

No. 50185

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

MAX LEON TEPPER,

APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

*On Appeal from the Evidentiary Panel
For the State Bar of Texas District 6-A2
No. D0020936831*

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

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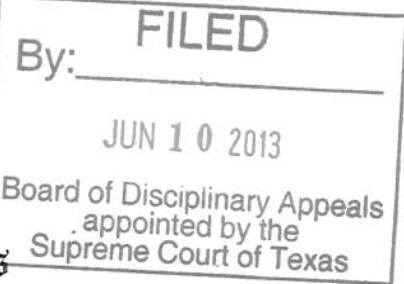
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**BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE**

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits this brief in response to the brief filed by Appellant, Max Leon Teppar. For clarity, Appellant will be referred to as “Tepper” and Appellee as “the Commission.” Any reference in this brief to any matter contained in the record before the Board shall be labeled CR (clerk’s record), Supp. CR (supplemental clerk’s record filed on May 31, 2013), RR (reporter’s record), or Pet. Ex. (Petitioner’s exhibit to reporter’s record).

All references to rules are references to the Texas Disciplinary Rules of Professional Conduct¹ unless otherwise noted.

¹ *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app A. (Vernon 2009).

STATEMENT OF THE CASE

<i>Type of Proceeding:</i>	Attorney Discipline
<i>Petitioner/Appellee:</i>	The Commission for Lawyer Discipline
<i>Respondent/Appellant:</i>	Max Leon Tepper
<i>Evidentiary Panel:</i>	6-A2
<i>Judgment:</i>	Judgment of Partially Probated Suspension (one-year active suspension followed by two-year probated suspension)
<i>Violation Found:</i>	Rule 8.04(a)(3): A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

STATEMENT OF THE ISSUES

1. May a judgment be declared void based on a supposedly untimely just-cause decision if (1) all evidence of record demonstrates that the just-cause decision was timely and (2) the just-cause deadline is not jurisdictional?
2. If an attorney files an auto theft report with police and obtains \$17,000.00 from his insurer for the theft claim, does his failure to notify police or his insurer of his subsequent recovery of the vehicle, coupled with his denial (during a traffic stop) that he had any knowledge that the vehicle was reported stolen, provide a reasonable basis for a finding that the attorney's conduct involved dishonesty, fraud, deceit, or misrepresentation?
3. If a party is aware of supposed discovery abuse well in advance of trial, may the party seek to have evidence excluded at trial based on the supposed discovery abuse without seeking any pretrial ruling?
4. May a respondent attorney successfully seek the reversal of a disciplinary judgment based on an alleged intentional failure to disclose evidence if there is nothing in the record to support the allegation and no harm from the alleged failure?
5. In the absence of any provision establishing a term limit for panel chairs, may a respondent attorney successfully seek the reversal of a disciplinary judgment based on a claim that a panel chair improperly served more than two one-year terms?

STATEMENT OF FACTS

In March 2008, Tepper reported to Florida police that he left his truck on the side of the road because of a flat tire and when he returned to retrieve the truck, it was missing (Pet. Ex. A). Shortly after filing a theft report with police, Tepper filed a theft claim with GEICO, his insurer (Pet. Ex. A). GEICO paid Tepper more than \$17,000.00 to settle the the claim in June 2008 (RRI 62). At the time of settlement, GEICO requested that Tepper return all sets of keys in his possession (RRI 71). Tepper responded by sending GEICO a single set of keys (RRI 71).

Approximately eight months after filing theft reports with police and GEICO, Tepper was stopped by police in Texas while driving the truck that was the subject of the theft reports (RRI 71-73). Officer Howard Johnson stopped Tepper in November 2008 in Crowley, Texas, because the truck was listed in a national database as a stolen vehicle (RRII 123-24).

Officer Johnson described Tepper's behavior during the traffic stop as "unusual" and "odd" (RRII 127, 156-57). He testified that upon being stopped by multiple officers with guns drawn and being asked why he was driving a truck that had been reported stolen, Tepper claimed that he had no knowledge of his truck's being reported stolen (RRII 126-27, 28). Tepper changed his story and admitted that he had reported the truck stolen after he heard Officer Johnson speak to

Florida authorities, who confirmed that Tepper himself had reported the truck stolen (RRII 128).

The incident report that Officer Johnson completed after the traffic stop described Tepper's unusual behavior:

[Tepper] stated the pickup belonged to him and did not know why it was reported stolen. . . . He was not very forthcoming with information when I asked him why his vehicle was reported stolen if he was driving it. He said he did not know why.

(Pet. Ex. E). The report also stated that Officer Johnson had to contact a deputy in Florida to inquire about the situation because “[t]hings still did not make sense with the vehicle being reported stolen and the registered owner not knowing anything about it” (Pet. Ex. E). The report further stated that Tepper did not admit that he had reported the truck stolen until Officer Johnson confronted him with the information provided by the Florida deputy (Pet. Ex. E).

Tepper did not report the recovery of the truck to GEICO (RRI 89-90). Even after the traffic stop, Tepper did not contact GEICO (RRI 89-90). As a result, once GEICO was notified by authorities that Tepper had been stopped while he was driving the truck, GEICO had to conduct an investigation to determine the location of the truck so that it could be recovered (RRI 74-78).

When GEICO located the truck, GEICO's investigators had problems verifying that it was the correct vehicle because the vehicle identification number was obscured by a piece of cardboard (RRI 74). Once GEICO investigators were

able to confirm that it was the correct vehicle, they, together with local police and a member of the North Texas Auto Theft Task Force, recovered the truck in the early morning hours of February 12, 2009 (RRI 75-76).

Ultimately, on March 20, 2009, Tepper paid restitution to GEICO in the amount of the insurance proceeds that he had received plus GEICO's investigative expenses, and GEICO returned the truck to him (RRI 78). The State of Florida commenced criminal prosecution of Tepper for (1) false and fraudulent insurance claim, (2) theft of a motor vehicle, and (3) false report to law enforcement (Supp. CR E).

The Commission instituted disciplinary proceedings based on Tepper's actions (CR 19, 39). After a full evidentiary hearing during which Tepper was represented by counsel, the Evidentiary Panel found that Tepper engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation as alleged (App. 1). On August 8, 2012, the Panel imposed a partially probated suspension as a sanction for Tepper's misconduct and ordered him to pay attorneys' fees and direct expenses (App. 1). Tepper commenced this appeal on September 26, 2012 (CR 2328-31).

SUMMARY OF THE ARGUMENT

Tepper seeks reversal of the judgment in this case based on three arguments. First, he argues that the judgment is void because CDC did not make a timely determination of just cause. Contrary to Tepper's argument, CDC made a timely just-cause decision. In fact, even though the disciplinary rules do not require CDC to provide any notice of a just-cause decision, Tepper received notice from CDC prior to the just-cause deadline. And even if CDC had made an untimely just-cause decision, the Evidentiary Panel would not have been deprived of jurisdiction because the timing of a just-cause decision is not jurisdictional.

Tepper's second argument is that the evidence does not provide a sufficient basis for the Evidentiary Panel's finding that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. Tepper's argument is unsupportable because even if only the uncontroverted facts are considered, they are sufficient to provide a reasonable basis for the judgment. The uncontroverted evidence shows that Tepper filed an auto theft report with police and obtained \$17,000.00 from his insurer for the theft of his truck; he failed to notify police or his insurer of his subsequent recovery of the truck; and during a traffic stop when he was driving the truck that he had reported stolen, he denied that he had any knowledge that the truck had been reported stolen. Because Tepper failed to contact his insurance company even after the traffic stop, the insurance company

had to conduct an investigation to locate and recover the truck with the assistance of police. Five months elapsed between the time that Tepper regained possession of the truck and the insurer's recovery of the truck. During those five months, Tepper admittedly retained possession of both the truck and the insurance proceeds. Based on these uncontroverted facts, the Panel's conclusion that Tepper violated Rule 8.04(a)(3) is supported by well more than a scintilla of evidence.

Finally, Tepper argues that the cumulative effect of several procedural errors warrants reversal. His primary claim is that the Commission intentionally concealed evidence. However, the record does not support his accusation. Indeed, the record shows that the Commission sent the evidence to Tepper more than a year before trial. And if Tepper believed that the Commission's conduct was wrongful, he was obligated to seek relief prior to trial, which he did not do. He also did not show or even allege that he suffered any harm.

Tepper's final argument is that the term of the Evidentiary Panel's chair exceeded the limitations set forth in the disciplinary rules. Like his other arguments, Tepper's argument regarding the chair's term is unsupportable because the disciplinary rules do not place a limit on the term of a panel chair.

Because Tepper has failed to show reversible error, the Board should affirm the judgment in all respects.

ARGUMENT

- I. **Cases of attorney discipline involve two distinct phases: (1) an administrative screening phase to determine whether there is sufficient cause to proceed with litigation and (2) a litigation phase that takes place after the respondent attorney has an opportunity to choose whether to have the case proceed in district court or before an evidentiary panel of a district grievance committee.**

Every grievance against an attorney goes through an administrative screening process that takes place before the Commission may initiate a disciplinary action. The Texas Rules of Disciplinary Procedure, which have the same force and effect as statutes, govern the administrative screening process. *In re Caballero*, 272 S.W.3d 595, 599 (Tex. 2008); *O'Quinn v. State Bar of Tex.*, 763 S.W.2d 397, 399 (Tex. 1988).

- A. **The first step is to determine whether a grievance alleges conduct that constitutes professional misconduct.**

The disciplinary process generally begins with the filing of a grievance against an attorney.² TEX. R. DISCIPLINARY P. 2.10. Within thirty days after a grievance is filed, the Office of the Chief Disciplinary Counsel (CDC) must review it and make a threshold screening decision known as “classification.” *Id.* Classification involves a determination by CDC to categorize each incoming grievance as either (1) an “inquiry” that alleges conduct which does not constitute

²“‘Grievance’ means a written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyer, or lawyer Disability, or both, received by the Office of Chief Disciplinary Counsel.” TEX. R. DISCIPLINARY P. 1.06R.

professional misconduct or (2) a “complaint” that alleges conduct which does constitute professional misconduct. TEX. R. DISCIPLINARY P. 2.10, 1.06G, 1.06S. Grievances classified as inquiries are dismissed, but a grievance classified as a complaint is sent to the respondent attorney with notice to provide a written response to the allegations within thirty days. TEX. R. DISCIPLINARY P. 2.10.

B. The second step is to conduct a preliminary investigation to determine whether there is just cause to proceed.

Within sixty days after the deadline for a respondent attorney to provide a written response to a grievance that has been classified as a complaint, CDC must investigate the complaint and determine whether there is “just cause” to proceed. TEX. R. DISCIPLINARY P. 2.12. “Just cause” is defined as “such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney . . . has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed. . . .” TEX. R. DISCIPLINARY P. 1.06U. The disciplinary rules do not provide for the subpoena of documents or other methods of discovery during the just-cause phase. *Id.* Instead, the just-cause phase simply allows for a preliminary determination that is intended to weed out complaints that appear to be unsupportable. The disciplinary rules do not require that CDC provide notice to the respondent attorney of the just-cause decision, although CDC routinely notifies the respondent of the decision.

If CDC determines that there is no just cause, the matter is placed on a dismissal docket for presentation to a summary disposition panel of a grievance committee. TEX. R. DISCIPLINARY P. 2.13. The case is presented to the summary disposition panel by CDC without the presence of either the complainant or the respondent. *Id.* The dismissal docket is not adversarial in nature, and there is no testimony or formal admission of evidence. A summary disposition panel may vote to proceed despite CDC's determination that just cause does not exist, or the panel may dismiss the matter. *Id.* In either case, the panel's decision cannot be appealed. *Id.*

C. The third step is to provide notice of the basis for the just-cause finding and allow the respondent attorney to decide whether to have the case heard by an evidentiary panel or a district court.

After CDC determines that just cause exists or a summary disposition panel votes to proceed, CDC gives the respondent attorney written notice of the allegations of misconduct. TEX. R. DISCIPLINARY P. 2.14D. The disciplinary rules do not set forth any deadline for the written notice.

CDC also gives the respondent attorney the option to elect to have the matter heard in a district court or in an administrative setting before an evidentiary panel of a grievance committee. TEX. R. DISCIPLINARY P. 2.15. The attorney's election must be made within twenty days of receipt of the notice of allegations, and unless

the respondent attorney timely elects to proceed in district court, the disciplinary matter automatically proceeds before an evidentiary panel. *Id.*

D. Litigation begins after the respondent attorney has the opportunity to choose to have the case heard by an evidentiary panel or a district court.

If a respondent attorney chooses the administrative process, or fails to elect, litigation of the case begins when CDC files a disciplinary petition with an evidentiary panel. TEX. R. DISCIPLINARY P. 2.17A. The evidentiary panel determines professional misconduct and, if misconduct is found, imposes an appropriate sanction. TEX. R. DISCIPLINARY P. 2.17P. The proceedings are confidential, but if a public sanction is imposed, the proceedings become public upon request. TEX. R. DISCIPLINARY P. 2.16A. Both parties have the right to appeal an evidentiary panel's judgment to the Board, and the record on appeal is a public record. TEX. R. DISCIPLINARY P. 2.24, 2.16A. The parties also have the right to appeal the Board's decision to the Supreme Court. TEX. R. DISCIPLINARY P. 7.11.

If a respondent attorney chooses to proceed in district court, CDC files a disciplinary petition with the Supreme Court, which appoints an active district judge (from outside the administrative judicial region in which the respondent attorney resides) and then forwards the matter to a district court of proper venue, where the case generally proceeds as in any other civil case except where the Texas

Rules of Disciplinary Procedure specify otherwise. TEX. R. DISCIPLINARY P. 3.02, 3.03, 3.08B. The district court's judgment can be appealed "as in civil cases generally." TEX. R. DISCIPLINARY P. 3.16.

Before CDC actually initiates litigation by filing a petition with a district court or an evidentiary panel, no adjudication takes place. The pre-litigation phase includes only the administrative screening of the allegations of misconduct and a preliminary investigation to determine whether any allegation is viable. No action can be taken against a respondent attorney until the matter proceeds to the litigation phase before an evidentiary panel or a district court. TEX. R. DISCIPLINARY P. 2.17P, 2.18, 3.09, 3.10. Thus, there is no final determination prior to litigation.

II. Tepper's argument regarding the timing of the just-cause decision has no merit.

A. The record shows that the just-cause decision was timely.

Tepper first argues that the judgment in this case is void because CDC failed to make a timely just-cause decision. Contrary to Tepper's argument, there is nothing in the record to support his "belief" that the decision was untimely. In fact, the evidence in the record regarding the timing of the just-cause decision demonstrates that the decision was timely.

TRDP 2.12 requires that "[n]o more than sixty days after the date by which the Respondent must file a written response to the Complaint . . . the Chief

Disciplinary Counsel shall investigate the Complaint and determine whether there is Just Cause.” TEX. R. DISCIPLINARY P. 2.12. As demonstrated by the letter sent to Pepper on June 17, 2009, CDC did precisely what the rule requires – within sixty days after the deadline for Pepper’s response, CDC determined that just cause existed (App. 2; CR 19-22). Nothing in the record shows otherwise.

Despite the absence of any evidence to support his assertion that the just-cause decision was untimely, Pepper claims that the decision must have been untimely because CDC’s notice of the allegations of misconduct was sent after the deadline for the just-cause decision. Pepper’s argument is misplaced for two reasons: (1) there is no deadline for the notice of allegations, and (2) the notice of allegations was sent *before* the just-cause deadline.

TRDP 2.14D requires CDC to provide “written notice of the acts and/or omissions engaged in by the Respondent and of the [Rules] that [CDC] contends are violated.” TEX. R. DISCIPLINARY P. 2.14D. The provision of written notice is a step in the grievance process that is separate from the just-cause decision. And though TRDP 2.14D specifies where and how the notice is to be sent (by certified mail to the attorney’s registered address on the State Bar’s membership rolls), it is silent as to *when* it must be sent. TEX. R. DISCIPLINARY P. 2.14D. Thus, there is no deadline for the notice, and Pepper’s claim that his notice was late has no merit.

His attempt to graft the just-cause deadline onto the notice requirements of TRDP 2.14D is unsupportable.

Moreover, CDC extended Pepper's deadline for responding to the complaint to April 24, 2010, which in turn extended the deadline for the just-cause decision to June 23, 2010 (App. 2). Pepper admits that CDC sent the notice of allegations on June 17, 2010. Appellant's Br. 15-16. Thus, assuming for the sake of argument that CDC was required to send notice to Pepper by the just-cause deadline, the record definitively demonstrates that CDC satisfied its burden.

A. The timing of a just-cause decision does not affect an evidentiary panel's jurisdiction over a disciplinary action.

Jurisdictional error is rare. *Comm'n for Lawyer Discipline v. Schaefer*, 364 S.W.3d 831, 835-36 (Tex. 2012). An error is jurisdictional only if it undermines the capacity of an evidentiary panel or deprives it of jurisdiction to hear evidence and issue disciplinary orders. *Id.* An untimely just-cause decision is not the type of error that would rob an evidentiary panel of jurisdiction over a disciplinary action. *Comm'n for Lawyer Discipline v. Stern*, 355 S.W.3d 129, 136 (Tex.App.—Houston [1st Dist.] 2011, pet. denied). Therefore, even if CDC had failed to make a timely just-cause decision, jurisdiction would not have been affected.

Although the just-cause deadline is mandatory under TRDP 15.05, the Supreme Court has consistently held for more than a decade that mandatory requirements are not necessarily jurisdictional. In *Dubai Petroleum Co. v. Kazi*, 12

S.W.3d 71 (Tex. 2000), the Supreme Court first announced that it was explicitly overruling prior precedent holding that a plaintiff's failure to satisfy a statutory requirement deprives a trial court of jurisdiction over a cause of action. The Court acknowledged that "the modern direction of policy is to reduce the vulnerability of final judgments to attack" on the basis of jurisdictional deficiencies. *Id.* at 76; *see also Igal v. Brightstar Information Technology Group, Inc.*, 250 S.W.3d 78 (Tex. 2008) (holding that a mandatory statutory requirement is not jurisdictional unless the legislature intended for the requirement to be jurisdictional).

More recently, in *City of DeSoto v. White*, 288 S.W.3d 389 (Tex. 2009), the Supreme Court proclaimed that a statutory requirement is *presumed* to be non-jurisdictional and the presumption may be overcome only by clear legislative intent to the contrary. And in *In re United Services Auto. Ass'n*, 307 S.W.3d 299 (Tex. 2010), the Court criticized the relatively liberal approach which has led appellate courts, as well as the Supreme Court, to declare judgments void for the failure to satisfy mandatory statutory requirements. *See also Roccaforte v. Jefferson County*, 341 S.W.3d 919, 925 (Tex. 2011) (reiterating holding in *White* that a statutory requirement is presumed to be nonjurisdictional absent clear legislative intent to the contrary).

The *Dubai* line of cases directs that a court considering whether a statutory provision is jurisdictional should focus on the language of the provision at issue.

The provision that sets forth the just-cause deadline does not include any language indicating that the deadline is intended to be jurisdictional:

No more than sixty days after the date by which the Respondent must file a written response to the Complaint . . . CDC shall investigate the Complaint and determine whether there is Just Cause.

TEX. R. DISCIPLINARY P. 2.12.

There simply is nothing in the language to overcome the presumption that the deadline is non-jurisdictional. And in fact, another rule (TRDP 2.13) indicates that the deadline was *not* intended to be jurisdictional.

Under TRDP 2.13, if CDC determines that there is no just cause to proceed on a complaint, the complaint must be presented to a summary disposition panel, which must decide whether to approve CDC's determination. TEX. R. DISCIPLINARY P. 2.13. If the summary disposition panel overrules CDC's just-cause determination and votes to proceed, the case is placed on the hearing docket. *Id.* A summary disposition panel's decision to proceed would most likely occur after the 60-day deadline for determining just cause; therefore, it is clear that the rules do not intend for the 60-day deadline to be absolute. As such, the deadline cannot be jurisdictional.

In short, Tepper's argument that a late just-cause decision would leave an evidentiary panel without subject-matter jurisdiction is directly contrary to the established principle that a statutory requirement is presumed to be non-

jurisdictional and the presumption may be overcome only by clear legislative intent to the contrary. As a result, even if the just-cause decision in this case were untimely, to avoid waiver Tepper would have had to raise the issue with the Evidentiary Panel through a proper request, objection, or motion. TEX. R. APP. P. 33.1(a). He did not do so.

III. The evidence provides a reasonable basis for the finding that Tepper violated Rule 8.04(a)(3).

In his second issue, Tepper challenges the sufficiency of the evidence to support the judgment. He argues that the Panel's finding that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation is not supported by substantial evidence. Tepper's argument cannot succeed because even if the Board considers only the uncontroverted evidence, it is sufficient to support the judgment. Indeed, the facts that Tepper unequivocally admitted are sufficient to support the judgment.

A. The judgment must be affirmed if the evidence provides any reasonable basis for the Evidentiary Panel's conclusion that Tepper's actions violated the disciplinary rules.

In attorney disciplinary cases, the substantial evidence standard of review applies. TEX. GOV'T CODE ANN. § 81.072(b)(7) (Vernon 2009) (State Bar Act); TEX. R. DISCIPLINARY P. 7.11, *reprinted in* TEX. GOV'T CODE ANN. tit. 2, subtit. G app. A-1 (Vernon 2009); *Schaefer*, 364 S.W.3d at 835. The evidence is not

reviewed for factual and legal sufficiency as in an appeal from a district court's judgment.

Under the substantial evidence test, the findings of an administrative body are presumed to be supported by substantial evidence, and the party challenging the findings must bear the burden of proving otherwise. *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994). In determining whether there is substantial evidence to support the findings, the reviewing court may not substitute its judgment for that of the administrative body and must consider only the record upon which the decision is based. *R.R. Comm'n of Tex. v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995); *Tex. State Bd. of Dental Exam'rs v. Sizemore*, 759 S.W.2d 114, 116 (Tex. 1988).

The substantial evidence standard focuses on whether there is any reasonable basis in the record for the administrative body's findings. *City of El Paso*, 883 S.W.2d at 185. Anything more than a scintilla of evidence is sufficient to support a finding. *Tex. Dep't of Pub. Safety v. Cuellar*, 58 S.W.3d 781, 783 (Tex.App.—San Antonio 2001, no pet.). The ultimate question is not whether a finding is correct, but only whether there is some reasonable basis in the record for the finding. *City of El Paso*, 883 S.W.2d at 185.

B. The evidence provides a reasonable basis for the Evidentiary Panel's finding that Tepper engaged in conduct that involved dishonesty, fraud, deceit, or misrepresentation.

By its plain language, Rule 8.04(a)(3) prohibits an attorney from engaging in conduct that involves “dishonesty, fraud, deceit or misrepresentation.” TEX. DISCIPLINARY R. PROF’L CONDUCT 8.04(a)(3).

The disciplinary rules define “fraud” as “conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.” TEX. DISCIPLINARY R. PROF’L CONDUCT, Terminology. The disciplinary rules do not define the terms “dishonesty,” “deceit,” and “misrepresentation.”

Courts have concluded that, consistent with its ordinary meaning, the term “dishonesty” denotes “a lack of honesty, probity, or integrity in principle” and a “lack of straightforwardness,” particularly where the attorney acts to promote his own interests. *Rosas v. Comm’n for Lawyer Discipline*, 335 S.W.3d 311, 319 (Tex.App.—San Antonio 2010, no pet.); *Brown v. Comm’n for Lawyer Discipline*, 980 S.W.2d 675, 680 (Tex.App.—San Antonio 1998, no pet.). To prove an attorney’s conduct was dishonest, the Commission need not prove the attorney’s subjective intent. *See Lynn v. Bd. of Law Exam’rs*, 1999 WL 46683 at *3 (Tex.App.—Austin 1999, no pet.) (discussing the application of Rule 8.04(a)(3)).

In this case, there is well more than a scintilla of evidence to show that Tepper's failure to report the recovery of his truck involved dishonesty, fraud, deceit, or misrepresentation. In fact, because Tepper provided no explanation for his failure to report the recovery of the truck, the *only* reasonable conclusion to be drawn from the evidence is that his conduct involved dishonesty, fraud, deceit, or misrepresentation.

1. Testimony of Candace Donnell

Candace Donnell, a GEICO investigator, testified that in March 2008, Tepper filed an automobile theft claim with GEICO based on the supposed theft of his truck in Florida, and GEICO paid the claim in June 2008 (RRI 47, 62). GEICO asked for all sets of keys in Tepper's possession and received a single set (RRI 71).

Approximately five months later on November 23, 2008, Tepper was stopped by police in Texas while driving the truck that was the subject of his theft claim (RRI 71-73). Tepper had not reported the recovery of the truck to GEICO or police (RRI 89-90; Pet. Ex. A). Even after the traffic stop, Tepper did not contact GEICO (RRI 89-90). As a result, once GEICO was notified by authorities that Tepper had been stopped while he was driving the truck, GEICO had to conduct an investigation to determine the location of the truck so that it could be recovered (RRI 74-78).

When the truck was located, GEICO's investigators had problems verifying that it was the correct vehicle because the vehicle identification number was obscured by a piece of cardboard (RRI 74). Once GEICO investigators were able to confirm that it was the correct vehicle, they, together with local police and a member of the North Texas Auto Theft Task Force, recovered the truck in the early morning hours of February 12, 2009 (RRI 75-76). Ultimately, on March 20, 2009, Tepper paid restitution to GEICO in the amount of the insurance proceeds he originally received plus GEICO's investigative expenses, and GEICO returned the truck to him (RRI 78).

Tepper attempted to discredit Ms. Donnell's testimony through questions that implied that GEICO's investigative team improperly attempted to persecute him – a claim that the evidence does not support. In fact, the supplemental clerk's record that was requested by Tepper includes a docket sheet related to the State of Florida's criminal prosecution of Tepper for (1) false and fraudulent insurance claim, (2) theft of a motor vehicle, and (3) false report to law enforcement (Supp. CR E). The docket sheet states that on April 27, 2009, GEICO reported to the prosecutor that it had no interest in the pursuit of the criminal case because Tepper had paid restitution in full (Supp. CR E).

2. Testimony of Officer Johnson

Howard Johnson, a police officer, testified that he stopped Tepper in November 2008 in Crowley, Texas, because the truck that Tepper was driving was listed as a stolen vehicle (RRII 123-24). He described Tepper's behavior during the traffic stop as "unusual" and "odd" (RRII 127, 156-57). He testified that upon being stopped by multiple officers with guns drawn and being asked why he was driving a truck that had been reported stolen, Tepper claimed that he had no knowledge of his truck's being reported stolen (RRII 126-27, 28). Tepper changed his story and admitted that he had reported the truck stolen after he heard Officer Johnson speak to Florida authorities, who confirmed that Tepper himself had reported the truck stolen (RRII 128).

Officer Johnson's testimony is supported by the incident report that he completed the night he stopped Tepper:

[Tepper] stated the pickup belonged to him and did not know why it was reported stolen. . . . He was not very forthcoming with information when I asked him why his vehicle was reported stolen if he was driving it. He said he did not know why.

(Pet. Ex. E). The report also states that Officer Johnson had to contact a deputy in Florida to inquire about the situation because "[t]hings still did not make sense with the vehicle being reported stolen and the registered owner not knowing anything about it" (Pet. Ex. E). The report further states that Tepper did not admit

that he had reported the truck stolen until Officer Johnson confronted him with the information provided by the Florida deputy (Pet. Ex. E).

3. Documentary evidence

Additional documentary evidence supports the testimony of Ms. Donnell and Officer Johnson. A Florida police report details Tepper's claim that his truck was stolen (Pet. Ex. A). The report characterizes Tepper's claim as one for "Auto Theft" (Pet. Ex. A). GEICO paperwork also details Tepper's insurance claim and his recovery of more than \$17,000.00 in insurance proceeds (Pet. Ex. A). And on June 16, 2008, Tepper signed a notarized Sworn Statement in Proof of Loss that stated that, to the best of his knowledge and belief, "theft" caused the loss of his truck (Pet. Ex. B).

4. Testimony of Tepper

Tepper testified but did not offer any reasonable explanation for his failure to report the recovery of the truck. He said only that (1) he reported the truck "missing" rather than stolen, (2) he had no obligation to report his recovery of the truck, (3) "things came up," and (4) he was waiting for GEICO to call him (RRII 203-05, 237, 247, 255). He also failed to explain the obscured VIN.

Instead of offering a plausible explanation for his conduct, Tepper attacked the integrity of both of the Commission's trial attorneys who were assigned to his case; Ms. Donnell; Officer Reilly of the North Texas Auto Theft Task Force, who

participated in the investigation of Tepper for criminal fraud but did not testify at the hearing; and Craig McNeill, an assistant district attorney who filed the grievance against Tepper.

In the absence of any reasonable explanation for Tepper's failure to report the recovery of his truck to GEICO or police, which Tepper admitted and which was obviously incriminating, it was reasonable for the Panel to conclude that his conduct involved dishonesty, fraud, deceit, or misrepresentation. The circumstances surrounding Tepper's failure to report the recovery clearly show a lack of honesty, probity, or integrity in principle and a lack of straightforwardness. And the evidence provides ample support for the conclusion that Tepper intentionally failed to report the recovery of his truck so that he could avoid reimbursing GEICO.

In short, the only reasonable interpretation of the undisputed facts is that Tepper failed to report the recovery of his truck to GEICO because he intended for GEICO to continue to believe that the truck was stolen so that he would not have to repay GEICO. In other words, the purpose of his failure to report the recovery was to retain money that rightfully belonged to GEICO and thereby promote his own interest.

Moreover, the obscured vehicle identification number (VIN) on Tepper's truck shows an intent to deceive because it appears that the number was obscured in order to prevent the detection of the reportedly stolen truck.

If less time had lapsed between Tepper's recovery of the truck and GEICO's recovery of the truck, it might be more difficult to conclude that Tepper was intentionally dishonest or deceitful. Or if he had provided an excuse for the lengthy delay, such as intervening circumstances that prevented his reporting the recovery more promptly, it might be more difficult to conclude that his conduct was intentional. But under the circumstances, it was reasonable to conclude that he intentionally chose not to report his recovery of the truck so that he could retain money that rightfully belonged to GEICO. It was beyond the scope of reasonable behavior for Tepper, without explanation, to possess the money and the truck for five months without taking action to notify GEICO. He wrongfully held more than \$17,000.00 for at least five months.

IV. Tepper's final issue has no merit because there is no evidence of discovery abuse or the destruction of evidence and the panel chair was not limited to two one-year terms.

Tepper's final argument focuses on three issues that, he claims, warrant reversal because of their cumulative impact. Because none of the issues has merit, Tepper's final argument cannot succeed.

A. The record does not support Teppner's claim that the Commission's trial counsel intentionally removed pages from GEICO's business records or withheld information in response to discovery requests.

Teppner claims that the Commission removed pages from GEICO's business records and then failed to provide prompt notice of the filing of the business records so that he would not realize that the pages had been removed. The basis for his claim is that the two GEICO business records affidavits at issue stated that fifty-three and fifty-two pages were attached to the affidavits when only fifty pages were actually attached to each affidavit.

The Commission soundly refuted Teppner's baseless accusation by explaining that (1) the pages were miscounted and (2) the only page that Teppner specifically identified as missing was actually included but was out of order (RRI 56-68). Candace Donnell's sworn testimony supported the Commission's explanation (RRI 68). Nothing in the record provides any indication that the explanation was false. As such, there is no evidence of spoliation.

In addition, the Commission provided Teppner with notice of the filing of the business records well before the deadline set forth in the Texas Rules of Evidence (TRE). TRE 902(10)(a) states, "Notice shall be deemed to have been promptly given if it is served in the manner contemplated by Rule of Civil Procedure 21a fourteen days prior to commencement of trial in said cause." TEX. R. EVID. 902(10)(a). It is undisputed that the Commission served Teppner with notice of the

filing of the business records, and even provided him with copies of the records, more than a year prior to trial (RRI 49; CR 768). Therefore, notice was prompt.

Similarly, the record does not support Tepper's complaint that the Commission intentionally withheld GEICO's business records in response to a discovery request. Because the documents were on file with the Evidentiary Panel and notice of their filing was provided to Tepper well in advance of trial, it would be unreasonable to conclude that any failure to provide the records in discovery was designed to conceal the documents. Moreover, if Tepper wished to have the Panel sanction the Commission for failing to produce the documents in discovery, he should have moved for sanctions prior to the commencement of the evidentiary hearing. If a party fails to obtain a pretrial ruling on discovery misconduct that was known to the party before trial, the party waives any claim for sanctions. *Meyer v. Cathey*, 167 S.W.3d 327, 333 (Tex. 2005). Tepper was on notice of the existence of the business records more than a year before his hearing began and, therefore, was required to seek pre-hearing relief for the Commission's supposed failure to provide the documents in discovery.³ As a result, it would have been an abuse of discretion for the Panel to sustain Tepper's objection to the Commission's use of the documents at trial, especially because Tepper could not have been

³ Tepper also waived any complaint regarding his attempt to depose Candace Donnell. As with his complaints regarding the Commission's supposed failure to produce documents in discovery, Tepper did not seek relief from the Panel prior to the hearing (RRII 115-18).

harmful by any failure to produce the documents in discovery when he was served with a copy of the documents more than a year before trial.

B. The chair of the Evidentiary Panel could not have exceeded any term limit because the disciplinary rules do not establish term limits for panel chairs.

Tepper's final argument is that the judgment is void because a person may serve as chair of an evidentiary panel for only two one-year terms and Karen Hanson served as chair for more than two years. Tepper's specious argument cannot succeed because the disciplinary rules do not establish term limits for panel chairs. The provision upon which Tepper relies governs the terms of grievance committee chairs, not panel chairs. TEX. R. DISCIPLINARY P. 2.03. There is no similar provision for panel chairs.⁴

⁴ Toward the end of his brief, Tepper refers to a number of rulings that were adverse to him. Appellant's Br. 42-45. However, he does not articulate any basis for finding reversible error or identify any harm that he suffered because of the rulings. Thus, he has waived any error related to the rulings.

CONCLUSION AND PRAYER

For these reasons, the Commission prays that the Board affirm the judgment of the District 6-A2 Evidentiary Panel of the State Bar of Texas.

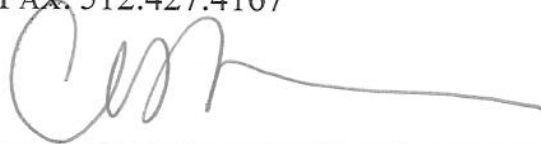
RESPECTFULLY SUBMITTED,

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A handwritten signature in dark ink, appearing to be 'CCH', with a long horizontal line extending to the right.

CYNTHIA CANFIELD HAMILTON
STATE BAR CARD No. 00790419
ATTORNEY FOR APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Brief of Appellee, the Commission for Lawyer Discipline, has been served on Max Leon Tepper by and through his attorney of record, Mr. Matthew Sharp, by email (as agreed) on the 10th day of June 2013.

A handwritten signature in black ink, appearing to read 'CH', with a long horizontal flourish extending to the right.

CYNTHIA CANFIELD HAMILTON
SENIOR APPELLATE COUNSEL
STATE BAR OF TEXAS

No. 50185

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

MAX LEON TEPPER,
APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

*On Appeal from the Evidentiary Panel
For the State Bar of Texas District 6-A2
No. D0020936831*

**APPENDIX TO BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE**

RESPECTFULLY SUBMITTED,

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CHIEF DISCIPLINARY COUNSEL

LAURA BAYOUTH POPPS
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No. 50185

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

MAX LEON TEPPER,

APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

*On Appeal from the Evidentiary Panel
For the State Bar of Texas District 6
No. D0020936831*

**APPENDIX TO BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE**

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits the following record excerpts in support of its Brief:

APPENDIX 1: Judgment of Partially Probated Suspension (CR 1738-45)

APPENDIX 2: Supplemental Documents Regarding Just-Cause Deadline

Appendix 1

BEFORE THE DISTRICT 6 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 6-A2
STATE BAR OF TEXAS

COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner

V.

MAX LEON TEPPER,
Respondent

§
§
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§
§

D0020936831

JUDGMENT OF PARTIALLY PROBATED SUSPENSION

Parties and Appearance

On April 5, 2012, and July 11, 2012, came to be heard the above styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, Max Leon Tepper, Texas Bar Number 24033377, appeared in person and through attorney of record and announced ready.

Jurisdiction and Venue

The Evidentiary Panel 6-A2 having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 6, 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 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 his principal place of practice in Dallas County, Texas.
3. Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.
4. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees and direct expenses associated with this Disciplinary Proceeding in the amount of \$16,394.63.

Conclusions of Law

The Evidentiary Panel concludes that, based on foregoing findings of fact, the following Texas Disciplinary Rule of Professional Conduct has been violated: 8.04(a)(3).

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 Rules of Disciplinary Procedure, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is a Partially Probated Suspension.

Accordingly, it is ORDERED, ADJUDGED and DECREED that Respondent be suspended from the practice of law for a period of three years, beginning September 1, 2012, and ending August 31, 2015. Provided Respondent complies with the following terms and conditions, Respondent shall be actively suspended from the practice of law for a period of one year beginning September 1, 2012, and ending August 31, 2013. If Respondent complies with all of the following terms and conditions timely, the two-year period of probated suspension shall begin on September 1, 2013, and shall end on August 31, 2015:

1. Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of Sixteen Thousand Three Hundred Ninety-Four and 63/100 Dollars (\$16,394.63). The payment shall be due and payable on or before December 1, 2012, 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
2. Respondent shall pay reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Five Thousand 00/100 Dollars (\$5,000.00) in the event Respondent appeals to the Board of Disciplinary Appeals and the judgment is affirmed. The payment shall be due and payable within 30 days of the issuance of a decision by the Board of Disciplinary Appeals, 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
3. Respondent shall pay reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand 00/100 Dollars (\$3,000.00) in the event Respondent appeals to the Supreme Court of Texas and the judgment is affirmed. The payment shall be due and payable within 30 days of the issuance of a decision by the Supreme Court of Texas, 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
4. Respondent shall make contact with the Chief Disciplinary Counsel's Offices' Compliance Monitor at 877-953-5535, ext. 1334 and Special Programs Coordinator at 877-953-5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

Should Respondent fail to comply with all of the above terms and conditions timely, Respondent shall remain actively suspended until the date of compliance or until August 31, 2015, whichever occurs first.

Terms of Active Suspension

It is further ORDERED that during the term of active suspension ordered herein, or that may be imposed upon Respondent by the Board of Disciplinary Appeals as a result of a probation revocation proceeding, Respondent shall be prohibited from practicing law in Texas; holding himself out as an attorney at law; performing any legal services for others; accepting any fee directly or indirectly for legal services; appearing as counsel or in any

representative capacity in any proceeding in any Texas or Federal court or before any administrative body; or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

It is further ORDERED that, on or before September 1, 2012, Respondent shall notify each of Respondent's current clients and opposing counsel in writing of this suspension.

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

It is further ORDERED Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) on or before September 1, 2012, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein.

It is further ORDERED Respondent shall, on or before September 1, 2012, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing.

It is further ORDERED Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St.,

Austin, TX 78701) on or before September 1, 2012, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court.

It is further ORDERED that, on or before September 1, 2012, Respondent shall surrender his law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of Texas.

Terms of Probation

It is further ORDERED that during all periods of suspension, Respondent shall be under the following terms and conditions:

5. Respondent shall not violate any term of this judgment.
6. Respondent shall not engage in professional misconduct as defined by Rule 1.06(V) of the Texas Rules of Disciplinary Procedure.
7. Respondent shall not violate any state or federal criminal statutes.
8. Respondent shall keep State Bar of Texas membership department notified of current mailing, residence and business addresses and telephone numbers.
9. Respondent shall comply with Minimum Continuing Legal Education requirements.
10. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.
11. 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.
12. Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of Sixteen Thousand Three Hundred Ninety-Four and 63/100 Dollars (\$16,394.63). The payment shall be due and payable on or before December 1, 2012, 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
13. Respondent shall pay reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Five Thousand 00/100 Dollars (\$5,000.00) in the event Respondent appeals to the Board of Disciplinary Appeals and the

judgment is affirmed. The payment shall be due and payable within 30 days of the issuance of a decision by the Board of Disciplinary Appeals, 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

14. Respondent shall pay reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand 00/100 Dollars (\$3,000.00) in the event Respondent appeals to the Supreme Court of Texas and the judgment is affirmed. The payment shall be due and payable within 30 days of the issuance of a decision by the Supreme Court of Texas, 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
15. Respondent shall make contact with the Chief Disciplinary Counsel's Offices' Compliance Monitor at 877-953-5535, ext. 1334 and Special Programs Coordinator at 877-953-5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

Probation Revocation

Upon 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 pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals ("BODA") and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

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

It is further ORDERED that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for

discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Attorney's Fees and Expenses

It is further ORDERED Respondent shall pay all reasonable and necessary attorney's fees and direct expenses to the State Bar of Texas in the amount of Sixteen Thousand Three Hundred Ninety-Four and 63/100 Dollars (\$16,394.63). The payment shall be due and payable on or before December 1, 2012, 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further ORDERED Respondent shall pay reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Five Thousand 00/100 Dollars (\$5,000.00) in the event Respondent appeals to the Board of Disciplinary Appeals and the judgment is affirmed. The payment shall be due and payable within 30 days of the issuance of a decision by the Board of Disciplinary Appeals, 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, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further ORDERED Respondent shall pay reasonable and necessary attorney's fees to the State Bar of Texas in the amount of Three Thousand 00/100 Dollars (\$3,000.00) in the event Respondent appeals to the Supreme Court of Texas and the judgment is affirmed. The payment shall be due and payable within 30 days of the issuance of a decision by the Supreme Court of Texas, 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, Chief Disciplinary Counsel's Office, 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, 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

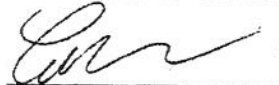
This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 14 day of August, 2012.

EVIDENTIARY PANEL
DISTRICT NO. 6
STATE BAR OF TEXAS



Caren K. Lock
District 6-A2 Presiding Member

Appendix 2

BURLESON, PATE & GIBSON, L.L.P.
Attorneys and Counselors at Law

Phil Burleson
1933-1995

John E. Agnew
John E. Collins ■
Timothy A. Duffy
Michael P. Gibson *
Carl David Medders
Tom Pappas *

* Board Certified Criminal Law
■ Board Certified Personal Injury Trial Law
Texas Board of Legal Specialization

A Limited Liability Partnership

Founders Square
900 Jackson Street, Suite 330
Dallas, TX 75202
Telephone (214) 871-4900
Facsimile (214) 871-7543
www.bp-g.com

Of Counsel:
J. Craig Jett *
Dan Montalvo
Jack C. Pate

March 13, 2009

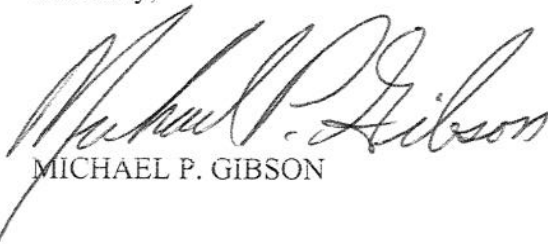
Mr. Gary Nation
Office of the Chief Disciplinary Counsel
State Bar of Texas
One Lincoln Centre
5400 LBJ Freeway, Suite 1280
Dallas, Texas 75240

Re: D0020936831 - Craig A. McNeil - Max Leon Teppar

Dear Mr. Nation:

Please be advised that I represent Mr. Teppar in connection with the above complaint. We will file our written response within thirty (30) days of today if that is agreeable to you. Please let me hear from you if it is not agreeable.

Sincerely,


MICHAEL P. GIBSON

MPG:cmb

cc: Max Leon Teppar, III

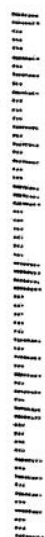
BURLESON, PATE & GIBSON L.L.P.

ATTORNEYS AND COUNSELORS
Founders Square
900 Jackson Street, Suite 330
Dallas, Texas 75202



Mr. Gary Nation
Office of the Chief Disciplinary Counsel
State Bar of Texas
One Lincoln Centre
5400 LBJ Freeway, Suite 1280
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7524041025



BURLESON, PATE & GIBSON, L.L.P.
900 JACKSON STREET, SUITE 330
DALLAS, TEXAS 75202
(214) 871-4900
FAX: (214) 871-7543

FAX TRANSMISSION

TO: Gary Nation **FAX:** 972-383-2935
Date: April 13, 2009
Pages: 2, including this cover sheet.
Re: Max Leon Tepper
From: Cally Brown
Paralegal to Michael P. Gibson, Tom Pappas and Carl David Medders
Comments:

NOTE: The information contained in this facsimile is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination or copy of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original message to us at the above address via the United States Postal Service. Thank you.

If this Fax is not received in completion, please notify Cally Brown at (214) 871-4900.

Phil Burleson
1933-1995

John E. Agnew
John E. Collins *
Timothy A. Duffy
Michael P. Gibson *
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Tom Pappas *

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Of Counsel:
J. Craig Jett *
Dan Montalvo
Jack C. Pate

April 13, 2009

VIA FAX: (972) 383-2935

Mr. Gary Nation
Office of the Chief Disciplinary Counsel
State Bar of Texas
One Lincoln Centre
5400 LBJ Freeway, Suite 1280
Dallas, Texas 75240

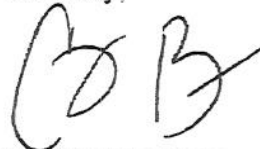
Re: D0020936831 - Craig A. McNeil - Max Leon Teppar

Dear Mr. Nation:

Our firm represents Max Leon Teppar in the above matter. Mr. Gibson is currently in trial in Cause No. 3:07-CR-2016-IEG; *United States of America v. Jeffrey A. Light* (14); In the United States District Court for the Southern District of California, San Diego Division. We would request an extension in order to file a written response on Mr. Teppar's behalf until April 24, 2009. It is my understanding that there will be no further extensions.

If my understanding is incorrect, please let me know immediately.

Sincerely,



CALLY BROWN
Paralegal to Michael P. Gibson

/cmb

cc: Mr. Max Leon Teppar, III

BURLESON, PATE & GIBSON, L.L.P.

Attorneys and Counselors at Law

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Timothy A. Duffy
Michael P. Gibson *
Carl David Medders
Tom Pappas *

* Board Certified Criminal Law
▪ Board Certified Personal Injury Trial Law
Texas Board of Legal Specialization

April 23, 2009

VIA CERTIFIED MAIL

7008 3230 0002 3252 1084

Mr. Gary Nation
Office of the Chief Disciplinary Counsel
State Bar of Texas
One Lincoln Centre
5400 LBJ Freeway, Suite 1280
Dallas, Texas 75240

Re: D0020936831 - Craig A. McNeil - Max Leon Tepper

Dear Mr. Nation:

Mr. Tepper's response to each of the facts set out in the Complaint are as follows:

- a. Mr. Tepper reported to both Geico and the Bay County Sheriff's Department that his 2004 Chevrolet pickup was not parked where he had left it and it was missing.
- b. When Mr. Tepper executed the Geico Vehicle Theft Questionnaire, he did not know the location of his pickup truck. He presumed it was stolen since he did not know where his truck was located. He did not have it at that time.
- c. Is accurate.
- d. Is accurate.
- e. Mr. Tepper did not know or realize that Geico would re-title the pickup truck in their name after they paid the claim. He believed the pickup was still titled in his name.
- f. Is accurate except that the truck was parked at 3440 Milton Street.
- g. Mr. Tepper has 3 pending charges in Bay County, Florida. One charge is False and Fraudulent Insurance Claim, a felony. One charge is Theft of a Motor Vehicle, a felony. One charge of a False Report to Law Enforcement, a misdemeanor. All of these cases are pending and no resolution of them has taken place. Mr. Tepper, when made aware of the charges, traveled to Florida and self surrendered to the Sheriff's Department. He is on bond and is represented by counsel.



Mr. Gary Nation
April 23, 2009
Page 2

- h. Is accurate. However, no formal charges have been filed as of the date of this response.

Mr. Tepper has paid full and complete restitution to Geico Insurance in the amount of \$19,688.00 (Exhibit "A") This amount represents payment to Geico for the settlement claim and all associated costs. Geico has signed the title of the car over to Mr. Tepper and released him. (Exhibit "B")

Mr. Tepper denies that his conduct involving his truck and the insurance claim involved dishonesty, fraud or misrepresentations in violation of Rule 8.04(d)(3).

Mr. Tepper exercised poor judgment in not timely notifying Geico that he had found his pickup truck and had possession of it. But his mistake in not timely reporting it and resolving the issue was a mistake, but not an intentional knowing criminal act.

Sincerely,



MICHAEL P. GIBSON

MPG:cmb
Enclosures

cc: **VIA CERTIFIED MAIL**
7008 3230 0002 3252 1091
Mr. Craig McNeil
Special Assistant District Attorney
133 N. Industrial Blvd., LB 19
Dallas, Texas 75207-4399

Mr. Max Leon Tepper, III