretion as to denial of (1) discovery, (2) motion to strike Commission's pleadings,(3)Plea to Jurisdiction, (4)Special Exceptions, (5)2d Motion to Recuse, (6) Nunc Pro Tunc, (7) Motion to Modify/Vacate/Stay and/or for New Evidentiary Hearing, reversible error as to admitted evidence in the Evidentiary Hearing, specifically Commission's Exhibits 1 through 4, 9 and 10, 13, find the Evidentiary Hearing Report/rendition void, vacate or reverse the Judgment, dismiss H0051132998 or order Judgment corrected to conform with rendition or order Panel to grant Nunc Pro Tunc or remand for a new Evidentiary Hearing before a properly authorized tribunal.

Respondent prays for all other relief, to which she is entitled.

RESPECTFULLY SUBMITTED,

Elene B. Glassman, pro se
SBN 08016000
3525 Sage Road, #506
Houston, Texas 77056
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 Supplemental 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 11,275 ~~11.264~~ 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/Respondent

CERTIFICATE OF SERVICE

This certifies that the undersigned served Appellant's Supplemental Brief on the State Bar of Texas, Commission for Lawyer Discipline, Board of Disciplinary Appeals by sending it to lead counsel for Respondent Cynthia Hamilton as shown in the Certificate of Service attached hereto and served it on State Bar of Texas, Commission for Lawyer Discipline, Board of Disciplinary Appeals by sending it to the following address by certified mail, return receipt requested:

Ms. Christine McKeeman, BODA
Texas Law Center, No 610
P. O.Box 12426 Capitol Station
Austin Texas 78711

Elene B. Glassman

TABLE OF CONTENTS

BEFORE EVIDENTIARY PANEL 4C OF THE STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE, **Petitioner,**	§	**H0051132998 [FASON]**
v.	§	
ELENE B. GLASSMAN, **Respondent.**	§	**HARRIS COUNTY, TEXAS**

PETITIONER'S ORIGINAL EVIDENTIARY PETITION

COMES NOW Petitioner, the Commission for Lawyer Discipline, a committee of the State Bar of Texas, and would respectfully show unto the Evidentiary Panel as follows:

PARTIES

1. Petitioner is the Commission for Lawyer Discipline, a committee of the State Bar of Texas.

2. Respondent is Elene B. Glassman, Texas Bar Card No. 08016000, a licensed attorney and a member of the State Bar of Texas. Respondent may be served at 1715 West Main, No. 1, Houston, Texas 77098.

NATURE OF PROCEEDING

3. Petitioner brings this disciplinary proceeding pursuant to the State Bar Act, Texas Government Code Annotated §81.001, *et seq.* (Vernon 2003); the Texas Disciplinary Rules of Professional Conduct; and the Texas Rules of Disciplinary Procedure. The complaint that forms the basis of this cause of action was filed on or after January 1, 2004.

VENUE

4. Respondent's principal place of practice is Harris County, Texas; therefore, venue is appropriate in Harris County, Texas, pursuant to Rule 2.11B of the Texas Rules of Disciplinary Procedure.

PROFESSIONAL MISCONDUCT

5. The acts and/or omissions of Respondent, as hereinafter alleged, constitute professional misconduct as defined by Rule 1.06V of the Texas Rules of Disciplinary Procedure.

CAUSE OF ACTION

6. Elene B. Glassman (Respondent) was the defendant in a suit filed in 2004 by her sister in statutory probate court in regard to an *inter vivos* trust established by their deceased parents and for which Respondent was the trustee. On June 27, 2006, after a bench trial, a judgment was signed finding, *inter alia*, that Respondent had breached her duty as trustee and assessing monetary damages against Respondent.

7. In August of 2006, as part of her effort to collect on the judgment, Respondent's sister, represented by John S. Fason, filed an application for writ of garnishment directed to JP Morgan Chase Bank (Chase); this application was assigned a separate cause number from the underlying suit. On April 30, 2009, after a hearing, an order was signed requiring Chase to pay to Respondent's sister the funds belonging to Respondent that it was holding.

8. Respondent, representing herself, filed an appeal from the April 30, 2009 garnishment order. However, in her brief she did not directly attack the order itself. Rather, she challenged the order by attacking the June 27, 2006 judgment on which the garnishment order was based. Respondent had not timely appealed the June 27, 2006 judgment, and an appeal of the judgment in 2009 was time-barred. Apparently realizing this, Respondent attacked the judgment by arguing that the statutory probate court had lacked subject matter jurisdiction to enter the judgment, and therefore it was void.

9. However, the statutory probate court clearly had possessed jurisdiction to enter the June 27, 2006 judgment. The record in the case demonstrated jurisdiction existed, and

Respondent's own pleadings contained judicial admissions of the facts necessary to establish the court's jurisdiction. Therefore, there was no reasonable ground to believe that the April 30, 2009 garnishment order could be reversed, and Respondent's appeal was frivolous. By filing the appeal, Respondent unreasonably increased the cost and unreasonably delayed the resolution of the matter.

10. The 14th Court of Appeals affirmed the April 30, 2009 garnishment order and imposed $2,500.00 in sanctions on Respondent for filing a frivolous appeal. The Supreme Court of Texas denied Respondent's Petition for Review. Respondent is seeking a rehearing of that decision.

RULE VIOLATIONS

11. The acts and/or omissions of Respondent described above violate the following Texas Disciplinary Rules of Professional Conduct:

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

3.02 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.

COMPLAINT

12. The complaint that forms the basis of this cause of action was brought to the attention of the Office of the Chief Disciplinary Counsel of the State Bar of Texas by Mr. Fason's filing of a grievance on or about May 5, 2011.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner, the Commission for Lawyer Discipline, respectfully prays that this Evidentiary Panel discipline Respondent, Elene B.

Glassman, by reprimand, suspension, or disbarment, as the facts shall warrant; and grant all other relief, general or specific, at law or in equity, including injunctive relief, to which Petitioner may show itself to be justly entitled, including, without limitation, expenses and attorneys' fees.

Respectfully submitted,

STATE BAR OF TEXAS

LINDA A. ACEVEDO
Chief Disciplinary Counsel

Timothy R. Bersch

TIMOTHY R. BERSCH
State Bar No. 02254500
Assistant Disciplinary Counsel
600 Jefferson Street, Suite 1000
Houston, Texas 77002
Telephone: 713-758-8200
Facsimile: 713-758-8292

ATTORNEYS FOR PETITIONER, COMMISSION FOR LAWYER DISCIPLINE

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 2.09A of the Texas Rules of Disciplinary Procedure, a true and correct copy of the foregoing instrument was forwarded on the 21st day of December, 2011, to the following:

Mr. Elene B. Glassman
Attorney at Law
1715 West Main, No. 1
Houston, Texas 77098
Pro se

CMRRR 7005 2570 0000 1444 4069

Timothy R. Bersch

TIMOTHY R. BERSCH

BEFORE EVIDENTIARY PANEL 4C OF THE STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE Petitioner	)(	H0051132998
v.	)(	
ELENE B. GLASSMAN Respondent	)(	HARRIS COUNTY, TEXAS

RESPONDENT'S SECOND MOTION TO RECUSE AND/OR DISQUALIFY EVIDENTIARY PANEL 4C and MOTION TO DISMISS

Respondent, Elene B. Glassman submits this Second Motion to Recuse and/or Disqualify Evidentiary Panel 4c and Motion to Dismiss H0051132998 and shows as follows:

EVIDENTIARY PANEL 4C

1. Evidentiary Panel 4c has disregarded the procedures to be followed by Evidentiary Panels in response to Motions to Recuse/Disqualify as provided in the Evidentiary Panel Proceedings Procedural Guide (May 2012) page 6 and similar provisions in earlier versions of the Evidentiary Panel Proceedings Procedural Guide.
2. Upon receipt of the Evidentiary Petition on or about February 14, 2012, Respondent filed a timely challenge to the assignment of Evidentiary Panel 4c and its members.
3. Information sent to Respondent showed Harrison Gregg Jr. as 2011-2012 Chair of Evidentiary Panel 4c. The documents provided to Respondent did not show the name of the Chair of the District 4 Grievance Committee.
4. Mr. Gregg did not comply with the terms of the 2011-2012 Evidentiary Panel Proceedings Procedural Guide by forwarding the challenge to assignment of Evidentiary Panel 4c to the 2011-2012 Chair of the State Bar District 4 Grievance Committee Chair, Catherine Wylie.

5. In April 2012, Respondent asked to review the Clerk's File in H0051132998 and was told no one had ever before asked to do that. Assistant Disciplinary Counsel inquired about permission to allow Respondent to review the Clerk's File. The Clerk's File was made available to Respondent for review.

6. In April 2012, in the course of reviewing the Clerk's File in H0051132998, Respondent learned that Catherine Wylie, who has a conflict of interests with regard to Respondent, was the 2011-2012 chair of the State Bar District 4 Grievance Committee and had been responsible for the assignment of Evidentiary Panel 4c to H0051132998.

7. Respondent immediately asked about the Commission for Lawyer Discipline procedures for recusal/disqualification and was told by Assistant Disciplinary Counsel that there are no procedures other than the State Bar Act and Texas Rules of Disciplinary Procedure and that Evidentiary Panel 4c would hear the Challenge to Assignment of Evidentiary Panel 4c, Motion for Recusal/Disqualification etc.

8. In addition to telephone conversations in which Assistant Disciplinary Counsel asserted that there are no Commission for Lawyer Discipline procedures in Evidentiary Hearing matters other than the State Bar Act and Texas Rules of Disciplinary Procedures, there was email communication between Respondent and Assistant Disciplinary Counsel in which Assistant Disciplinary Counsel repeated his position stated on the telephone. A copy of relevant email correspondence between Assistant Disciplinary Counsel and Respondent with regard to the matter is attached hereto as Exhibit 1.

9. Respondent objected to Evidentiary Panel 4c hearing a Challenge to the Assignment to H0051132998 and to Evidentiary Panel 4c hearing the request for its recusal/disqualification. A copy of the objection is attached hereto as Exhibit 2.

10. A Request for Hearing on the Motion for Recusal/Disqualification was filed on or about May 15, 2012. A June hearing date was discussed but could not be confirmed due to Respondent's vacation plans. (See Exhibit 1) Despite the clear requirements stated in the Evidentiary Panel Proceedings Procedural Guides published each year since at least 2008, Assistant Disciplinary Counsel said the hearings would be before Evidentiary Panel 4c.

11. Harrison Gregg, 2011-2012 Chair of Evidentiary Panel 4c had the duty to forward the Motion to the 2011-2012 Chair of the State Bar District 4 Grievance Committee and did not do so.

12. In July 2012, Respondent was informed that Evidentiary Panel 4c had " new members." It is not possible for Respondent to determine whether the arrangements made in July 2012, are in accord with the terms and conditions of the State Bar Act, Texas Disciplinary Rules of Procedure, the State Bar Board Manuals, Evidentiary Panel Proceedings Procecudural Guides and prior procedures as to composition of Evidentiary Panels as CFLD has not produced documents requested in the discovery process that would provide some of the relevant information.

13. On or about July 10, 2012, David Hodges, purported chair of 2012-2013 State Bar District 4 Grievance Committee appointed Mr. Sylvester Anderson as Chair of Evidentiary Panel 4c.

14. On or about July 16, 2012, Respondent was informed of the new appointments to Evidentiary Panel 4c and of the appointment on July 10, 2012 of Mr. Sylvester Anderson as 2012-2013 Chair of Evidentiary Panel 4c

15. Respondent was advised on or about July 16, 2012 that the hearings requested in May, 2012, would be heard on August 1, 2012 before Evidentiary Panel 4c to which

Respondent objected, seeking a continuance, more time to evaluate the recently changed circumstances and objecting to Evidentiary Panel 4c conducting/hearing a challenge to its own authority, recusal, disqualification, etc.

16. Following hearings on August 1, 2012, of 4 motions by Respondent (Motion for Continuance, Challenge to Evidentiary Panel 4c/Motion to Recuse/Disqualify Evidentiary Panel 4c, Objection to Evidentiary Panel 4c Hearing the Challenge to Evidentiary Panel 4c/Motion to Recuse/Disqualify and Motion to remove the matters scheduled for August 1, 2012 from the Evidentiary Panel 4c Docket of August 1, 2012) all of which motions were denied, pursuant to a Public Information Request, Respondent learned that there are "Evidentiary Panel Proceedings Procedural Guides" usually published annually by Chief Disciplinary Counsel.

17. Following the hearings of August 1, 2012, of the 4 motions by Respondent, pursuant to a Public Information Request, Respondent also learned that State Bar Board Policy Manuals are published at least annually. The introduction to Texas Rules of Disciplinary Procedure states as follows:

> "...the responsibility for administering and supervising lawyer discipline and disability is delegated to the Board of Directors of the State Bar of Texas. Authority to adopt rules of procedure and administration no inconsistent with these rules is vested in the Board. ..."

18. That provision brings the State Bar Board Policy Manuals within the Texas Rules of Disciplinary Procedure. State Bar Board Policy Manuals include specific terms and conditions with regard to members of all State Bar committees and specifically the State Bar Grievance Committee as well as the organization and conduct of all State Bar Committees specifically including the Grievance Committee with regard to meetings, minutes etc. as set forth in Roberts Rules of Order.

EVIDENTIARY PANEL CHAIR

19. State Bar Board Policy Manuals state specifically that Chief Disciplinary Counsel shall produce a procedural guide. In accordance with that instruction, the Evidentiary Panel Proceedings Procedural Guides and the State Bar Board Policy Manuals include specific responsibilities for the chair of an Evidentiary Panel upon receipt of a Motion for Recusal/Disqualification.

20. Case law states that the response to a request for recusal is for the presiding judge in the matter to promptly submit the request to the Administrative Judge, who then assigns another judge to hear it. A document including a substantive request for recusal does not have to be entitled a "Request for Recusal" if the substantive allegations are sufficient to raise the question of recusal. The Challenge to Evidentiary Panel 4c included sufficient allegations and support to be considered a Request for Recusal. It was the duty of the 2011-2012 Chair of Evidentiary Panel 4c to forward the matter to the 2011-2012 State Bar District 4, Grievance Committee.

21. State Bar Board Policy Manuals direct that all Grievance Committee members receive copies of the Evidentiary Panel Proceedings Procedural Guides. The 2012-2013 chair of Evidentiary Panel 4c had no authority to hear the Challenge to Evidentiary Panel 4c/ Motion for Recusal/Disqualification.

22. Mr. Sylvester Anderson, 2012 Chair of Evidentiary Panel 4c and three additional members of the 2012 Evidentiary Panel 4c, Mr. Gene P. Tausk, Ms. Clara J. Veal and Mr. Richard M. Law heard Respondent's Challenge/Motion to Recuse/Disqualify on August 1, 2012 and participated in the proceedings with questions, comments etc.

23. The impartiality of Evidentiary Panel 4c is reasonably questionable in that Evidentiary Panel 4c has displayed bias and prejudice as to Respondent and/or the subject matter to such an extent that the deep seated antagonism with regard to Respondent and/or the subject matter presented to Evidentiary Panel 4c in the hearings on August 1, 2012 was such that it is evident that Evidentiary Panel 4c was unable and/or unwilling to comply with the requirements of the State Bar Act, Texas Disciplinary Rules of Procedure, Texas Rules of Civil Procedure, Evidentiary panel Proceedings Procedural Guide and State Bar Board Policy Manuals

MEMBERS OF EVIDENTIARY PANEL 4c

24. Members of Evidentiary Panel 4c had no authority to hear the Challenge to Evidentiary Panel 4c/Motion for Recusal Disqualification or the other motions heard on August 1, 2012.

25. The Chair of Evidentiary Panel 4c and the members who attended the hearings on August 1, 2012 all disregarded the procedures in the Evidentiary Panel Proceedings Procedural Guides with regard to Recusal/Disqualification and conducted/participated in a hearing they had no jurisdiction to conduct or authority to attend.

26. Mr. Anderson, Mr. Tausk, Ms. Veal and Mr. Law constitute a majority of the 6 members of the 2012 Evidentiary Panel 4c; all of them have violated their duties pursuant to their Oath of Office as members of the State Bar Grievance Committee and their responsibilities as members of State Bar District 4 Grievance Committee; as provided in State Bar Board Policy Manuals, they are subject to being removed from the Grievance Committee.

PROCEDURAL ELEMENTS OF RECUSAL/DISQUALIFICATION

27. Applicable case law provides that all decisions of a judge who does not promptly submit a Motion for Recusal/Disqualification to the Presiding Judge for assignment of another judge to hear the motion, are void, of no force and effect.

28. The decision of Evidentiary Panel 4c on August 1, 2012, denying Respondent's Challenge to Evidentiary Panel 4c/ Motion to Recuse/Disqualify is subject to being declared void, of no force and effect.

29. Upon receipt of a Motion for Recusal/Disqualification, Evidentiary Panel Proceedings Procedural Guides require the Chair of the Evidentiary Panel to forward the motion to Chair of the Grievance Committee. Had the 2011-2012 chair of Evidentiary Panel 4c complied with the requirements incumbent upon him, the matter would have been forwarded to Catherine Wylie, the 2011-2012 Chair of the Houston District Grievance Committee who had a conflict of interests with regard to Respondent.

30. The 2012-2013 Chair of the State Bar District 4 Grievance Committee may or may not be a properly elected Chair; his position as Chair is subject to challenge as are all of his appointments.

31. With procedural irregularities and manipulation, disregarding the terms in the Evidentiary Panel Proceedings Procedural Guides, Mr. Anderson, 2012-2013 chair of Evidentiary Panel 4c, appointed by the 2012-2013 Chair of the State Bar District 4 Grievance Committee, who may or may not have been properly elected in compliance with State Bar Board Policy Manual requirements, not only did not forward the Motion to Recuse/Disqualify, the First Amended Motion to Recuse/Disqualify and the Second Amended Motion to Recuse/Disqualify to the Chair of State Bar District 4 Grievance Committee, Mr. Anderson presided at the hearings on August 1, 2012 and included three

additional members of Evidentiary Panel 4c, thereby further tainting a majority of Evidentiary Panel 4c rendering the entire panel disqualified with regard to Respondent

32. Mr. Anderson and the members of Evidentiary Panel 4c knew or should have known that their conduct in this matter was improper and violated their duties as members of the State Bar District 4 Grievance Committee pursuant to the Oath of Committee Members, TDRP 2.05 and provisions of the State Bar Board Policy Manuals.

33. State Bar Board Policy Manuals provide that Chief Disciplinary Counsel is to provide training for all State Bar Grievance Committee members. In the course of the hearings on August 1, 2012, Mr. Anderson, Mr. Tausk, Ms. Veal and Mr. Law all displayed a lack of knowledge of their duties as set forth in the Evidentiary Panel Proceedings Procedural Guides and the State Bar Board Policy Manuals.

34. As stated in the State Bar Board Policy Manuals, the director of the State Bar submitting a nomination for appointment to the Grievance Committee, is responsible for being sure that the nominee is aware of his/her obligations as a member of the State Bar Grievance Committee.

35. One of the obligations of Grievance Committee members stated in the State Bar Board Policy Manuals is training about Grievance Committee procedures.

36. Another responsibility is compliance with all procedures applicable to members of Grievance Committee Panels when conducting an Evidentiary Hearing.

37. Grievance Committee members are required to take an oath stating that they will perform their duties; Mr. Anderson, Mr. Tausk, Ms. Veal and Mr. Law have violated their oaths.

38. Motions in Evidentiary Matters are heard by the Chair of the Evidentiary Panel; Mr. Anderson had no authority to include others in any of the 4 hearings on August 1, 2012.

39. Mr. Tausk, Ms. Veal and Mr. Law had no authority to attend and/or participate in the 4 hearings of August 1, 2012.

DISMISSAL

40. The many irregularities, manipulations and disregard of the provisions of the State Bar Act, Texas Rules of Disciplinary Procedure, State Bar Board Policy Manuals, and Evidentiary Panel Proceedings Procedural Guides terms and conditions create a cumulatively biased and prejudiced situation in which Respondent cannot be accorded due process, fundamental fairness and/or her rights pursuant to the Constitution of the United State and the Constitution of Texas; she is entitled to dismissal of Evidentiary Petition H0051132998.

41. There have been so many irregularities, manipulations and disregard of the provisions of the State Bar Act, Texas Rules of Disciplinary Procedure, State Bar Board Policy Manuals and Evidentiary Panel Proceedings Procedural Guides that they constitute harassment of Respondent

42. The irregularities, manipulations and disregard of the provisions of the State Bar Act, Texas Rules of Disciplinary Procedure, State Bar Board Policy Manuals and Evidentiary Panel Proceedings Procedural Guides have been damaging to Respondent, necessitating extensive expenditure of her time, subjecting her to unnecessary and improper hearings, increasing her costs and establishing a record that casts her in a false light.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Respondent prays that the assignment of Evidentiary Panel 4c in the above identified matter be cancelled, Respondent requests "dismissal" of Evidentiary Petition H0051132998, that Sylvester Anderson be recused from his

position as Chair of State Bar of Texas District 4C Grievance Committee with regard to any and all matters touching Respondent, that Mr. Gene Tausk, Ms. Clara Veal and Mr. Richard Law all be recused with regard to any matter touching Respondent and for all other relief, general and special, at law and in equity, to which Respondent is entitled.

Respectfully Submitted,

Elene B. Glassman, pro se
Respondent
SBN 08016000
1715 West Main, #1
Houston, Texas 77098
713 523 6464
ebglassman@gmail.com

BEFORE EVIDENTIARY PANEL 4C OF THE STATE BAR DISTRICT NO. 4
GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE **Petitioner**	)(	**H0051132998**
v.	)(	
ELENE B. GLASSMAN **Respondent**	)(	**HARRIS COUNTY, TEXAS**

RESPONDENT'S UNSWORN DECLARATION

Pursuant to Texas Civil Practice and Remedies Code, 132.001, Respondent Elene Baernstein Glassman declares as follows:

"I, Elene Baernstein Glassman, am the Respondent in the above identified matter. My date of birth is May 15, 1942. My address is:

Elene B. Glassman, 1715 West Main, #1, Houston, Texas 77098.

1. Commission for Lawyer Discipline, "CLD" a Committee of the State Bar of Texas, is the Petitioner in the above identified matter
2. CLD has filed an Evidentiary Petition H0051132998
3. Catherine Wylie, who had a conflict of interests with Respondent, assigned the members and appointed the chairs of all Evidentiary Panels of District 4 during 2011-2012, including Evidentiary Panel 4c.
4. The procedures stated in the State Bar Board Policy Manuals with regard to State Bar Committee Procedures have been disregarded by State Bar District 4 Grievance Committee to the detriment and disadvantage of Respondent
5. The procedures stated in the Evidentiary Panel Proceedings Procedural Guides published by Chief Disciplinary Counsel at the direction of the State Bar Board have also been disregarded by State Bar District 4 Grievance Committee, the Chair of State Bar District 4 Grievance Committee, State Bar District 4 Grievance Committee 2011-2012 Evidentiary Panel 4c, and 2012-2013 Evidentiary Panel 4c the purported 2012-2013 chair

of State Bar District 4, Grievance Committee Evidentiary Panel 4c and several of the purported members of State Bar District 4 Grievance Committee.

6. The pattern of disregard of duties of Evidentiary Panel Chairs and Evidentiary Panel members, irregularities and manipulation is evident in the record of H0051132998, some of the irregularities have been acknowledged by Assistant Disciplinary Counsel Timothy R. Bersch, counsel of record in H0051132998.
7. Additional irregularities are evident from a review of the record in the matter.

I declare under penalty of perjury that the foregoing statements are true and correct."

Executed in Harris County, Texas the 26 day of October, 2012.

Elene Baernstein Glassman

CFLD v. Glassman [Fason]

Inbox

Mon, Apr 23, 2012 at 5:40 PM

Tim Bersch

<Tim.Bersch@texasbar.com>
To: "Elene Glassman (ebglassman@gmail.com)" <ebglassman@gmail.com>
Reply | Reply to all | Forward | Print | Delete | Show original

Ms. Glassman:

When you and I talked last week, we discussed possible dates for a hearing on your Challenge to Jurisdiction and on your First Amended Objection to Assignment of Evidentiary Panel. We agreed that we would aim for June 6, with the understanding that the hearing might have to be postponed if you are going to be out of town.

Since our conversation, I have had another thought as to how to proceed. You are objecting to Catherine Wylie's participation in this process and to her appointment of the panels in District 4. Rather than put time and energy into fighting over these issues, I suggest that we just sit back and do nothing in the case until August. The reason for this suggestion is that the Grievance Committee year runs from July 1 through June 30. Ms. Wylie is in her sixth and final year on the District 4 Committee, which means that she will no longer be on the Committee as of July. There will a new District 4 Committee Chair, and that person will make his or her own assignments of Grievance Committee members to all six District 4 panels.

As far as I can tell, once the steps that I have just outlined have taken place, there will be no need for further consideration of your First Amended Objection to Assignment of Evidentiary Panel. Since Ms. Wylie will no longer be on the Grievance Committee, there will be no need for you to try to remove her. And since all the members of the six panels will have been assigned to those panels by the new Committee Chair, there should be no objection to the assignment process.

If you are willing to go along with this suggestion, then my proposal is that we wait until July and then schedule your Challenge to Jurisdiction for a hearing as soon as you and I and the panel are all available.

I look forward to hearing from you.

Tim

Exh 1

H0051132988 CLD v. Glassman

Inbox

Tue, Apr 24, 2012 at 3:40 PM

Elene Glassman

<ebglassman@gmail.com>
To: Tim Bersch <tbersch@texasbar.com>
Reply | Reply to all | Forward | Print | Delete | Show original
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
Reply | Reply to all | Forward | Print | Delete | Show original

Mr. Bersch,

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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.

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Reply | Reply to all | Forward | Print | Delete | Show original

Tim Bersch

<Tim.Bersch@texasbar.com> Tue, Apr 24, 2012 at 6:12 PM To: Elene Glassman <ebglassman@gmail.com>
Reply | Reply to all | Forward | Print | Delete | Show original
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
[illegible]

Tim Bersch

Tue, Apr 24, 2012 at 6:12 PM
Wed, Apr 25, 2012 at 11:58 AM

Elene Glassman

<ebglassman@gmail.com>
To: Tim Bersch <Tim.Bersch@texasbar.com>
Reply | Reply to all | Forward | Print | Delete | Show original
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
- Show quoted text -
Reply | Reply to all | Forward | Print | Delete | Show original

Wed, Apr 25, 2012 at 4:19 PM

Tim Bersch

<Tim.Bersch@texasbar.com>
To: Elene Glassman <ebglassman@gmail.com>
Reply | Reply to all | Forward | Print | Delete | Show original
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.

Reply | Reply to all | Forward | Print | Delete | Show original

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.

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Reply | Reply to all | Forward | Print | Delete | Show original

Wed, Apr 25, 2012 at 4:19 PM

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<Tim.Bersch@texasbar.com>

To: Elene Glassman <ebglassman@gmail.com>

Reply | Reply to all | Forward | Print | Delete | Show original

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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]

H0051132998 CLD v. Glassman; Extension of time for challenging new appointees and rescheduling of hearing scheduled for August 1, 2012

Inbox

Elene Glassman <ebglassman@gmail.com> Mon, Jul 23, 2012 at 9:40 AM
To: Tim Bersch <tbersch@texasbar.com>

Re: Request for Extension of Time to challenge new appointments to Evidentiary Panel 4c and Rescheduling of hearing on Request for Recusal and/or Disqualification

Mr. Bersch

When I filed the Motion for Continuance and Request for Extension of Time for Discovery, you said that filing formal documents was not necessary, a letter to you with the requests would have sufficed.

Friday I delivered the signed Agreement as to the new dates for completion of discovery and for the Evidentiary Hearing. I also delivered a letter requesting additional time to consider whether I want to challenge any of the new members of Evidentiary Panel 4c and requesting that the recusal/disqualification hearing scheduled for August 1 be rescheduled.

Since I delivered the documents Friday, I realize you might not have had an opportunity to review them.If a fmotion for either or both of those requests is necessary, please advise me promptly as both matters are presently time sensitive.

Elene Glassman

Tim Bersch <Tim.Bersch@texasbar.com> Mon, Jul 23, 2012 at 7:35 PM
To: Elene Glassman <ebglassman@gmail.com>

Ms. Glassman,

Thank you returning the signed letter agreement regarding the November 5 date for the discovery deadline and the December 5 date for the Evidentiary Hearing in the above-captioned matter. We will now file a formal notice in regard to the hearing.

I have also received and reviewed your July 19 letter concerning the scheduled August 1 hearing on your pending motions. I have one correction regarding your letter. I did not tell you in our July 10 telephone conversation that all of the current members of Panel 4C are new to Panel 4C. Clara J. Veal is a current member of Panel 4C who was also a member of the panel last year. (Ms. Veal has been a member of Panel 4C since the 2007-08 Bar year; however, she was not one of the four members of Panel 4C who actually heard the prior case against you during the 2008-09 year.) All of the other five

current members of Panel 4C are new to the panel this year.

As to the substance of your July 19 letter, I am not willing to agree to an extension of the deadline for you to bring any alleged grounds for disqualification or recusal of panel members to the attention of the panel. Likewise, I am not willing to agree to a continuance of the scheduled hearing. I think it is best that you present your arguments in support of your motions directly to the members of the panel on August 1, so that these issues can be decided, one way or the other. As far as your ability to prepare for the hearing is concerned, I will be producing only a few documents in response to your Request for Production, so you will not have any difficulty reviewing them before the hearing.

Tim Bersch

- Show quoted text -

Reply | Reply to all | Forward | Print | Delete | Show original

Elene Glassman <ebglassman@gmail.com> Tue, Jul 24, 2012 at 10:25 AM
To: Tim Bersch <Tim.Bersch@texasbar.com>

Reply | Reply to all | Forward | Print | Delete | Show original

Mr. Bersch,

Thank you for your response. I had not understood that Clara Veal remains on the panel. Thank you for clarifiying that point.

I will file a formal request for extension of time as to the 10 days and challenge the current appointments.

The hearing on August 1 was requested by me; I want to take it off the docket for August 1. If there is something in the State Bar Act or TRDP that vests that power in CLD, I have not seen it and would appreciate the authority supporting your response.

I will also file a request for continuance as to the hearing scheduled for August 1.

Elene Glassman

- Show quoted text -

Reply | Reply to all | Forward | Print | Delete | Show original

Tim Bersch <Tim.Bersch@texasbar.com> Tue, Jul 24, 2012 at 12:18 PM
To: Elene Glassman <ebglassman@gmail.com>

Reply | Reply to all | Forward | Print | Delete | Show original

Ms. Glassman,

Thank you for your e-mail.

There is no specific rule to which I can point that deals with the scheduling issue that we are discussing. However, the longstanding practice is that a hearing, once scheduled, can only be rescheduled by agreement of the parties or by order of the panel. Since I am not willing to agree to reschedule the August 1 hearing, this means that the panel must decide whether to continue it. My position is based on the fact that Petitioner has an interest equal to yours in having your motions resolved. As long as they remain unresolved, we will not be able to have the Evidentiary Hearing in this case.

You are certainly welcome to file a motion seeking a continuance of the hearing on the two motions that are scheduled to be heard on August 1. I will agree to have the Motion for Continuance heard first at the hearing. If the panel grants the continuance, then the hearing on the other two motions will take place at a later time. If the panel denies the continuance, then the other two motions will be heard immediately.

Tim Bersch

-----Original Message-----
From: Elene Glassman [mailto:ebglassman@gmail.com]
Sent: Tuesday, July 24, 2012 10:26 AM

Elene B. Glassman
1715 West Main, #1
Houston, Texas 77098

713 523 6464

ebglassman@gmail.com

November 27, 2011

Mr. Timothy Bersch
Assistant Disciplinary Counsel
State Bar of Texas
600 Jefferson, Suite 1000
Houston, Texas 77001

Re: H0051132998 Objection to Panel 4C

Dear Mr. Bersch,

This is an objection to the appointment of Panel 4C and the members of Panel 4C individually in H0051132998.

Some members of Panel 4C were members of the Evidentiary Panel appointed in H0100623222. During the Evidentiary Hearing in H0100623222 at least one member of Panel 4C openly displayed a lack of knowledge of TRDP; the panel is tainted as several members of Panel 4C were appointed to the prior panel..

Additionally, the panel is not in compliance with the standards of the State Bar Act, State Bar bylaws, Texas Rules of Civil Procedure and/or the Texas Rules of Disciplinary Procedure.

Very truly yours,

Elene B. Glassman

Elene B. Glassman

Exh 2

Elene B. Glassman
1715 West Main, #1
Houston, Texas 77098

713 523 6464

ebglassman@gmail.com

April 17, 2012

Mr. Timothy R. Bersch
Assistant Disciplinary Counsel
State Bar of Texas
600 Jefferson, Suite 1000
Houston, Texas 77001

Re: H0051132998 Commission on Lawyer Discipline v. Elene B. Glassman

Dear Mr. Bersch,

Enclosed is Respondent's First Amended Objection to Assignment of Evidentiary Panel 4c and Objection to Appointment of All Evidentiary Panels of State Bar District 4 with a Certificate of Service.

Very truly yours,

Elene B. Glassman

Enclosures:

Respondent's First Amended Objection to Assignment of Evidentiary Panel 4c and Objection to Appointment of All Evidentiary Panels of State Bar District 4.
Certificate of Service

BEFORE EVIDENTIARY PANEL 4C OF THE STATE BAR DISTRICT NO. 4
GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE Petitioner	)(	H0051132998
v.	)(	
ELENE B. GLASSMAN Respondent	)(	HARRIS COUNTY, TEXAS

FIRST AMENDED OBJECTION TO ASSIGNMENT OF EVIDENTIARY PANEL 4C AND OBJECTION TO ALL EVIDENTIARY PANELS OF STATE BAR DISTRICT 4

Respondent, Elene B. Glassman submits this First Amended Objection to Assisgnment of Evidentiary Panel 4c and Objection to Assignment of any Evidentiary Panel of State Bar of Texas Grievance Committee District 4, requests dismissal of the above identified matter and shows as follows:

1. The Chair of State Bar of Texas District 4C Grievance Committee appoints the panel to preside at Evidentiary Hearings.
2. On April 12, 2012, Respondent learned that Catherine Wylie is Chair of District 4C Grievance Committee and appointed panel 4c to preside at the evidentiary hearing in the above identified matter (Exhibit 1: letter to Catherine Wylie requesting appointment of Evidentiary Panel in H0051132988; Exhibit 2: Order Assigning Evidentiary Panel signed by Catherine Wylie with list of panels and designation of 4c initialed by Catherine Wylie)
3. Catherine Wylie has a conflict of interests with regard to respondent Elene B. Glassman based on but not limited to the following facts:
    A. Catherine Wylie was purportedly appointed as successor trustee in In re Baernstein Trust "Baernstein" Cause Number 350,750, Probate Court 1,

Harris County, Texas, the litigation that gave rise to the appeal to the 14th Court of Appeals, Appeal No. 14-09-00522 CV.

B. Respondent was the trustee of Baernstein from its inception in 1980;

C. In response to a request by Meryl B. Goodfriend through her counsel of record John Fason, Judge Austin ordered that Respondent was removed as Trustee and Catherine Wylie was appointed as Successor Trustee

D. A judgment issued by the 14th Court of Appeals in Appeal Number 14-09-00522 was the basis for the complaint filed by John Fason in this matter.

E. The appointment of a Successor Trustee was void as it followed disregard of jurisdictional criteria by Judge Austin who appointed Catherine Wylie; everything that flows from absence of jurisdiction is void and of no force and effect. The absence of jurisdiction is stated in the record of Cause Number 350,750.

F. Catherine Wylie, functioning as Successor Trustee, was responsible for stewardship of the assets of Baernstein;

G. There are two residual beneficiaries of Baernstein, Elene B. Glassman, "Respondent" herein, Appellant in Appeal Number 14-09-00522 and Meryl B. Goodfriend, Appellee in Appeal Number 14-09-00522.

4. Catherine Wylie, as chair of State Bar of Texas District 4 Grievance Committee has a conflict of interest with regard to anything as to grievance matters affecting Respondent, a residual beneficiary of the Baernstein Trust for which Ms. Wylie functioned as Successor Trustee.

A. Ms. Wylie knew or should have known from the information in the record of 350, 750 that the allegations of malfeasance and all other allegations of impropriety on the part of Respondent presented by John Fason in his capacity as counsel of record to Meryl B. Goodfriend were not valid; Ms. Wylie had a responsibility to bring that information to the attention of Probate I.

B. Ms. Wylie received substantial fees from functioning as Successor Trustee in the Baernstein Trust, duplicating work that had already been done by Respondent herein, thereby improperly depleting the assets of the Trust to the disadvantage of Respondent as Trustee, the residual beneficiaries and to her own financial advantage.

C. Ms. Wylie has appointed the same panel to preside in this matter that presided in the Evidentiary Hearing H0100623222; the judgment from H0100623222 is void.

D. Any panel appointed by Ms. Wylie in any grievance matter involving Respondent would be tainted as Chair of the State Bar of Texas District 4 Grievance Committee Ms. Wylie is disqualified as to matters involving respondent

E. Ms. Wylie will be a witness in the pending matter and possibly in Cause Number 2011-43140 a disciplinary matter arising from H0100623222 currently pending in the 129th District Court, Harris County, Texas.

5. Ms. Wylie has a conflict of interests with regard to her own benefit and her duties as Chair of the State Bar of Texas District 4 Grievance Committee and her

responsibilities specifically as to respondent as set forth in the State Bar Act, the Texas Disciplinary Rules of Procedure, the Administrative Procedures Act, the Texas Business Organizations Code, the Texas Rules of Civil Procedure, Texas Rules of Evidence and the Texas Trust Act.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Respondent prays that the assignment of Evidentiary Panel 4c in the above identified matter be cancelled, that all Evidentiary Panels of State Bar District 4 be disqualified to preside as to any grievance matters as to Respondent, that Catherine Wylie be found disqualified with regard to any participation in State Bar of Texas/Commission for Lawyer Discipline grievance proceedings with regard to Respondent. Respondent requests that H0051132998 be dismissed, that Catherine Wylie be recused from her position as Chair of State Bar of Texas District 4C Grievance Committee and for all other relief, general and special, at law and in equity, to which Respondent is entitled.

Respectfully Submitted,

Elene B. Glassman, pro se
Respondent
SBN 08016000
1715 West Main, #1
Houston, Texas 77098
713 523 6464
ebglassman@gmail.com

H0051132998

Elene B. Glassman,
Appellant

V.

Commission for Lawyer Discipline
Appelleet

CERTIFICATE OF CONFERENCE

I hereby certify that on the 26 day of October, 2012, Movant left a message for Timothy R. Bersch telephone number 713 758 8200, Counsel of Record for Petitioner, Commission for Lawyer Discipline in H0051132998 advising him that a Second Challenge to Evidentiary Panel 4c/Second Motion to Recuse and/or Disqualify Evidentiary Panel 4c and Motion to Dismiss would be filed and asking if he will oppose or not oppose;

Petitioner [illegible]

Elene B. Glassman

CERTIFICATE OF SERVICE

I certify that on the 26 day of October, 2012 a true and correct copy of the foregoing Respondent's Second Motion to Recuse and/or Disqualify Evidentiary Panel 4c and Motion to Dismiss was served on Petitioner by fax, personal delivery or certified mail, return receipt requested to:

Mr. Timothy R. Bersch
Assistant Disciplinary Counsel
State Bar of Texas
600 Jefferson # 1000
Houston, Texas 77001

Elene B. Glassman

10:00 Respondent's Second Motion to Recuse and/or Disqualify Evidentiary Panel 4C and Motion to Dismiss. I'll call this hearing to order.

Present as counsel for Petitioner, the 10:00 Commission for Lawyer Discipline, is Timothy R. Bersch. Also present is Respondent Elene B. Glassman. Also present is Maribelle Hernandez, legal assistant for Timothy R. Bersch.

Pursuant to Rule 2.16 of the Texas Rules 10:00 of Disciplinary Procedure, this hearing is a confidential proceeding. This hearing is being recorded by a certified court reporter. Cameras or tape recorders are not allowed into the room.

Ms. Glassman, would you like to present 10:01 your motion?

MS. GLASSMAN: Thank you. My name is Elene Glassman. I am the Respondent in the matter before Commission for Lawyer Discipline today. I have filed a Second Motion to Recuse and/or Disqualify 10:01 Evidentiary Hearing 4C, and Motion to Dismiss the cause of this matter in this evidentiary proceeding.

Evidentiary Panel 4C disregarded procedures to be followed by evidentiary panels, in response to motions to recuse or to disqualify. As 10:01 provided in the evidentiary panel proceedings procedural

guides of May 2012, page 6, and similar provisions in earlier versions of the evidentiary panel proceedings procedural guides.

This is a perpetuation of the problems that I have had throughout these proceedings. And getting proper procedures followed, upon receipt of the evidentiary petition, in early 2012, I filed a challenge to the assignment of Evidentiary Panel 4C and its members.

Evidentiary Panel 4C heard a matter in 2008, 2009, that is still not resolved, and they still have claim jurisdiction with regard to that matter creating something of a conflict with regard to the current matter. In that -- the current matter out of the litigation, from which the prior matter developed.

THE CHAIR: Ms. Glassman, did you get an opportunity to object to this panel assignment for this particular matter?

MS. GLASSMAN: I objected immediately. That is the first motion to recuse, that was improperly heard, in June -- no. It was heard August 1.

Upon receipt of notice of the complaint, I immediately challenged Evidentiary Panel 4C, in preparing a response to request for disclosure. I discovered that the chair of the evidentiary of the

10:03 Houston 2011, 2012 chair of evidence -- of the State Bar District 4 Grievance Committee, was Katherine Wylie, who had been involved in the litigation out of which the problems arose. She was appointed as a -- improperly
10:04 appointed, as a substitute trustee. And she had made the appointment. I did not know that, no one informed me until I came down to review the file, in order to prepare the response to the request for disclosure.

Upon learning that from the file, I
10:04 immediately filed a motion to recuse the panel, Ms. Wylie, the entire -- well, Evidentiary Panel 4C and the entire panel. But there's more to it than just Ms. Wylie. The procedures had not been followed.

The procedures for evidentiary panel
10:05 begin with the State Bar Act, which refers to policies and procedures developed by the State Bar board. The State Bar board produces State Bar board policy manuals which I will, with your permission, refer to as the policy manuals.

10:05 THE CHAIR: Okay.

MS. GLASSMAN: And the chief disciplinary counsel, or office of chief disciplinary counsel, produces an annual evidentiary panel proceedings procedural guide. I have on numerous occasions asked
10:05 opposing counsel for the internal rules or documents,

aside from the State Bar Act and rules of Disciplinary Procedure. I have been told that they do not exist.

I objected to the hearing on recusal being heard by Evidentiary Panel 4C, I objected to almost everything that was presented, and they proceeded without regard to my objection; using, therefore, an extra judicial source, aside from the fact that the panel had no authority to hear the matter. Aside from the fact that they chose to disregard my objection without checking any kind of judicial standards.

There are a number of judicial standards that apply to this, one of which is the Texas Rules of Civil Procedure, Rule 18(b), I think, deals with the procedures for recusal. And the State Bar, following the hearings on August 1, I submitted an open records -- excuse me, public information request pursuant to the Texas Public Information Act.

And part of the response included some pages from the evidentiary panel proceedings procedural guide, and pages from the State Bar board policy manual. That is how I learned that those documents exist.

I had raised the subject in the hearing on August 1st, and every member of the panel claimed they had no knowledge of any other documents. The State Bar board, the policy manuals, require that panel

10:07 members, that grievance committee members, be provided with a copy of the procedural manual. They require that panel members be trained every year, they require that the grievance committees comply with all the same
10:08 standards as all other State Bar committees, and the additional requirements in the State Bar board policy manual that is about the grievance committees. A chair of a panel has specific obligations.

Now, if you go to these Texas Rules of
10:08 Civil Procedure with regard to recusal, when a motion for recusal is filed, it is to be immediately, the judge who is presiding, is to immediately within, I think it says three days, either recuse himself, or sign an order for referral. I have not received either a signed
10:08 recusal or an order for referral from Mr. Anderson, the chair of the panel. So the matter was -- the matter has been referred inappropriately.

THE CHAIR: Ms. Glassman, let me ask you a question. My understanding, the only, I guess,
10:09 allegation by you, bias or prejudice regarding Panel 4C, is that they had previously heard another matter. Am I understanding correctly?

MS. GLASSMAN: No.

THE CHAIR: Okay. What am I missing?

10:09 MS. GLASSMAN: This is a second motion to

recusal, and Panel 4C has now disregarded their specific obligations. Mr. Anderson as chair of the panel has not complied with his responsibility.

THE CHAIR: Okay. I want to put that aside for a second. And tell me substantively what was wrong with Panel 4C that they should have recused themselves besides they heard another matter related to you?

MS. GLASSMAN: That matter is still pending.

THE CHAIR: I understand.

MS. GLASSMAN: They have conflict of interest. And their impartiality is therefore in doubt.

THE CHAIR: Okay. And I understand that. I want to make sure I understand your position. Is there anything else that you have besides that?

MS. GLASSMAN: The fact the chair who appointed them was an inappropriate person.

THE CHAIR: Okay. Well, you understand that her appointment was purely ministerial.

MS. GLASSMAN: That's not what the rules say. And this is a problem throughout these proceedings. I'm very procedural-oriented. I think that the U.S. Constitution and the Texas Constitution support my position about the need to follow proper

10:10 procedures, and Mr. Bersch does not think procedures matter.

THE CHAIR: Okay. Let me ask you this. If I order that this be transferred over to 4F, do you 10:10 have a problem with that?

MS. GLASSMAN: I don't know who is on 4F.

THE CHAIR: You haven't been provided a list? I think it was in --

MS. GLASSMAN: I have a list of all of 10:11 the panels, and I have not gone through the list to check each and every member. I may or may -- I would not have the problem of their having the conflict of interest, then I'd have to see who's on the panel.

THE CHAIR: Okay. Mr. Bersch, can you 10:11 provide that to her at this moment?

MS. GLASSMAN: I can't review it instantly. I need to go online and see who these people are, whether there are any problems. I run into a lot of bias and prejudice.

10:11 MR. BERSCH: If I can respond --

THE CHAIR: Yes. Please.

MR. BERSCH: -- to some of the Respondent's comments. In response to the Chair's question just a moment ago, a copy of the current roster 10:11 for panel 4F was attached as Exhibit B to Petitioner's

10:11 response to Respondent's Second Motion to Recuse. This was the response that Petitioner filed on December 4th and we sent it by certified mail and by e-mail to Ms. Glassman. So she does have and has had it in
10:12 possession for several days, at least a copy of the roster of 4F. But I will say that if --

THE CHAIR: Can I take a look at that?

MR. BERSCH: Certainly.

THE CHAIR: I don't have it in front of
10:12 me.

MR. BERSCH: Actually --

MS. GLASSMAN: This was sent when?

MR. BERSCH: This was attached to my response to the Second Motion to Recuse which we filed
10:12 on December 4th, and we put it in the mail, certified mail, to you on that day -- may I finish my sentence?

MS. GLASSMAN: Excuse me.

MR. BERSCH: And we also e-mailed it to you that day, and we have a copy of the e-mail
10:12 transmittal that my legal assistant sent to you that day, indicating that it was being filed.

The -- I have here because I thought we might need to enter this, a copy of the roster that is marked as an exhibit.

10:13 I'll go ahead and ask that -- I would ask

10:13 that Petitioner's Exhibit No. 3, be included in the record of this proceeding, and it is a copy of the current roster of Evidentiary Panel 4F, with the information excluded as to phone number, fax number, and 10:13 e-mail because that's held confidential. But it has the names, mailing addresses, service dates, and the designation as attorney or public member for all the current members of 4F.

THE CHAIR: Okay. Any objection to this 10:13 exhibit?

MS. GLASSMAN: No objection to the exhibit.

(Exhibit 3 marked/admitted)

THE CHAIR: It's admitted. Well, so if I 10:14 could please respond briefly to some of the other things the respondent has said.

MS. GLASSMAN: I have not finished my presentation.

THE CHAIR: Well, Ms. Glassman, why don't 10:14 we do this. Why don't we come back to you. I've read everything that both parties have filed. Unless you have something new, I think I'm aware of what your position is. Do you have anything that you didn't include?

10:14 MS. GLASSMAN: Are you aware of my

position about -- all about whether or not any of the panel members including you are properly --

THE CHAIR: Yes. I read that.

MS. GLASSMAN: Thank you.

MR. BERSCH: I'll be brief. I think much of what Ms. Glassman indicated in her remarks is just not relevant in what we're dealing with here. I think it's clear in the rules that the only basis to recuse or disqualify a panel or an entire panel is based on the grounds set forth in the Rule 18(b) of the Texas Rules of Civil Procedure.

And as we indicated in a written response, Ms. Glassman, in her various allegations against Panel 4C, really does not get into any of the specific grounds for recusal or disqualifications. And therefore -- and one thing that she mentions about this prior case before Panel 4C, Ms. Glassman makes the statement that it is unresolved.

That's an inaccurate statement. Ms. Glassman continues to maintain that position that that prior case was heard at two separate hearings in September of 2008 and January of 2009. That judgment was signed by the panel chair in early 2009. Ms. Glassman filed it, there was an appeal, she did not pursue her appeal. Now she has her own recitation as to

13:59 not have a live controversy, there is no jurisdiction. You cannot be in court for an advisory opinion or discussing a moot point. There must be -- and that comes straight out of the Texas Constitution and the 13:59 U.S. Constitution, the 14th Amendment.

This is not justiciable because it's predicated on a void judgment that was withdrawn.

MR. PHIFER: Have you submitted a briefing to the panel with the legal cases and precedent 13:59 that you relied upon?

MS. GLASSMAN: No. But I probably could put it together in a reasonable length of time and do that because a lot of it is in here.

THE CHAIR: If we gave you 30 days, could 14:00 you do that?

MS. GLASSMAN: I don't have an order that says that I have a scheduling order, and it does not say anything about 30 days to do that. I don't have any other order except the -- I don't have an order -- I 14:00 don't know if I have -- I think I do have an order that says the motion to compel was denied.

THE CHAIR: Mr. Bersch, do you have any response to the pleading of jurisdiction?

MR. BERSCH: Just very brief. In regard 14:00 to Ms. Glassman's last point, certainly this is

14:00 justiciable as the panel chair has already alluded. Requirements of jurisdiction are met in that as Ms. Glassman has admitted herself in her amended pleading, which is in front of the panel, she is a 14:00 licensed attorney in the State of Texas. In and of itself, that satisfies jurisdiction.

Certainly, we have a live issue because the Commission for Lawyer Discipline, which is the body charged with administrating the disciplinary system in 14:01 this state, has alleged, it is simply an allegation, but we have alleged that Ms. Glassman violated two of our disciplinary rules. That is the live issue in front of the panel which will be heard in the scheduling order at the evidentiary hearing on June 12th.

14:01 Beyond that, I stand on the -- well, I will say that, of course, we do disagree that the commission is bound by the evidentiary procedures act. Yet, our response to the Respondent's challenge, we cited to Rule 4.09 of the Texas Rules of Disciplinary 14:01 Procedure, which indicates that petitioner is not a, quote, governmental body, close quote, as defined by the government code and not bound by the APA or the Texas Organizations code. We have followed all the requirements in the rules of disciplinary procedure, and 14:01 we have attached as exhibits to our response the various

14:01 documents and mailings that we made in compliance with it. Beyond that, we stand on our response and will answer any questions by the panel.

THE CHAIR: We're going to consider this

14:02 matter. There will be a recess for 5 minutes.

MS. GLASSMAN: Please note my objection. I have not been allowed to present my arguments. I have not been allowed to respond.

THE CHAIR: We're dismissed.

14:02 (Deliberations held)

THE CHAIR: The plea of jurisdiction is denied. Since we are here, we would like -- the panel would also like to discuss the parameters of the evidentiary hearing that is scheduled in the June time.

14:08 Mr. Bersch, you represent the complainant. How long do you think the evidentiary side of your portion of things will take?

MR. BERSCH: Approximately an hour.

THE CHAIR: How many witnesses

14:08 approximately?

MR. BERSCH: Other than myself in regard to attorney's fees, and possibly Ms. Hernandez, just moving up a couple documents, I may have one witness.

THE CHAIR: Ms. Glassman, how long do you

14:08 think your defense will take?

14:08 MS. GLASSMAN: At least an hour.

THE CHAIR: How many witnesses?

MS. GLASSMAN: Primarily myself. I'll have to cross examine Mr. Bersch and Mr. Fason which on
14:09 the disclosure who is testifying and I'll cross examine him. I want to make a statement on the record about what just happened, please.

THE CHAIR: You can make a short statement.

14:09 MS. GLASSMAN: This is a perpetuation of the pattern that I have encountered all the way through, starting with Probate 1. I have not been allowed to present the facts that are in the record that are not at issue that would demonstrate all of the support for my
14:09 point of view.

I have not been allowed to explicate the cases that are miscited by Petitioner, and to show how the mistakes happened. I have not been permitted to respond to his arguments. I have not had an opportunity
14:09 to even comment on his response to my motion before the panel today. I understand that most people think jurisdiction is all or nothing. But it isn't. Selection of a forum is just the very beginning. And in order to do a plea to the jurisdiction, it is necessary
14:10 to go through all of the elements of jurisdiction. This

Counsel prepared to proceed?

MR. BERSCH: Yes, we are.

THE CHAIR: Mr. Bersch --

MS. GLASSMAN: Excuse me. May I file the motion in limine?

THE CHAIR: You may file whatever you want, ma'am, but not right now. We're going to proceed with the evidentiary hearing.

MS. GLASSMAN: Thank you.

THE CHAIR: Mr. Bersch, by prior order of the panel and by agreement of both counsel, each side is limited to one hour maximum for its case in chief. The court reporter is going to give you a warning when you get to 50 minutes so that you know you have 10 minutes left to wrap up your case. And I'm going to push the start button right now.

MR. BERSCH: Thank you. Petitioner is going to begin by reading into the record a brief judicial admissions on the part of Respondent. I have in front of me a copy of the entire document, entitled Respondent's First Amended General Denial and Challenge to Jurisdiction, which Respondent filed on February 26, 2013.

I'm only interested in reading a short portion on the second page. So I've provided to members

of the panel and to Ms. Glassman just copies of the first two pages, just so the members can follow along if they so desire. The rest of the document is not relevant to what I want to do. I simply want to read into the record the short section basically in the middle of the second page. The heading on the section is the word Parties. And the next two sentences read as follows:

"Petitioner is Commission For Lawyer Discipline, 'CLD,' Committee of the State Bar of Texas. Respondent is Elene B. Glassman, a lawyer licensed to practice law in Texas since 1969. SBN08016000."

That concludes the judicial admissions I wanted to read into the record.

At this point Petitioner offers into evidence Petitioner's Exhibits 1 through 4. They are certified copies of documents that are part of the court records in a lawsuit numbered 350750, In Re: Inter Vivos Trust of Helen Baernstein, In the Probate Court No. 4 of Harris County, Texas.

THE CHAIR: Any objection to Petitioner's Exhibits 1 through 4?

MS. GLASSMAN: I object to all of them. They are not relevant for purposes of the allegations in this lawsuit, and they are prejudicial to the fair and

impartial determination of the claim. And the judgment in the probate suit is void for absence of jurisdiction and therefore is not admissible. None of them are admissible.

Further, the only thing we're here about is the matter of the appeal, not the underlying case. The rest of it is verbiage and is calculated to inflame the prejudice of the panel.

THE CHAIR: Those objections are overruled. Petitioner's Exhibits 1 through 4 will be admitted.

MR. BERSCH: Next Petitioner offers into evidence Exhibits 5 through 7. These are certified copies of documents in the court records of a lawsuit styled No. 350750-403, Meryl Goodfriend, Garnishor, Versus JPMorgan Chase Bank, NA, Garnishee, In the Probate Court No. 1 of Harris County, Texas.

THE CHAIR: Ms. Glassman, any objections to Petitioner's Exhibits 5, 6, or 7?

MS. GLASSMAN: No objection to 5. Objection to 6. No objection to 8.

THE CHAIR: We're not up to 8 yet. How about to 7?

MS. GLASSMAN: I'm sorry, I have no objection to 7.

THE CHAIR: Okay. The objection will be overruled, and Petitioner Exhibits 5, 6, and 7 will be admitted.

MR. BERSCH: Next Petitioner offers into evidence Exhibits 8 through 11. These are certified copies of documents in the court file of an appellate case with the style No. 14-09-0522-CV, Elene B. Glassman, Appellant, Versus Meryl G. Goodfriend, Appellee, in the 14th District Court of Appeals, Houston, Texas.

THE CHAIR: Any objections to Petitioner Exhibits 8, 9, 10, or 11?

MS. GLASSMAN: I do not object to 8. I do object to 9, because that is not the basis of the claim. The claim was filed based on a judgment that was withdrawn on June 2. And I object to 10, because none of that is -- everything that happened after the withdrawal and the declaration of the judgment of February 24 being void is not properly before this panel.

THE CHAIR: Those objections will be denied. Petitioner Exhibits 8 through 11 will be admitted.

MR. BERSCH: At this point Petitioner calls as a witness John Fason.

This witness has not been sworn.

(Mr. Fason was sworn.)

MR. BERSCH: May I address the witness briefly?

THE CHAIR: Yes.

MR. BERSCH: Mr. Fason, you can pull up a little closer if you want to, if it's convenient. And I put the original copies of some exhibits there on the table.

JOHN S. FASON,

HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

QUESTIONS BY BERSCH:

Q. Mr. Fason, could you please tell the members of the panel your full name.

A. John Stewart Fason.

Q. Are you a licensed attorney in the state of Texas?

A. Yes.

Q. How long have you been a licensed attorney in Texas?

A. 25 years.

Q. And what city is your office?

A. Houston.

Q. Mr. Fason, have you ever represented a client

But there's an important difference, in our belief. What a party can judicially admit are the facts which show that jurisdiction exists. And that is what Ms. Glassman did in the original proceeding, the probate court lawsuit that was filed in 2004 and ended up in the judgment.

And this document that we have that has been the subject of some questioning, Plaintiff's Exhibit 3, on Page 2, it is this crucial distinction. What we are arguing is that Ms. Glassman admitted the facts which prove that jurisdiction existed, not that we're saying that she just conceded to jurisdiction.

And it's exactly this same fashion in regard to this disciplinary proceeding, because woven through all of Ms. Glassman's arguments at every level is that the probate court in 2004 to 2006 didn't have jurisdiction and Panel 4C in 2009 didn't have jurisdiction and this panel today doesn't have jurisdiction. We disagree with that.

And in this regard -- and I read into the record from Page 2 of Ms. Glassman's First Amended General Denial in this proceeding. And again, what we are saying is that Ms. Glassman judicially admitted the facts, because she admits, she states on Page 2 of her pleading in this case, she says, "Respondent is Elene B.

Glassman, a lawyer licensed to practice law in Texas since 1969."

Those are the facts necessary to give this panel subject matter jurisdiction. So it is on the record. There is no doubt about it. She admitted it. And it's just as valid as if she testified to it from the stand.

As far as all these other issues -- she talks about conditions preceding and everything -- those matters were all taken care of in and raised in her challenge to jurisdiction, which was the subject of the hearing conducted by this panel on February 13, 2013, and the panel denied her motion.

It is difficult to go back in time, but we think it is clear from the record that she did not have a basis for any good-faith belief that the appeal that she was filing was a valid appeal, a non-frivolous appeal.

I would recommend to the members of the panel, if you look through the paragraphs 6 through 10 of our petition, which I sent to you, I believe every sentence in here is easily and clearly supported by the record, either by one of the documents that have been admitted or by Mr. Fason's testimony as to each aspect, all the way through as to what was done in the timeline

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

THE CHAIR: Ma'am, we're taking judicial notice of the things that are in the file. Will you proceed with your questions of Mr. Fason.

Q. (By Ms. Glassman) Mr. Fason, will you please look at the document that has been offered. Please read the date on the top right-hand corner.

A. This is the grievance form?

Q. Excuse me. The top left-hand corner.

A. Just to make sure I'm on the same page as you, the grievance form?

Q. Yes.

A. Okay. May 13, 2011.

Q. Excuse me. I said the left-hand corner. I erred.

A. The left-hand corner. June 8, 2011, Received, State Bar.

Q. Now please turn to Page 9. No, 5. And is that your signature?

A. Yes.

Q. And please read the date.

A. May 10, 2011.

Q. Now, at that point, May 10, 2011, the court had not yet withdrawn the judgment of June 2?

A. The 14th Court of Appeals?

Q. That's correct. The judgment of February 24.

A. That's correct.

Q. So you filed the complaint on June 8; is that correct? That's what the document says.

A. No, I think I filed it on May 10 or the next day. I signed it and mailed it. Now, it was received by a certain office on June 8. I don't know why 20 or 30 days passed.

Q. Nonetheless, the judgment was withdrawn on June 2, was it not?

A. Yes.

Q. So the judgment had no further force and effect; right?

A. Well, you're using the word judgment. I think the opinion was withdrawn. The way I understand the court of appeals, they issue an opinion, and then the mandate did the actual judgment of the court of appeals. So the opinion from February 2011 was withdrawn on June 2, 2011.

Q. So there was no mandate issued with regard to the opinion on February 24, 2011; right?

A. Not at the time I signed this grievance, right.

Q. Right. Now, did you at any time amend your grievance?

A. No.

Q. So your objection was about the judgment, the opinion issued on February 24, 2011; is that not correct?

A. I'm not sure that's correct. What do you mean by objection? Do you mean my complaint about your misconduct?

Q. Your complaint was about what was in the opinion issued on February 24.

A. No, my complaint was about your actions.

Q. Your complaint was predicated on what was in the opinion.

A. No.

Q. No?

A. What was in the opinion supported my complaint. I agreed with the court of appeals. When I filed my response to brief I asked that you be sanctioned. My complaint is based on your conduct in pursuing an appeal.

Q. I understand that you felt that there was an inappropriate pursuit of the appeal. And you predicated that, did you not, on claiming that a judicial admission had been achieved with regard to jurisdiction?

A. You're saying I predicated my State Bar complaint on the judicial admission?

Q. And some other factors, which I will address.

A. I argued in my response brief that judicial admissions should be considered by the court of appeals. And I think they did. But the predicate for the grievance was that you had filed a frivolous complaint attacking jurisdiction because that was the only thing available to you because everything else was time barred, and you knew jurisdiction lay with the court of appeals. It was a frivolous argument, and you knew that. And that's the reason I filed this grievance.

Q. That's your opinion, is it not?

A. It is. I think it's a well-founded opinion.

Q. Well, of course you would, but you would concede, wouldn't you, that there might be another way of looking at it?

MR. BERSCH: Objection, argumentative.

THE CHAIR: Sustained. Rephrase your question, please.

Q. (By Ms. Glassman) Mr. Fason, you relied on a case -- you characterized the matter as a collateral attack on the judgment, did you not?

A. In my response brief in the court of appeals I characterized your appeal as collateral attack on the June 2006 judgment, yes.

Q. And pursuing the idea that it was a collateral attack, you did not acknowledge that collateral attacks

of the county court directing that same be sold lay to the Court of Criminal Appeals and not to the Court of Civil Appeals. The other question presented was the contention that the Court of Civil Appeals erred in holding that the claimant was entitled to a jury trial. By refusing that application this court decided only that the proceeding was a civil suit to be governed by the rules of procedure applicable to such suits, and was not a mere incident of the criminal case. We did not there consider the question of whether, under the above constitutional provision, the district court alone had jurisdiction of the proceeding, and neither did we consider the question of the exact nature of the suit. We have now given those questions careful consideration and our conclusions follow below.

[2, 3] A forfeiture occurs "* * * where a person loses some property, right, privilege, or benefit in consequence of having done or omitted to do a certain act." State v. De Gress, 72 Tex. 242, 11 S.W. 1029; Myers v. State, 47 Tex.Civ.App. 336, 105 S.W. 48, 50. This is a typical case of forfeiture. The State is asserting that, because of an act done by Compton, he should lose his automobile. Compton denies the commission of such act. Only by a suit can that issue be determined, and that suit is clearly one for a decree of forfeiture and not merely for an incidental order in the criminal case in which Compton was not made a party. The State could not summarily order it sold. General Motors Acceptance Corp. v. State, 118 Tex. 189, 12 S.W.2d 968. From this it necessarily follows that the county court was without jurisdiction to determine the issues, as between Compton and the State, and that under the constitution the district court alone was clothed with jurisdiction of the controversy. State v. Eggerman, 81 Tex. 569, 16 S.W. 1067; State v. Stoutsenberger, 4 Willson Civ.Cas.Ct.App. 247, 16 S.W. 304; Dupree v. State, 48 Tex.Civ.App. 272, 107 S.W. 926; State v. San Miguel, 4 Tex. Civ.App. 182, 23 S.W. 389; Myers v. State, supra.

This opinion is limited to the case made below and does not decide the question of whether or not an order that an automobile belonging to a defendant in a criminal proceeding be sold would be but an incident of that proceeding.

[4] Since the county court had no jurisdiction to entertain the forfeiture suit, Compton is not estopped by his act in intervening therein. The judgments of the District Court and the Court of Civil Appeals will both be affirmed.

Opinion adopted by the Supreme Court.

KEY NUMBER SYSTEM

WHITE v. WHITE et al.

No. A—49.

Supreme Court of Texas

April 5, 1944.

Rehearing Denied May 3, 1944.

1. Wills ⇐205, 433

Although a will may not be used as evidence of title until it has been probated, after it is admitted to probate it becomes a muniment of title until set aside in some lawful manner.

2. Judgment ⇐747(2)
Partition ⇐95

Unimpeached partition judgment determining that testatrix' interest in land vested in defendant as her sole devisee was res judicata of such question and could not be collaterally attacked in new partition suit against defendant wherein plaintiffs claimed title to land as testatrix' heirs on ground that will of testatrix was invalidated in will contest filed by plaintiffs. Vernon's Ann. Civ.St. art. 3314.

3. Descent and distribution ⇐90(1)

Generally, during period allowed for administration, before heirs as such may maintain a suit to recover property which they claim has descended to them, they must show that no administration is pending and none is necessary.

4. Partition ⇐95

Where record in partition suit instituted by heirs did not affirmatively show that no administration was pending and none was necessary, judgment rendered therein was not "void" so as to subject it to collateral attack, but would be "voidable" or "erroneous" and subject to annulment upon direct attack.

See Words and Phrases, Permanent Edition, for all other definitions of "Erroneous Judgment", "Void Judgment" and "Voidable Judgment".

5. Judgment ⇐489

In order for a collateral attack to be successful, record must affirmatively reveal jurisdictional defect.

6. Judgment ⇐495(1)

If record in cause does not negative existence of facts authorizing court to render judgment, law conclusively presumes that such facts were established before court when such judgment was rendered, and evidence dehors the record to the contrary will not be received.

7. Judgment ⇐495(1)

Where a court of record, having general jurisdiction, assumes to exercise its jurisdiction in a given case, all presumptions are in favor of validity of its proceedings; and if record shows that the steps necessary to clothe it with power to act were taken, or if record be silent on this subject, then its judgment is conclusive in any other court of same sovereignty when collaterally attacked.

8. Judgment ⇐489

Only entire want of court's power to render judgment would render judgment void so as to subject it to collateral attack.

Error from Court of Civil Appeals of Tenth Supreme Judicial District.

Suit by M. M. White and others against S. E. White for partition of land. To review a judgment of Court of Civil Appeals, 176 S.W.2d 987, affirming a judgment for plaintiffs, defendant brings error.

Reversed, and judgment rendered in accordance with opinion.

Taylor & McWilliams and J. S. Simkins, all of Corsicana, for plaintiff in error.

Richard Mays, of Corsicana, for defendants in error.

FOLLEY, Commissioner.

The respondent, M. M. White, and one of his brothers and his five sisters, three of them suing as feme soles and the other two being joined by their husbands, brought this suit against the petitioner, S. E. White, another brother, all being the children and surviving heirs of J. M. White and Rachel E. White, both deceased. The suit was for the purpose of partitioning 169 acres of land in Navarro County in equal shares between the eight children. The petitioner interposed as res adjudicata and estoppel by judgment a decree in a former partition suit between the same parties in which petitioner was awarded a 9/16 interest in the land and each of the other seven heirs a 1/16 interest. The trial court overruled the defensive pleas of petitioner and rendered judgment decreeing a 1/8 interest in each of the eight children. Such judgment was affirmed by the Court of Civil Appeals. 176 S.W.2d 987.

J. M. White died intestate in 1917. His wife, Rachel E. White, died October 8, 1936, leaving an instrument purporting to be her will in which she named petitioner her sole beneficiary and independent executor without bond. On June 2, 1937, respondents filed a partition suit in Cause No. 19656 in the District Court of Navarro County seeking partition of the land in equal shares between the eight children. To distinguish that action from the present partition suit we shall designate it as the first partition suit. On June 11, 1937, petitioner filed in the probate court of Navarro County an application to probate the instrument alleged to be the last will and testament of Rachel E. White. The same was duly admitted to probate on June 28, 1937. The order probating this will was not appealed from. On August 4, 1937, petitioner filed an answer in the first partition suit in the district court alleging that the 169 acres of land was the separate property of his deceased mother and claimed full title to it under the will of his mother theretofore duly probated. By amended and supplemental pleadings filed in the first partition suit respondents attacked the purported will of their deceased mother as being void because of her lack of testamentary capacity and because of undue influence. They also asserted that the land constituted the community property of their deceased parents, rather than the separate property of their deceased mother. Petitioner excepted to the respondents' pleadings attacking the validity of the will, asserting that the same was collateral attack upon a will duly probated, which order had not been vacated and from which there had been no appeal. These exceptions were sustained by the trial court. The first partition suit proceeded to trial and judgment was rendered on June 27, 1938. The trial court decreed that the land was the community property of J. M. White and his wife, Rachel E. White, and further decreed that a 9/16 interest in the land should vest in petitioner and a 1/16 interest in each of the other seven children, and that the

ame should be partitioned between them. The land was found to be incapable of division and a receiver was appointed to sell the same and to partition the proceeds according to the respective interests decreed in the parties. The receiver qualified and on December 6, 1938, filed his report in such cause showing that he had sold the land to M. M. White for $3,600 cash. This report was confirmed by the court on December 15, 1938, and the receiver directed to execute and deliver a deed to the purchaser upon his compliance with the terms of the sale. The receiver died, however, before the sale was consummated and no further action was had in that cause. There was no appeal from such judgment.

On September 28, 1938, in accordance with the provisions of Article 5534, Vernon's Ann.Civ.St., respondents filed in the probate court of Navarro County a contest of the will of their deceased mother theretofore admitted to probate. The attack consisted of the same allegations substantially as they had theretofore attempted to set up in the first partition suit. The judgment was against them in the probate court, but upon appeal to the district court they were successful in obtaining a decree on December 16, 1939, invalidating the will, and the former order of the probate court admitting the same to probate was set aside. Such judgment was affirmed by the Court of Civil Appeals. 149 S.W.2d 1031.

On November 12, 1942, the present suit was filed by respondents against petitioner in the District Court of Navarro County seeking to partition the same land theretofore involved in the first partition suit. In this suit respondents alleged that by reason of the setting aside of the will they had acquired a new and additional interest since the rendition of the first partition judgment, which interest, they asserted, was in nowise affected or adjudicated in the former suit. In the instant suit respondents made no attack on the former partition judgment. They neither asserted it was invalid nor sought to set it aside. This suit is, therefore, not in the nature of a bill of review and respondents do not so contend.

The petitioner filed a plea in abatement in which the former partition decree was interposed as res adjudicata and estoppel by judgment of the present suit. The petitioner alleged that this suit was purely a collateral proceeding seeking to vacate the former judgment which had become final. His plea in abatement was overruled by the trial court. In his answer, conditioned on his plea in abatement, petitioner reasserted such defensive pleas, which exceptions were also overruled.

In a trial before the court without a jury this cause was consolidated with Cause No. 19656, the first partition suit. In connection with the judgment the court found that since the former decree had been entered the will had been invalidated and that such action left a 1/2 interest in the land to be partitioned in this suit. The court further found that the former judgment remained in full force and effect as to the other 1/2 interest in the land and that the present judgment was to partition the new interest created by invalidating the will. In such judgment it was ordered and decreed that petitioner and respondents should each recover an undivided 1/8 interest in the land. It was further decreed that the land was incapable of equitable division and that the same be sold by a new receiver appointed by the court and that the proceeds be divided equally among the eight children. There was no order expressly setting aside or modifying the former partition judgment.

The Court of Civil Appeals affirmed the judgment upon the same principle upon which respondents proceeded successfully in the trial court, which was that the former partition suit would not afford the basis for res adjudicata or estoppel because the interest of the testatrix was subsequently vested in her heirs when the will was invalidated. It is our opinion that both courts below were in error in this conclusion.

Under the law of this State when a person dies leaving a lawful will, unless it is otherwise directed therein, all of his estate devised or bequeathed by such will vests immediately in his devisees and legatees subject to the payment of his debts. All of his estate not devised or bequeathed vests immediately in his heirs. If he dies intestate all of his estate vests immediately in his heirs subject to the payment of his debts. Article 3314, Vernon's Ann.Civ.St.

[1] Although a will may not be used as evidence of title until it has been probated, after it is admitted to probate it becomes a muniment of title until set aside in some lawful manner. Ochoa v. Miller, 59 Tex. 460; Moursund v. Priess, 84 Tex. 554, 19 S.W. 775; Smith v. Lancaster, Tex.Civ. App., 248 S.W. 472; Long v. Shelton, Tex. Civ.App., 155 S.W. 945; Ortiz v. De Benavides, 61 Tex. 60; Hickman v. Gillum, 66 Tex. 314, 1 S.W. 339.

[2] At the time of the trial in the first partition suit no lawful attack had been made upon the will and thus no sufficient reason existed to abate the suit. Respondents permitted the cause to proceed to judgment without filing a contest of the will in the probate court or a plea in abatement in the district court. The title to the land was therefore put in issue in the first partition suit and the interests of the parties determined in the judgment. Unless that judgment is void it is not subject to this collateral attack. Assuming that such judgment was not void, it was a final adjudication of the interests of the parties in the land. It distinctly ascertained and determined these interests. After it was entered nothing remained to be done except to carry it into effect by the receiver executing the decree of the court. The merits of the case were determined and the rights of the parties were concluded. Such judgment not having been set aside in any manner provided by law, it is conclusive of the questions determined by it and as to such issues it constitutes a final judgment that may not be disturbed in the manner attempted in this suit. Cannon v. Hemphill, 7 Tex. 184; McFarland v. Hall's Heirs, 17 Tex. 676; Petrucio v. Seardon, 76 Tex. 639, 13 S.W. 560; Merle v. Andrews, 4 Tex. 200; Pearce v. Jackson, 84 Tex. 515, 19 S.W. 690.

The respondents assert that the district court was without jurisdiction of the subject matter in the first partition suit and therefore the judgment therein is void. They contend that the estate of the deceased was then in the process of administration and therefore the probate court had exclusive jurisdiction.

[3-6] It is the general rule that during the period allowed for administration, before heirs as such may maintain a suit to recover property which they claim has descended to them, they must show that no administration is pending and none is necessary. Richardson v. Vaughan, 86 Tex. 93, 23 S.W. 640; Youngs v. Youngs, Tex.Com.App., 26 S.W.2d 191; Cyphers v. Birdwell, Tex.Civ.App., 32 S.W.2d 937; Laas v. Seidel, 95 Tex. 442, 67 S.W. 1015; Giddings v. Steele, 28 Tex. 732, 91 Am.Dec. 336; Green v. Rugely, 23 Tex. 539; Webster v. Willis, 56 Tex. 468; Rogers v. Kennard, 54 Tex. 30. The record in the first partition suit does not affirmatively show these necessary jurisdictional facts. Under such circumstances we must concede that such judgment was voidable or erroneous and subject to annulment upon a direct attack. However, mere silence of the record on this subject does not render the judgment void so as to subject it to a collateral attack. In order for a collateral attack to be successful the record must affirmatively reveal the jurisdictional defect. Moore v. Hanscom, 101 Tex. 293, 106 S.W. 876, 877, 108 S.W. 150. It seems to be the settled rule that if the record in the cause does not negative the existence of facts authorizing the court to render the judgment, the law conclusively presumes that such facts were established before the court when such judgment was rendered, and evidence dehors the record to the contrary will not be received. Templeton v. Ferguson, 89 Tex. 47, 33 S.W. 329.

[7, 8] Where a court of record, having general jurisdiction, assumes to exercise its jurisdiction in a given case, all presumptions are in favor of the validity of its proceedings; and if the record shows that the steps necessary to clothe it with power to act were taken, or if the record be silent on this subject, then its judgment must be held conclusive in any other court of the same sovereignty when collaterally called into question. Martin v. Robinson, 67 Tex. 368, 3 S.W. 550. The question here concerns only the court's power to render the judgment and not whether, having the power, it rendered an erroneous judgment. Only an entire want of power would render the judgment void. Simmons v. Arnim, 110 Tex. 309, 220 S.W. 66. No such jurisdictional defects are here affirmatively shown. This necessarily impels the conclusion that the judgment was not shown to be void and is therefore not subject to this collateral attack. Alston v. Emmerson, 83 Tex. 231, 18 S.W. 566, 29 Am.St.Rep. 639; Croom v. Winston, 18 Tex.Civ.App. 1, 43 S.W. 1072; Zwernerman v. Rosenberg, Tex.Sup., 11 S.W. 150; Kay v. Thompson, Tex.Civ.App., 40 S.W.2d 884; Johnson v. Coit, Tex.Civ.App., 48 S.W.2d 397.

Since the judgment in the first partition suit stands unimpeached in this proceeding, it follows that prior to the time the will was declared void the estate of the deceased passed to others under the judgment in question, and no new estate came into being when the will was thereafter invalidated. Such prior judgment is res adjudicata of the interests of the parties in the land and precludes the present demands of respondents inconsistent therewith. Therefore, nothing remains for the trial court to do

proceeding you filed an appeal, and the basis for your appeal was you didn't think the judgment entered in 2006 was valid because the probate court had no jurisdiction over that matter. Is that a fair simplification of your position?

MS. GLASSMAN: They did not acquire subject matter jurisdiction, the authority to adjudicate.

THE CHAIR: Okay. And is that a fair summary of your position, that your appeal was not groundless and frivolous because you had a reasonable, good-faith basis to believe that the underlying judgment was void for lack of jurisdiction?

MS. GLASSMAN: I had a reasonable, good-faith position backed up by a record.

THE CHAIR: And have you made that argument to a number of courts?

MS. GLASSMAN: I made that argument in response to the garnishment. There was a question earlier about other challenges to jurisdiction in the course of the case. Jurisdiction is challenged all over the record.

MR. PHIFER: May I ask a question, ma'am?

MS. GLASSMAN: Certainly.

MR. PHIFER: I have here Petitioner's

Exhibit No. 3. It's Respondent's counterclaim.

MS. GLASSMAN: Yes.

MR. PHIFER: You filed a counterclaim in the original lawsuit in the probate court?

MS. GLASSMAN: Yes.

MR. PHIFER: This is a document that appears to have been signed by you and filed in the probate court in -- let me see if I can find a certificate of service. I don't see a specific date on here.

THE CHAIR: June 17, 2005.

MR. PHIFER: What date?

THE CHAIR: June 17, 2005.

MR. PHIFER: June 17, 2005. And on Page 2 of this exhibit, under Jurisdiction of Venue --

MS. GLASSMAN: Uh-huh.

MR. PHIFER: -- you stated, "Jurisdiction of this suit lies in Harris County, Texas, for the following reasons." Then you specifically cited, "A, in accordance with Texas Civil Practice and Remedies Code Annotated, Chapter 37.005, because it relates to a trust that is subject to the jurisdiction of the court." Did you make that statement to the court at that time, an official document?

MS. GLASSMAN: I prepared that document.

May I explain?

MR. PHIFER: I'm asking a question. Did you make that representation to the court?

MS. GLASSMAN: I put it in the document. I never had the opportunity to speak to the court.

MR. PHIFER: Those were your words?

MS. GLASSMAN: Those are my words.

MR. PHIFER: You prepared that document and filed it with the court?

MS. GLASSMAN: That's correct.

MR. PHIFER: And then you stated, "Venue in this suit lies in Harris County, Texas, because the parties reside in Harris County, Texas."

MS. GLASSMAN: I have not challenged venue.

MR. PHIFER: You were the trustee of that inter vivos trust that was the subject of the underlying lawsuit that was in the probate court that came to judgment in June of 2006?

MS. GLASSMAN: That's correct.

MR. PHIFER: You lived in Harris County, Texas?

MS. GLASSMAN: That's correct.

MR. PHIFER: Thank you, ma'am.

MS. GLASSMAN: However, you cannot

acknowledge subject matter jurisdiction. That subverts the sovereignty of the constitution of Texas. And the cases are quite clear. In fact, there is -- well, you don't want me to get to closing argument.

THE CHAIR: Well, I don't. But I do want to ask you what your thinking process is, because we want to make sure that we understand what was going through your mind when you filed this appeal. That's what this panel is obviously interested in, I'm certainly interested in.

Am I hearing you say that even though you filed a pleading in the underlying suit admitting that the trial court, the probate court, rather, had jurisdiction over that suit, that you're not bound by that because you can't admit yourself in a jurisdiction? Is that your position?

MS. GLASSMAN: That's basically correct.

THE CHAIR: Okay. Is that also a position that you've argued to a number of courts?

MS. GLASSMAN: Yes.

THE CHAIR: Has any court accepted that?

MS. GLASSMAN: They've sidestepped it.

THE CHAIR: Has any court accepted it?

MS. GLASSMAN: They have not accepted it, nor have they rejected it. They've sidestepped it.

THE CHAIR: We certainly know that the 14th Court of Appeals rejected it. Did Judge Austin rule on it?

MS. GLASSMAN: No. Judge Austin died.

THE CHAIR: Yes, I know that. Okay. Proceed with your testimony, but please try to focus it on the issues as I've defined them.

MS. GLASSMAN: As I understand it, for there to be acknowledgement of subject matter jurisdiction, remove the sovereignty of the state, the cases are consistent and clear, the plaintiff has the burden of proving subject matter jurisdiction before the court has the authority to adjudicate issues. Without such subject matter jurisdiction the court may hear it but may not make decisions on issues, grant recovery, or issue a judgment.

And my research indicated that the cases were consistent, that you cannot, you cannot remove the responsibility of proving subject matter jurisdiction by acknowledging, waiving, consenting. And what they are arguing is that my acknowledgement is a judicial admission and you can't use a judicial admission to prove subject matter jurisdiction.

THE CHAIR: Okay. Tell me why you thought at the time that the probate court did not have

argument, I will submit, not factual testimony.

THE CHAIR: It will be sustained. Ms. Glassman, if you want to talk about why you believed that you had a valid appeal, that would be your testimony, your factual testimony.

MS. GLASSMAN: Fine.

THE CHAIR: But insofar as analyzing the law or what your rights were of the law or what the law required, I'm going to sustain the objection. We're not going to have a legal argument during the presentation of evidence.

MS. GLASSMAN: After the hearing, after the April 30 determination, I filed an affidavit of inability to pay costs. Pursuant to that I sought the transcript from the judgment of, from the bench trial of June 9, 2006. Nowhere in there is there any, nowhere in any of the other transcripts is there any offer or admission of subject matter jurisdiction. It is an essential element, a vital fact in every case in every tribunal in Texas, including an evidentiary proceeding and a tribunal of this sort.

It took six months. We had to find the court reporter. She could not find the transcript. She eventually found it. And so from June the court denied the challenge to the affidavit of inability to pay

costs. I did not receive the transcript until something like October, at which point -- during that time I sought to clean up the record. There were numerous problems with judgments. They had a number of clerical errors. Then I proceeded to prepare the brief.

So from October of 2009 to May of 2010 is when I filed my appellate's brief. And then there were a number of problems with the reply brief from Mr. Fason. I challenged the brief. It included a number of mistakes of fact, as does Mr. Bersch's. I have attempted repeatedly to get the mistakes of fact corrected. Nonetheless, there is a split, I believe, that a collateral attack of a judgment that issues from the same court as the base judgment pleaded as a direct attack. And I have case law to support.

It is commonly understood that a collateral attack cannot be challenged based on jurisdiction if that collateral attack is in a sister court of equal sovereignty to the court that issued the judgment. The rationale for that is that the -- it has to do with respect between courts of equal sovereignty. But that is not what happens when they are issued by the same court. So that in a direct attack -- I think it's Brown -- well, you don't want the cases yet.

In this instance the collateral attack

to how he decided to proceed with this matter and his claim that he has, that he does have knowledge. He's now claiming he doesn't have knowledge, but he did claim that he has knowledge.

THE CHAIR: Ma'am --

MS. GLASSMAN: Also, could we please take a break?

THE CHAIR: No, ma'am. We just finished a break.

Mr. Bersch is not a fact witness in this case. It is very unusual --

MS. GLASSMAN: Since it is my --

THE CHAIR: Let me finish, please. It is very unusual for anyone in any judicial or quasi-judicial proceeding to be allowed to call opposing counsel as a fact witness in the case. It creates some ethical issues if Mr. Bersch were a fact witness in this case. Unless you have something beyond what you've told us that would indicate that he is a fact witness with relevant evidence to offer before this tribunal, your request to call Mr. Bersch is denied.

Do you have any further witnesses?

MS. GLASSMAN: No.

THE CHAIR: Do you rest?

MS. GLASSMAN: Yes.

THE CHAIR: Mr. Bersch?

MR. BERSCH: Petitioner closes.

THE CHAIR: Okay. We'll take a short break now, and then we're going to proceed. A very short break, about five minutes. We're going to proceed with closing arguments. We're going to limit those to about ten minutes each. I'm going to release Mr. Fason since neither one of you indicated you wanted to recall him.

(Recess)

THE CHAIR: Mr. Bersch, do you want to reserve some of your time for rebuttal?

MR. BERSCH: Yes, sir, if I could. We have ten minutes altogether?

THE CHAIR: Yes, sir.

MR. BERSCH: If I could go seven minutes to start and reserve a few minutes?

THE CHAIR: Perfect.

MR. BERSCH: Thank you.

THE CHAIR: You ready to start?

MR. BERSCH: Yes, sir.

THE CHAIR: I'm pushing the clock right now.

MR. BERSCH: All right. Thank you, members of the panel, for your time and your attention

in this matter. I will be very brief. I think there is a central -- well, one of the central issues in this matter that is part of the dispute between Petitioner and Respondent, that is part of our current dispute and then also goes back through all the matters that Respondent refers to.

Respondent has frequently cited in her written papers that she submitted to the panel and she's mentioned here again today that a party to a litigation cannot concede subject matter jurisdiction where none exists or cannot waive an objection to subject matter jurisdiction.

And central to her argument that she acted in good faith in filing her appeal from the garnishment action in 2009 is this belief that the 2006 judgment was void for lack of subject matter jurisdiction and she could raise that at any time even in the form of collateral attack.

Petitioner disagrees with that, in fact believes the law is so clear that it means that her action in filing that appeal in 2009 constituted a filing of a frivolous plea. And that is what we've alleged in our petition. We allege that she violated two rules, 3.01 and 3.02, that relate to each other.

3.01 says you shall not bring a frivolous

pleading, in essence. 3.02 says a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or unreasonably delays resolution of the matter. So here we say --

MR. PHIFER: Do we have copies of those?

MR. BERSCH: It's in the petition.

MR. PHIFER: Thanks.

MR. BERSCH: The rules are in the book. Well, not that book, in the -- well, we'll get the rules. I'm sorry. Usually there's a stack of them right here.

Petitioner's position is the law was crystal clear as to the fact that there was jurisdiction in the lawsuit filed in 2004 that ended in the 2006 judgment and that a collateral attack could not succeed.

Central to Ms. Glassman's defense of her action is this idea that you cannot concede jurisdiction. But we believe that she confuses two things. We agree with her that in any proceeding that if jurisdiction does not exist, a party, by simply saying, "I concede the jurisdiction," cannot, by making that statement, create jurisdiction where it in fact does not exist. So in that sense she is correct that a judicial admission of that nature is not going to create jurisdiction.

But there's an important difference, in our belief. What a party can judicially admit are the facts which show that jurisdiction exists. And that is what Ms. Glassman did in the original proceeding, the probate court lawsuit that was filed in 2004 and ended up in the judgment.

And this document that we have that has been the subject of some questioning, Plaintiff's Exhibit 3, on Page 2, it is this crucial distinction. What we are arguing is that Ms. Glassman admitted the facts which prove that jurisdiction existed, not that we're saying that she just conceded to jurisdiction.

And it's exactly this same fashion in regard to this disciplinary proceeding, because woven through all of Ms. Glassman's arguments at every level is that the probate court in 2004 to 2006 didn't have jurisdiction and Panel 4C in 2009 didn't have jurisdiction and this panel today doesn't have jurisdiction. We disagree with that.

And in this regard -- and I read into the record from Page 2 of Ms. Glassman's First Amended General Denial in this proceeding. And again, what we are saying is that Ms. Glassman judicially admitted the facts, because she admits, she states on Page 2 of her pleading in this case, she says, "Respondent is Elene B.

Glassman, a lawyer licensed to practice law in Texas since 1969."

Those are the facts necessary to give this panel subject matter jurisdiction. So it is on the record. There is no doubt about it. She admitted it. And it's just as valid as if she testified to it from the stand.

As far as all these other issues -- she talks about conditions preceding and everything -- those matters were all taken care of in and raised in her challenge to jurisdiction, which was the subject of the hearing conducted by this panel on February 13, 2013, and the panel denied her motion.

It is difficult to go back in time, but we think it is clear from the record that she did not have a basis for any good-faith belief that the appeal that she was filing was a valid appeal, a non-frivolous appeal.

I would recommend to the members of the panel, if you look through the paragraphs 6 through 10 of our petition, which I sent to you, I believe every sentence in here is easily and clearly supported by the record, either by one of the documents that have been admitted or by Mr. Fason's testimony as to each aspect, all the way through as to what was done in the timeline

and Ms. Glassman's appeal. And to the extent that a document does not support the statement, Mr. Fason's testimony does.

And at the end, the most important part of it, the last sentence of Paragraph 9, we say, "By filing the appeal, Respondent unreasonably increased the cost and unreasonably delayed a resolution of the matter." You heard Mr. Fason's testimony. His client had to spend an additional $4,500 to pay him to file the brief to respond to Ms. Glassman's brief. That is the unreasonable increase in cost. And there was a two-and-a-half-year delay in this matter coming to an end.

If Ms. Glassman had not filed her appeal, this garnishment action would have been completely over in the spring of 2009. And instead, by the time it was all said and done and the Supreme Court denied her motion for rehearing, it was November of 2011.

Thank you.

THE CHAIR: Right at seven minutes.

Hang on just a second. I'm going to start your clock here too.

You ready to proceed, Ms. Glassman?

MS. GLASSMAN: In a moment.

THE CHAIR: Okay. You're going to have

BEFORE EVIDENTIARY PANEL 4-6 OF THE
STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE,	§	
Petitioner,	§	**H0051132998 [FASON]**
	§	
v.	§	
	§	
ELENE B. GLASSMAN,	§	**HARRIS COUNTY, TEXAS**
Respondent.	§	

CLERK'S RECORD – VOLUME I

NO.	DESCRIPTION OF DOCUMENT	DATE OF FILING	PAGE NO.
1	Election Letter.	09/23/2011	0006
2	Respondent's Election and Principal of Practice Certification.	10/25/2011	0011
3	Panel Appointment to Chair.	10/31/2011	0013
4	Signed Panel Order From Chair.	10/31/2011	0019
5	Signed Panel Order to Respondent.	11/01/2011	0022
6	Respondent's Objection to Panel 4C.	11/28/2011	0029
7	Petitioner's Original Evidentiary Petition.	12/21/2011	0031
8	Resending Evidentiary Petition and Requests for Disclosure to West Main address.	01/26/2012	0040
9	Respondent's Original Challenge to Jurisdiction/Motion to Dismiss Petitioner's Evidentiary Petition and/or Motion to Strike Pleadings and General Denial.	03/12/2012	0044
10	First Amended Objection to Assignment of Evidentiary Panel 4C and Objection to All Evidentiary Panels of State Bar District 4.	04/17/2012	0071
11	Request for Hearing on the First Amended Challenge/Objection to Assignment of Evidentiary Panel 4C, Challenge to all Evidentiary Panels of State Bar of Texas District 4.	05/08/2012	0081
12	Notice of Evidentiary Hearing.	05/15/2012	0086
13	Transmittal letter to Panel with Respondent's First Amended Objection to Assignment of Evidentiary Panel 4C and Objection to All Evidentiary Panels of State Bar District 4.	05/15/2012	0091
14	2012-2013 New Panel List to Respondent	07/02/2012	0101

NO.	DESCRIPTION OF DOCUMENT	DATE OF FILING	PAGE NO.
31	Respondent's Second Motion to Recuse and/or Disqualify Evidentiary Panel 4C and Motion to Dismiss.	10/26/2012	0267
32	Request for Hearing.	11/01/2012	0297
33	Respondent's Motion to Compel Petitioner to Provide Complete and Factually Accurate Discovery Responses or to Strike Pleadings of Petitioner and Dismiss the Proceeding.	11/06/2012	0302
34	Second Amended Notice of Evidentiary Hearing.	11/13/2012	0310
35	Notice of Hearing on Respondent's Second Motion to Rescue and/or Disqualify Evidentiary Panel 4C and Motion to Dismiss.	12/03/2012	0315
36	Petitioner's Response to Respondent's Second Motion to Recuse and/or Disqualify Evidentiary Panel 4C and Motion to Dismiss.	12/04/2012	0321
37	Respondent's Motion to Strike Hearing.	12/13/2012	0333
38	Petitioner's Response to Respondent's Motion to Strike Hearing.	12/13/2012	0345
39	Order Denying Respondent's Motion to Strike Hearing.	12/13/2012	0364
40	Order Denying Respondent's Second Motion to Recuse and/or Disqualify Evidentiary Panel 4C and Motion to Dismiss.	12/14/2012	0366
41	Order of Transfer.	12/14/2012	0368
42	Third Amended Notice of Evidentiary Hearing.	12/19/2012	0371
43	Change in Panel Designation.	01/08/2013	0376
44	Respondent's First Amended Motion to Compel Petitioner to Provide Complete and Factually Accurate Discovery Responses or to Strike Pleadings of Petitioner and Dismiss the Proceeding.	01/08/2013	0381
45	Request For Hearing.	01/08/2013	0391
46	Transmittal letter to Panel Chair with Respondent's First Amended Motion to Compel Petitioner to Provide Complete and Factually Accurate Discovery Responses or to Strike Pleadings of Petitioner and Dismiss the Proceeding.	01/14/2013	0397
47	Order for Hearing.	01/28/2013	0416
48	Request For Conference in Evidentiary Proceeding.	01/29/2013	0420
49	Respondent's First Request for Conference.	01/29/2013	0424
50	Order For Conference.	01/30/2013	0432

BEFORE EVIDENTIARY PANEL 4-6 OF THE
STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE,	§	
Petitioner,	§	**H0051132998 [FASON]**
	§	
v.	§	
	§	
ELENE B. GLASSMAN,	§	**HARRIS COUNTY, TEXAS**
Respondent.	§	

CLERK'S RECORD – VOLUME II

NO.	DESCRIPTION OF DOCUMENT	DATE OF FILING	PAGE NO.
87	Order Denying Respondent's Motion to Modify/Vacate/Stay Judgment and/or New Evidentiary Hearing.	08/14/2013	0980
88	Respondent's Third Motion to Recuse/Disqualify.	08/26/2013	0982
89	Request for Hearing.	08/28/2013	1006
90	Letter to Hodges forwarding Respondent's Request for Hearing.	09/13/2013	1012
91	Letter to Hodges with attachments from Respondent.	09/16/2013	1015
92	Notice of Appeal.	09/16/2013	1027
93	Motion For Judgment Nunc Pro Tunc.	09/17/2013	1032
94	Petitioner's Response to Respondent's Third Motion to Recuse/Disqualify.	09/23/2013	1053
95	Petitioner's Response to Respondent's Motion for Judgment Nunc Pro Tunc.	09/24/2013	1069
96	Order Granting Hearing.	10/04/2013	1076

of the panel and to Ms. Glassman just copies of the first two pages, just so the members can follow along if they so desire. The rest of the document is not relevant to what I want to do. I simply want to read into the record the short section basically in the middle of the second page. The heading on the section is the word Parties. And the next two sentences read as follows:

"Petitioner is Commission For Lawyer Discipline, 'CLD,' Committee of the State Bar of Texas. Respondent is Elene B. Glassman, a lawyer licensed to practice law in Texas since 1969. SBN08016000."

That concludes the judicial admissions I wanted to read into the record.

At this point Petitioner offers into evidence Petitioner's Exhibits 1 through 4. They are certified copies of documents that are part of the court records in a lawsuit numbered 350750, In Re: Inter Vivos Trust of Helen Baernstein, In the Probate Court No. 4 of Harris County, Texas.

THE CHAIR: Any objection to Petitioner's Exhibits 1 through 4?

MS. GLASSMAN: I object to all of them. They are not relevant for purposes of the allegations in this lawsuit, and they are prejudicial to the fair and

impartial determination of the claim. And the judgment in the probate suit is void for absence of jurisdiction and therefore is not admissible. None of them are admissible.

Further, the only thing we're here about is the matter of the appeal, not the underlying case. The rest of it is verbiage and is calculated to inflame the prejudice of the panel.

THE CHAIR: Those objections are overruled. Petitioner's Exhibits 1 through 4 will be admitted.

MR. BERSCH: Next Petitioner offers into evidence Exhibits 5 through 7. These are certified copies of documents in the court records of a lawsuit styled No. 350750-403, Meryl Goodfriend, Garnishor, Versus JPMorgan Chase Bank, NA, Garnishee, In the Probate Court No. 1 of Harris County, Texas.

THE CHAIR: Ms. Glassman, any objections to Petitioner's Exhibits 5, 6, or 7?

MS. GLASSMAN: No objection to 5. Objection to 6. No objection to 8.

THE CHAIR: We're not up to 8 yet. How about to 7?

MS. GLASSMAN: I'm sorry, I have no objection to 7.

THE CHAIR: Okay. The objection will be overruled, and Petitioner Exhibits 5, 6, and 7 will be admitted.

MR. BERSCH: Next Petitioner offers into evidence Exhibits 8 through 11. These are certified copies of documents in the court file of an appellate case with the style No. 14-09-0522-CV, Elene B. Glassman, Appellant, Versus Meryl G. Goodfriend, Appellee, in the 14th District Court of Appeals, Houston, Texas.

THE CHAIR: Any objections to Petitioner Exhibits 8, 9, 10, or 11?

MS. GLASSMAN: I do not object to 8. I do object to 9, because that is not the basis of the claim. The claim was filed based on a judgment that was withdrawn on June 2. And I object to 10, because none of that is -- everything that happened after the withdrawal and the declaration of the judgment of February 24 being void is not properly before this panel.

THE CHAIR: Those objections will be denied. Petitioner Exhibits 8 through 11 will be admitted.

MR. BERSCH: At this point Petitioner calls as a witness John Fason.

This witness has not been sworn.

(Mr. Fason was sworn.)

MR. BERSCH: May I address the witness briefly?

THE CHAIR: Yes.

MR. BERSCH: Mr. Fason, you can pull up a little closer if you want to, if it's convenient. And I put the original copies of some exhibits there on the table.

JOHN S. FASON,

HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

QUESTIONS BY BERSCH:

Q. Mr. Fason, could you please tell the members of the panel your full name.

A. John Stewart Fason.

Q. Are you a licensed attorney in the state of Texas?

A. Yes.

Q. How long have you been a licensed attorney in Texas?

A. 25 years.

Q. And what city is your office?

A. Houston.

Q. Mr. Fason, have you ever represented a client

minutes to conclude your case.

MR. BERSCH: I appreciate that. And I doubt that I will need it, but thank you in case we go over a few minutes.

MS. GLASSMAN: Could we take a break, please?

THE CHAIR: How long do you think this will take?

MR. BERSCH: Well, depending on whatever cross-examination there might be. My part is only going to be five minutes.

THE CHAIR: Is it all right to wait five minutes, or do you want to break now? I'll do whatever you want to do.

MS. GLASSMAN: I would appreciate a break now.

THE CHAIR: All right. We'll recess for ten minutes.

MS. GLASSMAN: Thank you.

(Recess)

THE CHAIR: Petitioner ready to proceed?

MR. BERSCH: Yes, sir.

THE CHAIR: Respondent ready?

MS. GLASSMAN: Yes.

THE CHAIR: Go forward, please.

MR. BERSCH: Petitioner offers into evidence Petitioner's Exhibit No. 13. It is a certified copy of a judgment dated January 31, 1997, case styled The State Bar of Texas Versus Elene Glassman, in the District Court of Harris County, Texas, 334th Judicial District, Cause No. 93-08429.

THE CHAIR: Any objection?

MS. GLASSMAN: No.

THE CHAIR: Is it my understanding, Mr. Bersch, this will be offered for the limited purpose with regard to sanctions aspect in the event that sanctions are deemed appropriate?

MR. BERSCH: Yes, sir.

THE CHAIR: With that limitation, 12 will be admitted.

MR. BERSCH: This is 13, I believe.

THE CHAIR: 13. I'm sorry. You're correct.

MR. BERSCH: Thank you. Next Petitioner offers into evidence Petitioner's Exhibit No. 14, a certified copy of a document entitled Judgment of Partially Probated Suspension that was entered on January 29, 2009, in a case styled Commission For Lawyer Discipline Versus Elene B. Glassman, No. H0100623222, Before the Evidentiary Panel of the State Bar District

No. 4C06 Grievance Committee, Harris County, Texas.

THE CHAIR: Any objection?

MS. GLASSMAN: Irrelevant. Object.

THE CHAIR: Mr. Bersch, again, is 14 being offered solely for the purpose of consideration of sanctions, in the event sanctions are deemed appropriate?

MR. BERSCH: Yes, sir.

THE CHAIR: With that limitation, objection is overruled, and it will be admitted.

MR. BERSCH: Next, Petitioner calls Maribelle Hernandez to the stand.

MARIBELLE HERNANDEZ,

HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

QUESTIONS BY BERSCH:

Q. Ms. Hernandez, would you please state your full name for the record.

A. Maribelle Galvan Hernandez.

Q. How are you employed, ma'am?

A. I'm a legal assistant with the Office of the Chief Disciplinary Counsel for the State of Texas.

Q. What are your general duties in that position?

A. Legal assistant to an attorney, maintain a file, keep track of our various case-tracking systems of

what comes in, what goes out on cases that we have.

Q. And you work in your duties as a legal assistant with me on the team that we have; is that right?

A. Yes.

Q. As part of your duties have you been involved in working on and handling the documents in the case that we are trying here this afternoon?

A. Yes.

Q. Have you personally looked through the file as you have done that work over the months and years?

A. Yes.

Q. And did you specifically review the file again in preparation for today's hearing?

A. Yes.

Q. I'd like to direct your attention to Petitioner's Exhibit No. 12. Are you familiar with this document?

A. Yes.

Q. Petitioner's Exhibit No. 12, does it consist of a true and correct copy of three invoices for expenses that have been paid in the matter that we're trying today as well as a front page that is a summary regarding those invoices?

A. Yes.

- **Complainant may have counsel present, but <u>may not</u> 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)

<u>PANEL CHAIR TIP</u>

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: *<u>Handling of Exhibits</u>. 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

EVIDENTIARY HEARING REPORT

PANEL: 4-6 COMMITTEE: 4 HEARING DATE: Wednesday, June 12, 2013

CASE NO: H0051132998 STYLE: Commission for Lawyer Discipline v. Elene B. Glassman

LOCATION: 600 Jefferson, Suite 100, Houston, Texas 77002

COURT REPORTER: Cindi Bench Court Reporting, 281-565-8222 (cindibench@aol.com)

PANEL MEMBERS (INDICATE ATTY OR PUBLIC). Please note presiding member with an asterisk (*).

1. Timothy Riley (Atty)* Present / Absent / Recused
2. Michael Phifer (Atty) Present / Absent / Recused
3. Erwin Wilbanks (Atty) Present / Absent / Recused
4. Adrian Almaguer (Atty) Present / Absent / Recused
5. Michael Parmet (Public) Present / Absent / Recused
6. Herbert Karpicke (Public) Present / Absent / Recused

FILED

JUN 12 2013

STATE BAR OF TEXAS
HOUSTON CDC

I. TYPE OF HEARING: (Check One)

- ✓ Evidentiary and Sanction
- ___ Continued Evidentiary and Sanction
- ___ Sanction Only
- ___ Default

II. HEARING RESULT: (Check One)

- ___ Hearing Continued
- ___ Dismissed
- ___ Default Granted
- ___ Default Denied
- ✓ Professional Misconduct Found (If selected, please continue)
  - ___ Private Reprimand
  - ___ Public Reprimand
  - ✓ Disbarment
  - ___ Suspension: (If selected, please choose **either** Fully Active, Fully Probated or Partially Probated)
    - ___ **Fully Active** Suspension: Length ____
      Beginning: ____
    - ___ **Fully Probated** Suspension: Length ____
      Beginning: ____
    - ___ **Partially Probated** Suspension: ____
      Length of Active Portion: ____
      Beginning: ____
      Length of Probated Portion: ____
      Beginning: ____
    - ___ **: Probated portion conditioned upon:**
      - ___ Payment of restitution
      - ___ Payment of attorney's fees/cost
      - ___ Other: ____

✓ CFLD attorney's fees:

Amount: 7,550.00 Payable: 9/12/2013 (Date)

✓ CFLD Costs:

Amount: 462.50 Payable: 9/12/2013 (Date)

____ Restitution payable to: _____

Amount: _____ Payable: _____ (Date)

TERMS AND CONDITIONS OF PROBATION

Please check all terms and conditions the Panel finds appropriate for this probation:

____ Respondent shall not engage in professional misconduct during term of probation.

____ Respondent shall not violate any state or federal criminal statutes during term of probation.

____ Respondent shall keep State Bar of Texas membership notified of current address and telephone number.

____ Respondent shall comply with Minimum Continuing Legal Education requirements during term of probation.

____ Respondent shall comply with IOLTA requirements during term of probation.

____ Respondent shall respond to any request for information from the Grievance Committee or Chief Disciplinary Counsel during term of probation.

____ ADDITIONAL CONTINUING LEGAL EDUCATION COURSES AS FOLLOWS:

Areas of Law	No. of Hours	Deadline

____ PSYCHOLOGICAL EVALUATION REPORTS (Utilize only if supported by evidence of Mental Illness)

Evaluation Deadline	Frequency

____ SUBSTANCE ABUSE TESTING (Utilize only if supported by evidence of Substance Abuse)

Start Date	End Date	Frequency

____ LAW OFFICE MANAGEMENT PROGRAM EDUCATION COURSES

No. of Seminar Hours	Deadline

____ LAW OFFICE MANAGEMENT PROGRAM CONSULTATION

Deadline

____ TRUST ACCOUNT REPORTING (Utilize only if supported by evidence of Trust Account Violation)

Start Date	Frequency

____ TRUST ACCOUNT AUDIT (Utilize only if supported by evidence of Trust Account Violation)

Deadline

____ OTHER: _____

PROFESSIONAL MISCONDUCT

The Panel finds the following Disciplinary Rules were violated: 3.01 and 3.02

By my signature below, I request the Office of the Chief Disciplinary Counsel to prepare a Judgment in accordance with this hearing report.

T.D.R.

TIMOTHY RILEY
District No. 4-6
Presiding Member

CF5-7A

Revised: May 1, 2010

BEFORE EVIDENTIARY PANEL 4-6 OF THE
STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE, Petitioner,	§	H0051132998 [FASON]
v.	§	
ELENE B. GLASSMAN, Respondent.	§	HARRIS COUNTY, TEXAS

JUDGMENT OF DISBARMENT

Parties and Appearance

On the 12th day of June, 2013, came to be heard the above-captioned cause. Petitioner, the Commission for Lawyer Discipline, appeared through its attorney of record and announced ready. Respondent, Elene B. Glassman, Texas Bar Number 08016000, appeared in person and announced ready.

Jurisdiction and Venue

Evidentiary Panel 4-6, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District No. 4, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Professional Misconduct

The Evidentiary Panel, having considered the pleadings, evidence, stipulations, and argument of counsel, finds that Respondent has committed Professional Misconduct as defined by Rule 1.06V of the Texas Rules of Disciplinary Procedure.

Findings of Fact

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

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.

2. Respondent maintains her principal place of practice in Harris County, Texas.

3. Respondent brought a proceeding which was frivolous.

4. In the course of litigation, Respondent took a position that unreasonably increased the costs and unreasonably delayed the resolution of the matter.

5. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable and necessary attorneys' fees in the amount of $7,550.00 and direct expenses in the amount of $462.50 associated with this Disciplinary Proceeding.

Conclusions of Law

The Evidentiary Panel concludes that, based on foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 3.01 and 3.02.

Sanction

The Evidentiary Panel, having found that Respondent has committed Professional Misconduct, heard and considered additional evidence and argument regarding the appropriate sanction to be imposed against Respondent. The Evidentiary Panel carefully considered the factors as set out in Rule 2.18 of the Texas Rule of Disciplinary Procedure. Not by way of limitation, the Evidentiary Panel specifically found that factors D, E, G, H, I, and J of Rule 2.18 strongly militated against any of the lesser available sanctions that could have been applied, as those forms of sanction are defined in Rule 1.06(Y)(3-8) of the Texas Rules of Disciplinary Procedure. Accordingly, the Evidentiary Panel finds that proper discipline of the Respondent for each act of Professional Misconduct is DISBARMENT.

Disbarment

It is therefore ORDERED, ADJUDGED, and DECREED that, effective the date of this judgment, Respondent, Elene B. Glassman, State Bar Number 08016000, is hereby DISBARRED

from the practice of law in the State of Texas.

It is further ORDERED that Respondent is prohibited from practicing law in Texas, holding herself out as an attorney at law, performing any legal services for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any administrative body or holding herself out to others or using her name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

Notification

It is further ORDERED that Respondent shall immediately notify each of her current clients in writing of this disbarment. In addition to such notification, Respondent is ORDERED to return any files, papers, unearned monies, and other property belonging to clients and former clients in the Respondent's possession to the respective clients or former clients or to another attorney at the client's or former client's request. Respondent is further ORDERED to file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that all current clients have been notified of Respondent's disbarment and that all files, papers, unearned monies, and other property belonging to all clients and former clients have been returned as ordered herein.

It is further ORDERED Respondent shall, on or before thirty (30) days from the signing of this judgment by the Panel Chair, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is

representing. Respondent is further ORDERED to file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice has received written notice of the terms of this judgment.

Surrender of License

It is further ORDERED that Respondent shall, within thirty (30) days of the signing of this judgment by the Panel Chair, surrender her law license and permanent State Bar Card to the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of the State of Texas.

Attorneys' Fees and Expenses

It is further ORDERED that Respondent shall pay reasonable and necessary attorneys' fees in the amount of $7,550.00 and direct expenses in the amount of $462.50 to the State Bar of Texas. The payment shall be due and payable on or before September 12, 2013, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

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

Publication

It is further ORDERED this disbarment shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Conditions Precedent to Reinstatement

It is further ORDERED that payment of the foregoing attorneys' fees and expenses shall be a condition precedent to any consideration of reinstatement from disbarment as provided by Rules 2.19, 2.20, and 11.02(D) of the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 18th day of June, 2013.

EVIDENTIARY PANEL 4-6
DISTRICT NO. 4
STATE BAR OF TEXAS

TIMOTHY RILEY
Panel 4-6 Chair

BEFORE EVIDENTIARY PANEL 4-6 OF THE STATE BAR DISTRICT NO. 4
GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE **Petitioner**	)(	**EVIDENTIARY PROCEEDING**
v.	)(	**H0051132998**
ELENE B. GLASSMAN **Respondent**	)(	**HARRIS COUNTY, TEXAS**

RESPONDENT'S SPECIAL EXCEPTIONS TO PETITIONER'S ORIGINAL PETITION

ELENE B. GLASSMAN, Respondent , pursuant to Texas Rules of Civil Procedure "TRCP" 91 specially excepts to Petitioner's Original Petition, requests that Petitioner amend the Original Petition as indicated by these Special Exceptions to provide Respondent with fair notice of Petitioner's allegations and sufficiently complete and accurate facts to enable preparation of a defense or that Petitioner's Original Petition be dismissed and shows as follows:

Special Exception 1:

Respondent specially excepts to Petitioner's Original Petition paragraph 3 as insufficient to comply with Texas Rules of Disciplinary Procedure "TRDP" 2.17 A (7) requirements for pleading "...any other matter required by law...."

Petitioner's Original Petition refers to "The complaint that forms the basis of the cause of action..." which complaint was predicated on a judgment that was withdrawn, void, annulled and of no force and effect at the time the "complaint" was filed.

Respondent requests that Petitioner amend Petitioner's Original Petition to present sufficiently complete, accurate relevant facts to provide fair notice to Respondent in accordance with Texas Rules of Civil Procedure "TRCP" 45, 46, 47 and 54, TDRP 1.06P to enable Respondent to prepare a defense or deletion of paragraph 3 and/or dismissal of the Original Petition.

Special Exception 2:

Respondent specially excepts to Petitioner's Original Petition paragraph 3, which does not include necessary allegations of conditions precedent as required by TRCP 54 and/or accurate facts sufficient to establish compliance with the required conditions precedent stated in the State Bar Act section 81.072 A (7) and TDRP 2.12 and 2.14D; specifically Petitioner has not provided a basis for the determination of "just cause" which is an essential element, a condition precedent, necessary to proceed with a disciplinary proceeding.

Respondent specifically challenges compliance by Chief Disciplinary Counsel and/or Assistant Disciplinary Counsel with the requirements for investigation, determination of "just cause" based on investigation, compliance with TDRP 1.06V

Respondent requests that Petitioner amend paragraph 3 accordingly or that the petition be dismissed.

Special Exception 3:

Respondent further specially excepts to Petitioner's Original Petition paragraph 3 which does not include necessary allegations in accordance with State Bar Act section 81.072 to establish TRCP 54 "conditions precedent" qualifications of the members of Evidentiary Panel 4-6 to serve on an Evidentiary Panel to hear H0051132998; Petitioner has neither alleged the

qualifications of the members of Evidentiary Panel 4-6 to serve on an Evidentiary Panel nor has Petitioner provided sufficient facts as to the qualifications of Evidentiary Panel 4-6 to provide fair notice to Respondent to enable her to prepare a defense to the claims in Petitioner's Original Petition according to Texas Rules of Disciplinary Procedure "TRDP" 2.17 A (7) as to qualifications of panel members to preside and/or participate in an Evidentiary Hearing based on Petitioner's Original Petition. Specifically, Petitioner has not provided information to establish the proper appointment of members of State Bar District 4, Evidentiary Panel 4-6 as required in State Bar Act section 81.072(l) "...in strict accordance with the TDRP."

Respondent requests that Petitioner amend paragraph 3 to provide the necessary facts or that the petition be dismissed.

Special Exception 4:

Respondent further specially excepts to paragraph 3 of Petitioner's Original Petition as not providing information in accordance with TDRP 2.04 Organizational Meeting of Grievance Committees thus placing in issue the authority of the purported 2012-2013 Chair of State Bar District 4 Grievance Committee to make appointments to Evidentiary Panel 4-6 also required by State Bar Act section 81.072(1) "...in strict accordance with the TDRP."

Respondent requests that Petitioner amend paragraph 3 to provide the necessary facts or that the petition be dismissed.

Special Exception 5:

Respondent specially excepts to Petitioner's Original Petition paragraph 5 which is vague as to acts or omissions by Respondent that support the allegation of professional misconduct based on TRDP 1.06V as neither paragraph 5 nor the following paragraphs to which paragraph 5

refers state specific relevant acts or omissions based on accurate and/or sufficiently clear and complete recitation of relevant facts.

Respondent requests that Petitioner amend paragraph 5 to provide the necessary accurate acts, omissions and/or facts and appropriate references or that the petition be dismissed.

Special Exception 6:

Respondent specially excepts to Petitioner's Original Petition paragraphs 6 and 7 as misleading and confusing in ways that distort facts and circumstances in favor of Petitioner. The relationship of the parties to 350,750 "350,750" and 350,750-403 "403" and to the deceased beneficiaries is irrelevant for purposes of the Evidentiary Proceeding.

Respondent requests that Petitioner amend the petition using the names of the parties or referring to their status in 350,750 and 403, i.e. petitioner, defendant, beneficiaries, residual beneficiaries etc. or that the petition be dismissed.

Special Exception 7:

Respondent specially excepts to Petitioner's Original Petition paragraph 6 which states as follows. "On June 27, 2006, after a bench trial, a judgment was signed…"

The language suggests that the bench trial was June 27, 2006 instead of June 6, 2006, the date the record (Exhibit 1) shows it actually occurred is June 6, 2006. The misleading language further suggests that Petitioner is not familiar with the record in 350,750 and has not conducted an investigation as required by TRDP to determine whether the matters stated in the complaint are "true."

Petitioner does not mention that the bench trial on June 6, 2006 was heard by Associate Judge Ruth Ann Stiles but that Judge Austin signed the judgment dated June 27, 2006.

The language in paragraph 6 of the petition with regard to a finding in the judgment of June 27, 2006 is irrelevant as to the allegations in Petitioner's Original Petition and is calculated to inflame and prejudice the panel as to Respondent.

Respondent requests that Petitioner amend the petition to delete the inflammatory, irrelevant and prejudicial language, and provide clear unbiased statements with regard to the date of the bench trial and the date the judgment in 350,750 was signed or that the petition be dismissed.

Special Exception 8:

Respondent specially excepts to Petitioner's claim in paragraph 7 that the application for writ of garnishment was assigned a separate cause number. The cause number of the writ of garnishment appends 403 to the cause number of the underlying case number 350,750 and is therefore designated 350,750-403.

Respondent requests that Petitioner amend the petition to acknowledge the connection between 350, 750 and 403 as reflected in the assigned cause number showing 403 is not a separate number from 350,750 or that the petition be dismissed.

Special Exception 9:

Respondent specially excepts to Petitioner's Original Petition paragraph 8 assertion that Respondent's appeal that is the subject of this disciplinary matter did not attack the garnishment order in "403" in Harris County Probate Court 1, which has a cause number connecting it to the underlying matter in the same court, Harris County Probate Court 1, 350,750; Respondent requests that Petitioner amend Petitioner's Original Petition to state the collateral attack on the judgment rendered in Probate Court 1, Harris County, Texas 403. The "substance" of Appellant's appeal clearly shows a collateral attack on 403. Appellant's brief in 14-09-00522

"Appellant's Brief" p. 3-4 (Exhibit 2) and Appellant's Brief p. 27 et seq. (Exhibit 2) specifically state facts that are not in issue which qualify as a "collateral attack."

Respondent requests that Petitioner amend paragraph 8 in accordance with the facts or that the petition be dismissed.

Special Exception 10:

Respondent specially excepts to Petitioner's assertion in paragraph 8 that Respondent's attack did not attack the garnishment order in 403; an attack alleging failure to comply with the requirement of a "valid subsisting judgment" to support a garnishment is an attack on the judgment that was rendered granting the garnishment as void. A "valid subsisting judgment" is a prerequisite to a garnishment; 403 is a garnishment. Texas Government Code 63.001 (Exhibit 3) Complainant and the 14th Court state that the attack is a "collateral attack;" only Petitioner asserts that it is not a collateral attack. Respondent requests that Petitioner amend the Original Petition to comply with the facts supporting the attack on 403 as a collateral attack.

Respondent requests that Petitioner amend paragraph 8 in accordance with the facts or that the petition be dismissed.

Special Exception 11:

Respondent specially excepts to Petitioner's claim in paragraph 8 that an attack on the judgment in 403 and/or 350, 750 was time barred. There is no statute of limitations for attacking a "void" judgment nor is there a statute of limitations for a collateral attack.

Respondent requests that Petitioner amend paragraph 8 either deleting the language that an attack on a judgment that is void is time barred or correcting it or that the petition be dismissed.

Special Exception 12:

Respondent specially excepts to Petitioner's assertion in paragraph 9 that Probate Court 1 had jurisdiction to enter the June 27, 2006 judgment in 350,750. Where there is no proof of subject matter jurisdiction, a court lacks the authority to adjudicate issues, grant recovery or issue a judgment. The "record" in 350,750 does not show that subject matter jurisdiction, an essential element of jurisdiction to support a judgment was established.

Respondent requests that Petitioner amend paragraph 9 accordingly or that the petition be dismissed.

Special Exception 13:

Respondent specially excepts to Petitioner's claim in paragraph 9 that judicial admissions are a basis for establishing "subject matter jurisdiction" and requests that Petitioner amend Petitioner's Original Petition to delete the claims as to relevance of judicial admissions with regard to proving subject matter jurisdiction.

Respondent requests that Petitioner amend paragraph 9 accordingly or that the petition be dismissed.

Special Exception 14:

Respondent specially excepts to Petitioner's claim in paragraph 9 that Probate Court 1 possessed jurisdiction to enter the June 27, 2006 judgment claiming the record in 350,750 demonstrates the existence of jurisdiction and relying on Respondent's pleadings as relevant to establish jurisdiction; pleadings do not qualify as evidence.

Respondent requests that Petitioner amend paragraph 9 accordingly either identifying a relevant basis for claiming subject matter jurisdiction was established or that the petition be dismissed.

Special Exception 15:

Respondent specially excepts to Petitioner's disregard in paragraph 9 of the challenge to 403 including a challenge to 350, 750 as failing to support the garnishment in 403 and requests that Petitioner amend the Original Petition to acknowledge that a challenge including 350,750 supports a reasonable belief that the garnishment order would be set aside as not being supported by a "valid subsisting judgment."

That 403 and 350,750 are both in Probate Court 1, Harris County, Texas and the relevance of both matters being in the same court is not acknowledged in Petitioner's Original Petition; nor does Petitioner acknowledge that 350,750 and 403 are in the same court is not in issue. That 350,750 and 403 are in the same court is a vital fact necessary to analyze the issues presented.

Respondent requests that Petitioner amend paragraph 9 accordingly, acknowledging that 350,750 and 403 are in the same court, that their being in the same court is not in issue and is a vital fact or that the petition be dismissed.

Special Exception 16:

Respondent specially excepts to Petitioner's claim in paragraph 9 that Respondent did not properly attack the judgment in 350,750 signed June 27, 2006 which claims jurisdiction despite the absence of proof of jurisdiction. Jurisdiction in 350,750 is not supported by evidence as required by TRCP 301 and jurisdiction in 403 is not supported by a valid subsisting judgment.

Respondent requests that Petitioner amend the petition accordingly or that the petition be dismissed.

Special Exception 17:

Respondent specially excepts to Petitioner's statement in paragraph 9 that Respondent had no reasonable ground to believe the April 30, 2009 garnishment order would be reversed and requests that Petitioner's Original Petition be amended to provide accurate recitations of facts, if any, that support a claim of a frivolous appeal.

Respondent requests that Petitioner amend paragraph 9 accordingly or that the petition be dismissed.[1]

Special Exception 18:

Respondent specially excepts to the claim in Petitioner's Original Petition paragraph 9 that Respondent's appeal unreasonably increased the cost with regard to resolution of the matter and requests Petitioner to amend providing sufficient facts in accordance with TRDP 2.17 A (4) to provide fair notice to Respondent as to what costs were unreasonably increased by Respondent.

Respondent requests that Petitioner amend the Original Petition accordingly or that the petition be dismissed.

Special Exception 19:

Respondent specially excepts to the claim in Petitioner's Original Petition paragraph 9 that Respondent's appeal unreasonably delayed resolution of the matter and requests Petitioner to amend providing fair notice to Respondent as required by TRDP 2.17 A (4) of exactly which facts support a claim of delay by Respondent.

---

[1] "Collateral Attacks on Judgments" 41 TLR 163. (Part 1) and "Collateral Attacks on Judgments" 509 (Part 2) provide an analysis and clarification of the distinction in collateral attacks on judgments in "sister courts" i.e. "courts of equal sovereignty," and collateral attacks on judgments in the same court that issued the judgment upon which a garnishment is predicated.

Respondent requests that Petitioner amend the Original Petition accordingly or that the petition be dismissed.

Special Exception 20:

Respondent specially excepts to Petitioner's assertion in paragraph 10 speculating as to Respondents purposes in defending the claims in Petitioner's Original Petition and requests that Petitioner amend Petitioner's Original Petition to delete speculation and/or provide fair notice to Respondent to support the speculation as to Respondent's motives in defending Petitioner's claims.

Respondent requests that Petitioner amend paragraph 10 deleting the speculation or that the petition be dismissed.

Special Exception 21:

Respondent specially excepts to paragraph 12; the complaint upon which H0051132998 is predicated was not brought to the attention of the Office of Disciplinary Counsel of the State Bar of Texas on or about May 5, 2011 as stated in the Original Petition but after the opinion issued by the 14th Court of February 24, 2011 had been withdrawn and declared annulled. (Exhibit 4)

Respondent requests that Petitioner amend paragraph 12 to acknowledge the accurate date the matter was brought to the attention of the Office of Chief Disciplinary Counsel of the State Bar of Texas by receipt of a grievance; that the opinion on which the grievance is based had previously been withdrawn and declared annulled and was therefore void, of no force or effect for any purpose or that the petition be dismissed.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Respondent prays that the Court grant Respondents **Special Exceptions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,16, 17, 18, 19, 20 and 21** with regard to Petitioner's obligation to present accurate, clear and complete facts in Petitioner's pleadings sufficient to provide Respondent with fair notice of Petitioner's claims and sufficient accurate facts to enable her to prepare a response/defense or that the Original Petition be struck in part and/or totally and that H051132998 be dismissed, with prejudice and for such other relief, at law or in equity to which she shall show herself entitled.

RESPECTFULLY SUBMITTED,

ELENE B. GLASSMAN, pro se
SBN 08016000
3525 Sage Rd. #506
Houston, Texas 77056
713 523 6464
ebglassman@gmail.com

BEFORE EVIDENTIARY PANEL 4C OF THE STATE BAR DISTRICT NO. 4
GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE **Petitioner**	)(	**H0051132998**
v.	)(	
ELENE B. GLASSMAN **Respondent**	)(	**HARRIS COUNTY, TEXAS**

RESPONDENT'S MOTION TO COMPEL PETITIONER TO PROVIDE COMPLETE AND FACTUALLY ACCURATE DISCOVERY RESPONSES OR TO STRIKE PLEADINGS OF PETITIONER AND DISMISS THE PROCEEDING

TO THE HONORABLE CHAIR OF STATE BAR DISTRICT 4 GRIEVANCE COMMITTEE EVIDENTIARY PANEL ASSIGNED TO EVIDENTIARY PROCEEDING H0051132998:

Pursuant to Rule 215 of the TEXAS RULES OF CIVIL PROCEDURE, and TEXAS RULES OF DISCIPLINARY PROCEDURE 2.17D Respondent moves Evidentiary Panel assigned to Evidentiary Proceeding H0051132998 to compel Petitioner, Commission for Lawyer Discipline "CLD" to make full and complete answers to Respondent's requests for disclosure and discovery. As grounds for this Motion, Respondent respectfully shows as follows:

1. Despite the passage of sufficient time, Petitioner has not provided full and complete answers to Respondent's Request for Disclosure as follows:

   Petitioner's response to Request for Disclosure 2 is non responsive; Respondent requests Petitioner to respond to the request for the factual bases of the CLD claims or defenses consistent with the allegations in Petitioner's Disciplinary Petition.

   A copy of the Request for Disclosure served on Petitioner on or about May 4, 2012 is attached hereto as Exhibit 1.

2. This is a disciplinary matter concerning a moot judgment; the issue presented in the complaint is no longer a "live issue."

3. Despite the information provided to Petitioner by Respondent showing that this matter is not appropriate for a Disciplinary Petition and the requirements with regard to preliminary investigation by CLD as to the inquiry/complaint and the requirements for further investigation by Chief Disciplinary Counsel necessary to support the Disciplinary Petition CLD has proceeded but has failed and refused to provide documentation to establish that the required preliminary procedures to support a disciplinary petition have been followed.

4. Despite the passage of sufficient time, Petitioner has not provided full and complete answers to Respondent's First Requests for Production of Documents as follows:

   Requests: 1, 2, 3, 4 (District 4 Grievance Committee) 5 (the oaths that have not been provided) 6, 7, 8, 9, 11, 12 (J. G. Molleston) 14, 15, 16

   A copy of Respondent's First Request for Production of Documents is attached hereto as Exhibit 2.

5. Failure and refusal of Petitioner to properly and completely respond to requests for discovery violates Respondent's right to due process as provided in the State Bar Act, Texas Rules of Disciplinary Procedure, Texas Rules of Civil Procedure, the Constitution of Texas and the Constitution of the United States which failure and refusal entitles Respondent to have Petitioner's pleadings struck and the Evidentiary Proceeding dismissed.

Prayer for Relief

Respondent Elene B. Glassman requests that CLD be ordered to provide a properly responsive response Respondent's Request for Disclosure 2.

Respondent Elene B. Glassman requests that CLD be ordered to provide documentation to establish that the required preliminary procedures to support a disciplinary petition have been followed.

Respondent Elene B. Glassman requests that CLD be ordered to provide full and complete responses to Respondent's First Request for Production of Documents as follows:

Requests 1,2,3,4 (State Bar District 4 Grievance Committee,)

Request 5 (oaths that have not been provided)

Requests 6, 7, 8, 9, 11, 12, 14, 15, 16

Respondent requests that CLD be ordered to respond to Disclosure 2 and to provide full and complete responses to the indicated Requests for Production of Documents on or before 10 days from the order of the chair of the Evidentiary Panel assigned to Evidentiary Proceeding H0051132998 or that the pleadings of Petitioner be struck and the matter dismissed, and for all other relief, general and special, legal and equitable to which she is entitled.

Respondent specifically reserves the right to amend this Motion.

Respectfully Submitted,

Elene B. Glassman, pro se
SBN 08016000
1715 West Main, #1
Houston, Texas 77098
713 523 6464
ebglasman@gmail.com

BEFORE EVIDENTIARY PANEL 4C OF THE STATE BAR DISTRICT NO. 4
GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE **Petitioner**	)(	**H0051132998**
v.	)(	
ELENE B. GLASSMAN **Respondent**	)(	**HARRIS COUNTY, TEXAS**

RESPONDENT'S REQUEST FOR DISCLOSURE

RESPONDENT'S REQUEST FOR DISCLOSURE BY PETITIONER

ELENE B. GLASSMAN, Respondent, requests disclosure and production of documents, records, communications etc. from Commission for Lawyer Discipline, Petitioner in the above identified matter by and through its Attorney of Record, Timothy R. Bersch, 600 Jefferson, Suite 1000, Houston, Texas 77002.

REQUEST FOR DISCLOSURE

Pursuant to Rule 194 of the Texas Rules of Civil Procedure and Texas Disciplinary Rules of Procedure 2.17D (1), (2) (3), (4),(5) Petitioner is requested to disclose within 30 days of service of these requests, the information described in Texas Rule of Civil Procedure 194.2 (a), (b), (c), (d), (e), (f) – (1), (2),(3),(4) (A), (B), (i). Pursuant to Rule 193.5 you are required to supplement your response.

Respectfully submitted,

Elene B. Glassman, pro se
SBN 08016000
1715 West Main, #1
Houston, Texas 77098
Telephone: 713 523 6464
ebglassman@gmail.com

Exh. 1

CERTIFICATE OF CONFERENCE

I hereby certify that on the 15 day of November , 2012, Movant left a message for Timothy R. Bersch telephone number 713 758 8200, Counsel of Record for Petitioner, Commission for Lawyer Discipline in Evidentiary Proceeding H0051132998 advising him that Respondent's Motion to Compel Petitioner to Provide Complete and Factually Accurate Discovery Responses or to Strike Pleadings of Petitioner and Dismiss the Proceeding would be filed and asking if he will oppose or not oppose;

Petitioner Opposes

Elene B. Glassman

CERTIFICATE OF SERVICE

I certify that on the 14th day of November 2012 a true and correct copy of the foregoing Respondent's Motion to Compel Petitioner to Provide Complete and Factually Accurate Discovery Responses or to Strike Pleadings of Petitioner and Dismiss the Proceeding was served on Petitioner by fax, personal delivery or certified mail, return receipt requested to:

Mr. Timothy R. Bersch
Assistant Disciplinary Counsel
State Bar of Texas
600 Jefferson # 1000
Houston, Texas 77001

Elene B. Glassman

Elene B. Glassman
1715 West Main, #1
Houston, Texas 77098

713 523 6464

ebglassman@gmail.com

November 6, 2012

Mr. Timothy R. Bersch
Assistant Disciplinary Counsel
State Bar of Texas
600 Jefferson, Suite 1000
Houston, Texas 77001

Re: H0051132998 Commission on Lawyer Discipline v. Elene B. Glassman

Dear Mr. Bersch,

Enclosed is Respondent's Motion to Compel Petitioner to Provide Complete and Factually Accurate Discovery Response or to Strike Pleadings of Petitioner and Dismiss the Proceeding with a Certificate of Conference and Certificate of Service.

The letter of September 4, 2012 was a Notice of Attempted Resolution. However, since I have revised the drafted motion enclosed with that letter, as a courtesy I am again seeking amicable resolution.

Very truly yours,

Elene B. Glassman

Enclosures: Respondent's Motion to Compel Petitioner to Provide Complete and Factually Accurate Discovery Responses or to Strike Pleadings of Petitioner and Dismiss the Proceeding
Certificate of Conference
Certificate of Service

A Vivos
IV-7187

988173

PROBATE COURT 4

NO. 350750

IN RE:	§	IN THE PROBATE COURT
	§	
INTER VIVOS TRUST OF	§	NUMBER 4 OF
	§	
HELEN BAERNSTEIN	§	HARRIS COUNTY, TEXAS

PETITION TO COMPEL ACCOUNTING OF TRUST

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, MERYL GOODFRIEND, Movant herein, of Harris County, Texas, and complains of Elene Glassman, Trustee of the (Inter Vivos) Trust of Helen Baernstein, dated December 26, 1980, also of Harris County, Texas, and, for cause, respectfully shows the following:

1. Respondent Elene Glassman may be served with notice of this proceeding and citation accordingly at her residence address of 1715 W. Main Street, No. 1, Houston, Texas 77098.

2. This Court has jurisdiction and venue pursuant to Probate Code, Section 5(e), under the facts hereinafter stated, particularly and without limitation paragraphs three (3) and four (4) next following.

3. Under the terms of a trust instrument executed by Helen Baernstein, the Trustor being Helen Baernstein, conveyed to Respondent Trustee, for Movant's use and benefit and for the benefit of Respondent, certain investment accounts and/or cash, securities, bonds, and/or other liquid assets of present value in excess of $25,000.00. A copy of the trust instrument, marked Exhibit "A," is attached hereto and incorporated herein by reference.

4. In accordance with the trust instrument, the above-described property was delivered to Respondent Trustee during the lifetime of the Trustor, who died on November 9, 2003, and, following delivery, Respondent Trustee has had the care and management of the property from that time to the present. Distribution of all assets is to have been under the provisions of this Trust, upon the death of Trustor, which occurred on November 9, 2003. Notwithstanding this event, the Trustee has made no accounting nor distribution to the benefit of Movant. (See Trust provisions at Article IV, paragraph C.)

5. Respondent Trustee has never rendered any account of her actions as Trustee, showing her care and management of the property, funds received or disbursed, investments made, or claims for compensation made for the care of the property.

6. On June 22, 2004, Movant, Meryl Goodfriend, demanded of Respondent Trustee, Elene Glassman, that she fully account for her actions as Trustee, but Ms. Glassman has wholly failed and refused, and still fails and refuses, to render that account. Attached hereto and incorporated herein by referenced for all purposes, is true and correct copy of letters dated June 22, 2004, in request for

accounting by the Trustee. To this demand for trust accounting, Elene Glassman has been wholly unresponsive.

7. The names and addresses of all persons interested in the Trust and in this proceeding are as follows:

Name	Age	Marital Status	Address	Relationship	Interest
Meryl Goodfriend	67	Divorced	506 N. Post Oak Ln. Houston, TX 77024	Daughter	½ undivided interest
Elene B. Glassman	61	Divorced	1715 W. Main St., No. 1 Houston, TX 77098	Daughter	½ undivided interest

WHEREFORE, Movant, Meryl Goodfriend, requests an Order of this Court requiring a written statement of account due upon a date certain, sworn to and subscribed by Trustee, setting forth in detail:

1. All trust property that has come to Trustee's knowledge or into Trustee's possession that has not been previously listed or inventoried as property of the Trust.
2. A complete account of receipts, disbursements, and other transactions regarding the trust property for the period covered by the account, including their source and nature, with receipts of principal and income shown separately.
3. A listing of all property being administered, with an adequate description of each asset.
4. The cash balance on hand, and name and location of the depository where the balance is kept.
5. All known liabilities of the Trust.
6. Any other and further relief as the Court deems just and proper.

Respectfully submitted,

LAW OFFICES OF MICHAEL A. HIRSCH, P.C.

BY: _____

MICHAEL A. HIRSCH
1301 McKinney, Suite 2910
Houston, Texas 77010
713/528-3358
Facsimile Transmission No.
713/528-3080
State Bar No. 09718200

ATTORNEY FOR APPLICANT,
MERYL GOODFRIEND

FILED
2009 SEP 30 PM 3:16
COUNTY CLERK
HARRIS COUNTY, TEXAS

932-541-2326

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy
Attest: 3/4/2013
Stan Stanart, County Clerk
Harris County, Texas

_____ Deputy
Lisa Sheree Mitcham

PROBATE COURT NO. 1 OF HARRIS COUNTY, TEXAS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was transmitted on this the undersigned date by certified mail, return receipt requested, and/or via facsimile transmission and/or via hand delivery to the following person(s) and a true and correct copy of the foregoing instrument was submitted for filing in the office of the Clerk of the above Court, together with this proof of service:

Howard J. Stern, Esq.
Law Offices of Howard J. Stern
12200 Northwest Frwy, Ste. 650
Houston, Texas 77092

Ms. Elene Glassman
1715 W. Main Street, No. 1
Houston, Texas 77098-3607

932-51-2327

DATED: 4/30, 2004.

MICHAEL A. HIRSCH

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A Certified Copy
Attest: 3/4/2013
Stan Stanart, County Clerk
Harris County, Texas

Deputy

Lisa Sheree Mitcham

PROBATE COURT NO.1 OF HARRIS COUNTY, TEXAS

THE STATE OF TEXAS §
COUNTY OF HARRIS §

TRUST AGREEMENT

TRUST AGREEMENT, made and executed this 26 day of December, 1980, by and between HELEN R. BAERNSTEIN of Houston, Texas (hereinafter called "Settlor A"), HAROLD I. BAERNSTEIN of Houston, Texas (hereinafter called "Settlor B"), jointly referred to herein as Settlor and ELENE B. GLASSMAN of Houston, Texas (hereinafter called "Trustee").

I.

TRUST ESTATE

The Settlor does hereby transfer, assign, convey and deliver to the Trustee the property described in Schedule A attached hereto, to have and to hold such property and any other property of any kind which the Trustee may at any time hold or acquire pursuant to the provisions hereof (all of which property is hereinafter collectively referred to as the "Trust Estate"), subject to the trusts, purposes and conditions as hereinafter set forth.

II.

LIFE INCOME

During the lifetime of Settlor A, Trustee shall pay entire net income from the Trust Estate in convenient installments to Settlor A or otherwise as Settlor A may from time to time direct in writing. If at any time or times Settlor A is under a legal disability, or by reason of illness or mental or physical disability is, in the sole opinion of the Trustee, which shall be final and conclusive in all instances; unable properly to manage her own affairs, Trustee may use the income or such part or all of the principal of the Trust Estate as Trustee deems necessary or advisable in her sole and absolute discretion for the care, support and maintenance of Settlor A and/or Settlor B, or for any other purpose Trustee deems to be for the best interest of Settlor A and/or Settlor B. The determination of the best interests of the Settlors is herewith

EXHIBIT "A"

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Harris County, Texas

Deputy
Lisa Sheree Mitcham

PROBATE COURT NO.1 OF HARRIS COUNTY, TEXAS

exclusively given to the Trustee, whose determination shall be final, binding and conclusive in all instances.

III.

TAX PROVISIONS

If, upon the death of Settlor A and Settlor B, or either of them, any inheritance or estate taxes are assessed against the assets of this Trust or the interests of any beneficiaries hereof, the Trustee may pay such taxes, including any interest and penalties thereon, out of the principal of the Trust Estate as a whole, or may make provisions for such payment, without charging them against the interest of the several beneficiaries.

IV.

DISTRIBUTION ON DEATH OF SETTLORS

A. Upon the death of Settlor A, if, at the time of her death Settlor B shall then survive, Trustee shall continue to hold the Trust Estate as a separate and distinct trust for the benefit of Settlor B. Trustee shall continue to collect income from the property comprising the Trust Estate and may (but without obligation to do so), as in the sole discretion of Trustee seems necessary and/or appropriate, remit the net income derived therefrom for the benefit of Settlor B so long as he shall survive the death of Settlor A.

B. In the event that Settlor B predeceases Settlor A, Trustee shall continue to hold the Trust Estate as a separate and distinct trust for the benefit of Settlor A in accordance with paragraph II herein.

C. Upon the death of the last to survive of Settlor A and Settlor B, the Trustee shall pay over and deliver free and discharged of this trust, all of the then remaining corpus and then undistributed income, if any, comprising this Trust Estate, as follows:

1. One-half (1/2) of such corpus and undistributed income, if any, is to be paid over to MERYL B. GOODFRIEND, a daughter of the Settlors, herein, if she shall then survive at the time of such distribution; provided, however, that if she should not

932-51-2329

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PROBATE COURT NO.1 OF HARRIS COUNTY, TEXAS

then survive, then her share of the Trust Estate is to be paid over and distributed to her children, GENA S. GOODFRIEND and ALECE M. GOODFRIEND, or the issue of GENA S. GOODFRIEND and ALECE M. GOODFRIEND per stirpes; should there be no issue of GENA S. GOODFRIEND and ALECE M. GOODFRIEND, then to the survivors of the said children of MERYL B. GOODFRIEND in equal shares, share and share alike.

2. One-half (1/2) of such corpus and undistributed income, if any, is to be paid over to ELENE B. GLASSMAN, a daughter of the Settlors, herein, if she shall then survive at the time of such distribution; provided, however, that if she should not then survive, then her share of the trust estate is to be paid over and distributed to the then surviving of her children, JAMES ALEXANDER GLASSMAN, HILARY SHERIDAN GLASSMAN and PETER GEOFFREY GLASSMAN, or the issue of JAMES ALEXANDER GLASSMAN, HILARY SHERIDAN GLASSMAN and PETER GEOFFREY GLASSMAN per stirpes; should there be no issue of JAMES ALEXANDER GLASSMAN, HILARY SHERIDAN GLASSMAN and PETER GEOFFREY GLASSMAN, then to the survivors of the said children of ELENE B. GLASSMAN, in equal shares, share and share alike.

3. The Trustee, in making any division of any of the assets comprising the Trust Estate (while capital or income) may distribute the same in funds and/or in kind, or partly in funds and partly in kind, and the determination of the Trustee as to the value of any asset being distributed (save and except currency of the United States of America) shall be final, binding and conclusive upon any person entitled to a distribution of any part of the Trust Estate, and said determination shall not be subject to review, judicial or otherwise.

4. In the event that any distributee of any assets of the Trust Estate, pursuant to this paragraph, shall be under the age of legal majority, or shall

932-54-2339

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then be under any other legal disability, preventing such distributee from being directly paid such assets under the laws of Texas, then in force, then the Trustee may (but without any obligation to do so) continue to hold such assets in further trust, upon the same terms and provisions as contained in this instrument, insofar as reasonably applicable, including therein, but without limitation, the right and/or authority to make distributions from time-to-time, and such continued trust shall continue until the beneficiary thereof shall have obtained the age of legal majority or until the termination of such other legal disability; provided that if such beneficiary shall die prior to attaining the age of legal majority or the termination of such other legal disability, then the Trustee shall pay over such assets comprising such continued trust to the then surviving brothers and/or sisters of such beneficiary, if any shall then survive, in equal shares, or if none survive to the heirs-at-law of such deceased beneficiary as determined by the laws of Texas as then in force.

932-54-2331

D. Notwithstanding anything to the contrary herein contained, Trustee is authorized and empowered, in her sole, absolute and unfettered discretion at any time and from time-to-time to distribute from the corpus and undistributed income, if any, of the Trust Estate (even to the point of completely exhausting same), such amounts as she may deem advisable to provide adequately and properly for the health, support and maintenance of Settlor or either of them for any other purpose Trustee deems to be for the best interests of said income beneficiary or beneficiaries.

V.

PERPETUITIES

Notwithstanding anything herein contained to the contrary, no Trust created hereby shall continue for more than

twenty-one (21) years after the death of the last to survive of Settlor and such descendents of the Settlor as are in being at the date of the death of the last to surva Settlor, and if at the expiration of such period any property is still held in Trust hereunder, such property shall immediately be distributed to and among the persons then receiving or entitled to have the benefit of the income therefrom in the same proportions in which they are receiving or entitled to have the benefit of such income.

VI.

PAYMENTS TO DISABLED BENEFICIARIES

In the event the income or any discretionary payments of principal become payable to a person under a legal disability or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the sole opinion of the Trustee, unable properly to administer such amounts, then such amounts shall be paid to any such person in any one or more of the following ways:

1. To any such person directly;
2. To the guardian, committee, conservator or other similar official of a minor or incapacitated person;
3. To a relative of a minor or incapacitated person to be expended by such relative for the care, support, maintenance or education of such person; and,
4. By expending the same directly for the care, support, maintenance or education of any such person.

VII.

SPENDTHRIFT PROVISION

The interests of beneficiaries in principal or income shall not in any way be subject to the claims of their creditors or others nor to legal process and may not be voluntarily or involuntarily alienated or encumbered. Any attempt to violate the term of provisions herein stated shall be null and void and shall be disregarded by the Trustee,

932-54-2332

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Harris County, Texas

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Lisa Sheree Mitcham

PROBATE COURT NO.1 OF HARRIS COUNTY, TEXAS

unless the Trustee, in the exercise of other powers contained in this instrument shall deem such alienation to be in the best interests of the Settlors.

VIII.

TRUSTEE'S POWERS

The Trustee shall have all the powers, duties and responsibilities given to Trustees under the provisions of the Texas Trust Act; Article 7425b, V.A.T.S., and in particular, without limitation, the Trustee shall have the power and authority in her sole and absolute discretion:

A. Investment - to hold, manage, invest, encumber or otherwise dispose of the Trust property;

B. Rentention of Assets - to retain and hold any or all of the Trust property in the form in which it is received and no sale thereof need be made solely in order to diversify investments;

C. Sale of Trust Property - to sell, exchange, lease, mortgage, grant a security interest in, pledge, hypothecate, unitize, pool or otherwise deal with the property of the Trust Estate upon such terms and in such manner as the Trustee deems to be in the best interests of the Trust and the beneficiaries thereof;

D. Collection of Assets - to demand, receive receipt for, sue for and collect any and all rights, monies, properties or claims to which the Trust may be entitled and to compromise, settle or abandon any claim or demand in favor of or against the Trust;

E. Borrowing of Money - to borrow funds in such amount and for such purposes as shall be deemed in the best interest of the Trust and the beneficiaries thereof and to purchase property on the credit of the Trust; in connection with such borrowing or such purchase, to execute and deliver promissory notes and other evidences of indebtedness out of the assets comprising the Trust Estate;

93-51-2333

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Harris County, Texas

Deputy

Lisa Sheree Mitcham

PROBATE COURT NO. 1 OF HARRIS COUNTY, TEXAS

F. Voting of Stock - to vote in person or by proxy any stock or securities which may form part of the Trust Estate;

G. Classification of Collection - to determine whether and to what extent receipts should be deemed income or principal, whether and to what extent expenditures should be charged against income or principal;

H. Distribution in Kind - to make any division or distribution of income or principal in kind or partly in kind or partly in money and to determine the value of any property so divided or distributed;

I. Life Insurance - to pay out of income or principal as the Trustee may deem appropriate premiums upon policies of insurance upon the life of the Settlor.

J. Agents - to employ accountants, attorneys, and such agents as it may deem advisable to aid in the administration of the Trust Estate; to pay reasonable compensation for their services and to charge same (or apportion same between) income and corpus as it may deem proper.

93254-233

IX.

COMPENSATION OF TRUSTEE

For services as Trustee hereunder, the Trustee, shall be entitled to the same compensation usually paid to a corporate Trustee in Harris County, Texas, for similar services at the time such services are rendered.

X.

ADDITIONAL PROPERTY

The Settlor and each of them reserves the right to themselves or to any other person at any other time by deed, will or other instrument, to add to the principal of the Trust Estate created herein and any property so added shall be held, administered and distributed under te terms of this agreement.

XI.

BONDS

No bond or other security shall be required of the Trustee or of any Successor Trustee.

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A Certified Copy
Attest: 3/4/2013
Stan Stanart, County Clerk
Harris County, Texas

Lisa Sheree Mitcham Deputy

Lisa Sheree Mitcham

PROBATE COURT NO.1 OF HARRIS COUNTY, TEXAS

XII.

SITUS

The Trust created hereby shall be governed and regulated in accordance with the laws of the State of Texas.

XIII.

ACCOUNTING BY TRUSTEE

The Trustee shall, during the life of Settlor A, make an annual accounting to Settlor A as a beneficiary hereof, which account shall reflect all receipts, disbursements, and distributions since the last accounting and the status of the principal of any undistributed income on hand at the date of the accounting. The approval of any account by such beneficiary shall be final and binding upon all persons as to the matters and transactions shown on that account.

XIV.

TRUSTEE LIABILITY

In no event shall Trustee be liable for any acts or decisions pertaining to the investment, expenditure, retention, disposition or other action pertaining to the assets of said Trust or for the excuse of any acts or powers in accordance with the terms of said Trust and/or the provisions of the Texas Trust Act, Article 7425(b) V.A.T.S. except for conscious malfeasance by said Trustee pertaining to said Trust.

XV.

POWER OF AMENDMENT AND REVOCATION

Neither Settlor nor either of them shall have the right at any time to alter, amend or revoke this agreement either in whole or in part.

XVI.

SUCCESSOR TRUSTEE

A. In the event of the resignation, death, or refusal to serve for any reason of the said ELENE B. GLASSMAN, as Trustee, then S. MITCHELL GLASSMAN, Houston, Texas, shall serve as Successor Trustee hereunder.

B. Any Trustee serving hereunder may resign as Trustee upon written notice to Settlor A. In the event of such resignation, Settlor A, beneficiary hereof, shall have the right, by an instrument in writing signed and ackowledged by her in the manner required by the laws of the State of Texas for the recording of a deed to real property and filed with the Trustee, to appoint a Successor Trustee. Upon any such resignation, the Trustee shall render an accounting and shall assign, transfer, pay over and deliver to the Successor Trustee so appointed, the trust assets then held, subject to its proper expenses and charges including its commissions; and a receipt and release upon such an accounting signed by Settlor A and by the Successor Trustee shall be a complete release and discharge to the Trustee herein and have the same effect for all purposes as a decree, judgment or final order of a Court of competent jurisdiction made and entered in an accounting action or proceeding in which jurisdiction was obtained of all persons beneficially interested hereunder; any Successor Trustee so appointed shall have the same rights, powers, duties and discretions hereunder as if originally named herein as Trustee. Upon the failure of Settlor A to designate a Successor Trustee within sixty (60) days from the date of the notice of resignation as aforesaid, Trustee shall have the power to designate said Successor Trustee and thereupon to deliver, assign or transfer to said Successor Trustee assets then constituting the trust fund subject, however, to the right to retain sufficient money or other assets to defray its proper expenses and charges including its commissions.

C. No Successor Trustee shall be responsible for the acts or omissions of its predecessor in office, nor shall such successor be responsible to inquire into such acts or omissions. Such Successor Trustee may accept and hold the assets comprising the trust without requiring an audit or independent accounting of tha acts of the prececessor Trustee.

937-51-2339

XVII.

DEFINITION

When used in this Trust instrument, the term "Trustee" shall include any one and/or all Co-Trustees and Successor Trustees at that time in office hereunder pursuant to to the provisions hereof.

The Trustee hereby accepts the Trust herein created.

IN WITNESS WHEREOF, HELEN R. BAERNSTEIN, Settlor A, HAROLD I. BAERNSTEIN, Settlor B, and ELENE B. GLASSMAN, as Trustee have executed and acknowledged this agreement on this 26 day of December, 1980.

Settlor A:

Helen R. Baernstein

Helen R. Baernstein

Settlor B:

Harold I. Baernstein

Harold I. Baernstein

Trustee:

Elene B. Glassman

Elene B. Glassman

932-51-2337

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy
Attest: 3/4/2013
Stan Stanart, County Clerk
Harris County, Texas

Lisa Sheree Mitcham Deputy

Lisa Sheree Mitcham

PROBATE COURT NO.1 OF HARRIS COUNTY, TEXAS

THE STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared HAROLD I. BAERNSTEIN, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this 26th day of December, 1980.

Nancy H. Shapiro
NOTARY PUBLIC IN AND FOR
HARRIS COUNTY, T E X A S

My commission expires on the 21 day of November, 1981.

THE STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared HELEN R. BAERNSTEIN, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this 26th day of December, 1980.

Nancy H. Shapiro
NOTARY PUBLIC IN AND FOR
HARRIS COUNTY, T E X A S

My commission expires on the 21 day of November, 1981.

THE STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared ELENE S. GLASSMAN, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this 26th day of December, 1980.

Nancy H. Shapiro
NOTARY PUBLIC IN AND FOR
HARRIS COUNTY, T E X A S

My commission expires on the 21 day of November, 1981.

SCHEDULE A

The property transferred by HELEN R. BAERNSTEIN and husband, HAROLD I. BAERNSTEIN, as Settlors, to ELENE B. GLASSMAN, as Trustee, under the foregoing Trust Agreement dated the 24 day of December, 1980, consists of the following:

$5.00 cash

932-51-2336

Helen R. Baernstein
HELEN R. BAERNSTEIN

Harold I. Baernstein
HAROLD I. BAERNSTEIN

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy
Attest: 3/4/2013
Stan Stanart, County Clerk
Harris County, Texas

Lisa Sheree Mitcham Deputy

Lisa Sheree Mitcham

PROBATE COURT NO. 1 OF HARRIS COUNTY, TEXAS

FILE

LAW OFFICES OF
MICHAEL A. HIRSCH
A PROFESSIONAL CORPORATION
1001 McKINNEY, SUITE 2010
HOUSTON, TEXAS 77010

TELEPHONE
(713) 528-0058
FACSIMILE
(713) 528-0060

June 22, 2004

Via Facsimile (713) 957-0980

Howard J. Stern, Esq.
Law Offices of Howard J. Stern
12200 Northwest Frwy, Ste. 650
Houston, Texas 77092

Re: The Estate of Helen Baernstein; In the Probate Court Number Two (2) of Harris County, Texas; Docket No. 347,155

Dear Howard:

Demands and issues raised by Ms. Glassman in our course of dealing are increasing costs and complexity in matters of this Estate, unnecessarily and beyond reason. The position taken by Ms. Glassman that ties your hands relevant to the Trust, but yet requires addressing debts of the Trust in the context of issues relating to the Estate, is but one example of the difficulties which we should not have to experience. Our suggestion of escrowing funds to cover the reasonable expenses, not yet accounted by your client, has been unreasonably rejected. The suggestion of reimbursing the trust without an accounting is an equally unreasonable expectation.

If Ms. Glassman is unwilling to close on the presently proposed sale of real property, having had herself and her sister appointed as personal representatives of the Estate and agreeing to the trust accounting, the distribution of one-half each of the Estate proceeds (subject to retention of an amount to cover expenses or documented debts) Ms. Goodfriend will seek the appointment of an independent party to serve as Administrator With Will Annexed, to be appointed at the selection of the Court. Obviously, this alterative will engender substantial additional fees and expenses but apparently less than what we are experiencing because of the unreasonable demands made by Ms. Glassman, without expectation of such demands subsiding.

If Ms. Glassman wishes to comply with the suggestions of the proceeding paragraph, then we can move forward. If not, then we shall pursue the indicated alternative. Your written response is solicited within five days of the date of this letter, absent which we shall assume that Ms. Glassman continues the errant course that she has selected, and we shall respond accordingly. Please note that notwithstanding the verbiage of this letter or any other discussions we have had, the demand remains for accounting of the Trust assets which I trust you have called to the attention of Ms. Glassman.

Very truly yours,

Michael A. Hirsch, P.C.

MAH/kg

cc: Ms. Meryl Goodfriend

EXHIBIT "B"

932-54-2346

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A Certified Copy
Attest: 3/4/2013
Stan Stanart, County Clerk
Harris County, Texas

Deputy

Lisa Sheree Mitcham

PROBATE COURT NO.1 OF HARRIS COUNTY, TEXAS

NO. 347,155

ESTATE OF	§	IN THE PROBATE COURT
	§	
HELEN BAERNSTEIN,	§	NUMBER TWO OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER

MERYL GOODFRIEND, having petitioned this Court for an Order directing Elene Glassman, Respondent, as Trustee of a trust estate created December 26, 1980 to deliver a written statement of account regarding the administration of the trust; and the petition having been heard on this date by this Court; and proof having been made to the satisfaction of this Court that notice of the Hearing was given as required by law; and Movant having appeared at the Hearing by Michael A. Hirsch, attorney, and Respondent having appeared by Howard Stern, attorney; and the Court having heard the proofs of the parties and the arguments of counsel; and due deliberation having been had; now on Motion of Michael Hirsch, attorney for Movant:

It is ORDERED that Elene Glassman, as Trustee, be, and hereby is, directed to deliver a written statement of account to Meryl Goodfriend, beneficiary and person interested in the trust, on or before _____, 2004, sworn to and subscribed, setting forth in detail:

1. All trust property that has come to the Trustee's knowledge or into the Trustee's possession and that has not been previously listed or inventoried as property of the Trust.
2. A complete account of receipts, disbursement, and other transactions regarding the trust property for the period covered by the account, including their source and nature, with receipt of principal and income shown separately.
3. A listing of all property being administered, with an adequate description of each asset.
4. The cash balance on hand, and name and location of the depository where the balance is kept.
5. All known liabilities owed by the Trust.
6. All legal bases for the Trustee's refusal or failure to deliver assets to Meryl Goodfriend and Elene Glassman one-half, each, for their respective distributable interest in the Trust assets.

SIGNED on this the _____ day of _____, 2004.

_____
JUDGE PRESIDING

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

932-52-2341

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Harris County, Texas

Lisa Sheree Mitcham Deputy

Lisa Sheree Mitcham

PROBATE COURT NO.1 OF HARRIS COUNTY TEXAS

PROBATE COURT 4

32330

Cause No. 350750

IN RE:

Helen R. and Harold I. Baernstein Trust

In Probate Court

Number 4

Harris County, Texas

Respondent's Original Answer

To the Honorable Judge of Said Court:

COMES NOW, Elene B. Glassman, Respondent herein, and Trustee of Helen R. and Harold I. Baernstein Trust, dated December 26, 1980 and files this her Original Answer to Movant's Petition to Compel Accounting of Trust and denies each and every allegation in Movant's Petition on file herein and demands strict proof thereof.

Respectfully submitted,

Elene B. Glassman
1715 West Main, #1
Houston, Texas 77098
713 523 6464
Email: eglassman@mail.com
State Bar No. 08016000

FILED
2004 NOV 29 AM 9:13
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HARRIS COUNTY, TEXAS

RECORDER'S MEMORANDUM:
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COURT 1

CAUSE NO. 350,750

ELENE B. GLASSMAN, Trustee Harold I. and Helen R. Baernstein Trust	§	PROBATE COURT
VS.	§	NUMBER ONE
MERYL B. GOODFRIEND	§	HARRIS COUNTY, TEXAS

195303 RESPONDENT/COUNTERCLAIMANT'S RESPONSE TO MOTION FOR CONTEMPT, COUNTERCLAIM FOR DECLARATORY JUDGMENT AND REQUEST FOR DISCLOSURE

ELENE B. GLASSMAN, Trustee of Harold I. and Helen R. Baernstein Trust, hereinafter "Trust," Respondent and Counterclaimant herein, hereinafter "Trustee" files this Response to Movant/Counterdefendant , hereinafter "Movant" MERYL B. GOODFRIEND'S Motion for Contempt, Counterclaim for Declaratory Judgment and Request for Disclosures and in support thereof will respectfully show the Court as follows:

1.Discovery Control Plan

Trustee intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure 190.2; the suit involves monetary issues in excess of $50,000.00 and seeks declaratory relief.

2. Nature of this Suit

Trustee brings this Response and Counterclaim against Movant seeking clarification of the terms of a Rule 11 Mediation Agreement between the parties that was entered as a Judgment of this Court, hereinafter "Agreement" and for a Declaratory Judgment to enable Trustee to properly

prepare the accounting sought by Movant that forms the basis of Movant's Motion for Contempt.

3. Parties and Service

3.1 Elene B. Glassman, Trustee, is a natural person residing in Harris County, Texas, with her place of business at 3033 Chimney Rock Rd., Suite 400, Houston, Texas 77056

3.2 Meryl B. Goodfriend is a natural person residing in Harris Coutny, Texas, and may be served at her residence at 506 N. Post Oak Lane, Houston, Texas 77024 or such other place as she may be found an/or through her counsel of record, Michael A. Hirsch, 1301 McKinney, Suite 2910, Houston, Texas 77010.

4. Jurisdiction and Venue

4.1 Jurisdiction of this suit lies in Harris County, Texas for the following reasons:

a. In accordance with Tex. Civ. Pract. & Rem. Code Ann. Ch. 37.005 because it relates to a Trust that is subject to the jurisdiction of this Court,

4.2 Venue of this suit lies in Harris County, Texas because the parties reside in Harris County, Texas and all matters that form the basis of this claim took place in Harris County, Texas.

5. Factual Allegations

5.1 The Harold I. and Helen R. Baernstein inter vivos trust that is the basis of this suit was created on or about December 26, 1980, a copy of the instrument is attached hereto as Trustee's Exhibit I

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HARRIS COUNTY, TEXAS

5.2 The trust instrument states that the Trust ceases upon the death of the last to survive of Harold I. and Helen R. Baernstein. Harold I. Baernstein died on or about June 9, 1983; Helen R. Baernstein died on or about November 9, 2003.

5.3 The Trust names Movant and Trustee as beneficiaries of any remaining assets in existence at the time of the death of the last to survive of Harold I. and Helen R. Baernstein

5.4 On or about February 21, 2004, Movant, through Michael Rubenstein, a licensed attorney then assisting her, was provided with documentation concerning the assets of the Trust, including documentation establishing the ownership by the Trust of the condominium at "The Barclay" which condominium is located at 2601 Bellefontaine, B-112, Houston, Harris County, Texas, hereinafter "condo," in which Helen R. Baernstein resided at the time of her death.

5.5 On or about February 26, 2005, this Court ordered Trustee to "update" the accounting of the Trust. However, without notice to Trustee or her counsel of record, the Court, after further argument by Michael A. Hirsch, counsel of record for Movant, modified its ruling to Order an accounting from inception of the Trust. A copy of the relevant pages from the transcript of said hearing is attached hereto as Exhibit 2.

5.6 On or about March 28, 2005, pursuant to an Order of this Court, the parties hereto attended Mediation conducted by Judge Jim Scanlan and entered a Rule 11 agreement which has since been entered as a Judgment of this Court. A copy of the Mediation Agreement/Judgment hereinafter "Agreement," is attached hereto as Exhibit 3.

5.7 Despite the clear terms of the Agreement providing for further mediation in the event that there are further matters that the parties cannot resolve, Movant is seeking to have the this Court find Trustee in Contempt of Court.

5.8 Despite the documentation provided to Movant in February, 2004, throughout the proceedings in this Court, and in the proceedings with regard to probate of the Estate of Helen R. Baernstein, Movant has repeatedly asserted a claim of ownership in the condo occupied by Helen R. Baernstein.

5.9 There is no controversy about the source of the funds used to purchase the condo, only about "legal ownership" and what rights Movant as a co-Independent Executrix along with Trustee of the Estate of Helen R. Baernstein, has with regard to any decisions about, disposition or terms of sale etc. as to the condo.

5.10 The Agreement includes provisions with regard to the cleaning of the condo and posting it for sale. The Agreement provides for Movant to clean the Condo; she has not done so which limits the "curb appeal" for purposes of showing it to prospective buyers and diminishes the opportunity to attract the highest price, at least as high as the Ernest Money Contract, signed by Movant and Trustee a year ago, which Ernest Money Contract was abrogated by Movant three times after it was signed by the prospective purchaser, Movant and Trustee. A copy of the Ernest Money Contract reflecting signatures by Trustee and Movant is attached hereto as Exhibit 4.

6. Request for Disclosures

Pursuant to TEX.R.Civ. P. 194, Movant is requested to disclose within thirty (30) days of serve of this request the information and material described in TEX.R.CIV.P. 194.2

7. Attorneys Fees

Trustee has incurred expenses and attorneys fees in order to respond to Movant, prepare this suit for Declaratory Relief and Request for Disclosures; Trustee sues Movant for all fees and expenses incurred in connection with the preparation, filing, defense and prosecution of this litigation.

8. Injunctive Relief

Movant has repeatedly engaged in behavior with regard to Trustee that is tortuous, vexatious, intended to harass, intimidate and embarrass Trustee and Trustee's children by leaving unpleasant, threatening and intimidating messages, sending email communications and correspondence through the U.S. Mail etc. to Trustee and her children.

9. Prayer

WHEREFORE, PREMISES CONSIDERED, Trustee respectfully prays that this Court

a. Cite Movant to appear and answer herein
b. That upon heaing with regard to "Declaratory Relief" the Trustee have judgment against Movant for
    i. Declaratory relief and clarification as to the ownership of the condo
    ii. Injunctive relief with regard to

(a) Cessation of all communication between Movant and all of those acting in concert with her except through Movant's Counsel of Record

(b) Cessation of all behavior interfering with Trustee's management of the Trust

(c) Cessation of all behavior interfering with Trustee's management of the Trust

iii. Denial of Movant's Motion for Contempt

iv. Attorneys fees as stated above

v. Costs of Court

Further, Trustee respectfully prays for any other relief to which she may show herself entitled.

Respectfully Submitted,

Elene B. Glassman
State Bar No. 08016000
3033 Chimney Rock Rd., Ste 400
Houston, Texas 77056
Telephone (713) 465-0013
Facsimile (713) 465-9997

PROBATE COURT 1

480273

No. 350,750

IN RE: 492289	*	IN THE PROBATE COURT OF
INTER VIVOS TRUST OF	*	HARRIS COUNTY, TEXAS
HELEN BAERNSTEIN	*	PROBATE COURT NO. ONE

Judgment

This matter was called to trial on June 9, 2006, and the Petitioner Meryl B. Goodfriend appeared in person and through her attorney of record and announced ready. The Respondent Elene B. Glassman, having been given actual notice of this trial setting, did not appear. No party having requested a jury, all matters in controversy, both legal and factual were submitted to the Court, and the Court considered the evidence, the arguments, and the law and made its decision.

1. IT IS ORDERED, ADJUDGED, and DECREED that Elene B. Glassman knowingly and willfully breached her fiduciary duty as Trustee of the Harold Baernstein and Helen Baernstein Inter Vivos Trust, including malfeasance and defalcation, and fee forfeiture is warranted. It is ordered, adjudged and decreed that Meryl B. Goodfriend have and recover over and against Elene B. Glassman the sum of $568,780.64 less a credit of $100,000.00 for a partial distribution to Meryl Goodfriend in 2005 from the inter vivos trust pursuant to a Rule 11 agreement between the parties, and less $160,832.01 for a partial distribution to Meryl Goodfriend from the inter vivos trust pursuant to the order of this Court dated March 27, 2006, which results in a net figure of $307,948.63, and therefore it is ordered adjudged and decreed that Meryl B. Goodfriend have and recover over and against Elene B. Glassman the sum of $307,948.63.

2. IT IS ORDERED, ADJUDGED, and DECREED that Meryl Goodfriend have and recover over and against Elene B. Glassman the sum of $45,114.47 as prejudgment interest on the net amount awarded in the previous paragraph.

3. IT IS ORDERED, ADJUDGED, and DECREED that Meryl Goodfriend have and recover over and against Elene B. Glassman the sum of $50,000.00 as exemplary damages.

4. IT IS ORDERED, ADJUDGED, and DECREED that the liability of Elene B. Glassman to Meryl Goodfriend exceeds the beneficial interest of Elene B. Glassman in the

inter vivos trust, and therefor that interest of Elene B. Glassman is awarded to Meryl Goodfriend. All future distributions by the Successor Trustee to Meryl Goodfriend shall count as a credit against the liability of Elene B. Glassman under this judgment.

5. IT IS further ORDERED, ADJUDGED and DECREED that conditioned on the event of an unsuccessful appeal by Elene B. Glassman to an intermediate Court of Appeals, Meryl Goodfriend shall have and recover over and against Elene B. Glassman an additional attorney's fee of $30,000.00, and conditioned on the event of an unsuccessful appeal by Elene B. Glassman to the Texas Supreme Court by filing or responding to a petition for review, Meryl Goodfriend shall have and recover over and against Elene B. Glassman an additional attorney's fee of $10,000.00, and if the Texas Supreme Court requires oral argument, an additional attorney's fee of $10,000.00.

6. IT IS ORDERED, ADJUDGED and DECREED that Elene B. Glassman take nothing on her claims and counterclaims.

7. The Court orders that Elene B. Glassman is hereby enjoined and directed to immediately deliver and turn over to Meryl Goodfriend and/or her attorney John Fason all of the documents, tangible property, and intangible property of the inter vivos trust that is currently in her possession, custody or control, and which may come into her possession or control after the date of this judgment. The Court orders that Elene B. Glassman, her agents and those acting in concert with her, are enjoined to immediately transfer and turn over to Meryl Goodfriend the ownership and assets of the intervivos trust, including any cash, stock certificates, keys, titles, personal property, real property, documents, account statements, canceled checks and check books, partnership interests, shares, stocks, equity ownership, financial instruments, bonds, debentures, investments, and other property of the inter vivos trust which is now under her possession or control or which may hereafter come into her possession or control, and Elene B. Glassman, her agents and those acting in concert with her are further enjoined to take no actions which would interfere with or prevent the Successor Trustee Catherine Wylie or Meryl Goodfriend from full use and exercise of ownership and control of any property of the inter vivos trust. The Court further orders that

942-69-2754

Elene B. Glassman not hide, convey, dispose of, transfer, sell, secret, or take any other action with respect to any assets and property of the inter vivos trust or of herself as Trustee of this trust, or with respect to any documents describing or identifying such assets or property, including any after-acquired trust property and any trust property not previously disclosed by her as well as any trust property, and instead Elene Glassman is ordered and enjoined to report, in writing, to Counsel for Petitioner, John Fason, the nature, existence and location of any and all trust property not previously controlled by the Successor Trustee. The clerk of the court is directed to issue a writ of injunction based on this final judgment, directed to Elene B. Glassman, her agents, and all those acting in concert with her, and the court sets the bond in the amount of $100, which bond may be applied from the cash bond of $100 previously deposited by Meryl Goodfriend in connection with the Temporary Injunction.

9. IT IS ORDERED, ADJUDGED and DECREED that all fees of the Successor Trustee as well as all expenses incurred and paid by the Successor Trustee are charged against Elene B. Glassman and taxable as costs of court.

10. The court orders that execution, garnishment and all other post judgment writs may issue on this judgment. The court orders the

11. All sums awarded in this Judgment shall have post-judgment interest, compounded annually, at the rate of 7.75% per annum from the date of this judgment until paid. Costs taxed against Elene B. Glassman.

SIGNED on the 27th day of June, 2006.

Presiding Judge

6/27/06

FILED
2006 JUL -3 PM 3:38
County Clerk
Harris County, Texas

FILED
2006 JUN 15 PM 1:54
County Clerk
Harris County, Texas

RECORDER'S MEMORANDUM:
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Stan Stanart, County Clerk
Harris County, Texas

Deputy

Lisa Sheree Mitcham

PROBATE COURT NO.1 OF HARRIS COUNTY, TEXAS

PROBATE COURT 1

480273

No. 350,750

IN RE: 492289

INTER VIVOS TRUST OF

HELEN BAERNSTEIN

* IN THE PROBATE COURT OF

* HARRIS COUNTY, TEXAS

* PROBATE COURT NO. ONE

JUDG

Judgment

P1&2

This matter was called to trial on June 9, 2006, and the Petitioner Meryl B. Goodfriend appeared in person and through her attorney of record and announced ready. The Respondent Elene B. Glassman, having been given actual notice of this trial setting, did not appear. No party having requested a jury, all matters in controversy, both legal and factual were submitted to the Court, and the Court considered the evidence, the arguments, and the law and made its decision.

1. IT IS ORDERED, ADJUDGED, and DECREED that Elene B. Glassman knowingly and willfully breached her fiduciary duty as Trustee of the Harold Baernstein and Helen Baernstein Inter Vivos Trust, including malfeasance and defalcation, and fee forfeiture is warranted. It is ordered, adjudged and decreed that Meryl B. Goodfriend have and recover over and against Elene B. Glassman the sum of $568,780.64 less a credit of $100,000.00 for a partial distribution to Meryl Goodfriend in 2005 from the inter vivos trust pursuant to a Rule 11 agreement between the parties, and less $160,832.01 for a partial distribution to Meryl Goodfriend from the inter vivos trust pursuant to the order of this Court dated March 27, 2006, which results in a net figure of $307,948.63, and therefore it is ordered adjudged and decreed that Meryl B. Goodfriend have and recover over and against Elene B. Glassman the sum of $307,948.63.

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3. IT IS ORDERED, ADJUDGED, and DECREED that Meryl Goodfriend have and recover over and against Elene B. Glassman the sum of $50,000.00 as exemplary damages.

4. IT IS ORDERED, ADJUDGED, and DECREED that the liability of Elene B. Glassman to Meryl Goodfriend exceeds the beneficial interest of Elene B. Glassman in the

942-68-6753

inter vivos trust, and therefor that interest of Elene B. Glassman is awarded to Meryl Goodfriend. All future distributions by the Successor Trustee to Meryl Goodfriend shall count as a credit against the liability of Elene B. Glassman under this judgment.

5. IT IS further ORDERED, ADJUDGED and DECREED that conditioned on the event of an unsuccessful appeal by Elene B. Glassman to an intermediate Court of Appeals, Meryl Goodfriend shall have and recover over and against Elene B. Glassman an additional attorney's fee of $30,000.00, and conditioned on the event of an unsuccessful appeal by Elene B. Glassman to the Texas Supreme Court by filing or responding to a petition for review, Meryl Goodfriend shall have and recover over and against Elene B. Glassman an additional attorney's fee of $10,000.00, and if the Texas Supreme Court requires oral argument, an additional attorney's fee of $10,000.00.

6. IT IS ORDERED, ADJUDGED and DECREED that Elene B. Glassman take nothing on her claims and counterclaims.

7. The Court orders that Elene B. Glassman is hereby enjoined and directed to immediately deliver and turn over to Meryl Goodfriend and/or her attorney John Fason all of the documents, tangible property, and intangible property of the inter vivos trust that is currently in her possession, custody or control, and which may come into her possession or control after the date of this judgment. The Court orders that Elene B. Glassman, her agents and those acting in concert with her, are enjoined to immediately transfer and turn over to Meryl Goodfriend the ownership and assets of the intervivos trust, including any cash, stock certificates, keys, titles, personal property, real property, documents, account statements, canceled checks and check books, partnership interests, shares, stocks, equity ownership, financial instruments, bonds, debentures, investments, and other property of the inter vivos trust which is now under her possession or control or which may hereafter come into her possession or control, and Elene B. Glassman, her agents and those acting in concert with her are further enjoined to take no actions which would interfere with or prevent the Successor Trustee Catherine Wylie or Meryl Goodfriend from full use and exercise of ownership and control of any property of the inter vivos trust. The Court further orders that

Elene B. Glassman not hide, convey, dispose of, transfer, sell, secret, or take any other action with respect to any assets and property of the inter vivos trust or of herself as Trustee of this trust, or with respect to any documents describing or identifying such assets or property, including any after-acquired trust property and any trust property not previously disclosed by her as well as any trust property, and instead Elene Glassman is ordered and enjoined to report, in writing, to Counsel for Petitioner, John Fason, the nature, existence and location of any and all trust property not previously controlled by the Successor Trustee. The clerk of the court is directed to issue a writ of injunction based on this final judgment, directed to Elene B. Glassman, her agents, and all those acting in concert with her, and the court sets the bond in the amount of $100, which bond may be applied from the cash bond of $100 previously deposited by Meryl Goodfriend in connection with the Temporary Injunction.

9. IT IS ORDERED, ADJUDGED and DECREED that all fees of the Successor Trustee as well as all expenses incurred and paid by the Successor Trustee are charged against Elene B. Glassman and taxable as costs of court.

10. The court orders that execution, garnishment and all other post judgment writs may issue on this judgment. The court orders the

11. All sums awarded in this Judgment shall have post-judgment interest, compounded annually, at the rate of 7.75% per annum from the date of this judgment until paid. Costs taxed against Elene B. Glassman.

SIGNED on the 27th day of June, 2006.

Presiding Judge

6/27/06

FILED
2006 JUL -3 PM 3:38
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HARRIS COUNTY, TEXAS

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2006 JUN 15 PM 1:54
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HARRIS COUNTY, TEXAS

RECORDER'S MEMORANDUM:
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Harris County, Texas

Deputy
Lisa Sheree Mitcham

COURT NO.1 OF HARRIS COUNTY, TEXAS
PROBATE

I	246
A	
Ads	

567135

NO. 350.750-403

PROBATE COURT 1

EST. HELEN BAER STAN/ #TRUE

MERYL GOODFRIEND Plaintiff	§	IN THE PROBATE COURT
VS.	§	NO. 1
JPMORGAN CHASE BANK, N.A. Garnishee	§	HARRIS COUNTY, TEXAS

JPMORGAN CHASE BANK, N.A.'S
ORIGINAL ANSWER TO WRIT OF GARNISHMENT
(Including Request for Rule 677 Costs)

944-19-6181

JPMorgan Chase Bank, N.A., Garnishee in the above captioned cause, files this Original Answer to the Writ of Garnishment issued on September 5, 2006, and would respectfully show the Court as follows:

I.

The Writ, a true and correct copy of which is attached hereto as **Exhibit 1**, was served on Garnishee on September 7, 2006, by service upon Garnishee's registered agent, CT Corporation System in Dallas, Texas.

II.

At the time the Writ was served on it, Garnishee was indebted to Elene B. Glassman in the sum of THREE THOUSAND, SEVEN HUNDRED, TWENTY-THREE AND 31/100 DOLLARS ($3,723.31).

III.

At the time the Writ was served on it, Garnishee was not in possession of any other effects belonging to Elene B. Glassman except one or more safe deposit boxes. Garnishee has no

knowledge concerning the contents, if any, in the safe deposit box(es).

IV.

As of the date of this Original Answer to Writ of Garnishment, Garnishee is indebted to Elene B. Glassman in the sum of THREE THOUSAND, SEVEN HUNDRED, TWENTY-THREE AND 31/100 DOLLARS ($3,723.31).

V.

As of the date of this Original Answer to Writ of Garnishment, Garnishee is not in possession of any other effects belonging to Elene B. Glassman except one or more safe deposit boxes. Garnishee has no knowledge concerning the contents, if any, in the safe deposit box(es).

VI.

Garnishee does not have any knowledge of any other person who is indebted to or has possession of any other effects belonging to Elene B. Glassman.

VII.

As a result of the service of the Writ of Garnishment, it has been necessary for Garnishee to employ the undersigned attorneys to answer the Writ herein and to otherwise represent it. Under TEX. R. CIV. P. 677, Garnishee is entitled to recover its costs and a reasonable attorney's fee, and submits that a sum of at least $600.00 would be a reasonable attorney's fee. In the event of an appeal to the court of appeals, Garnishee would be further entitled to $2,500.00 as a reasonable attorney's fee. In the event of the filing of a petition for review to the Texas Supreme Court, Garnishee would be entitled to an additional $1,500.00. Should the petition be granted, Garnishee would be entitled to an additional $2,500.00 as a reasonable attorney's fee.

WHEREFORE, Chase Bank holds the sum of THREE THOUSAND, SEVEN HUNDRED, TWENTY-THREE AND 31/100 DOLLARS ($3,723.31), pending the disposition of this cause, and

respectfully requests that, on final hearing of this cause, the following relief:

1. That all claims to such sum be determined and adjudicated, and that Garnishee be discharged from all liability to Plaintiff Meryl Goodfriend and Defendant Elene B. Glassman respecting same.

2. That Garnishee recover against Plaintiff Meryl Goodfriend or Defendant Elene B. Glassman, as provided in TEX. R. CIV. P. 677, its costs and expenses, including a reasonable attorney's fee in a total amount of at least Six Hundred and 00/100 Dollars ($600.00).

3. For such other and further relief, general or special, at law or equity, to which Garnishee may show itself justly entitled.

Respectfully submitted,

Truman E. Spring, Jr.
State Bar No. 18966550
1412 Main Street, Suite 400
The Adolphus Tower
Dallas, Texas 75202
(214) 752-3113
(214) 752-3434 Facsimile

ATTORNEY FOR JPMORGAN CHASE BANK, N.A.

FILED
2006 OCT -2 PM 4:03
COUNTY CLERK
HARRIS COUNTY, TEXAS

VERIFICATION

STATE OF LOUISIANA §
§
PARISH OF EAST BATON ROUGE §

My name is Tina Coleman. I am an authorized representative for JPMorgan Chase Bank, N.A., the herein named Garnishee. I have read the foregoing Original Answer to Writ of Garnishment as such representative of the Bank. Based upon the Bank's records concerning this matter, I have personal knowledge of all factual statements therein contained, and such statements are true and correct.

Tina Coleman, Authorized Representative
JPMorgan Chase Bank, N.A.

Tina Coleman

28th SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public, on this the day of September, 2006, to certify which witness my hand and official seal.

Notary Public in and for the State of Louisiana
NOTARY·DEBRA B. KEMP

#77536

OFFICIAL SEAL
DEBRA B. KEMP
NOTARY PUBLIC NO. 77536
STATE OF LOUISIANA
PARISH OF EAST FELICIANA
My Commission is for Life

Instrument not prepared by signing Notary Public. Notary Public attesting to signature(s) only.
Debra B. Kemp, Notary Public No. 77536

34-25-518

CERTIFICATE OF SERVICE

I certify that on September 29, 2006, I served a true and correct copy of the foregoing pleading by telephonic document transfer on the following counsel of record:

John S. Fason
550 Westcott, Suite 420
Houston, Texas 77007
(713) 880-4602 (fax)

Truman E. Spring, Jr.

394-29-5185

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy
Attest: 3/4/2013
Stan Stanart, County Clerk
Harris County, Texas

_____ Deputy
Lisa Sheree Mitcham

PROBATE COURT NO.1 OF HARRIS COUNTY, TEXAS

944-49-6186

09/07/2006 12:33 2149790954 CT CORP PAGE 03/08

OFFICE OF BEVERLY B. KAUFMAN, COUNTY CLERK, HARRIS COUNTY, TEXAS
P. O. BOX 1525 ● HOUSTON, TX. 77251-1525 ● (713) 755-6425
PROBATE COURTS DEPARTMENT

Probate Court No. 1

WRIT OF GARNISHMENT, AFTER JUDGMENT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

DOCKET NO. 358,760-403 PRIVATE SERVICE

ESTATE OF: IN RE: ONTIVEROS TRUST OF HELEN BAERNSTEIN

TO: J.P. MORGAN CHASE BANK, c/o C.T. CORPORATION SYSTEM, REGISTERED AGENT, 350 N. ST. PAUL STREET, DALLAS, TEXAS 75201.

GREETINGS:

WHEREAS, IN THE PROBATE COURT NO. 1 OF HARRIS COUNTY, TEXAS IN A CERTAIN CAUSE WHEREIN MERYL GOODFRIEND, PLAINTIFF, AND ELENE B. GLASSMAN, DEFENDANT, THE PLAINTIFF, ON JUNE 27, 2006, SECURED A JUDGMENT AGAINST SAID DEFENDANT IN THE AMOUNT OF FOUR HUNDRED THREE THOUSAND SIXTY-THREE AND 10/100 ($403,063.10) DOLLARS, PLUS INTEREST AND COSTS OF SUIT, HAS APPLIED FOR A WRIT OF GARNISHMENT AGAINST YOU, THE GARNISHEE;

THEREFORE, YOU ARE HEREBY COMMANDED TO BE AND APPEAR BEFORE SAID COURT AT HOUSTON, IN SAID COUNTY AT 10:00 O'CLOCK A.M., ON THE MONDAY NEXT FOLLOWING EXPIRATION OF TWENTY DAYS FROM THE DATE OF SERVICE HEREOF, THEN AND THERE TO ANSWER UPON OATH WHAT, IF ANYTHING, YOU ARE INDEBTED TO THE SAID ELENE B. GLASSMAN, AND WERE WHEN THIS WRIT WAS SERVED UPON YOU, AND WHAT EFFECTS, IF ANY OF THE SAID ELENE B. GLASSMAN YOU HAVE IN YOUR POSSESSION, AND HAD WHEN THIS WRIT WAS SERVED, AND WHAT OTHER PERSONS, IF ANY, WITHIN YOUR KNOWLEDGE, ARE INDEBTED TO SAID DEFENDANT, OR HAVING EFFECTS BELONGING TO HER IN THEIR POSSESSION.

YOU ARE FURTHER COMMANDED NOT TO PAY TO THE DEFENDANT ANY DEBT OR TO DELIVER TO HER ANY EFFECTS, PENDING FURTHER ORDER OF THIS COURT.

HEREIN FAIL NOT BUT MAKE DUE ANSWER AS THE LAW DIRECTS.

TO: ELENE B. GLASSMAN, DEFENDANT:

YOU ARE HEREBY NOTIFIED THAT CERTAIN PROPERTIES ALLEGED TO BE OWNED BY YOU HAVE BEEN GARNISHED. IF YOU CLAIM ANY RIGHTS IN SUCH PROPERTY, YOU ARE ADVISED:

Page 1 of 2

Form No. 1-G2-75A (Rev. 05/12/05)

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blackouts additions and changes were present at the time the instrument was filed and recorded

09/07/2006 12:33 2149790954 CT CORP

OFFICE OF BEVERLY B. KAUFMAN, COUNTY CLERK, HARRIS COUNTY, TEXAS
P. O. BOX 1525 ● HOUSTON, TX. 77251-1525 ● (713) 755-6425
PROBATE COURTS DEPARTMENT

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE THE RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

ISSUED AND GIVEN UNDER MY HAND AND SEAL OF SAID COURT, AT HOUSTON, TEXAS THIS 5TH DAY OF SEPTEMBER, 2006.

BEVERLY B. KAUFMAN, COUNTY CLERK
PROBATE COURT NO. 1
HARRIS COUNTY, TEXAS

CHARLENE ROSIER
DEPUTY COUNTY CLERK

ATTORNEY: JOHN S. FASON
550 WESTCOTT, Suite 420
HOUSTON, TEXAS 77007
713-880-4600

Form No. 1-G2-75A (Rev. 05/12/05)

EXHIBIT 1

PROBATE COURT 1

No. 350750-403

MERYL GOODFRIEND,
Applicant-Garnishor

vs.

JP MORGAN CHASE BANK,
Garnishee

* IN THE PROBATE COURT OF
* HARRIS COUNTY, TEXAS
* PROBATE COURT NO. ONE

Original Application for Writ of Garnishment After Judgment

1. Applicant alleges Level II discovery. This application is filed pursuant to Tex.R.Civ.P. 659.

2. Applicant-Garnishor in this case is Meryl Goodfriend, and she is the owner of the Judgment, dated June 27, 2006, in Cause No. 350,750, styled *In Re Inter Vivos Trust of Helen Baernstein*, in Probate Court No. One of Harris County, Texas, which this garnishment is based on (the "underlying action")..

3. Garnishee is JP Morgan Chase Bank. It is an out-of-state financial institution for purposes of TEXAS FINANCE CODE §59.008 (statute concerning service of garnishment writs), and it has designated a registered agent and registered address with the Texas Secretary of State pursuant to TEXAS FINANCE CODE §201.102, as named below. The intended Garnishee is the bank which does business in Houston, Texas as JP Morgan Chase Bank and has depository account 81305086103 for Elene B. Glassman. Therefore, Applicant requests that a Writ of Garnishment be issued and served on:

JP Morgan Chase Bank c/o Registered Agent C.T. Corporation System

350 North St. Paul Street

FILED
2006 AUG 18 PM 12:54
COUNTY CLERK
HARRIS COUNTY
TEXAS

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy
Attest: 3/4/2013
Stan Stanart, County Clerk
Harris County, Texas

Deputy
Lisa Sheree Mitcham

PROBATE COURT NO.1 OF HARRIS COUNTY, TEXAS

ALL-STATE LEGAL®
PETITIONER'S EXHIBIT
5

reason to believe, and does believe, that the said Garnishee has property or money belonging to Judgment Debtor, or is otherwise indebted to Judgment Debtor.

10. The Affiant further says he has read this affidavit and that the statements contained in this affidavit are, within his knowledge, true and correct.

Affiant - John Fason

THE STATE OF TEXAS *
COUNTY OF HARRIS *

SWORN TO AND SUBSCRIBED before me, the undersigned notary, by John Fason, a person whose identity is known to me, Applicant in the above-styled and numbered cause, on this the 18th day of August, 2006, to certify which witness my hand and seal of office.

Notary Public for the State of Texas

CHRISTOPHER N. HARDING
Notary Public, State of Texas
My Commission Expires
January 28, 2007

943-55-3794

11. Request for Writ Applicant requests that a Writ of Garnishment issue in the form specified in Rule 661, Tex.R.Civ.P., directed to the Garnishee identified above and that same be forwarded by the clerk of the court to the undersigned counsel for Applicant who shall deliver it to the appropriate officer for service upon the Garnishee.

12. Applicant seeks recovery of all court costs, and interest.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that the Writ be issued and served on JP Morgan Chase Bank, and that Applicant have judgment against same for the full amount of the debt identified above plus court costs and for such other and further relief to which she may be entitled.

Respectfully submitted,

John S. Fason
SBN 06849280
550 Westcott, Suite 420
Houston TX 77007
713.880-4600; fax 713-880-4602
Attorney for Applicant/Garnishor
Meryl Goodfriend

Certificate of Service

I hereby certify that, after the writ is issued and delivered to the Garnishee, I will serve a copy of same together with a copy of this application on the following person in compliance with Tex.R.Civ.P. 663a:

(1) Judgment Debtor Elene B. Glassman, 1715 West Main Street, Houston, Texas 77098, by certified ~~mail, return~~ receipt requested.

John Fason

9-13-55-3755

THE SUPREME COURT OF TEXAS

Orders Pronounced August 26, 2011

ORDERS ON CAUSES

07-0284 CITY OF DALLAS v. KENNETH E. ALBERT, ET AL.; from Collin County; 5th district (05-03-01297-CV, 05-03-01298-CV, 214 SW3d 631, 12-21-06)
2 petitions
motion to strike response to notice regarding counsel denied
motion to strike notice of appearance denied
motion to consider cause denied

The Court reverses the court of appeals' judgment and remands the case to the trial court.

Justice Johnson delivered the opinion of the Court, in which Justice Wainwright, Justice Medina, Justice Green, Justice Guzman, and Justice Lehrmann joined, and in which Chief Justice Jefferson and Justice Hecht joined except to Part II-B.

Justice Hecht delivered an opinion concurring in part and dissenting in part, in which Chief Justice Jefferson joined.

Justice Willett delivered a dissenting opinion.

07-0945 TEXAS PARKS AND WILDLIFE DEPARTMENT v. THE SAWYER TRUST; from Donley County; 7th district (07-06-00487-CV, ___ SW3d ___, 08-22-07)

The Court reverses the court of appeals' judgment and remands the case to the trial court.

Justice Johnson delivered the opinion of the Court, in which Chief Justice Jefferson, Justice Wainwright, Justice Medina, Justice Green, Justice Willett, Justice Guzman, and Justice Lehrmann joined.

Chief Justice Jefferson delivered a concurring opinion, in which Justice Medina, Justice Willett, and Justice Guzman joined.

Justice Hecht delivered an opinion concurring in part and dissenting in part.

08-0658 CARROLL G. ROBINSON, BRUCE R. HOTZE, AND JEFFREY N. DAILY v. ANNISE D. PARKER, MAYOR; CITY OF HOUSTON; HOUSTON CITY COUNCIL, ET AL.;

from Harris County; 14th district (14-06-00167-CV, 260 SW3d 463, 04-03-08)

The Court vacates the judgments of the court of appeals and the trial court and dismisses the case for want of jurisdiction.

Justice Green delivered the opinion of the Court.

(Justice Guzman not sitting)

08-0751 TEXAS MUTUAL INSURANCE COMPANY v. TIMOTHY J. RUTTIGER; from Galveston County; 1st district (01-06-00897-CV, 265 SW3d 651, 07-31-08)

The Court reverses the court of appeals' judgment, renders judgment in part, and remands the case to that court.

Justice Johnson delivered the opinion of the Court with respect to Parts I, II, III, IV, and VI, in which Justice Hecht, Justice Wainwright, Justice Medina, Justice Willett and Justice Guzman joined, and an opinion with respect to Part V, in which Justice Hecht, Justice Wainwright, and Justice Medina joined.

Justice Willett delivered a concurring opinion, in which Justice Guzman joined.

Chief Justice Jefferson delivered a dissenting opinion, in which Justice Green and Justice Lehrmann joined.

08-0833 ANGLO-DUTCH PETROLEUM INTERNATIONAL, INC. AND ANGLO-DUTCH (TENGE) L.L.C. v. GREENBERG PEDEN, P.C. AND GERARD J. SWONKE; from Harris County; 14th district (14-07-00343-CV, 267 SW3d 454, 08-26-08)

The Court reverses the court of appeals' judgment and remands the case to the trial court.

Justice Hecht delivered the opinion of the Court, in which Chief Justice Jefferson, Justice Johnson, Justice Willett, and Justice Guzman joined.

Justice Wainwright delivered an opinion concurring in part and dissenting in part.

Justice Lehrmann delivered a dissenting opinion, in which Justice Medina and Justice Green joined.

08-0890 THE HOUSTON EXPLORATION CO. AND OFFSHORE SPECIALTY FABRICATORS, INC. v. WELLINGTON UNDERWRITING AGENCIES, LTD., ET AL.; from Harris County; 14th district (14-07-00970-CV, 267 SW3d 277, 07-17-08)
2 petitions

The Court affirms the court of appeals' judgment.

Justice Hecht delivered the opinion of the Court, in which Justice Wainwright, Justice

Medina, Justice Green, and Justice Guzman joined, and in Parts I and III of which Justice Johnson joined.

Justice Johnson delivered a concurring opinion.

Chief Justice Jefferson delivered a dissenting opinion, in which Justice Willett and Justice Lehrmann joined.

09-0073 MERCK & CO., INC. v. FELICIA GARZA, ET AL.; from Starr County; 4th district (04-07-00234-CV, 277 SW3d 430, 12-10-08)

The Court reverses the court of appeals' judgment and renders judgment.

Justice Hecht delivered the opinion of the Court.

(Justice Willett and Justice Guzman not sitting)

09-0306 BETTY YVON LESLEY, ET AL. v. VETERANS LAND BOARD OF THE STATE OF TEXAS, ET AL.; from Erath County; 11th district (11-07-00034-CV, 281 SW3d 602, 01-22-09)

The Court affirms in part and reverses in part the court of appeals' judgment and remands the case to the trial court.

Justice Hecht delivered the opinion of the Court, in which Justice Wainwright, Justice Medina, Justice Green, Justice Johnson, Justice Willett, Justice Guzman, and Justice Lehrmann joined.

(Chief Justice Jefferson not sitting)

09-0340 INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA v. CARMEN MURO; from Dallas County; 5th district (05-07-00279-CV, 285 SW3d 524, 03-12-09)

The Court reverses the court of appeals' judgment and renders judgment.

Justice Medina delivered the opinion of the Court.

09-0481 SUSAN COMBS, COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF TEXAS, AND GREG ABBOTT, ATTORNEY GENERAL OF THE STATE OF TEXAS v. TEXAS ENTERTAINMENT ASSOCIATION, INC. AND KARPOD, INC.; from Travis County; 3rd district (03-08-00213-CV, 287 SW3d 852, 06-05-09)

The Court reverses the court of appeals' judgment and remands the case to the trial court.

Justice Hecht delivered the opinion of the Court.

TEXAS RICE LAND PARTNERS, LTD. AND MIKE LATTA v. DENBURY GREEN

09-0901 PIPELINE-TEXAS, LLC; from Jefferson County; 9th district (09-09-00002-CV, 296 SW3d 877, 09-24-09)

The Court reverses the court of appeals' judgment and remands the case to the trial court.

Justice Willett delivered the opinion of the Court.

09-0999 TEXAS A&M UNIVERSITY - KINGSVILLE v. MELODY YARBROUGH; from Kleberg County; 13th district (13-07-00744-CV, 298 SW3d 366, 09-24-09)

The Court reverses the court of appeals' judgment and renders judgment.

Chief Justice Jefferson delivered the opinion of the Court, in which Justice Medina, Justice Green, Justice Guzman, and Justice Lehrmann joined.

Justice Willett delivered a dissenting opinion, in which Justice Hecht, Justice Wainwright, and Justice Johnson joined.

09-1010 FPL FARMING LTD. v. ENVIRONMENTAL PROCESSING SYSTEMS, L.C.; from Liberty County; 9th district (09-08-00083-CV, 305 SW3d 739, 10-29-09)

The Court reverses the court of appeals' judgment and remands the case to that court.

Justice Wainwright delivered the opinion of the Court.

10-0145 G & H TOWING COMPANY, ET AL. v. CORY WAYNE MAGEE, ET AL.; from Harris County; 1st district (01-07-00572-CV, 312 SW3d 807, 11-30-09)

Pursuant to Texas Rule of Appellate Procedure 59.1, after granting the petition for review and without hearing oral argument, the Court reverses the court of appeals' judgment and remands the case to that court.

Per Curiam Opinion

10-0235 IN RE STATE OF TEXAS; from Travis County; 3rd district (03-10-00121-CV, ___ SW3d ___, 03-31-10)

The Court conditionally grants the writ of mandamus.

Chief Justice Jefferson delivered the opinion of the Court.

10-0283 CHRISTOPHER N. EPPS AND LAURA L. EPPS v. BRUCE FOWLER, JR. AND STEPHANIE L. FOWLER; from Williamson County; 3rd district (03-08-00055-CV, ___ SW3d ___, 02-10-10)

The Court reverses the court of appeals' judgment and remands the case to the trial court.

Justice Lehrmann delivered the opinion of the Court, in which Chief Justice Jefferson, Justice Wainwright, Justice Green, Justice Willett, and Justice Guzman joined.

Justice Hecht delivered a dissenting opinion, in which Justice Medina and Justice Johnson joined.

10-0524 ST. DAVID'S HEALTHCARE PARTNERSHIP, L.P., LLP D/B/A ST. DAVID'S HOSPITAL AND ST. DAVID'S COMMUNITY HEALTH FOUNDATION v. GENARO ESPARZA, JR.; from Travis County; 3rd district (03-09-00734-CV, 315 SW3d 601, 05-13-10)

Pursuant to Texas Rule of Appellate Procedure 59.1, after granting the petition for review and without hearing oral argument, the Court reverses the court of appeals' judgment and remands the case to the trial court.

Per Curiam Opinion

10-0659 JERRY L. BARTH v. BANK OF AMERICA, N.A.; from Hidalgo County; 13th district (13-08-00612-CV, ___ SW3d ___, 05-06-10)

Pursuant to Texas Rule of Appellate Procedure 59.1, after granting the petition for review and without hearing oral argument, the Court reverses the court of appeals' judgment and remands the case to that court.

Per Curiam Opinion

10-0674 AUSTIN STATE HOSPITAL, DR. VIKAR NUZHATH AND DR. ERIK LINDFORS v. JOEL GRAHAM; from Dallas County; 5th district (05-09-01312-CV, 319 SW3d 905, 08-04-10)

Pursuant to Texas Rule of Appellate Procedure 59.1, after granting the petition for review and without hearing oral argument, the Court reverses the court of appeals' judgment and remands the case to that court.

Per Curiam Opinion

ORDERS ON CASES GRANTED

THE FOLLOWING PETITIONS FOR REVIEW ARE GRANTED:

10-0223 CENTOCOR, INC. v. PATRICIA HAMILTON AND THOMAS HAMILTON; from Nueces County; 13th district (13-07-00301-CV, 310 SW3d 476, 03-04-10)
2 petitions

[**Note**: This case has been set for oral argument at 9:00 a.m., December 8, 2011.]

Time allotted to argue: 20/20 minutes

10-0554 AMERICAN ZURICH INSURANCE COMPANY v. DANIEL SAMUDIO; from Harris County; 1st district (01-08-00233-CV, 317 SW3d 336, 02-11-10)

[**Note**: This case has been set for oral argument at 9:00 a.m., January 10, 2012.]

Time allotted to argue: 20/20 minutes

10-0666 THE CITY OF ROUND ROCK, TEXAS AND ROUND ROCK FIRE CHIEF LARRY HODGE v. JAIME RODRIGUEZ AND ROUND ROCK FIRE FIGHTERS ASSOCIATION; from Travis County; 3rd district (03-09-00546-CV, 317 SW3d 871, 07-21-10)

[**Note**: This case has been set for oral argument at 9:00 a.m., December 8, 2011.]

Time allotted to argue: 20/20 minutes

10-0953 FORD MOTOR COMPANY v. RICHARD H. GARCIA; from Hidalgo County; 13th district (13-09-00153-CV, ___ SW3d ___, 10-07-10)

[**Note**: This case has been set for oral argument at 9:00 a.m., December 8, 2011.]

Time allotted to argue: 20/20 minutes

ORDERS ON PETITIONS FOR REVIEW

THE FOLLOWING PETITIONS FOR REVIEW ARE DENIED:

09-0084 TEXAS GENERAL LAND OFFICE v. JUDITH ELAINE CARROLL KOCH, INDEPENDENT EXECUTRIX OF THE ESTATE OF MARY MARGARET ROBINSON BOOTH A/K/A MOLLY BOOTH; from Travis County; 3rd district (03-07-00108-CV, 273 SW3d 451, 12-19-08)
2 petitions

(Chief Justice Jefferson not sitting)

09-0639 THE STATE OF TEXAS; JERRY PATTERSON, IN HIS OFFICIAL CAPACITIES AS LAND COMMISSIONER AND CHAIRMAN OF THE SCHOOL LAND BOARD; AND THE GENERAL LAND OFFICE v. BP AMERICA PRODUCTION COMPANY, AS SUCCESSOR TO VASTAR RESOURCES, INC.; from Travis County; 3rd district (03-07-00685-CV, 290 SW3d 345, 05-08-09)
2 petitions

(Chief Justice Jefferson not sitting)

10-0373 THE CITY OF HOUSTON, TEXAS v. SARGE'S FIREWORKS, ET AL.; from Harris County; 1st district (01-08-00712-CV, 332 SW3d 578, 12-31-09)
2 petitions

10-0810 WINDLE TURLEY, SHIRLEY TURLEY, STEVE AARON, CAROL AARON, B.M. RANKIN, JR. AND ASHLEY RANKIN v. CITY OF DALLAS; from Dallas County; 5th district (05-09-00791-CV, ___ SW3d ___, 07-13-10)

10-0837 GEORGE LESIEUR v. TIMOTHY FRYAR, SANDRA FRYAR, CYNTHIA MORALES, D/B/A MORALES REALTY AND CYNTHIA GONZALES; from Medina County; 4th district (04-09-00397-CV, 325 SW3d 242, 07-14-10)

11-0035 VINSON MINERALS, LTD., JOHNNY H. VINSON AND CHISHOLM 2000, L.P. v. XTO ENERGY INC.; from Wise County; 2nd district (02-08-00453-CV, 335 SW3d 344, 12-16-10)

11-0163 REZA VAFAIYAN v. THE STATE OF TEXAS; from Wichita County; 2nd district (02-09-00098-CV, ___ SW3d ___, 08-31-10)
as amended

11-0186 RODNEY SMITH v. JILL NANETTE HAWKINS AND DOROTHY RUTH HAWKINS; from Harris County; 1st district (01-09-00060-CV, ___ SW3d ___, 09-23-10)
as amended

11-0216 SINCERELY YOURS, L.P. v. NCI BUILDING SYSTEMS, L.P., D/B/A METALLIC BUILDING CO. AND BUILDING SYSTEMS DE MEXICO, S.A., D.E. CV; from Denton County; 7th district (07-10-00280-CV, ___ SW3d ___, 12-22-10)

11-0218 TONI AND GEORGE HOLLINGER v. WALID SALEH AND THE SHER INSTITUTE FOR REPRODUCTIVE MEDICINE DALLAS, P.A.; from Dallas County; 5th district (05-10-00339-CV, 335 SW3d 368, 01-04-11)

11-0286 CORRAL CLUB, INC. v. CALVIN HARRIS AND MADELYN HARRIS; KALVIN GUYTON; from Harris County; 1st district (01-09-00590-CV, ___ SW3d ___, 03-10-11)

11-0326 ROOSEVELT BARNES, JR. v. POLK COUNTY SHERIFF DEPARTMENT, SHERIFF BILLY RAY NELSON, SR., SHERIFF MIKE NETTLES, AND THE POLK COUNTY DRUG TASK FORCE; from Polk County; 9th district (09-10-00221-CV, ___ SW3d ___, 03-17-11)

11-0335 ALLEN GLENN THOMAS v. TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL.; from Jones County; 11th district (11-10-00288-CV, ___ SW3d ___, 03-31-11)

11-0345 ELENE B. GLASSMAN v. MERYL B. GOODFRIEND; from Harris County; 14th district (14-09-00522-CV, ___ SW3d ___, 06-02-11)

11-0396 ECF NORTHRIDGE ASSOCIATES, L.P. AND TCI 9033 WILSHIRE BOULEVARD, INC. v. ORIX CAPITAL MARKETS, L.L.C., ET AL.; from Dallas County; 5th district (05-09-00066-CV, 336 SW3d 400, 03-14-11)
2 petitions

(Justice Johnson not sitting)

11-0472 LESLIE ANNE HURT v. JOHN EDWARD HURT; from Denton County; 2nd district (02-11-00043-CV, ___ SW3d ___, 06-09-11)

11-0526 ZURICH AMERICAN INSURANCE COMPANY v. CHANTAL MCVEY AS BENEFICIARY OF TROY MCVEY, DECEASED; from Burnet County; 3rd district (03-09-00666-CV, 339 SW3d 724, 03-30-11)

11-0529 CHRISTUS HEALTH AND CHRISTUS HEALTH GULF COAST D/B/A CHRISTUS ST. CATHERINE HEALTH & WELLNESS CENTER v. RICKEY DORRIETY, INDIVIDUALLY AND AS INDEPENDENT EXECUTOR OF THE ESTATE OF MELISSA DORRIETY, DECEASED AND AS NEXT FRIEND OF TIMOTHY DORRIETY, AND INCAPACITATED PERSON AND PATRICK DORRIETY, INDIVIDUALLY; from Harris County; 14th district (14-09-00927-CV, ___ SW3d ___, 05-19-11)

ORDERS ON MOTIONS FOR REHEARING

THE MOTIONS FOR REHEARING OF THE FOLLOWING PETITIONS FOR REVIEW ARE DENIED:

10-0415 BP AMERICA PRODUCTION COMPANY v. DISCOVERY OPERATING, INC.; from Midland County; 11th district (11-08-00127-CV, 11-08-00171-CV, 311 SW3d 140, 04-15-10)

10-0774 CLINICA SANTA MARIA v. LARRY MARTINEZ AND SUSIE STEPHANIE CAMPOS, RAY MARCHAN AND THE WATTS LAW FIRM; from Cameron County; 13th district (13-09-00573-CV, ___ SW3d ___, 06-24-10)

11-0273 RAFAEL PEREZ v. SPRING BRANCH INDEPENDENT SCHOOL DISTRICT; from Harris County; 14th district (14-10-00058-CV, ___ SW3d ___, 03-03-11)

11-0328 RICKY THOMAS LOVELL v. TEXAS DEPARTMENT OF INSURANCE WORKERS' COMPENSATION DIVISION NETWORK AND TRAVELERS INDEMNITY COMPANY; from Travis County; 3rd district (03-09-00594-CV, ___ SW3d ___, 03-18-11)

11-0413 ALETHA RAY v. CASTILIAN VILLAGE TOWNHOUSE ASSOCIATION; from Harris County; 1st district (01-10-00937-CV, ___ SW3d ___, 03-24-11)

MISCELLANEOUS

THE FOLLOWING PETITIONS FOR WRIT OF MANDAMUS ARE DENIED:

10-0112 IN RE JAMES K. NORWOOD, MAURICE MEYER III AND JOHN R. NORRIS III, AS CO-TRUSTEES OF THE TEXAS PACIFIC LAND TRUST; from Reeves County; 8th district (08-08-00082-CV; 08-08-00083-CV, ___ SW3d ___, 01-27-10)

11-0259 IN RE BUCKNER CHILDREN AND FAMILY SERVICES, INC.; from Dallas County; 5th district (05-11-00371-CV, ___ SW3d ___, 04-01-11)
as redrafted

11-0453 IN RE PABLO ANGEL RENDON OJEDA; from Montgomery County; 9th district (09-11-00279-CV, ___ SW3d ___, 06-02-11)
motion to stay trial of custody suit denied

11-0505 IN RE PABLO ANGEL RENDON OJEDA; from Montgomery County; 9th district (09-10-00446-CV, ___ SW3d ___, 10-28-10)
motion to stay trial of custody suit denied

11-0629 IN RE NICHOLAS J. BONACCI; from El Paso County
emergency motion for temporary relief and emergency stay denied

11-0655 IN RE STEPHANIE DEATHERAGE; from Montgomery County; 9th district (09-11-00456-CV, ___ SW3d ___, 08-18-11)
motion for emergency relief denied

This is a true and correct copy of the original

Blake Hawthorne, Clerk
Supreme Court of Texas
By: Blanca E. Valdez
Deputy Clerk

BEFORE THE EVIDENTIARY PANEL OF THE
STATE BAR DISTRICT NO. 4C06 GRIEVANCE COMMITTEE

COMMISSION FOR LAWYER DISCIPLINE,	§	
	§	
Petitioner,	§	H0100623222 [GOODFRIEND]
	§	
v.	§	
	§	
ELENE B. GLASSMAN,	§	HARRIS COUNTY, TEXAS
	§	
Respondent.	§	

JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On September 3, 2008 and January 6, 2009, came to be heard the above-captioned matter. Petitioner, Commission for Lawyer Discipline, appeared through its attorney of record and announced ready. Respondent, Elene B. Glassman, Texas Bar Number 08016000, appeared in person and announced ready. Hilary G. Reagin, Texas Bar Number 24012704, appeared on January 6, 2009 as Respondent's co-counsel and announced ready.

Jurisdiction and Venue

Evidentiary Panel 4C06, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 4C, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Professional Misconduct

The Evidentiary Panel, having considered all of the pleadings, evidence, stipulations, and argument, finds that Respondent has committed Professional Misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

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

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.

2. Respondent resides in and maintains her principal place of practice in Harris County, Texas.

3. Harold and Helen Baernstein established an Inter Vivos trust in 1980 (the Bernstein Trust) and appointed Respondent as Trustee.

4. Mr. Baernstein passed away, and then Mrs. Baernstein passed away in November 2003.

5. Respondent and her sister, Meryl Goodfriend, were the two beneficiaries of the trust, each possessing a 50% interest.

6. Ms. Goodfriend requested, consistent with the terms of the Baernstein Trust, that the income and principal be distributed to her and to Respondent, and she also requested that Respondent provide an accounting regarding the Baernstein Trust and that Respondent produce documents relevant to the Trust.

7. Respondent refused to distribute the assets of the Baernstein Trust and largely refused the information requests.

8. Ms. Goodfriend made a written request for an accounting and distribution on June 22, 2004; Respondent did not provide an accounting or a distribution.

9. Ms. Goodfriend filed a petition to compel an accounting in September, 2004.

10. On January 31, 2005, Respondent was ordered by the probate court to provide an accounting; Respondent provided no such accounting.

11. On March 31, 2005, Respondent entered into a Rule 11 agreement during mediation to provide an accounting and information.

12. Respondent provided no such accounting, and the probate court entered an order of contempt on June 16, 2005, remanding Respondent to jail to force compliance with its orders.

13. The probate court replaced Respondent as trustee for the Baernstein Trust on October 24, 2005, and the successor trustee subsequently distributed the trust funds.

14. In the course of the above-described litigation, Ms. Goodfriend's attorney prepared a list of withdrawals from the Baernstein Trust accounts that were alleged to be for the benefit of the Respondent and not for the benefit of any beneficiary of the Baernstein Trust.

15. The Commission for Lawyer Discipline has not met its burden of proof in establishing that Respondent misappropriated these funds.

16. Respondent's records with respect to these transactions were insufficient to definitively establish the purpose and nature of each of these transactions, and while this may be sufficient to support the judgment of the probate court that Respondent is liable as trustee to repay these amounts, it is not sufficient to demonstrate a violation of Rule 8.04(a)(3).

17. Respondent provided new, additional information at the hearing of this matter (that had not previously been provided during the long course of the prior litigation and numerous information and discovery requests) with respect to some of the transactions that seem to indicate that some of the transactions were not improper.

18. Part of the difficulty in tracing these transactions is that Respondent often deposited Baernstein Trust funds into her law firm trust account and that Respondent wrote various checks from her law firm trust account for both her personal expenses and for expenses of the Baernstein Trust or its beneficiaries.

19. Respondent commingled personal funds with client and Baernstein Trust funds in her firm trust account.

20. Respondent argues that she was not obligated to provide Ms. Goodfriend with an accounting of the Baernstein Trust because she periodically provided oral accountings to Helen Baernstein during her lifetime and provided some account statements.

21. As an initial matter, it does not appear that Respondent's oral accountings (even if they included some account statements) to Helen Baernstein satisfied the requirements of Texas Trust Code Section 113.152, which requires written accountings.

22. Moreover, the probate court rejected this argument and ordered Respondent to provide an accounting.

23. Indeed, even Respondent's own lawyer advised her on December 13, 2004 that she was required to provide Ms. Goodfriend an accounting and advised her that the accounting was past due and that "it is very important that we complete the accounting and provide it to [Ms. Goodfriend] and her attorney as soon as possible."

24. Regardless of the requirements of the Texas Trust Code, Rule 1.14(b) imposed upon Respondent an independent obligation to provide the accounting and to timely distribute the trust funds; Respondent failed to do so.

25. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees associated with this Disciplinary Proceeding in the amount of $5,920.00.

Conclusions of Law

The Evidentiary Panel concludes that, based on foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 1.14(b) and 8.04(a)(1).

Sanction

The Evidentiary Panel, having found that Respondent has committed professional misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds said findings and conclusions support a Judgment of Partially Probated Suspension.

Accordingly, it is ORDERED, ADJUDGED, and DECREED that Respondent be suspended from the practice of law for a period of ten (10) years, beginning March 1, 2009 and ending February 28, 2019. Respondent shall be actively suspended from the practice of law for a period of two (2) years, beginning March 1, 2009 and ending February 28, 2011. The eight (8) year period of probated suspension shall begin on March 1, 2011 and shall end on February 28, 2019.

Terms of Active Suspension

It is further ORDERED that during the term of active suspension ordered herein, or that may be imposed upon Respondent by the Board of Disciplinary Appeals as a result of a probation revocation proceeding, Respondent shall be prohibited from practicing law in Texas; holding herself out as an attorney at law; performing any legal services for others; accepting any fee directly or

officer, and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address, and telephone number of the client(s) Respondent is representing.

It is further ORDERED that, on or before March 2, 2009, Respondent shall surrender her law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel, 6300 La Calma, Suite 300, Austin, Texas 78752, to be forwarded to the Supreme Court of Texas.

Terms of Probation

It is further ORDERED that, during all periods of suspension, Respondent shall be under the following terms and conditions:

1. Respondent shall not violate any term of this judgment.

2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure.

3. Respondent shall not violate any state or federal criminal statutes.

4. Respondent shall keep the State Bar of Texas membership department notified of current mailing, residence, and business addresses and telephone numbers.

5. Respondent shall comply with Minimum Continuing Legal Education requirements.

6. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.

7. Respondent shall promptly respond to any request for information from the Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.

8. Respondent shall pay reasonable and necessary attorneys' fees to the State Bar of Texas in the amount of $5,920.00. The payment shall be due and payable on or before March 27, 2009, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the State Bar of Texas, Chief Disciplinary Counsel, 6300 La Calma, Suite 300, Austin, Texas 78752.

9. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete six (6) additional

hours of continuing legal education in the area of Law Practice Management and an additional six (6) hours of continuing legal education in the area of Client Trust Fund Accounting. These additional hours of CLE are to be completed between March 1, 2009 and February 28, 2011. Within ten (10) days of the completion of each such CLE course, Respondent shall verify completion of the course to the State Bar of Texas, 6300 La Calma Drive, Suite 300, Austin, Texas 78752. Additionally, within thirty (30) days of the last day of Respondent's birth month, Respondent shall provide to the State Bar of Texas her MCLE Transcript Report for reporting years 2009, 2010, and 2011.

10. For three years, Respondent shall provide a semi-annual report to the State Bar of Texas, Chief Disciplinary Counsel, 6300 La Calma Drive, Suite 300, Austin, Texas 78752, for each trust account that she maintains as part of her law practice. The first report shall be filed by March 27, 2009, and cover the six months from September 1, 2008 through February 28, 2009. Additional reports shall be filed every six months after March 27, 2009, with each report covering the six-month period ending on the last day of the previous month. The last report shall be filed by March 27, 2012. Each report shall include the records regarding Respondent's trust accounts for the applicable six-month period, including the checkbooks, canceled checks, check stubs, check registers, bank statements, vouchers, deposit slips, ledgers, journals, closing statements, accountings, and other statements of receipts and disbursements rendered to clients or other parties with regard to client trust funds, or other similar records clearly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client. The records regarding each trust account shall be grouped together.

Probation Revocation

It is further ORDERED that, if Respondent violates any term of this judgment, the Board of Disciplinary Appeals ("BODA") shall enter an order revoking the probation and imposing the active suspension of Respondent from the practice of law to commence on the date of revocation.

Upon determination that Respondent has violated any term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation with BODA and serve a photocopy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

BODA shall conduct an evidentiary hearing. At the hearing, BODA shall determine by a preponderance of the evidence whether Respondent has violated any term of this Judgment. If

BODA finds grounds for revocation, BODA shall enter an order revoking probation and placing Respondent on active suspension from the date of such revocation order. Respondent shall not be given credit for any term of probation served prior to revocation.

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

Restitution, Attorneys' Fees and Expenses

It is further ORDERED that Respondent shall pay reasonable and necessary attorneys' fees to the State Bar of Texas in the amount of $5,920.00. The payment shall be due and payable on or before March 27, 2009, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the State Bar of Texas, Chief Disciplinary Counsel, 6300 La Calma, Suite 300, Austin, Texas 78752.

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

Publication

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

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 29th day of January, 2009.

EVIDENTIARY PANEL
DISTRICT NO. 4C
STATE BAR OF TEXAS

KENNETH HELD
District 4C06 Presiding Member

State Bar of Texas
Office of the Chief Disciplinary Counsel
Houston Regional Office
I certify this is a true copy.
ODC Records Clerk 6-11-13
Date

Gmail by Google

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]

GOVERNMENT CODE

TITLE 5. OPEN GOVERNMENT; ETHICS

SUBTITLE A. OPEN GOVERNMENT

CHAPTER 552. PUBLIC INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 552.001. POLICY; CONSTRUCTION. (a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

(b) This chapter shall be liberally construed in favor of granting a request for information.

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

Sec. 552.002. DEFINITION OF PUBLIC INFORMATION; MEDIA CONTAINING PUBLIC INFORMATION. (a) In this chapter, "public information" means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

(a-1) Information is in

body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

(a-2) The definition of "public information" provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

(b) The media on which public information is recorded include:

(1) paper;

(2) film;

(3) a magnetic, optical, solid state, or other device that can store an electronic signal;

(4) tape;

(5) Mylar; and

(6) any physical material on which information may be recorded, including linen, silk, and vellum.

(c) The general forms in which the media containing public information exist include a book, paper, letter, document, e-mail, Internet posting, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1204 (S.B. 1368), Sec. 1, eff. September 1, 2013.

Sec. 552.003. DEFINITIONS. In this chapter:

(1) "Governmental body":

(A) means:

(i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members

executive or legislative branch of state government and that is directed by one or more elected or appointed members;

(ii) a county commissioners court in the state;

(iii) a municipal governing body in the state;

(iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(v) a school district board of trustees;

(vi) a county board of school trustees;

(vii) a county board of education;

(viii) the governing board of a special district;

(ix) the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code;

(x) a local workforce development board created under Section 2308.253;

(xi) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and

(xii) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and

(B) does not include the judiciary.

(2) "Manipulation" means the process of modifying, reordering, or decoding of information with human intervention.

(2-a) "Official business" means any matter over which a governmental body has any authority, administrative duties, or advisory duties.

(3) "Processing" means the execution of a sequence of coded instructions by a computer producing a result.

(4) "Programming" means the process of producing a sequence of coded instructions that can be executed by a computer.

(5) "Public funds" means funds of the state or of a governmental subdivision of the state.

(6) "Requestor" means a person who submits a request to a governmental body for inspection or copies of public information.

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

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 18.24, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 633, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1004, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 9.014, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1204 (S.B. 1368), Sec. 2, eff. September 1, 2013.

Sec. 552.0035. ACCESS TO INFORMATION OF JUDICIARY. (a) Access to information collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.

(b) This section does not address whether information is considered to be information collected, assembled, or maintained by or for the judiciary.