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FOURTEENTH COURT OF APPEALS  
COURT OF APPEALS NUMBER: 14-17-00521-CV  
TRIAL COURT CAUSE NO. 2013-56866  
REPORTER'S RECORD  
VOLUME 1 OF 1 VOLUME(S)

FILED IN  
14th COURT OF APPEALS  
HOUSTON, TEXAS  
8/2/2017 11:48:09 AM  
CHRISTOPHER A. PRINE  
Clerk

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COMMISSION FOR LAWYER )  
DISCIPLINE ) IN THE DISTRICT COURT  
Petitioner )  
V. ) HARRIS COUNTY, TEXAS  
ROBERT S. BENNETT )  
Respondent ) 334TH JUDICIAL DISTRICT

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**CLOSING ARGUMENTS**  
**RULING OF THE COURT**  
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On the 24th day of May, 2017, the following proceedings came on to be heard in the above-entitled and numbered cause before the HONORABLE CRAIG SMITH, Judge presiding, held in Houston, Harris County, Texas;

Proceedings reported by machine shorthand.

CYNTHIA BERRY, CSR  
OFFICIAL COURT REPORTER - 334TH DISTRICT COURT



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1 May 24, 2017

2 P R O C E E D I N G S

3 THE COURT: Everybody be seated.

4 I am Craig Smith. I'm the Judge of the 192nd,  
5 sitting by appointment for the 334th in this matter, the  
6 Commission for Lawyer Discipline vs. Robert Bennett.

7 Let's just announce for the record who we have.

8 Mr. Bersch?

9 MR. BERSCH: My name is Tim Bersch. I'm the  
10 attorney for the petitioner of the Commission for Lawyer  
11 Discipline.

12 THE COURT: Mr. Wagnon?

13 MR. WAGNON: Jeffrey Wagnon. I'm counsel for  
14 Mr. Bennett.

15 THE COURT: And Mr. Bennett.

16 MR. BENNETT: Your Honor, Bob Bennett, the  
17 respondent in the case.

18 THE COURT: And it was discussed before we went  
19 on the record that Mr. Bennett is going to be representing  
20 himself in this matter?

21 MR. WAGNON: That's correct, Your Honor.

22 THE COURT: Plaintiff has handed me Petitioner's  
23 Exhibits part 2, which are items --

24 MR. BERSCH: 21 through 50.

25 THE COURT: -- 21 through 50, representing to me

1 they were already admitted. I take his word for it, until  
2 otherwise. I've got those here.

3 Mr. Bennett, do you want to present me with a  
4 couple cases that have already been filed, but probably didn't  
5 get in my folder before I left Dallas?

6 MR. BENNETT: That's probably right, Your Honor.  
7 What I've marked as Exhibit 1 is a letter from Mr. Wagon. It  
8 has two cases, one from Tennessee, and the other from Florida.  
9 And I'd like -- I'll be arguing from that. Copies have been  
10 sent to Mr. Bersch. And I've marked it as Exhibit Number 1.

11 THE COURT: Thank you.

12 MR. BENNETT: So that would be respondent's  
13 Exhibit Number 1.

14 THE COURT: All right. Thank you.

15 MR. BERSCH: May I be heard on that offer, or is  
16 the Court going to --

17 THE COURT: I haven't done anything with it yet.

18 MR. BERSCH: Sorry. Sure.

19 THE COURT: I said okay.

20 This is a preliminary matter. I'm trying to do  
21 a little housekeeping, and we'll get down to the meat of this  
22 real soon. What else you got?

23 MR. BENNETT: Your Honor, I think this is what  
24 both Mr. Bersch and I are concerned about. When I made that  
25 offer, I wanted that to be part of the record. And so

1 whatever -- it's not part of the original filing in the case.

2 THE COURT: Just a minute. Has this been filed  
3 with the court?

4 MR. BENNETT: Yes, sir.

5 THE COURT: Well, then it's in the record. This  
6 is just a copy of it.

7 MR. BENNETT: That's correct, Your Honor.

8 THE COURT: So I don't have to admit it or not  
9 admit it. Whatever is in the record is in the record.

10 MR. BENNETT: Well, I would prefer if the Court  
11 would admit it, so there's no question it's before the Court,  
12 and whatever we have to do with that --

13 THE COURT: It's not a piece of evidence that I  
14 can admit at this time. I mean, I know you know the rules. I  
15 trust you think I know the rules. All right?

16 MR. BENNETT: Yes, sir. That's all we have  
17 right now.

18 THE COURT: Thank you.

19 Anything else?

20 MR. BERSCH: No, Your Honor.

21 THE COURT: Everybody here in this courtroom for  
22 this matter?

23 MS. JAMISON: Yes, Your Honor. May I approach?

24 THE COURT: Sure. What you got?

25 MS. JAMISON: Just a motion to withdraw. We

1 were Mr. Bennett's -- we were appellate counsel for  
2 Mr. Bennett, and we're still counsel of record. We filed a  
3 motion to withdraw, and so I just thought that we would come by  
4 today and see if we could get you to sign the order.

5 THE COURT: Let me see if there is any  
6 objection.

7 MR. WAGNON: I have no objection.

8 MR. BENNETT: There's no objection.

9 MR. BERSCH: Could the person who is speaking  
10 identify herself for the record?

11 MS. JAMISON: Marie Jamison, from Wright &  
12 Close.

13 MR. BERSCH: Petitioner has no objection.

14 THE COURT: I'll sign and enter the order right  
15 now.

16 MS. JAMISON: I have one. It's the one that's  
17 been filed. (Document tendered).

18 THE COURT: All right. It's the 24th, you are  
19 withdrawn. I'm not going to keep you. I assume you can get a  
20 copy of this off the --

21 MS. JAMISON: -- that's right, Your Honor, from  
22 the clerk's website.

23 THE COURT: All right.

24 MS. JAMISON: May I be excused?

25 THE COURT: You are excused. Thank you for

1 being here.

2 (Ms. Jamison exits courtroom)

3 THE COURT: Anybody else need to visit with me  
4 on this before we --

5 MR. BERSCH: My only question I would pose, or  
6 perhaps the Court was going to address it, is how much time the  
7 Court is going to give the parties for the argument.

8 THE COURT: That's where we're going next. How  
9 much time do you anticipate, Mr. Bersch, just for your side,  
10 for all of this case?

11 MR. BERSCH: Oh, well, I think --

12 THE COURT: I know you don't have control of it  
13 all.

14 MR. BERSCH: Yes. It's just --

15 THE COURT: I promise I understand this.

16 MR. BERSCH: -- argument from each side, so I  
17 was going to request 40 minutes argument for petitioner,  
18 30 minutes to begin with, and 10 minutes for rebuttal.  
19 Obviously, then I would agree to 40 minutes for the other side.  
20 So that's 80 minutes, and that's an hour and 20 minutes.

21 THE COURT: Mr. Bennett?

22 MR. BENNETT: I think that's fair, Your Honor.

23 THE COURT: Okay. I should have written that  
24 down then.

25 MR. BENNETT: I'm sure you'll remember, Your



1 Honor. I'm sure you'll remember that.

2 THE COURT: I'm not sure I will.

3 MR. BENNETT: That plane will be leaving this  
4 afternoon.

5 THE COURT: My flight is not the issue.

6 I'll tell you, this is serious. I understand  
7 that. And I'm not quite as formal as some Judges are; but I  
8 promise you, I take -- I understand the seriousness of this  
9 matter; but I've studied the file, and I am ready to move  
10 forward with this.

11 I'd like to get, not just a summary, I think an  
12 opening on where the heck we are. Because I'm reading that --  
13 have you been living under a suspension for the last two years,  
14 and not practicing law?

15 MR. BENNETT: Well, technically, Your Honor, I  
16 was disbarred. And so I was under a disbarment order until, I  
17 guess, March of this year.

18 MR. BERSCH: Of last year.

19 MR. BENNETT: Last year. And then, so I was not  
20 suspended, I was disbarred. And then the Court of Appeals came  
21 back and --

22 THE COURT: I read all that. I've read why I'm  
23 here; but I did read your paperwork, and your lawyer's  
24 submission. You were not actually practicing law for two  
25 years.

1 MR. BENNETT: For two years.

2 THE COURT: Because of the disbarment finding in  
3 this court --

4 MR. BENNETT: Of the trial court.

5 THE COURT: -- of the prior Judge in this court.

6 All right. Good.

7 Now, is it my understanding that there's been a  
8 disciplinary action filed against Mr. Bersch?

9 MR. BENNETT: Judge, there is not a disciplinary  
10 action; there's a motion for sanctions that's been filed. That  
11 was filed in the original case.

12 THE COURT: In this case?

13 MR. BENNETT: Uh-huh.

14 THE COURT: What's the status of that?

15 MR. BENNETT: Well --

16 THE COURT: I just need to know.

17 MR. BERSCH: -- it was never dealt with, Your  
18 Honor. It was filed the day that we went to trial, March 17,  
19 2014. And because it was filed that day, and we were starting  
20 trial, I didn't file a response. We then had the three-day  
21 trial, the Judge signed the judgment of disbarment, and we had  
22 the appellate process, and it's just sat there. It's been  
23 sitting there for three years.

24 THE COURT: All right.

25 MR. BENNETT: I'm not going to argue that today,

1 Your Honor.

2 THE COURT: We're not -- I don't think you're  
3 going to argue it ever. Y'all let me know what your intention  
4 is, and I can make a ruling.

5 MR. BENNETT: I'll withdraw that motion, Your  
6 Honor.

7 THE COURT: All right. I appreciate that.  
8 So what else? We're just dealing with the  
9 sanction on this one finding.

10 MR. BENNETT: On one DR.

11 THE COURT: The 3.02.

12 MR. BENNETT: Yes, sir.

13 THE COURT: You can go back to the table.  
14 Mr. Bersch, give me your timeline again.

15 MR. BERSCH: Yes, Your Honor. Requesting  
16 40 minutes for petitioner's argument, of which I would use  
17 30 minutes to begin with, and then reserve 10 minutes for my  
18 rebuttal, after respondent has made his argument.

19 THE COURT: All right. And that is in line and  
20 agreeable with you; right, Mr. Bennett?

21 MR. BENNETT: That's correct, Your Honor.

22 THE COURT: So I guess I'm going to get my  
23 phone; that's the way I keep time.

24 All right. Mr. Bersch.

25 MR. BERSCH: Yes, Your Honor.

1 THE COURT: You're up.

2 MR. BERSCH: Thank you very much.

3 First of all, Your Honor, on behalf of the  
4 petitioner, I would like to express appreciation for the Court  
5 accepting this assignment, and for making the trip down here  
6 today for this hearing.

7 As the Court has already indicated, it is a very  
8 serious matter, both for the petitioner and for respondent, and  
9 we appreciate the opportunity to address the Court on these  
10 issues today.

11 I'd like to start, just very briefly, with a  
12 short overview of how we came to be here today in front of the  
13 Court.

14 Petitioner filed this disciplinary proceeding  
15 against the respondent, Robert S. Bennett, in 2013. The case  
16 was tried from March 17th through 19th of 2014, before the  
17 Honorable Carmen Kelsey, sitting without jury.

18 At the conclusion of the trial, Judge Kelsey  
19 found that the respondent violated two disciplinary rules,  
20 1.15(d) and 3.02, and she imposed the sanction of disbarment on  
21 respondent. Judge Kelsey signed the final judgment of  
22 disbarment on March 21st, 2014.

23 Rule 1.15(d) has several elements, one of which  
24 is the requirement to refund an unearned advanced fee upon  
25 termination of representation. Judge Kelsey found the

1 respondent violated that element of the rule in regard to a  
2 former client of respondent's by the name of Gary Land.

3           Judge Kelsey also found that respondent  
4 violated both of the two elements of Rule 3.02 in the course of  
5 his litigation with Mr. Land regarding the fee dispute. Rule  
6 3.02 reads as follows: "In the course of litigation a lawyer  
7 shall not take the position that unreasonably increases the  
8 costs or other burdens of the case, or that unreasonably delays  
9 resolution of the matter."

10           Respondent appealed that judgment of disbarment  
11 to the Fourteenth Court of Appeals. The Fourteenth Court  
12 issued its opinion and its judgment on March 24th, 2016,  
13 reversing the finding of the 1.15(d) violation.

14           THE COURT: Finding no evidence.

15           MR. BERSCH: That's correct. Affirming the  
16 finding of a Rule 3.02 violation, reversing that part of the  
17 judgment that ordered the disbarment, and remanding the case to  
18 the trial court for a determination of the sanction to be  
19 imposed. Neither side sought review to the Supreme Court of  
20 Texas, therefore, the Fourteenth Court issued its mandate on  
21 June 9, 2016.

22           It reiterated what it had set forth in its  
23 judgment as to its holdings, remanding the case to the trial  
24 court, "for reconsideration of the appropriate sanction to  
25 impose on appellant as a result of his violation of only

1 Rule 3.02 of the Texas Disciplinary Rules of Professional  
2 Conduct."

3           Now, by the time this mandate was issued, in  
4 June of 2016, Judge Kelsey no longer occupied her bench. And,  
5 therefore, on August 17, 2016, the Supreme Court assigned Your  
6 Honor to preside over this matter.

7           Now, with that as the background as to why we're  
8 here today, how we got to be here today, petitioner's view of  
9 the task facing this Court. Pursuant to the mandate issued by  
10 the Fourteenth Court, this Court's task is to determine that  
11 appropriate sanction to impose on respondent. It is a fixed  
12 part of the case that respondent did violate Rule 3.02 of the  
13 Texas Disciplinary Rules of Professional Conduct.

14           Now, before we get into the details of the  
15 evidence, which we think can be brought to bear for the Court  
16 in accomplishing its task, we have two preliminary points.

17           First of all, just to be clear about this,  
18 because there were two rule violations originally found, and  
19 the Court reversed one of them, all of respondent's actions  
20 that supported the finding of a Rule 1.15(d) violation are part  
21 of the actions that support the finding of a Rule 3.02  
22 violation. The basic point is that none of the respondent's  
23 actions that he took, and that we presented evidence regarding,  
24 were rendered irrelevant by the fact that the Court reversed  
25 the finding of the 1.15(d) violation.

1                   What we have done in our case, and I'm going to  
2 go through with the Court in a few minutes, is to focus on the  
3 respondent's actions beginning on July 23rd, 2012, when Judge  
4 Kyle Carter of the 125th District Court, here in Harris County,  
5 issued a judgment confirming the arbitration award that had  
6 been issued by the Fee Dispute Committee of the Houston Bar  
7 Association, in favor of Gary Land, and against respondent.

8                   So we start with that date, July 23rd, 2012, and  
9 we look at respondent's actions up to the first part of March  
10 of 2014, when two things happened. First of all, the deadline  
11 came and went for respondent to file a motion for rehearing  
12 with the Supreme Court of Texas regarding the petition for  
13 review that had been denied. That deadline came and went, and  
14 respondent did not seek a rehearing.

15                   Secondly, on, apparently, based on the  
16 discussion that is in the record from the trial of the case, on  
17 Friday, March 14, 2014, three days before the case went to  
18 trial, respondent's counsel informed counsel for Gary Land  
19 that respondent would no longer oppose an effort by Mr. Land  
20 to remove the money from the Registry of the Court that  
21 Mr. Bennett had been ordered to pay to Mr. Land back in July of  
22 2012.

23                   So our focus in the case and our focus today is  
24 from July 23, 2012 through March of 2014. And all of  
25 respondent's improper actions during this period are still part

1 of this case, even though we're now dealing with one rule  
2 violation instead of two.

3           The second preliminary point is somewhat related  
4 to the first one. Although it reversed Judge Kelsey's finding  
5 that respondent has violated Rule 1.15(d), the Court of Appeals  
6 did not reverse any of the evidentiary findings and other  
7 rulings of which respondent had complained.

8           For example, respondent argued he was acting as  
9 a party in the litigation with Mr. Land and, therefore, Rule  
10 3.02 did not apply to him. The Fourteenth Court held that  
11 "Undisputed evidence shows that Bennett was not only a party,  
12 but also acted as an attorney, representing himself and his law  
13 firm in the dispute with Land." And therefore, "the trial  
14 Court did not err when it determined that Rule 3.02 applied to  
15 Bennett's conduct."

16           Respondent had argued that his appeal of Judge  
17 Carter's decision was permitted under the terms of his attorney  
18 retainer and dispute resolution agreement with Mr. Land. The  
19 Fourteenth Court held that "Bennett's proposed construction of  
20 the agreement is not reasonable for several reasons."

21           Respondent had argued that the decision of the  
22 First Court of Appeals, when it considered Land's -- when it  
23 considered his appeal of Judge Carter's decision, that the  
24 first -- the decision of the First Court of Appeals to deny  
25 Land's request for sanctions for filing a frivolous appeal thus



1 prevented any conclusion that he violated Rule 3.02. The  
2 Fourteenth Court held to the contrary, that "the failure to  
3 grant appellate sanctions does not bar the disciplinary action  
4 because the two proceedings do not involve the same parties,  
5 issues, or behavior."

6           Respondent argued that Judge Kelsey could not  
7 consider his delay in superseding the judgment, because the  
8 delay was not prohibited by any rule, and it left Mr. Land able  
9 to execute on the judgment. Fourteenth Court, in contrast,  
10 noted that Mr. Land attempted to execute on the judgment, but  
11 the respondent resisted the attempt by claiming an exemption,  
12 and objecting to the appointment of a receiver.

13           Respondent argued that his separate lawsuit  
14 against Mr. Land was not an ethical violation and, therefore,  
15 could not support a determination that he violated Rule 3.02.  
16 The Fourteenth Court concluded that Judge Kelsey reasonably  
17 could have found that the separate lawsuit, "was one part of  
18 Bennett's unreasonable efforts to increase the burden or delay  
19 the resolution of the dispute."

20           Respondent argued that the evidence was legally  
21 and factually insufficient to support Judge Kelsey's conclusion  
22 that he violated Rule 3.02. The Fourteenth Court held that  
23 "The evidence is legally and factually sufficient to support  
24 the trial Court's second and third findings of fact, and its  
25 second conclusion of law that Bennett violated 3.02."

1                   Finally, respondent argued that Judge Kelsey  
2 erroneously prevented his witnesses from offering expert  
3 testimony during the misconduct phase of the trial. The  
4 Fourteenth Court held that, "The trial Court did not abuse  
5 its discretion when it prevented Bennett's experts from  
6 testifying on the question whether Bennett's conduct violated  
7 Rules 1.15(d) and 3.02 of the Texas Disciplinary Rules of  
8 Professional Conduct."

9                   Now, there are different approaches that can be  
10 taken to this task that's facing the Court, the task of  
11 determining the appropriate sanction. One approach, we submit,  
12 would be to ask two basic questions. The first question is:  
13 How serious was the misconduct? In the case we're dealing with  
14 here, petitioner would respectfully submit that respondent's  
15 misconduct was very serious. And I'm going to discuss the  
16 evidence in some detail in a moment.

17                   The second basic question to this task of  
18 determining a sanction: Has the respondent apologized or  
19 expressed any regret for his actions? In our case, the answer  
20 is no. And I'll discuss this a little bit later also, and look  
21 at some of the transcript of the trial. So that's one  
22 approach, to ask those two basic questions.

23                   A second, related approach to this task of  
24 determining the appropriate sanction is to follow the guidance  
25 provided in Rule 3.10 of the Texas Rules of Disciplinary

1 Procedure.

2 May I approach?

3 THE COURT: Why?

4 MR. BERSCH: I have a copy of Rule 3.10.

5 THE COURT: I do, too. Is that the same one we  
6 have in Dallas?

7 MR. BERSCH: I imagine it is, Your Honor. I'll  
8 go ahead and give a copy to the other side, if I may do that.

9 THE COURT: Sure.

10 (Document tendered)

11 MR. BERSCH: Because I will be referring to this  
12 in some --

13 THE COURT: All right.

14 MR. BERSCH: -- detail as we go along.

15 THE COURT: The imposition of sanctions, A  
16 through L. All right.

17 MR. BERSCH: Yes, Your Honor, that's correct.

18 Now, for one thing, as the Court can see in the  
19 rule, it says that a private reprimand is not an available  
20 sanction, because this is a District Court proceeding, and  
21 that's part of the way the rules are set up.

22 The rule also says, "In determining the  
23 appropriate sanctions the Court shall consider..." and then it  
24 lists these twelve factors. For our case, our purposes here,  
25 respondent would like to emphasize ten of the twelve.

1           THE COURT: Would you bring me your copy up  
2 here, please? Only because I don't want to be writing down in  
3 the Judge's book. (Document tendered). Appreciate it.

4           MR. BERSCH: Thank you.

5           Five of the twelve factors, in our opinion,  
6 relate to that first general question about the seriousness of  
7 the misconduct. They are factors A, B, C, D, and F, and I'll  
8 return to these later. Then five other factors we believe  
9 relate to that second general question, about whether the  
10 respondent has apologized or expressed regret. And those are  
11 factors E, G, H, I, and K, and I'll discuss these in more  
12 detail later, as well.

13           All right, then. The first basic question: How  
14 serious was the misconduct? And to deal with this, we need to  
15 look briefly at the contract that respondent and Gary Land  
16 entered into. This contract is in evidence as Petitioner's  
17 Exhibit 2. And, Your Honor, that -- this document is in the  
18 inside cover of the notebook that I gave you. Because it was  
19 part of our first notebook of exhibits, I didn't want to burden  
20 the Court with everything, but I did make a copy just of  
21 Exhibit 2.

22           And this is the start of it all. This is the  
23 contract they entered into. And I would like to direct the  
24 Court's attention to page 7, the last paragraph there on  
25 page 7, and the first sentence of that last paragraph. I'll

1 read it as follows: "In order to facilitate a quick and  
2 inexpensive resolution of any disputes concerning this  
3 agreement, the parties agree that any disputes arising out of  
4 the agreement, whether contractual or tortious in nature, will  
5 be resolved by submission to binding arbitration, pursuant to  
6 the rules of the Houston Bar Association Fee Dispute  
7 Committee."

8           And then I direct the Court's attention to the  
9 next page, page 8, that long first paragraph there on page 8,  
10 and it is the second-to-last sentence in the top paragraph on  
11 page 8. And that sentence reads as follows: "By the  
12 signatures on this contract the client and Bennett agree that  
13 the arbitrator's decision in any such arbitration shall be  
14 binding, conclusive, and non appealable, pursuant to the rules  
15 and regulations of the Houston Bar Association Fee Dispute  
16 Committee."

17           This document, the contract, Petitioner's  
18 Exhibit 2, was drafted by respondent. There were some minor  
19 changes suggested by Mr. Land, but it was respondent's document  
20 that he presented to Mr. Land, Mr. Land signed, and it governed  
21 their relationship.

22           Mr. Land, at respondent's request, also signed a  
23 form, specific form consenting to arbitrate any fee dispute  
24 through the Fee Dispute Committee of the Houston Bar  
25 Association.

1                   This contract is the foundation for  
2 understanding the seriousness of the misconduct in which  
3 respondent engaged, vis-a-vis Mr. Land. As Mr. Land's  
4 attorney, respondent owed a fiduciary duty to Mr. Land, to put  
5 Mr. Land's interests ahead of his own.

6                   MR. BENNETT: Judge, I don't want to object  
7 unnecessarily, but I was -- it's clear in the record I was not  
8 his attorney at the time this was -- he knows that. He is  
9 misstating the record.

10                  THE COURT: I read the record, that -- that  
11 Mr. Land's -- it was a Justice?

12                  MR. BENNETT: Hollis Horton was his attorney.

13                  THE COURT: I read it. Okay? He did have a  
14 lawyer, did he not, helping him to --

15                  MR. BERSCH: Yes. Oh, yes.

16                  THE COURT: -- go through this? I think a  
17 lawyer needs a lawyer. But that's just my comment.

18                  MR. BERSCH: No, there's no question about that.  
19 And as I said in the trial, and I'll say here today, petitioner  
20 has no objection to this contract that was signed, has no  
21 objection to the provisions in the contract. And, indeed, as  
22 we agreed, both sides agreed through the trial, we make no  
23 objections to what happened between respondent and Mr. Land  
24 from the time the contract was signed, in February of 2011, all  
25 the way through July 23rd of 2012, when Judge Carter signed his

1 order affirming the arbitration award. But I just want to  
2 point out to the Court what this provision is, because it  
3 really comes into play later on, when we look at the later  
4 conduct.

5                   Now, the next 17 months, move through quickly.  
6 There was a fee dispute. Mr. Bennett wanted more than \$50,000  
7 that Mr. Land initially paid him. Mr. Land wanted \$35,000  
8 back. They both followed the procedures of the Fee Dispute  
9 Committee. And the arbitration panel awarded Mr. Land \$27,500.  
10 They denied Mr. Bennett's request for any recovery. And there  
11 were more proceedings, both in front of the panel and in front  
12 of Judge Carter, and then Judge Carter issued his judgment on  
13 January -- July 23, 2012.

14                   Now, before we go further, just a brief point  
15 about the evidence that we have; we're talking about these  
16 documents. Respondent was often critical about, of  
17 Petitioner's case, and the fact that we did not call any  
18 witnesses. We didn't feel that witnesses were necessary. The  
19 documents tell the story. In a sense, we had a witness. The  
20 respondent was our witness, because many of the documents  
21 admitted into evidence were filed on his behalf, and some of  
22 them actually signed by him and personally filed by him.

23                   More so than testimonial evidence, these  
24 documents tell the clear, direct story about what happened.  
25 And, of course, the Court of Appeals found this acceptable.

1                   Now, I want to talk about four actions in which  
2 respondent engaged that constituted his violation of Rule 3.02.  
3 The first action came a month, to the day, after Judge Carter  
4 issued his ruling, because on August 23, 2012, respondent,  
5 despite the language in his contract, filed the notice of  
6 appeal. And, Your Honor, that notice of appeal is Exhibit 21  
7 in the notebook that I gave the Court, the notebook that is  
8 notebook number 2 of Petitioner's exhibits. You'll see there,  
9 that notice of appeal was submitted directly by the respondent,  
10 Bob Bennett.

11                   So filing this action, when the contract had  
12 said that any arbitration award would be non appealable, is the  
13 first action that resulted in respondent causing an unnecessary  
14 and unreasonable delay in the resolution of his dispute with  
15 Mr. Land, and an unreasonable increase in the cost, because of  
16 course, then Mr. Land had to hire an attorney in order to  
17 represent him in this appeal.

18                   The second action taken by respondent that  
19 constituted his violation of Rule 3.02 occurred just a few  
20 weeks later. Respondent could have simply pursued this appeal  
21 and seen what happens; but, instead, he took another step. And  
22 I refer the Court to Exhibit Number 22. Respondent filed --

23                   MR. BENNETT: Judge, a housekeeping matter. I  
24 don't have those -- I probably have the documents somewhere,  
25 but he has a set of them, you have a set of them, I don't have



1 a set in front of me. Are there copies that I could have, so I  
2 can look at these as we're talking about them?

3 MR. BERSCH: Your Honor, I didn't make an extra  
4 set of copies. These were all part of the trial, and these  
5 notebooks were given to Mr. Bennett and Mr. Wagnon when we  
6 tried the case.

7 THE COURT: All right. Let's stop right now for  
8 a second. Just stop. Why don't you come and take mine. I  
9 read the record.

10 MR. BERSCH: Your Honor, if I may? Rather than  
11 do that, I'd rather share the documents, because as we go  
12 along, in case the Court does have a question or wants to look  
13 at something. I really did -- I always provide copies of  
14 exhibits, cases, and everything to the other side. I didn't  
15 feel that was necessary here, because I had already done that,  
16 and I --

17 MR. BENNETT: Two years ago.

18 THE COURT: Shush. I don't need them. Take  
19 'em. Mr. Bennett, come get it.

20 THE COORDINATOR: Judge, I can make a copy.

21 THE COURT: I appreciate that. I don't need  
22 that right now. I'll take notes, and maybe I'll need a copy at  
23 the end.

24 I just think it's -- Mr. Bersch, I'm not  
25 spanking you too hard on this, but I just think it's common

1 courtesy for trial lawyers to share everything with the other  
2 side, even if it's already in the record. Especially in the  
3 order that you have presented, this isn't all the exhibits,  
4 these are some of the exhibits.

5 MR. BERSCH: Well, no. We presented two  
6 notebooks, and identical copies of these notebooks were given  
7 to respondent in 2014. He has this notebook.

8 THE COURT: Okay. All right. Thank you. I'm  
9 okay.

10 MR. BERSCH: The point is --

11 THE COURT: I'm not -- that didn't come out like  
12 I'm saying you are violating common courtesy. I'm not. I  
13 didn't mean it to sound like that.

14 Continue.

15 MR. BERSCH: Your Honor, if I had thought that  
16 he wouldn't come with the exhibits, I would have made him a  
17 notebook. It's simple enough to do.

18 THE COURT: I know you would have. Now look  
19 where we are.

20 MR. BERSCH: I had no idea he'd come to the  
21 proceeding without a copy of the exhibits.

22 THE COURT: Now look where we are. Okay. You  
23 are back up. You are in at 21 minutes.

24 MR. BERSCH: Okay.

25 The second action was filing the separate

1 lawsuit a month after he filed the appeal.

2           The third action was to the actions he took in  
3 regard to whether or not he was going to supersede the  
4 judgment. Rule 24.1 of the Rules of Appellate Procedure --

5           THE COURT: Let me interrupt just a moment.

6           Mr. Bennett, why don't you bring that exhibit  
7 book up to Walter. Is that too much trouble for you to make me  
8 a copy of that?

9           THE COORDINATOR: (Complies).

10          THE COURT: Thank you very much. Then we'll all  
11 be on the same page. In the meantime, you are continuing with  
12 your argument. You're in at 22 minutes.

13          MR. BERSCH: There are four ways in which to  
14 supersede a judgment, if a person doesn't want to pay the  
15 judgment. One that is normally used is to file the supersedeas  
16 bond or make a cash deposit in the Registry of the Court.

17          Two months after the appeal, after Judge Carter  
18 had issued his judgment, respondent had done neither, and so  
19 Mr. Land's attorney decided he'd better start trying to execute  
20 on this judgment. So he did a Writ of Execution, tried to have  
21 that served. He was met with an affidavit from respondent  
22 saying the property is exempt. Then he filed the motion to  
23 have a receiver appointed. Respondent opposed that. It was  
24 finally appointed. Mr. Bennett actually filed an appeal of  
25 that order at one point, although then he dropped it. Finally,

1 six months after Judge Carter issued his ruling, and  
2 Mr. Bennett had caused Mr. Land to incur all these additional  
3 attorneys fees, finally, Mr. Bennett put his cash deposit into  
4 the Registry of the Court to supersede the judgment.

5           Finally, the fourth action that Mr. Bennett took  
6 that constituted his violation of Rule 3.02, we go back to the  
7 appeal again. The briefs were filed in the appeal, and it went  
8 along. In June of 2013, 11 months after Judge Carter issued  
9 his ruling, the Court of Appeals affirmed Judge Carter's  
10 ruling. Mr. Bennett, at that point, could have just stopped  
11 and said, I'm done, I've had my shot with the Appellate Court,  
12 and I lost; but he didn't.

13           He filed a motion for rehearing and en banc  
14 reconsideration. But -- so that was prolonging it. That's  
15 still increasing the costs and preventing the resolution of the  
16 matter. But beyond that, it's not as though he was pursuing  
17 some deeply felt beliefs; he totally abandoned the grounds for  
18 the appeal in his appellate brief, and came up with an entirely  
19 new ground, dealing with the status of the mental capacity of  
20 Mr. Land. And that was the way that he continued. And then he  
21 also used that ground when he went on to the Petition for  
22 Review with the Supreme Court.

23           It wasn't until the Supreme Court had denied his  
24 Petition for Review, and he was facing the deadline to file the  
25 motion for rehearing, only two weeks before we went to trial,

1 that he finally stopped the appeal. So to continue that appeal  
2 on totally new grounds, we say is the fourth part of his  
3 actions that constitute a violation of 3.02.

4           Now, we go back to that question, how serious  
5 was the misconduct. We think doing these four things  
6 constitutes very serious misconduct, egregious misconduct. It  
7 wasn't just that he said, I lost, I think the arbitration panel  
8 had it wrong, I think Judge Carter didn't give me a decent shot  
9 at it, so I'm going to appeal. By doing these other things,  
10 particularly filing the lawsuit, which he then non suited 7 1/2  
11 months later, Mr. Bennett, the respondent, was on a campaign  
12 really to grind Gary Land into the dust. Mr. Bennett was  
13 offended that he had lost. He was going to lash out at  
14 Mr. Land in any way that he could, and he did so in these four  
15 different ways. That's what we think makes this very serious  
16 misconduct, calling for a serious sanction.

17           We go back to the factors that we were talking  
18 about. A and B deal with the nature and degree of professional  
19 misconduct. We've discussed that.

20           C deals with the loss or damage to clients.  
21 Well, we see 20 months worth of dealing with this litigation,  
22 paying for his attorney.

23           D is the damage to the profession. It looks  
24 very harmful to the image and standing of our profession when  
25 an attorney acts in the way that Mr. Bennett acted toward his

1 client.

2                   And F is the profit to the attorney. In the  
3 end, respondent did not profit, because he lost; but the reason  
4 he did all this was seeking profit. He was trying to avoid  
5 paying the \$27,500, and he was still trying to have that extra  
6 amount awarded to him.

7                   Now, respondent repeatedly argues that  
8 petitioner has brought forth no evidence to support the  
9 imposition of a sanction, because we didn't present a witness  
10 to talk about that, and because, also, Mr. Bennett has no prior  
11 disciplinary history. But we don't need that to support our  
12 request for a sanction.

13                   We look at the factors, and the factors that I  
14 just listed. And then we base our request for a sanction on  
15 the evidence, on respondent's own actions. That is far better  
16 support for a sanction than just having someone come in and  
17 provide testimony of the nature that Mr. Bennett has discussed.  
18 And besides that, as I've said before, respondent, through all  
19 these documents that he filed and he authored, really serves as  
20 our best witness.

21                   Now, the second basic question: Has the  
22 respondent apologized or expressed any regret for his actions?  
23 The answer to that is no. On the first day of the trial,  
24 Mr. Wagon was asking him questions on direct examination, and  
25 respondent expressed his position very clearly on this. This

1 is Volume 2 of the reporters record, page 154, lines 4 to 13.

2 May I approach the Court?

3 THE COURT: Sure. You're at 27 minutes.

4 MR. BERSCH: Yes, thank you. (Document  
5 tendered).

6 Page 154, beginning on line 4, question by  
7 Mr. Wagnon: "Mr. Bennett, you have been charged with violating  
8 Texas Disciplinary Rule of Professional Conduct 3.02, which  
9 involves the unnecessary, or that you've take a position that  
10 unreasonably increases the cost or other burden of the case, or  
11 that unreasonably delayed resolution of the matter. Are you  
12 aware of that?"

13 "Answer: I am aware of that."

14 "Question: Okay. Did you violate 3.02?"

15 "Answer: No."

16 Ending on line 13.

17 I have some other excerpts that I can read also,  
18 and perhaps I will on my rebuttal; but in the interest of time  
19 I won't read them. The point is that respondent expressed no  
20 regret.

21 There was a time, in the sanction phase, after  
22 Judge Kelsey had found misconduct, that respondent did say,  
23 well, I'm not going to do this again; but he never apologized.  
24 He never admitted he was wrong. And we think that is a key  
25 difference in terms of looking at these various factors.

1                   The factors that I talked about before,  
2 factor E, the assurance of those who seek legal services in the  
3 future will be insulated from the type of professional  
4 misconduct found, and factor G, the avoidance of repetition,  
5 you can only have a high degree of confidence in that if the  
6 respondent had understood what he did wrong, and has pledged to  
7 act differently in the future.

8                   And in addition to the fact that it was the  
9 mildest possible promise for future conduct, saying I'm not  
10 going to do that again, without indicating he did anything  
11 wrong, Mr. Bennett doesn't address the other three actions that  
12 he took, which he's really ignored through the whole  
13 proceeding. He's always focused on the appeal, and the appeal  
14 was only one part of these four actions which constituted the  
15 violation of 3.02.

16                   Then factors H and I, the deterrent effect on  
17 others, and the maintenance of respect for the legal  
18 profession. Given the egregious nature of the respondent's  
19 treatment of Mr. Land, and the lack of apology, a small  
20 sanction, a light sanction would not meet those goals at all.

21                   And then, of course, the trial of the case, we  
22 see the lack of remorse expressed by Mr. Bennett, which brings  
23 us, Your Honor, to the requested sanction that the respondent,  
24 or that petitioner has.

25                   For this egregious conduct, and considering the



1 lack of remorse, petitioner requests the following sanction:  
2 A 4-year partially probated suspension, consisting of two  
3 separate parts. The first part is an active suspension of  
4 2 1/2 years. The second part would be a probated suspension of  
5 1 1/2 years, with the proviso that respondent would be given  
6 credit toward the 2 1/2 year active suspension for the 2 years  
7 and 3 days that he was unable to practice while the judgment of  
8 disbarment was in force.

9           The net result of this, if we start with the  
10 2 1/2 year active suspension, provide credit for 2 years and  
11 3 days, if we say a year is 365 days, divided in 2, it's  
12 182 1/2, round it down to 182, subtract 3 days. What we're  
13 asking for is that Mr. Bennett be placed on active  
14 suspension --

15           THE COURT: Approximately another 6 months --

16           MR. BERSCH: For 179 days.

17           THE COURT: -- minus -- minus 3 days in 2 years  
18 or a year-and-a-half.

19           MR. BERSCH: So that -- it would come out -- and  
20 what we would ask is that the 179-day active suspension run  
21 from July 1st, 2017 through and including December 26, 2017.  
22 And then the 1 1/2 year probated suspension would begin  
23 immediately, starting on December 27, 2017, running through and  
24 including June 26, 2019.

25           THE COURT: And what's the legal effect of the

1 probated sentence?

2 MR. BERSCH: A person is on probation, means you  
3 are supposed to do your basics, do your MCLE, keep your address  
4 current, and not violate any orders, and respond to requests  
5 for information. And if you violate the probation, then your  
6 probation can be revoked, according to the rules, and you can  
7 be placed on active suspension for the period that is called  
8 for as a probated suspension.

9 Finally, in addition, we ask that respondent be  
10 required to complete five additional hours of continuing legal  
11 education, each in the areas of ethics and civil litigation,  
12 for a total of ten additional hours. These will be in  
13 addition, of course, to the normal MCLE requirements that all  
14 attorneys have. And we ask that he be required to complete  
15 those hours between July 1st, 2017 and November 30, 2017.

16 Thank you, Your Honor.

17 THE COURT: Thank you very much. That is  
18 32 minutes.

19 All right. Mr. Bennett, are you in a position  
20 where you can break yours up into, like, 20 minutes and take a  
21 break?

22 MR. BENNETT: Absolutely. Whatever is good with  
23 the Court. 20 minutes is fine.

24 THE COURT: My attention span is better for an  
25 hour versus an hour-and-a-half.

1 MR. BENNETT: Let's go 20 minutes.

2 THE COURT: Okay with you?

3 MR. BENNETT: Yes, sir. May I approach?

4 THE COURT: You may.

5 MR. BENNETT: Judge, I'd like to show you what  
6 is already in evidence, and it's a part of our filings. And  
7 this is a letter from the Judge whose seat that you are seating  
8 on. This is a letter from Judge Steven Kirkland.

9 THE COURT: Is this part of this record?

10 MR. BENNETT: Yes, sir. And Judge Kirkland's  
11 letter goes into my background, goes into his relationship with  
12 me, goes into his review of the entire transcript, and talks  
13 about how this was absurd.

14 MR. BERSCH: Your Honor, I object to this. This  
15 is not part of the record of this case. This letter is dated  
16 December 29, 2014. This case was tried in March of 2014. It  
17 could not possibly be an exhibit during the trial of this case.

18 If respondent is attempting to introduce it as  
19 an exhibit of this proceeding, petitioner objects. This is not  
20 an evidentiary proceeding, and there should be no documents  
21 admitted.

22 MR. BENNETT: Let me explain what I'm trying to  
23 do, Your Honor, so it's very clear. Of course, Mr. Bersch has  
24 tried to keep away from Rule 3.10, which outlines all the  
25 considerations that you are to go under at this sanction

1 hearing. It's up to the discretion of the Court to receive  
2 evidence as part of this hearing. Okay? You can --

3 THE COURT: Don't the rules of evidence apply in  
4 this kind of hearing?

5 MR. BENNETT: The rules of evidence do apply.

6 THE COURT: How do you get this into evidence?

7 MR. BENNETT: Well, it asks a consideration --

8 THE COURT: No, no. How do you get Judge  
9 Kirkland's letter into evidence, under the rules of evidence?

10 MR. BENNETT: Simply because it's a letter that  
11 he wrote during this proceeding.

12 THE COURT: How do I know this?

13 MR. BENNETT: Well, it's also listed on the OCDC  
14 site, which is also part of the evidence in this case. So we  
15 have two different places that this is part of the evidence.

16 THE COURT: Are you -- are you a civil trial  
17 lawyer?

18 MR. BENNETT: I am, Your Honor.

19 THE COURT: How would you get this into  
20 evidence? How do you get this into evidence in this matter?

21 MR. BENNETT: Judge, I -- obviously, the --

22 THE COURT: I'm going to take your word for it  
23 that you are an experienced, highly-ranked trial lawyer. How  
24 does someone with that background that you have, get this  
25 letter into evidence at this hearing?

1 MR. BENNETT: Judge, I've already explained my  
2 approach to it, and the approach given the discretion the Court  
3 has in this type of hearing.

4 THE COURT: Okay. I'll exercise my discretion  
5 and say you have not jumped through the necessary hoops to  
6 proffer this as evidence at this hearing.

7 MR. BENNETT: Okay. Thank you, Your Honor.

8 Now, let me go to what was last said by  
9 Mr. Bersch concerning these elements that are laid out in 3.10.  
10 I think this is very important for the Court to consider, that  
11 what Mr. Bersch is trying to do is to try to have the Court  
12 ignore all the record that was presented at the time of the  
13 original hearing, the sanction hearing, in which he did not  
14 call any witnesses, in which I called witnesses, and they  
15 testified on each one of these points.

16 For instance, Lillian Hardwick, who is the  
17 leading ethics expert in the state, and is an expert for the  
18 OCDC, Office of Chief Disciplinary Council, the Commission for  
19 Lawyer Discipline, she has testified for them --

20 MR. BERSCH: Objection, Your Honor. That  
21 misstates the record. Mrs. Hardwick testified that she served  
22 as a consultant, but not that she'd actually testified for the  
23 Commission.

24 MR. BENNETT: She was an expert for them, I'll  
25 go that far.

1 THE COURT: You don't really have to exaggerate  
2 the truth here. I mean, that doesn't help you. Okay? It just  
3 doesn't help you. I've read this record. I am pretty familiar  
4 with this case.

5 MR. BENNETT: Well, Judge --

6 THE COURT: I'm taking all this in. This is the  
7 first time we've ever had a face-to-face.

8 Do you think you messed up in this case?

9 MR. BENNETT: Do I think I could have done  
10 better? Ab --

11 THE COURT: That's not what I asked. Don't try  
12 to lawyer me. Answer my question. Do you think you messed up  
13 in this case?

14 MR. BENNETT: I messed up, Your Honor. I messed  
15 up, and I said that from the stand. I said that from the  
16 stand. I have lectured on this case. I have gone -- I have  
17 done CLE, attorneys have gotten CLE from me talking about this  
18 case, and how it could have been improved.

19 But the basic question in this case was I could  
20 have put in -- and if we go to the contract, and we don't have  
21 those documents back yet --

22 THE COURT: I've got the contract.

23 MR. BENNETT: -- the contract itself, Your  
24 Honor, says, number one, in three places in the contract -- and  
25 just keep this in mind -- in three places in the contract I

1 instruct my client to hire an attorney.

2           Number two, Mr. Bersch didn't read this, but the  
3 next sentence says, "Please note that arbitration may" -- the  
4 magical "may" -- "may result in the client's waiver of  
5 significant rights, such as the right of a jury trial, the  
6 possible waiver of broad discovery, and the loss of the right  
7 to appeal."

8           There's also other language throughout the  
9 contract that you need to be aware that there may be issues  
10 with the appeal. And so from my point of view, and relying on  
11 counsel, I thought we had a right to appeal.

12           Now, let me also segue that into one of these  
13 points that Mr. Bersch is talking about in filing this lawsuit.  
14 I didn't file that lawsuit filed on my behalf. It was filed by  
15 an attorney, Mr. Wagon, who is sitting here. There is no  
16 grievance filed against him. There was no action taken against  
17 him. And the other actions that were taken in this case were  
18 all pursuant to what a normal lawyer would do, given these  
19 facts. So --

20           THE COURT: I'm sorry, you are saying what?  
21 What was that? These steps are what a normal lawyer would  
22 do --

23           MR. BENNETT: Yes, sir.

24           THE COURT: -- based on the facts of this case?

25           MR. BENNETT: Yes, sir, absolutely. And the

1 appeal of the case, we thought we had a right to appeal. We  
2 thought we had the right to appeal. And it was only -- and we  
3 had the First Court of Appeals decision stating that it was not  
4 a frivolous appeal.

5 THE COURT: Okay. That isn't what they found.  
6 They just found that they weren't going to assess a sanction.  
7 That isn't what they found.

8 You seem to be so lacking in self awareness that  
9 I'm having -- I'm having problems with this. I'm having  
10 problems with the argument. I mean, it is a -- it's amazing to  
11 me that -- that you seem to have -- you completely fail to  
12 acknowledge the violations that have been found here. I mean,  
13 we're not re litigating the violations. We are just dealing  
14 with the sanctions or punishment for this violation, under  
15 3.02. Is that what it was?

16 MR. BERSCH: Yes, Your Honor.

17 MR. BENNETT: 3.02, Your Honor. One DR  
18 violation found against me in 40 years of practice.

19 THE COURT: I'm with you.

20 MR. BENNETT: 40 years of practice.

21 THE COURT: I'm with you on that. Nobody should  
22 get the death penalty for this. I'm with you on that. But you  
23 seem to fail to acknowledge that your actions, in dealing with  
24 this matter after the arbitration on, were not proper. You  
25 might -- well, mistakes were made. I mean, that --



1 MR. BENNETT: May I be heard?

2 THE COURT: Okay.

3 MR. BENNETT: Part of the problem I have, Your  
4 Honor, and I am --

5 THE COURT: I understand. I'm sorry, I  
6 understand what lawyers go through. I understand how hard  
7 people work, to study, how hard that bar license is, how -- how  
8 hard the practice is. I understand all those things. And I  
9 think this disbarment is out of whack, and I'm thinking that  
10 the Commission is thinking that they don't think it's in the  
11 range of what should happen either; but we still have to  
12 acknowledge the improper activities. We have to acknowledge  
13 this isn't going to happen again, because I know this is wrong.  
14 It's not that, I go out and give lectures that -- don't make  
15 this mistake, this mistake, lawyers, take this other route.

16 I'm not using your time. I'll give you  
17 5 minutes back for me. You can go. Go, Mr. Bennett.

18 MR. BENNETT: Judge --

19 THE COURT: Since we're only at 9 minutes, I'm  
20 giving you 4 more minutes.

21 MR. BENNETT: -- from my point of view, when I  
22 go talk to the leading expert on ethics in the state, Lillian  
23 Hardwick, and ask her what I did, when I go to former United  
24 States Magistrate Dan Naranjo, asking him to come over and  
25 testify, when I go to the chairman of the Ethics Committee here

1 in Houston, ask him what should be done, and they tell me this  
2 is not a violation, that was my thinking at the time of this  
3 trial. That was my thinking, because no expert on the other  
4 side, no witness on the other side appeared and said --

5 THE COURT: Where are we now? Where are you  
6 now?

7 MR. BENNETT: Can I lead up to that, Your Honor?

8 THE COURT: Yes, you can. Thank you.

9 MR. BENNETT: That's what I was trying to do.

10 THE COURT: There you go. I get your lawyer's  
11 letter of yesterday, and it's the same position that y'all have  
12 had through this whole case --

13 MR. BENNETT: Judge, it has nothing to do --

14 THE COURT: -- you've done nothing wrong.

15 MR. BENNETT: -- with the fact that the letter  
16 states that there were violations in both of those cases.  
17 There were violations in both of those cases. I think the  
18 Tennessee said that it wasn't serious. The Florida case, which  
19 is the one attached, said he violated two rules. I understand  
20 that. I understand what the Court of Appeals has said. I  
21 acknowledge that. I appreciate that. I have acknowledged that  
22 in writings and lecturing on it, that I violated it. The issue  
23 before this Court is what the appropriate sanction is.

24 THE COURT: Okay.

25 MR. BENNETT: That's my understanding.

1 THE COURT: That's my understanding, too.

2 MR. BENNETT: Okay.

3 Now, moving on from that, what I understand the  
4 Court has to do, and what Mr. Bersch doesn't want you to do, is  
5 to focus on these 12 considerations, all 12 of them. And,  
6 somehow, under those 12 considerations I have committed the  
7 cardinal sin of not properly apologizing. I'm happy to  
8 apologize; but, again, technically, there's not a requirement  
9 under any of those that I apologize.

10 Do I recognize that it could have been done  
11 better? Do I recognize that I should have put "may," the word  
12 "may" in there, instead of what I did? Absolutely. If you  
13 read the second sentence in the contract, "may" is there.  
14 Okay? I understand that. I understand that the Court has to  
15 deal with the violation. I have to deal with the violation.  
16 I understand that. But the issue is, what is the appropriate  
17 sanction in this case.

18 Now, moving to that, which I think is really the  
19 heart of what we're doing here, you have to put together that  
20 there was no evidence presented on 3.10, other than these  
21 pleadings. No one came in and said, yes, this is serious  
22 because of this. No one came in and said, well, he has a  
23 disciplinary record. No one came in and said there's profit  
24 here being made. No one came in and said there's a loss of  
25 profession.

1                   People came in and testified during that,  
2 extensively, as to each one of those, in my favor. And that's  
3 the evidence before the Court.

4                   THE COURT: I will make a finding in it. Your  
5 actions are a damage to the profession. Okay? Keep going.

6                   MR. BENNETT: Well --

7                   THE COURT: I know. I'm just saying --

8                   MR. BENNETT: Where do you want me to go?

9                   THE COURT: I mean, keep going. Keep going with  
10 what you're saying. I think you are lacking in self awareness.  
11 I truly do, Mr. Bennett. I am trying to communicate to you how  
12 this bench has looked at this case, reviewed the evidence,  
13 reviewed the file, and I still don't see any remorse, except,  
14 "I'm sorry I didn't put 'may' in there."

15                   MR. BENNETT: Judge, I don't know where to go  
16 with this --

17                   THE COURT: I know you don't --

18                   MR. BENNETT: -- you have so thrown me off --

19                   THE COURT: -- I know --

20                   MR. BENNETT: -- of where we are in the case --

21                   THE COURT: -- I'll tell you --

22                   MR. BENNETT: -- because, number one -- if I can  
23 be heard just once, please? May I be heard?

24                   THE COURT: Oh, okay. Yeah. Keep going. I'll  
25 give you the whole 40 minutes now. Go. You have 30 minutes.

1 MR. BENNETT: Judge, if you look at the  
2 contract, the contract very specifically states in three  
3 different places to hire an attorney. That goes beyond any  
4 type of fiduciary duty that I have under any rules in the State  
5 of Texas. There's no rules that require an attorney to tell  
6 the other side to hire an attorney. That is part of this case.

7 Additionally -- and it's already been  
8 stipulated, even though we tried to go over it very quickly --  
9 Mr. Land had his own attorney at the time that this case was  
10 tried. I'm sorry, at the time the contract was written. Let  
11 me rephrase that. At the time the contract was written,  
12 Mr. Land had his own attorney, and that was Justice Hollis  
13 Horton. There was correspondence between Mr. Horton and  
14 Mr. Land about this. I did not represent him at that time.

15 Now, as we moved forward with the case --

16 THE COURT: I know that's very unusual, and  
17 good. That's a good thing. Sometimes attorney/client  
18 contracts are not executed with the client having a separate  
19 attorney.

20 MR. BENNETT: Let me also bring up the issue of  
21 the money. There is no requirement, there is no requirement  
22 that an attorney, or any individual has to put up a supersedeas  
23 bond, nor has to put up money into the Registry of the Court.  
24 Now, whether I did that as timely as I could, there was a lot  
25 of things going on, but the money was placed into the Registry

1 of the Court. There was no requirement of that.

2                   So the issue of the point that I didn't, you  
3 know, I take care of the client as far as the money is  
4 concerned is not right, because the money was placed in the  
5 Registry of the Court and was -- ultimately, the client did  
6 receive that payment, knowing it was there.

7                   Now let me go back to what I perceive as the,  
8 what the Court keeps talking about, and I have to address this,  
9 the awareness that I have about how this case was handled. And  
10 I've talked about every expert that I talked to about this  
11 case, which I think is important.

12                   More importantly, though, at the present time,  
13 at the present time I understand that I violated 3.02. There's  
14 no question about that. I accept that.

15                   Now, how that has affected the profession, I can  
16 only point out a couple other things about this, Your Honor.  
17 Number one, recently, 2500 attorneys --

18                   MR. BERSCH: Excuse me, Your Honor.

19                   THE COURT: Overruled.

20                   MR. BENNETT: -- 2500 attorneys in Harris County  
21 voted for me to be on the State Bar, the State Bar of Texas  
22 Board of Directors, knowing everything, and all the publicity  
23 of this case. We have a court reporter here writing all this  
24 down. She's going to write an article tomorrow about it.  
25 She's written other articles about it. The Bar knows about

1 that, and knows about my reputation, and know how I handle  
2 cases. I point that out.

3 I point out one other thing, too, that I think  
4 is important and is in the pleadings of this case. There is a  
5 site called Abbo, A-b-b-o.com, where attorneys and clients can  
6 go --

7 THE COURT: There's a newspaper reporter, or a  
8 court reporter here?

9 MR. BENNETT: Newspaper reporter.

10 THE COURT: There you go. I was hoping that's  
11 what it is. Welcome.

12 MR. BENNETT: Texas Lawyer.

13 THE COURT: I thought you said she was a court  
14 reporter. I'm thinking, how is that going to help?

15 MR. BENNETT: Well, I misspoke. I apologize,  
16 Your Honor.

17 The other part of this Abbo situation is that  
18 every client can go to Abbo and post a review of the -- post a  
19 review of the attorney. I have more reviews than any other  
20 attorney in the State of Texas, because I believe that is  
21 important to the attorney/client relationship. No other  
22 attorney in the State of Texas has more reviews than I do. I  
23 think that speaks to my reputation. I think it speaks to the  
24 profession. I think it speaks to what has happened in this  
25 case, that attorney -- that clients have seen this, read about

1 this. If you Google my name, the first thing that comes up is  
2 Bennett disbarment.

3 THE COURT: I'm sorry. I bet it does. I'm  
4 sorry for that.

5 MR. BENNETT: Well, I'm sorry, too.

6 THE COURT: Because I am just telling you,  
7 that's a death penalty, and I don't see that here. All right.

8 MR. BENNETT: Well, I don't either, Your Honor.

9 THE COURT: Trying to take the pressure off of  
10 you a little bit. I just want some remorse.

11 MR. BENNETT: Judge, I don't know how to be more  
12 remorseful, other than saying I'm remorseful about this. But  
13 more importantly, in the record itself, when I was asked about  
14 this, the Judge -- and I haven't said a word about the Judge,  
15 yet.

16 THE COURT: And I don't want you to. I read it  
17 in the record. You can if you want; but I'd rather you not.

18 MR. BENNETT: Okay.

19 I paid back the money. The money has been paid  
20 back. I have never had anything to do with Mr. Land again.  
21 We've now had a whole year since I have been reinstated. No  
22 grievance has been filed, with the exception -- no grievance  
23 has been filed, but we've had probably about 25 or 30 reviews  
24 done of me on Abbo, which are there.

25 THE COURT: And what is that? I'm so sorry.



1 MR. BENNETT: Judge, it's a website,  
2 www.a-b-b-o.com, and that's where people and the public can go  
3 and find attorneys. It's probably the leading source of lawyer  
4 referrals. And you put your name on it, and then you can  
5 see -- what I do, and maybe because of this, when I finish a  
6 case, I tell my client, would you do a review for me.

7 THE COURT: It's the YELP for lawyers.

8 MR. BENNETT: It's the YELP for lawyers.

9 THE COURT: I got it.

10 MR. BENNETT: That's exactly right, Your Honor.  
11 It's the YELP for lawyers.

12 And when I lecture on ethics, I do tell the  
13 attorneys they should use that. Because if you have a client  
14 that's going to write up something nice about you after the  
15 case is finished, then later they can't usually change their  
16 mind, or probably won't change their mind. Or if they do  
17 change their mind, you'll have that review.

18 So, for me, it's just added assurance. And I  
19 give that information to attorneys I talk to about that. Okay.

20 Judge, my 20 minutes is more than up. Do you  
21 want to take a break now?

22 THE COURT: Are you okay?

23 MR. BENNETT: I'm in good shape.

24 THE COURT: Are we okay now?

25 MR. BENNETT: I -- I think we are, Your Honor.

1                   THE COURT: I'm okay, too. I'll come back and  
2 you're at -- you have 20 minutes. You have 10 minutes,  
3 something like that. I'll be back.

4                   MR. BENNETT: When do you want us to come back?

5                   THE COURT: Just take 15 minutes.

6                   (Recess)

7                   THE COURT: All right. Mr. Bennett, you ready?  
8 You've got about another 20 minutes. Feel good?

9                   MR. BENNETT: I feel great, Your Honor.

10                  THE COURT: Tell me the truth now.

11                  MR. BENNETT: I feel terrible, Your Honor. I  
12 feel terrible.

13                  THE COURT: That's right.

14                  THE BAILIFF: There are no recording devices  
15 used in the courtroom.

16                  SPECTATOR: I turned mine off.

17                  THE COURT: Thank you, Sheriff.

18                  MR. BENNETT: Judge, in hindsight now, 20/20  
19 vision, obviously, what I should have done was not take the  
20 appeal. I understand that now. I understand that completely.  
21 I understand how that was a delay, and an increase in costs.

22                                 If the Court would like to hear, there is an  
23 attorney that I explained this to, Cynthia Owens, who is  
24 running for the board of directors. And she can testify as to  
25 my explanation to her, and how this has devastated my life. We

1 had several discussions about that.

2 THE COURT: I'm not going to take any new  
3 evidence; but I appreciate that offer. Thank you very much for  
4 being here, ma'am.

5 MR. BENNETT: We'll find out tomorrow whether  
6 she makes it on the board or not.

7 THE COURT: Good luck.

8 MS. OWENS: Thank you, Judge.

9 MR. BENNETT: Beyond that, Your Honor, again, I  
10 just want to reemphasize -- and it's not that I'm not  
11 remorseful, but I have to emphasize the fact that dealing with  
12 the sanction, the Court needs to look at the testimony of  
13 everyone that testified at the sanction hearing.

14 Now, that doesn't do anything other than help  
15 the Court understand what the appropriate sanction is. So I  
16 think that's the -- and the quality of those people who did  
17 testify.

18 THE COURT: I have reviewed the record. I'm  
19 just telling you, I have.

20 MR. BENNETT: Okay. With that, Your Honor, we  
21 have filed a brief dealing with why we believe, even though I  
22 am remorseful, even though I am sorry for what happened, you  
23 are putting this next to a 40-year career where there's never  
24 been any -- there's never been even a grievance filed,  
25 according to their evidence. There's never been a grievance

1 filed against me. There hasn't been a grievance filed against  
2 me --

3 THE COURT: You are telling me there's never  
4 been a grievance filed against you?

5 MR. BENNETT: What that means, Your Honor --

6 THE COURT: I understand. I understand what  
7 you're saying. Is that what you are saying, or there's just no  
8 record of a grievance?

9 MR. BENNETT: There's no record of it.

10 THE COURT: There you go. Don't lawyer me here.  
11 I've been on the State Bar Grievance Committee.

12 All right. Keep going.

13 What do you recommend to the Court, Mr. Bennett?

14 MR. BENNETT: Judge, I have had to go through  
15 two years without a law license. Financially, it was  
16 incredibly destructive. I went through a divorce. At the  
17 point now, I'm slowly getting clients back, slowly getting  
18 clients back.

19 If the Court enters a sanction such as what has  
20 been suggested, where I'm suspended for 156 days, I'm not too  
21 sure I can practice law again. And to me, especially when at  
22 one point I could have had a two-year probated sentence at the  
23 best part, that was offered to me -- that was offered to me.  
24 Should I have taken it, understanding now? Yes, I guess, so.  
25 But --

1                   THE COURT: There's no real guess in that, is  
2 there? There's no guess in that, is there?

3                   MR. BENNETT: No, Your Honor. Okay. But I  
4 still believe that given what I've gone through, a no-sanction  
5 finding would be appropriate, given everything else in this  
6 case. That's where I am. I hope the Court doesn't think that  
7 doesn't mean I'm not remorseful, I'm not sorry, that I have  
8 self awareness, that I understand what I've done. I have  
9 completely -- there's no chance, given the facts and everything  
10 else, of this ever happening again. Hadn't happened before,  
11 didn't happen after I got my law license, won't happen again.

12                   THE COURT: All right. Thank you very much.  
13 All right. Is that all you have?

14                   MR. BENNETT: I have lots of other things, Your  
15 Honor, but I think that's good enough for right now.

16                   THE COURT: This is it. Right now is all you  
17 got.

18                   MR. BENNETT: I understand that, Your Honor.

19                   THE COURT: We're going to talk after I give  
20 Mr. Bersch another 8 minutes.

21                   MR. BERSCH: Thank you, Your Honor.

22                   First of all, it's a little bit hard to  
23 understand part of Mr. Bennett's argument, where he accused me  
24 of -- I forget the term -- running away, or not dealing with  
25 Rule 3.10. And I believe that I spent quite a bit of time --

1 THE COURT: You handed me a copy.

2 MR. BERSCH: -- talking about Rule 3.10, and  
3 went through the five factors which I think relate to the  
4 question of the seriousness of the misconduct, and then the  
5 five factors relating to the effect of the lack of remorse and  
6 the rest. So I think I have covered that. I've dealt with ten  
7 of the twelve factors, and I think those ten are definitely  
8 applicable, as I have discussed.

9 So much of respondent's argument and his  
10 position deals with these people who came and testified. And  
11 he talks about his dealings with his clients. I'm sure that  
12 respondent, in his 40 years of practice, has had many satisfied  
13 clients. And I'm sure he's had many excellent relationships  
14 with the people, including these people who came and testified.

15 But our position is that those satisfied  
16 clients, and those ratings, and the relationships are  
17 outweighed by the evidence, by what happened in this case  
18 between Mr. Bennett and Mr. Land.

19 We've all had the experience of knowing someone  
20 personally, or perhaps a public figure, a politician, a movie  
21 star, where we think we like the person, and we find out that  
22 what we think we know about them is not exactly the same as  
23 what their true character is. And I would submit to the Court  
24 that that's what we're dealing with here. The public persona  
25 that Mr. Bennett has and, in fact, dealings with a lot of

1 clients is not the full measure of his true character.

2                   When we look at what happened between July 23rd,  
3 2012 and early 2014, there were many decision points for  
4 Mr. Bennett, where time after time he was faced with a choice:  
5 Do I do something that is going to benefit Mr. Land, that's  
6 going to bring a halt to all of this, or do I take some  
7 aggressive action that will punish Mr. Land, make him rue the  
8 day that he ended up in this litigation with me?

9                   And time after time, every one of those decision  
10 points, Mr. Bennett opted in favor of the aggressive approach,  
11 the scorched earth policy, to force Mr. Land to hire an  
12 attorney, to pay attorneys fees, to delay getting his money, to  
13 go through the anguish of litigation. None of those people who  
14 testified for Mr. Bennett, and none of those other clients who  
15 were satisfied were present for any of this. They don't know  
16 what happened. And I would submit to you the distinction is,  
17 those other clients and those other people who testified were  
18 never in a situation where Mr. Bennett's personal financial  
19 interests was at odds with theirs.

20                   I would like to approach the bench, if I could,  
21 with another excerpt from the transcript. (Document tendered).  
22 This is from Volume 4 of the transcript, page 77, lines 1  
23 through 5. Mr. Bennett was in an exchange with Judge Kelsey.

24                   Starting on line 1, Mr. Bennett is speaking.

25                   "The point is that there was nothing. Number

1 one, he was not injured in any way, shape or form. There's no  
2 injury."

3 "THE COURT: To whom?

4 "MR. BENNETT: To Mr. Land."

5 Now, Mr. Bennett can say what he wants to say,  
6 now that he's learned the lesson, he's not going to file an  
7 appeal like this again. But the point is, through the entire  
8 dealing, period of dealing with Mr. Land, up through and  
9 including the trial -- and this actually speaks to the Court's  
10 point about the lack of self awareness -- there was only one  
11 interest in Mr. Bennett's mind, and that was his interests. He  
12 wanted that money. He did not want to pay the \$27,500, and he  
13 wanted the additional 25,000 that he had asked for when he  
14 filed his arbitration complaint. And in his mind,  
15 unbelievably, after everything he put Mr. Land through, he  
16 says, Mr. Land "was not injured in any way, shape or form."

17 Now, maybe all those other clients have had good  
18 experiences with Mr. Bennett, but when push came to shove, when  
19 there was money there, it was his way, running rough shod over  
20 Mr. Land, and he didn't even think there was injury there.  
21 That's why he never apologized or expressed remorse for  
22 anything.

23 The final thing I will say, Judge, as you're  
24 deciding what to do about the sanction, Mr. Bennett asked for  
25 no sanction. And we dealt with this in a recent response I



1 made to the Court on their trial brief, where that is not an  
2 option. The rule says when misconduct is found, then the  
3 decision will be made as to the sanction.

4           The *Kilpatrick* case that they have cited -- or  
5 that they cited the *Miller* case -- but *Kilpatrick* says, you  
6 make a choice among the various sanctions, not whether there  
7 will be a sanction.

8           There was a possibility for a rule violation and  
9 a minor sanction. If Mr. Bennett had truly believed in the  
10 righteousness of his cause, when he received Judge Carter's  
11 ruling -- and he felt the arbitration panel got it wrong, that  
12 Judge Carter didn't really look at this matter, I'm in the  
13 right here, I've been wronged, I'm going to file this appeal --  
14 if he had filed that appeal and done nothing else -- if he had  
15 not sued Mr. Land, if he had not played games as far as  
16 superseding the judgment is concerned, and if the following  
17 June, 11 months later, the Court of Appeals had issued its  
18 ruling, and Mr. Bennett took that ruling and accepted it, and  
19 said, all right, I thought I was in the right here, but I guess  
20 I'm not, I'm stopping, here's your money, Mr. Land, and by the  
21 way, I apologize, I shouldn't have done this, I know, I was  
22 just very angry about it, I am very sorry that I put you  
23 through this, here's the money -- and if Mr. Land had already  
24 filed the grievance and we'd gone forward on it, that's a  
25 scenario where possibly we'd be looking at a minor sanction.

1                   There would be a violation of Rule 3.02, because  
2 he increased the cost and he delayed the resolution of the  
3 matter, but then he shut it off. He wasn't punishing him. It  
4 wasn't this scorched earth campaign. And then he apologized.  
5 That's the type of case where perhaps there would be a  
6 relatively minor sanction that would be appropriate; but that  
7 is not the case we're dealing with here.

8                   THE COURT: What are you talking about,  
9 relatively minor?

10                   MR. BERSCH: In that type of situation, if  
11 Mr. Bennett were in here saying, I gave up, and so I just want  
12 a fully probated suspension, and say, well, all right, you  
13 appealed, you shouldn't have done that, you did nothing else,  
14 fully probated, that might be appropriate.

15                   But the gap between that hypothetical I just  
16 posed, of that kind of conduct on Mr. Bennett's part, the gap  
17 between that and Mr. Bennett's actual conduct is of a huge  
18 level of magnitude. And it is that same level of magnitude  
19 that we would submit that should be the gap between that  
20 hypothetical fully-probated suspension, and the sanction that  
21 is mandated by Mr. Bennett 's conduct, and his lack of remorse  
22 in this case.

23                   And that takes us into the realm of the  
24 partially-probated suspension. And I would ask the Court to  
25 please not impose an active sanction less than the 2 years and

1 6 months. So that when he receives the credit, he is left with  
2 the actual active he is going to serve, 179 days. Because we  
3 would submit that's the only way, after all of this, to  
4 maximize -- we'll never guarantee -- but to maximize the chance  
5 that there will be a deterrent effect, and that there will be  
6 an avoidance of repetition, and we will minimize the damage to  
7 the profession. And so we repeat the request for the sanction  
8 that I previously set forward. Thank you.

9 THE COURT: Thank you.

10 I'm that close to ruling right now. Let me talk  
11 for a minute and let me tell you what I might do, and what I  
12 may not.

13 Your self righteousness, the statement  
14 Mr. Bersch made, I think that's what happened here.  
15 Mr. Bennett, you got emotionally involved and connected to this  
16 case. And it was -- that's why we have lawyers to come in and  
17 represent clients, to take some of the emotion out of that, to  
18 advise the client. And that's why that saying goes, I believe,  
19 that the lawyer who represents himself has a fool for a client,  
20 because you can't -- you couldn't separate that.

21 And a law license is so empowering. It gives  
22 you the keys to every courthouse in this state. It is -- it so  
23 empowers a lawyer, that you are the envy of most every other  
24 member of the public. And you can do good with that power, or  
25 you can abuse that power. And I think what you did with regard

1 to this case, and this particular client, was an abuse of that,  
2 of that license and the power that that license provides you.

3 I think that your 2-year-plus suspension is  
4 sufficient for the active part of the suspension. I'm going to  
5 give you an additional 6-month probated suspension.

6 And I believe your actions on dealing with -- I  
7 take your word that you go around and talk about these actions  
8 to lawyers, on ethics, and your experience. I want you to  
9 continue doing that. Not ordering that. I think five more  
10 hours of ethics isn't going to teach you any more about this  
11 than what you already hopefully have learned.

12 So how are we going to write this up,  
13 Mr. Bersch?

14 MR. BERSCH: Your Honor, I'll prepare the  
15 judgment. Do I understand correctly that what the Judge is  
16 ordering --

17 THE COURT: I want to make sure we're all on the  
18 same page.

19 MR. BERSCH: -- so the Court is ordering a  
20 partially-probated suspension of 2 years, 6 months, and 3 days.  
21 2 years and 3 months actively served, and he'll receive credit  
22 because he's already served that amount, and then 6 months of  
23 probation that he would then serve immediately. Is that my  
24 understanding?

25 THE COURT: That's what I said, but I want to --

1 that is what I said. And I'm going to take five minutes and  
2 come back and make something final. Okay?

3 Here's what I -- I think the message has been  
4 sent to Mr. Bennett. I think it has deterred him and any other  
5 lawyer who ever heard about this case in Harris County or  
6 anywhere else. I do question some of his self awareness with  
7 regard to whether or not he truly violated the DR. I think  
8 he's failed to fully acknowledge, at least until today, the  
9 impropriety of his actions. But two years and how many days,  
10 Mr. Bennett?

11 MR. BERSCH: Three days is what he served.

12 THE COURT: That's a pretty big hammer. And  
13 give me a few minutes with regard to any further sanction,  
14 whether it be suspended or not. Okay? I'll be right back.

15 (Recess)

16 THE COURT: Okay. Write it up just the way I  
17 said it. That's your understanding?

18 MR. BERSCH: Yes, all right, I will. I also  
19 understood you were not awarding any additional CLEs. That's  
20 not part --

21 THE COURT: No further CLE.

22 MR. BERSCH: All right. I'll write it up and  
23 submit it to the Court.

24 THE COURT: Mr. Bennett, what do you understand  
25 the Court has ruled?

1 MR. BENNETT: Judge, as I understand it, the  
2 time served will be 2 years and 3 days. And that I'll be  
3 starting, I guess, June, July, whenever the Court signs the  
4 order, I'll be on probation for 6 months, and I need to mind my  
5 Q's and P's on those 6 months. I don't have a probation  
6 officer to report to.

7 THE COURT: I'm not -- you need to watch your  
8 P's and Q's anyway. I appreciate it. All right.

9 We'll get the judgment, put it together?

10 MR. BERSCH: I will.

11 THE COURT: Send it to counsel for form.

12 MR. BERSCH: Yes, sir.

13 THE COURT: Anything else?

14 MR. BERSCH: I don't believe so, Your Honor.

15 THE COURT: Thank you all. Good job. Everybody  
16 is excused.

17 (Hearing adjourned)

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25

1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS )  
 3 COUNTY OF HARRIS )

4 I, Cynthia Berry, Official Court Reporter in and for the  
 5 334th District Court of Harris County, State of Texas, do  
 6 hereby certify that the above and foregoing contains a true and  
 7 correct transcription of all portions of evidence and other  
 8 proceedings requested by counsel for the parties to be included  
 9 in this volume of the Reporter's Record, in the above-styled  
 10 and numbered cause, all of which occurred in open court or in  
 11 chambers and were reported by me.

12 I further certify that this Reporter's Record of the  
 13 proceedings truly and correctly reflects the exhibits, if any,  
 14 admitted, tendered in an offer of proof or offered into  
 15 evidence.

16 I further certify that the total cost for the preparation  
 17 of this Reporter's Record is \$ 406.00 and ~~was/were~~ paid by  
 18 Appellant.

19 WITNESS MY OFFICIAL HAND this the 2nd day of  
 20 August, 2017.

21 /s/Cynthia Berry

22 Cynthia Berry, Texas CSR 4730  
 23 Expiration Date: 12/31/2018  
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