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

No. 67898

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

DEREK ALFONSO QUINATA
STATE BAR OF TEXAS CARD NO. 24072292,
APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

*On Appeal from an Evidentiary Panel
For the State Bar of Texas District 17
Nos. 202203728, 202204951, and
202204943*

BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE DEPUTY
COUNSEL FOR
ADMINISTRATION

BENJAMIN CLAYTON HACKETT
ASSISTANT DISCIPLINARY
COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY
COUNSEL COMMISSION FOR LAWYER
DISCIPLINE
STATE BAR OF TEXAS
P.O. BOX 12487
AUSTIN, TEXAS 78711-2487
Clayton.Hackett@texasbar.com
PHONE: 512.427.1350
FAX: 512.427.4167

IDENTITY OF PARTIES AND COUNSEL

APPELLANT

DEREK A. QUINATA
4745 Rutherford Drive
El Paso, TX 79924
Telephone: (915) 667-6966
Fax: (915) 242-0700
Email: quinata_d@yahoo.com
Pro se

APPELLEE

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

COUNSEL FOR APPELLEE

SEANA WILLING
Chief Disciplinary Counsel

ROYCE LEMOINE
Deputy Counsel for Administration

BENJAMIN CLAYTON HACKETT
Assistant Disciplinary Counsel
STATE BAR CARD NO. 24078612
Email: clayton.hackett@texasbar.com
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
Telephone: 512.427.1350; 1.877.953.5535
Fax: 512.427.4167

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COMMISSION FOR LAWYER DISCIPLINE,
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*On Appeal from an Evidentiary Panel
For the State Bar of Texas District 17
Nos. 202203728, 202204951, and
202204943 [SBOT]*

BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits this brief in response to the brief filed by Appellant, Derek Alfonso Quinata, on August 9, 2023. For clarity, this brief refers to Appellant as “Quinata” and Appellee as “the Commission.” References to the record are labeled CR (clerk’s record), RR Default (reporter’s record for default hearing held on April 12, 2023) and RR MFNT (reporter’s record for hearing on Quinata’s motion for new trial held on June 14,

2023). References to Quinata’s brief are labeled Quinata’s Br., followed by the relevant page number(s). References to rules refer to the Texas Disciplinary Rules of Professional Conduct (“TDRPC”)¹ or the Texas Rules of Disciplinary Procedure (the “TRDP” or the “Rules”)² unless otherwise noted.

¹ *Reprinted in* TEX. GOV’T CODE ANN., tit. 2, subtit. G app A. (West 2023).

² *Reprinted in* TEX. GOV’T CODE ANN., tit. 2, subtit. G app A-1. (West 2023).

STATEMENT OF THE CASE

Type of Proceeding: Attorney Discipline

Petitioner/Appellee: The Commission for Lawyer Discipline

Respondent/Appellant: Derek Alfonso Quinata

Evidentiary Panel: 17-1

Judgment: Judgment of Disbarment [CR 229]

*Violations found (Texas
Disciplinary Rules of
Professional Conduct):*

Rule 1.03(a): A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.15(d): Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.

Rule 8.04(a)(7): A lawyer shall not: violate any disciplinary or disability order or judgment.

Rule 8.04(a)(8): A lawyer shall not: fail to timely furnish to the Chief Disciplinary Counsels office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so.

STATEMENT OF JURISDICTION

The Board of Disciplinary Appeals has jurisdiction over this appeal from the decision of an evidentiary panel of the State Bar of Texas District 17 Grievance Committee, pursuant to Rules 2.23 and 7.08(D) of the Texas Rules of Disciplinary Procedure.

STATEMENT AS TO ORAL ARGUMENT

Appellant has requested oral argument. Pursuant to Rule 4.06(b) of the Board's Internal Procedural Rules, Appellee believes oral argument is unnecessary in this case as the dispositive issues have been authoritatively decided, the facts and legal arguments are adequately presented in the briefs and record, and/or the Board's decisional process would not be significantly aided by oral argument. However, should the Board direct Appellant to appear and argue, Appellee requests the opportunity to respond.

STATEMENT OF THE ISSUES

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

Did the evidentiary panel act within its discretion in denying Quinata's motion for a new hearing where the evidence showed that he was properly served and where he failed to set forth a meritorious defense to any alleged disciplinary violations?

- II. Were the sanctions of disbarment issued by the evidentiary panel an abuse of discretion?

STATEMENT OF FACTS

Background

In January 2022, complainant George Geiger hired Quinata to represent his daughter in a juvenile criminal matter. [CR 221]. Quinata failed to respond to Geiger's reasonable requests for information about the status of his daughter's case and failed to return unearned portions of his fee upon termination. [Id.]. Subsequently, Geiger filed a grievance ("Geiger Complaint") against Appellant on June 7, 2022. [RR Default pp. 148-154]. Quinata failed to submit a response to the Geiger Complaint in accordance with Rule 2.10(B) of the Texas Rules of Disciplinary Procedure ("TRDP"). [Id.].

In January of 2021, Quinata was appointed to represent complainant Kaylyn Andrea Nelson in a criminal matter. [CR 222]. Thereafter, Nelson paid Quinata \$900.00 for the representation. [Id.]. Quinata did not seek compensation from the court for the court appointment. On July 13, 2022, Complainant Nelson filed a grievance ("Nelson Complaint") against Quinata. [RR Default pp. 162-168]. Quinata failed to submit a response to the Nelson Complaint in accordance with Rule 2.10(B) of the TRDP. [Id.].

On August 10, 2021, complainant Melissa Armendariz paid Quinata \$500.00 to represent her husband in a criminal matter. [CR 222]. Upon termination of the representation in April 2022, Quinata failed to return the unearned portion of the

\$500.00 fee that Armendariz paid him. [Id.]. On July 21, 2022, Armendariz filed a grievance (“Armendariz Complaint”) against Quinata. [RR Default pp. 176-183]. Quinata failed to submit a response to the Armendariz Complaint in accordance with Rule 2.10(B) of the TRDP. [Id.].

During the period of Respondent’s representation of Geiger and Nelson, the Board of Disciplinary Appeals (“BODA”), on April 29, 2022, heard the Commission’s Petition for Revocation of Probation filed against Quinata on December 28, 2021, related to his failure to comply with the terms of four Agreed Judgments of Probated Suspension that he entered into in 2019. [CR 221-222 and RR Default Exh. 9]. Specifically, the Commission sought revocation of these Agreed Judgments of Probated Suspension, entered into on June 18, 2019, June 28, 2019, and October 17, 2019, for Quinata’s failure, as ordered, to: 1) complete six additional hours of CLE; 2) engage the services of a CPA; 3) contact TLAP; and 4) pay ordered attorney fees. [RR Default Exh. 9].

On May 6, 2022, BODA entered its Judgment Revoking Probation and Actively Suspending Respondent from the Practice of Law due to his failure to comply with the terms of the four Agreed Judgments of Probated Suspension. [RR Default Exh. 9]. As a result, Quinata was placed under active suspension beginning June 15, 2019. [Id.]. BODA’s judgment also required Quinata to notify his clients of his suspension within 30 days of May 6, 2022. Quinata failed to notify Geiger and

Nelson of his suspension in violation of Rule 8.04(a)(7) of the Texas Disciplinary Rules of Professional Conduct (“TDRPC”). [CR 221-222 and RR Default pp. 16-19 and 21-23].

Underlying Disciplinary Proceeding

On August 19, 2022, Quinata was served with notice of the allegations of professional misconduct in this matter, pursuant to Rule 2.14(D) of the TRDP, as described above. [CR 7-11]. Included with said notice, was an election form for Quinata to specify whether he wished to proceed before an evidentiary panel or district court. [CR 11]. Quinata never responded and by default the matter was assigned to an evidentiary panel for the State Bar of Texas District 17 (“the Evidentiary Panel”), pursuant to Rule 2.15 of the TRDP. [CR 21-25 and 48-51].

The Commission filed its Evidentiary Petition and Request for Disclosure (“Evidentiary Petition”) on October 24, 2022. [CR 61-66]. After repeated attempts to serve Quinata personally, he was served with the Evidentiary Petition by substituted service on December 7, 2022. [CR 129-132]. The cover letter included with the petition specifically informed Quinata that he was required to file a responsive pleading by January 2, 2023, and that failure to do so would result in a default pursuant to Rule 2.17(B) and (C) of the TRDP. [CR 96-104]. Quinata failed to file any responsive pleadings prior to January 2, 2023.

On March 6, 2023, the Commission filed its Motion for Default Judgment and

set a default hearing for April 12, 2023. [CR 134-138, 164-165]. On March 6, 2023, and March 23, 2023, Quinata was served with a copy of the default motion and notice of the default hearing via email and personally. [CR 169-178]. On April 12, 2023, Quinata failed to appear, and the Evidentiary Panel heard said motion. [CR 221-223]. On April 14, 2023, the Evidentiary Panel issued a default Judgment of Disbarment against Appellant, Derek Alfonso Quintana, finding Quinata violated Rules 1.03(a), 1.15(d), 8.04(a)(7), and 8.04(a)(8) of the Texas Disciplinary Rules of Professional Conduct (TDRPC) as to all matters referenced above. [CR 229-235]. The evidentiary panel also found Quinata was in default because he failed to file a responsive pleading to the petition. [Id.]

Post Judgment Motion and Appeal

On May 12, 2023, Quinata filed his Motion for New Trial and Motion to Vacate Judgment (“Motion for New Trial”), arguing that the default judgment should be set aside. [CR 263-266]. Quinata also filed his notice of appeal the same day. [CR 259-260].

In his motion, Quinata claimed that he failed to file a responsive pleading because he was not provided notice of the Evidentiary Petition and/or the April 12, 2023, default hearing. [CR 263-266]. The Commission responded to Quinata’s motion and argued that substituted service of the Evidentiary Petition was properly made on December 7, 2022, pursuant to the Evidentiary Panel’s Order for Substitute

Service (dated December 6, 2022), and that Quinata was not entitled to notice of the default hearing, pursuant to Rule 2.17(O). [CR 271-275]. The panel denied Quinata’s motion on June 14, 2023. [CR 401 and RR MFNT p. 27-28].

SUMMARY OF THE ARGUMENTS

In light of the existence of an Order Assigning Evidentiary Panel in the clerk record (CR 18) that defeats Appellant’s “ISSUE 1:” (Quinata Br. 7), Appellee will argue that the Evidentiary Panel acted well within its discretion in denying Quinata’s motion for a new hearing because he failed to show he was entitled to a new hearing under *Craddock v. Sunshine Bus Lines, Inc.*, 134 Tex. 388, 133 S.W.2d 124 (1939).

When the party opposing a motion for a new trial contests the defaulting party’s explanation as to why the party failed to file a responsive pleading, the matter is left for the trier of fact. *Id.* Here, the Evidentiary Panel had a number of reasons to believe that Quinata’s failure to file a response was due to conscious indifference. These reasons included prior communications he had with the Chief Disciplinary Counsel’s Office, and his own testimony and arguments presented at the hearing on his Motion for New Trial. [CR 126, 208, 268-269; RR MFNT, *see generally*]. In addition, Quinata failed to set forth even one meritorious defense to the findings of the Evidentiary Panel in their Judgment of Disbarment. [RR MFNT, *see generally*]. As such, the Evidentiary Panel acted well within its discretion in denying Quinata’s Motion for a New Trial.

Further, Quinata’s argument that the sanction imposed by the Evidentiary Panel was excessive is also not supported by the record. The facts established in the case, as well as the evidence presented at the sanctions hearing, and the sanctioning guidelines set forth in Part XV of the TRDP support the panel’s decision. Therefore, the Judgment of Disbarment should be affirmed.

ARGUMENT

As it has for decades, *Craddock v. Sunshine Bus Lines, Inc.*, 134 Tex. 388, 392, 133 S.W.2d 124, 126 (1939) governs the inquiry as to whether a default judgment should be set aside. Here, pursuant to the TRDP and the Texas Rules of Civil Procedure (“TRCP”), an evidentiary panel should grant a new trial if the defendant shows: (1) that the default was neither intentional nor the result of conscious indifference; (2) a meritorious defense; and (3) that a new trial would cause neither delay nor undue prejudice. *Id.* Appellate courts review a trial court’s refusal to grant a motion for new trial for abuse of discretion. *Dolgenercorp of Texas, Inc. v. Lerma*, 288 S.W.3d 922, 926 (Tex. 2009). When a defaulting party moving for a new trial meets all three elements of the *Craddock* test, then a trial court abuses its discretion if it fails to grant a new trial. *Id.* Here, Quinata’s appeal fails under both the first and second elements of the *Craddock* test.

I. The evidentiary panel acted well within its discretion in rejecting Quinata’s explanations for his failure to file a responsive pleading.

The Evidentiary Panel correctly denied Quinata’s Motion for New Trial as

Quinata failed to establish that his failure to answer was not intentional nor the result of conscious indifference. In general, courts view this factor with a significant degree of leniency: “Generally, some excuse, although not necessarily a good one, will suffice to show that a defendant's failure to file an answer was not because the defendant did not care.” *Sutherland v. Spencer*, 376 S.W.3d 752, 755 (Tex. 2012) (quoting *In re R.R.*, 209 S.W.3d 112, 115 (Tex. 2006)).

This leniency, however, has its limits. A defendant satisfies his/her burden as to the first *Craddock* element when the factual assertions, if true, negate intentional or consciously indifferent conduct by the defendant and the factual assertions are not controverted by the plaintiff. *Fidelity and Guar. Ins. Co. v. Drewery Const. Co., Inc.*, 186 S.W.3d 571, 576 (Tex. 2006) (emphasis added). In determining if the defendant's factual assertions are controverted, the court looks to all the evidence in the record. *Dir., State Employees Workers' Comp. Div. v. Evans*, 889 S.W.2d 266, 269 (Tex. 1994). When controverted, the question of whether the defendant’s failure to act was intentional or the result of conscious indifference is a fact question to be resolved by the trial court (or here, panel). *Estate of Pollack v. McMurrey*, 858 S.W.2d 388, 391 (Tex. 1993). The trial court “may generally believe all, none, or part of a witness’s testimony...[and] can reasonably believe, based on contradictory evidence, that there was intentional or consciously indifferent conduct on the part of a defendant.” *Lynch v. Lynch*, 540 S.W.3d 107, 122 (Tex. App.—

Houston [1st Dist.] 2017, pet. denied) (internal citations omitted). Lawyer discipline cases have specific rules applicable to defaults.

Rule 2.17(C) of the TRDP governs defaults in disciplinary proceedings before an evidentiary panel. TEX. RULES DISCIPLINARY P.R. 2.17(C). The Rules do not afford discretion when a respondent attorney fails to timely answer:

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

Here, Quinata offers two arguments: 1) that service of the Evidentiary Petition via email was improper notice; and 2) that the Commission’s subsequent “motion for substituted service” and its supporting affidavit were “defective”. [Quinata’s Br. 9-11]. However, neither argument is viable based on the record.

A. Quinata’s argument regarding his email account is irrelevant to the issue of service pursuant to Rule 2.09(A) of the TRDP, and his appeal.

Rule 2.09(A) of the TRDP sets forth that every notice required to be sent under Part II of the TRDP, is required to be served by U.S. certified mail, return receipt requested, or by any “other means” permitted by the TRCP. TEX. RULES DISCIPLINARY P.R. 2.09. Rule 21a of the TRCP provides that documents not filed electronically may be served “by mail, by commercial delivery, by fax, by email...” TEX. R. CIV. P. 21a(a)(2). Licensed attorneys, as members of the State Bar of Texas

(“State Bar”), are required to provide the State Bar with a valid email address in order to receive “electronic communications from the State Bar”. See Article III, Section 3 of the STATE BAR RULES.

The evidence in the record shows Quinata provided the State Bar (pursuant to the State Bar Rules) with the email address of quinata_d@yahoo.com. [CR 127; RR Default p. 9 and Exh. 2]. That is, Quinata represented to the State Bar that his “preferred email address,” for receiving electronic communications from the State Bar was quinata_d@yahoo.com. And Quinata’s attorney confirmed on June 14, 2023, during the Evidentiary Panel’s hearing on Quinata’s Motion for New Trial, that Quinata’s email address was in fact, quinata_d@yahoo.com. [RR MFNT, p. 16]. Additionally, as evident by the clerk’s record, Quinata’s Exhibit A to his Motion for New Trial shows that he had previously used quinata_d@yahoo.com to correspond with the Chief Disciplinary Counsel’s office in October 2022. [CR 268-269]. Moreover, Quinata’s own signature block in this appeal includes the same email address. [Quinata’s Br. 13].

Here, Quinata argues that “service effectuated via email is invalid” because he does not **regularly use** his email account. [Quinata’s Br. 9]. However, as described above, Quinata was required to provide the State Bar with his “preferred email address”. And the record clearly shows the Evidentiary Panel was presented with evidence of the email address he provided to the State Bar and with

documentation showing that on October 24, 2022, the Commission’s Evidentiary Petition was emailed to quinata_d@yahoo.com with the subject line of “Case No. 202203728, 202204951, 202204943; CFLD v. Derek Alfonso Quinata – Evidentiary Petition and Discovery Filed”. [CR 127 and 139]. Additionally, Quinata’s conclusory statement that he “has a history of not responding to emails due to the conspicuousness of emails...” does not buttress any of his arguments related to the ownership of, or the “regular” use of his email account. [Quinata’s Br. 9-11].

Notwithstanding, Quinata’s email account arguments do not address any material issue related to his appeal because the record shows that the Commission attempted to serve Quinata personally with the Evidentiary Petition on November 30, 2022, December 1, 2022, and December 3, 2022, and thereafter, properly served Quinata via substituted service on December 7, 2022. [CR 121 and 132].

B. Substituted service was properly executed by posting the Evidentiary Petition pursuant to the Evidentiary Panel’s order.

In his brief, Quinata generally argues that his failure to file an answer should be excused because Petitioner’s Motion for Substitute Service of Process and “supporting affidavit” (filed on December 5, 2022) were “defective”. [Quinata’s Br. 7-10]. He starts his arguments by claiming that the Evidentiary Panel was not “presented with evidence that 4745 Rutherford, El Paso, Tx [sic] 79924, is a place where [Quinata] can probably be found,” as required pursuant to Rule 106 of the TRCP. However, the evidence presented in the record directly contradicts his

argument. [Quinata’s Br. 9-11].

First, attached as Exhibit A to the Commission’s Motion for Substitute Service of Process is the Affidavit of Attempted Service (dated December 5, 2022) of process server Yvonne Natividad (“Natividad’s Affidavit”). [CR 126]. Said affidavit **lists** the Rutherford address referenced above and is sworn before a notary, in accordance with Rule 106 of the TRCP. [CR 126]. Secondly, attached as Exhibit B to the Commission’s Motion for Substitute Service of Process (filed with the Evidentiary Panel on December 5, 2022) was a printout of the address Quinata provided to the State Bar, which shows service of the Evidentiary Petition was made to the same address listed on Quinata’s own signature block in his brief: “4745 Rutherford Drive, El Paso, Tx 79924”. [CR 127; Quinata’s Br. 13]. Third, every pleading filed by Quinata in the clerk’s record failed to show that Quinata possessed a different address other than the one he provided the State Bar. [CR 127; 259-260; 263-266]. Lastly, Quinata failed to provide any testimony or evidence to the Evidentiary Panel, during his hearing on his Motion for New Trial on June 14, 2023, to show that “4745 Rutherford Drive, El Paso”, was not, in fact, his actual address. [RR MFNT, pp. 6-8].

Quinata also cites *Lewis v. Ramirez*, 49 S.W.3d 561, 565 (Tex.App. – Corpus Christi 2001, no pet.) and *Pao v. Brays Vill. E. Homeowners Ass’n, Inc.*, 905 S.W.2d 35, 38 (Tex.App. – Houston [1st Dist.] 1995, no writ) in his attempt to argue that the Natividad’s Affidavit failed to meet the requirements of Rule 106(b) of the TRCP. In

this respect, Quinata appears to focus on his misplaced argument that Natividad’s Affidavit failed to “satisfy the argument of diligent due process”, was required to make “mention that service by attaching process to defendant’s door would comply with Rule 106(b)”, and/or was required to set forth the usual place of business or abode where process can be served. [Quinata’s Br. 11].

However, Quinata’s arguments are not supported by the current language of Rule 106 of the TRCP and the cases he has cited.³ Here, Natividad’s Affidavit clearly sets forth all of her attempts to serve Quinata, in accordance with Rule 106(b). [CR 126]. The affidavit also complies with Rule 106(b) in that it was “made under penalty of perjury-listing any location where the defendant can probably be found...” TEX. R. CIV. P. 106(b). It should be noted that Quinata is attempting to rely on cases analyzed under Rule 106(b) of the TRCP, as it existed before it was modified in 2020.

Additionally, as in *James v. Commission for Lawyer Discipline*, 310 S.W.3d 586 (Tex.App.—Dallas 2010, no pet.), Natividad’s affidavit was not required to make mention of the method of substituted service to be used, or how it was concluded that the address listed was determined to be the “usual place of business or abode of defendant” *Id at 590*. And Rule 107 of the TRCP does not require the trial court to “specify the manner for proof of service in its order for substituted service.” *Id*.

³ In *Lewis*, the process server’s affidavit was found insufficient because it only stated he “attempted to serve defendant, JOHN E. LEWIS, in person and on several occasions...” However, that is not the case with Natividad’s Affidavit which clearly sets forth the date, time and location of all of her attempts to serve Quinata. [CR 126].

As a result, the Evidentiary Panel had ample evidence to believe Quinata was properly served with the Evidentiary Petition and disbelieve Quinata’s reason(s) for his failure to file an answer to the Evidentiary Petition. Natividad’s Affidavit regarding her attempts to serve Quinata was clear. Additionally, Natividad’s Affidavit of Delivery (dated December 7, 2022) complied with the requirements of the Order for Substitute Service entered by the Evidentiary Panel on December 6, 2022. [CR 129-132]. At no time has Quinata denied that the address where personal service was attempted, and where substituted service was affected is an address where he can “probably be found”. TEX. R. CIV. P. 106(b). As such, there was ample evidence for the Evidentiary Panel to find that Quinata’s claims and arguments lacked credibility.

II. Quinata failed to establish any meritorious defense to warrant a new trial.

Quinata cannot satisfy the requirements of *Craddock* because his Motion for a New Trial did not set up a meritorious defense to any of the alleged disciplinary violations. [CR 263-269]. “The motion must allege facts which in law would constitute a defense to the cause of action asserted by the plaintiff and must be supported by affidavits or other evidence proving *prima facie* that the defendant has such meritorious defense.” *Pollack*, 858 S.W.2d at 392. Setting up a meritorious defense does not require proof “in the accepted sense.” *Dolgencorp*, 288 S.W.3d at 927–28. Rather, the motion sets up a meritorious defense if it alleges facts which in law would constitute a defense to the plaintiff’s cause of action and is supported by

affidavits or other evidence providing prima facie proof that the defendant has such a defense. *Id.* If proven, a meritorious defense would cause a different—although not necessarily opposite—result on retrial. *Comanche Nation v. Fox*, 128 S.W.3d 745, 751 (Tex. App.—Austin 2004, no pet.).

Here, the Evidentiary Panel’s Judgment of Disbarment sets forth that the sanction against Quintana was imposed for “each act of professional misconduct.” [CR 229-235]. To obtain a “different—although not necessarily opposite” result in a new trial, Quintana was required to establish a meritorious defense to each of the alleged violations of Rules 1.03(a), 1.15(d), 8.04(a)(7), and 8.04(a)(8) of TDRPC.

Although it appears Quintana may have provided a defense to the Evidentiary Panel’s finding that he violated Rule 8.04(a)(8) (for his failure to respond to each of the three complaints against him) in his Motion for New Trial, he did not. In his motion, Quintana represented to the Evidentiary Panel that he “rarely uses” the email address of quinata_d@yahoo.com, as it related to his arguments concerning the service of the Evidentiary Petition. [CR 263-266]. However, Quintana makes no mention that his failure to respond to the Geiger Complaint, Nelson Complaint, and/or Armendariz Complaint, as required under Rule 2.10(B) of the TRDP, was predicated on this same excuse and/or that he “rarely” used his email account **at the time** he received notice of the underlying Complaints.

Assuming *arguendo* that Quintana’s motion was adequate to establish a

plausible defense to the Evidentiary Panel’s finding that he violated Rule 8.04(a)(8) for failing to respond to the underlying Complaints, Quinata has still failed to provide any defense, whatsoever, for his violation of Rules 1.03(a), 1.15(d), and 8.04(a)(7). Especially, in light of the fact that during his Motion for New Trial hearing on June 14, 2023, Quinata’s counsel, Luis Lopez, acknowledged they had no prepared meritorious defenses, when specifically asked by the panel chair to provide them. [RR MFNT pp. 25-28]. Without a meritorious defense to each of the disciplinary violations, Quinata cannot show that the Evidentiary Panel abused its discretion in denying his Motion for a New Trial.

III. The Evidentiary Panel acted within its discretion in assessing a sanction disbarring Quinata.

Quinata’s final argument in his brief, is that the sanction imposed by the Evidentiary Panel was “excessive and inappropriate”. [Quinata’s Br. 11-12]. For the reasons set forth below, Quinata’s argument fails to demonstrate an abuse of discretion by the Evidentiary Panel in the imposition of the above-referenced sanction. As such, the Board should affirm the Evidentiary Panel’s Judgment of Disbarment.

Trial courts (in this case, evidentiary panels) have broad discretion to impose discipline, though a sanction may be so light or heavy as to constitute an abuse of discretion. *State Bar of Texas v. Kilpatrick*, 874 S.W.2d 656, 659 (Tex. 1994); *see also*, *Molina v. Commission for Lawyer Discipline of The State Bar of Texas*, BODA No. 35426, 2006 WL 6242393, at *4 (March 31, 2006) (citing *Kilpatrick*). Sanctions

imposed for professional misconduct are reviewed for abuse of discretion. *McIntyre v. Commission for Lawyer Discipline*, 169 S.W.3d 803, 807 (Tex. App.—Dallas 2005, no pet.). A court abuses its discretion only when it acts in an unreasonable and arbitrary manner, without reference to any guiding principles. *Id.*, at 807; *Love v. State Bar of Texas*, 982 S.W.2d 939, 944 (Tex.App. – Houston [1st Dist.] 1998, no pet.). Moreover, the fact that an appellate court might impose a sanction different from that imposed by the trial court does not show an abuse of discretion. *Love*, 982 S.W.2d at 944-45 (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241 (Tex. 1986)).

Part XV of the TRDP provides guidelines to consider in determining appropriate sanctions for professional misconduct. General factors that should be considered include the duty violated, the respondent attorney’s level of culpability, the potential or actual injury caused by the misconduct, and the existence of aggravating or mitigating factors. TEX. RULES DISCIPLINARY P. R. 15.02.

More specifically Rules 15.04(A), 15.04(B), 15.07, and 15.08 all set forth discretionary guidelines for determining appropriate sanctions in circumstances involving an attorney’s failure to: 1) communicate with a client; 2) return unearned fees; 3) comply with a previous disciplinary order(s); and 4) timely provide a response to a Complaint as required under the TRDP. TEX. RULES DISCIPLINARY P. R. 15.04, 15.07, and 15.08. In fact, the guidelines set forth ranges from private reprimands to disbarment for each of the violations found against Quinata. Additionally, Rule 15.09

provides aggravating and mitigating factors an evidentiary panel may consider in deciding an appropriate sanction once professional misconduct is established, including a respondent's prior disciplinary record, their uncooperative conduct during proceedings, and an attorney's deceptive practices during the disciplinary process. TEX. RULES DISCIPLINARY P. R. 15.09(A-C).

Here, Quinata argues that his sanction does not “serve the purposes of the lawyer discipline process” and is “excessive”. [Quinata Br. 11-12]. But the Judgment of Disbarment clearly and concisely sets forth the factual allegations made in the Commission's Evidentiary Petition, which were deemed true due to Quinata's default. Additionally, the Evidentiary Panel was presented with aggravating factors in the form of: Quinata's prior disciplinary record (RR Default p. 31 and Exhs. 16, 17, 18, 19, 20, 21, 22), a pattern of misconduct (*Id.*, *see generally*), multiple violations (*Id.*, *see generally*), and deceptive practices (*see* RR Default pp. 16 and 23 [did not inform clients of suspension], pp. 21-22 and 24-26 [solicited money from court appointed criminal client]).

As such, the evidence presented to the Evidentiary Panel, as described above, provides the basis for the factual determination that led the panel to deny Quinata's Motion for New Trial. Factual determinations by an evidentiary panel are subject to the substantial evidence standard of review. TEX. GOV'T CODE § 81.072(b)(7); TEX. RULES DISCIPLINARY P.R. 7.11; *Comm'n for Lawyer Discipline v. Schaefer*, 364

S.W.3d 831, 835 (Tex. 2012). Here, the panel's sanction of disbarment was supported by ample evidence as set forth in the record.

CONCLUSION AND PRAYER

For these reasons, the Commission prays that the Board affirm the Judgment of Disbarment entered by the Evidentiary Panel for the State Bar of Texas District 17.

RESPECTFULLY SUBMITTED,

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION

BENJAMIN CLAYTON HACKETT
ASSISTANT DISCIPLINARY COUNSEL
OFFICE OF THE CHIEF DISCIPLINARY COUNSEL
STATE BAR OF TEXAS
P.O. BOX 12487
AUSTIN, TEXAS 78711
Clayton.Hackett@texasbar.com
TELEPHONE: 512.427.1350
FAX: 512.427.4167

/s/Clayton Hackett
BENJAMIN CLAYTON HACKETT
STATE BAR CARD No. 24078612
ATTORNEY FOR APPELLEE

CERTIFICATE OF COMPLIANCE

Pursuant to the Board of Disciplinary Appeals Internal Procedural Rules, the foregoing brief on the merits contains approximately 4,290 words (total for all sections of brief that are required to be counted), which is less than the total words permitted by the Board's Internal Procedural Rules. Counsel relies on the word count of the computer program used to prepare this petition.

/s/Clayton Hackett

BENJAMIN CLAYTON HACKETT

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing brief of Appellee, the Commission For Lawyer Discipline has been served on Derek Alfonso Quinata, by email to quinata_d@yahoo.com on the 1st of November 2023.

/s/Clayton Hackett

BENJAMIN CLAYTON HACKETT