

14-17-00521-CV

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IN THE COURT OF APPEALS FOR THE  
FOURTEENTH JUDICIAL DISTRICT AT HOUSTON, TEXAS

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ROBERT S. BENNETT,  
Appellant,  
v.  
COMMISSION FOR LAWYER DISCIPLINE,  
Appellee.

**Appellant's Amicus Letter**

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On Appeal from the 344th District Court, Harris County, Texas

Cause No. 2013-56866  
Hon. Craig Smith, presiding

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**BOB BENNETT**  
**ATTORNEY AT LAW**

ROBERT S. BENNETT  
Texas State Bar No. 02150500  
405 Main St. Suite 310  
Houston, Texas 77002  
(713) 225-6000  
(713) 225-6001 (facsimile)  
[bob@bennettlawfirm.com](mailto:bob@bennettlawfirm.com)

**BARBARA GARDNER**  
**ATTORNEY AT LAW**

BARBARA GARDNER  
Texas State Bar No. 07651300  
602 Sawyer Street, Suite 490  
Houston, TX 77092  
(832) 834-3210 (phone)  
[Barbara@GardnerEmploymentLaw.com](mailto:Barbara@GardnerEmploymentLaw.com)

**ORAL ARGUMENT REQUESTED**

October 25, 2018

Honorable Christopher A. Pine, Clerk  
Fourteenth Court of Appeals  
301 Fannin Street, Suite 245  
Houston, Texas 77002

RE: ***Robert S. Bennett, Appellant. V. Commission for Lawyer Discipline, Appellee***  
On Appeal from the 344th District Court, Harris County, Texas Cause No. 2013-56866

Dear Mr. Pine:

The purpose of this letter is to provide the Court with an e-mail from Attorney Barbara Gardner State Bar of Texas Bar No. 07651300 Address 602 Sawyer Street, Suite 490, Houston, TX 77092 regarding the case at issue. The Appellant, Robert S. Bennett and Texas Attorney Barbara Gardner, files this their Letter Amicus pursuant to Texas Rule of Appellate Procedure 38.7. Request is hereby made that this letter be submitted to the Panel so that the Court may rule on this request that it supplement the briefing with this letter and consider this Attorney Amicus Letter regarding issues raised in the Appeal.

First, it was wise of the court and we appreciate the considered opinion in: *Robert S. Bennett vs. Commission for Lawyer Discipline*, No. 14-14-00740-CV, Fourteenth Court of Appeals-Houston, March 24, 2016. This decision vindicated the Appellant's handling of any client funds. It also corrected the serious judicial mistake which abruptly and unfairly deprived the Appellant of his livelihood. Unfortunately, on June 17, 2017 the second trial judge on the case, Judge Craig Smith of Dallas, Texas at the Second Sanction Hearing that this Court ordered, imposed the same sentence as Juvenile Judge Carmen Kelsey did who was removed from the case. This second sanction Hearing partially undid what this Court had tried to accomplish in a just way.

Second, since the Second Sanction Hearing was decided by the second sanction trial judge, the Honorable Craig Smith, the Appellant Trial Brief was filed on November 20, 2017, the Appellant Reply Brief was filed on January 23, 2018. It is anticipated that additional Amicus Briefs and Letters will be filed.

Third, Texas Attorney Barbara Gardner in her attached Letter joins the other submissions that Oral Argument should be granted, the Disciplinary Rules of Procedure 3.10 were not properly considered or followed, no evidence was offered at the Second Sanction Hearing that would support a 2 years plus six months suspension, that no evidence was offered that any consideration under Tex. R. of Disciplinary Procedure

3.10 was violated, and it was a judicial abuse of discretion to impose a public reprimand of two years plus six months suspension – even with credit for time served. Gardner joins in the request that this Court find that former Disciplinary Assistant Counsel Tim Bersch committed prosecutorial misconduct, and that the *Thompson Decision*, 455. S. W. 2<sup>nd</sup> 569 (Tex. 2014) should be followed to invalidate the period of the sanction. The Court should allow oral argument, and if a finding of no sanction is not imposed, then the Court should return the Case for an appropriate Sanction Hearing.

In conclusion and in reference to the attached letter, Texas Attorney Barbara Gardner joins thousands of other Texas attorneys in requesting that the case be set for Oral Argument and if no Sanction is not entered by this Court that it be returned for a new Sanction Hearing

Respectfully submitted,

By: /s/ Robert S. Bennett  
Robert S. Bennett

By: /s/ Barbara Gardner  
Barbara Gardner

CC: Barbara Gardner

CC: Office of Chief Disciplinary Counsel

See attachments – Barbara Gardner CURRENT Letter to Commission, Barbara Gardner PAST Letter to Commission, Barbara Gardner RESUME

## Barbara Gardner CURRENT Letter to Commission:

*Barbara Gardner*  
**Attorney at Law**

Public Counselor - Labor & Employment Law  
Texas Board of Legal Specialization  
(832) 998-8118  
Barbara@GardnerCurrentLaw.com

October 17, 2018

Honorable Christopher A. Pine, Clerk  
Fourteenth Court of Appeals  
301 Fannin Street, Suite 245  
Houston, Texas 77002

**RE: Robert S. Bennett, Appellant. V. Commission for Lawyer Discipline, Appellee**  
On Appeal from the 344th District Court, Harris County, Texas Cause No. 2013-56866,

Dear Mr. Pine:

I am writing on behalf of Robert ("Bob") Bennett, the Appellant in this matter. After reviewing the disciplinary actions taken against Mr. Bennett and the procedural history of this case, and knowing Bob Bennett as I do, there is only one conclusion: A miscarriage of justice has occurred.

It is my understanding that the initial disbarment was reversed and that Mr. Bennett was fully licensed and reinstated. The appellate court found that Mr. Bennett did not violate Texas Disciplinary Rule 1.15(d) but did find a violation of Rule 3.02. However, when the case was remanded to the Civil District Court Judge Craig Smith, the trial judge:

- Disallowed any discovery,
- Held a sanction hearing with no testifying fact witnesses, no expert witnesses, and no documentation introduced into evidence, and
- Imposed a two-year suspension!

This is far from "justice," but is a "railroad" judgment by a judge who had no interest in the truth. I have tried cases in Harris County District Courts for over thirty (30) years. I graduated number one in my law school class. And I am board certified in both employment and labor law by the Texas Board of Legal Specialization. I have no hesitation stating that it is a sad day in Texas if this is how any district judge handles his cases.

There is no need to cite any legal support in this letter because the Court's file is replete with citations. The facts stated above speak volumes. I join thousands of other Texas attorneys who request that Mr. Bennett be granted oral argument and that after due consideration of the facts and applicable law, no sanction should be imposed upon Mr. Bennett.

Very truly yours,

Barbara J. Gardner

## Barbara Gardner PAST Letter to Commission:



Barbara Gardner

Gardner Employment Law

I have known Bob for many years, and he is a very talented lawyer. He has had major successes in several areas of practice, including large PI verdicts. In the recent years, Bob has become a "go-to" person on social media and IT matters related to lawyers' advertising. I have learned an enormous amount from Bob.

I would certainly give Bob a strong recommendation!

October 26, 2011, Barbara was with another company when working with Robert S. at Bennett Licensing for Professionals LLP

## Barbara Gardner RESUME:

**BARBARA GARDNER**  
Attorney at Law  
602 Sawyer Street, Suite 490  
Houston, Texas 77092  
(832) 834-3210  
Barbara@GardnerEmploymentLaw.com

### SUMMARY OVERVIEW

As interviewed on Houston's Fox 26 TV News, skilled and highly adept at trial and appellate work and consultation in employment law. Board Certified in Labor & Employment Law by the Texas Board of Legal Specialization. Extensive experience as a speaker and guest lecturer on legal matters. Represents employees and small companies in employment matters.

### EDUCATION:

- J.D. – South Texas College of Law
- Rank: Number one in law school class
- B.A. – University of Colorado, Psychology Degree
- B.A. – University of Houston, Music Degree

### ACCOMPLISHMENTS:

- Graduated number one in law school class
- "Best Lawyers in America" (Employment Law), 2007–2018
- Among "Best Women Lawyers," Best Lawyers Business Edition, 2018
- "Texas Super Lawyers," 2007–2018
- "Highest Possible Rating" in Legal Ability & Ethical Standards by Judiciary & Bar members, Martindale Hubbell 2015-2016
- "Texas Top Lawyers," 2012-2018
- "Women Leaders in the Law," Fortune Magazine 2015
- "Top-Rated Lawyers in Labor & Employment," Fortune Magazine 2013
- "The Best Women Lawyers in Texas," 2013
- "Texas' Best Lawyers," 2009–2013
- "Top 100 Trial Lawyers in Texas" 2012
- "Top Lawyers," Corporate Counsel, 2008-2011
- "Houston's Top Lawyers," 2006, 2007, 2011
- "Top Lawyers for the People," 2007
- Board Certified in Labor & Employment Law by Texas Board of Legal Specialization
- AV-Preeminent rating by peers in Martindale Hubbell
- Interviewed as expert several occasions on Houston's Fox 26 News TV
- Former Partner & Head of Employment Law Section of Lam, Lyn & Philip
- One of founding principals and partner of Tucker, Vaughan, Gardner & Barnes
- Judicial Law Clerk for Hon. Carl Bue, United States District Judge
- 30+ years of successful trial and appellate experience

/S/ Barbara Gardner

Barbara Gardner

Attorney at Law

602 Sawyer Street, Suite 490

Houston, TX, 77092

(832) 834-3210 (phone)

[Barbara@GardnerEmploymentLaw.com](mailto:Barbara@GardnerEmploymentLaw.com)

## CERTIFICATE OF SERVICE

I certify that on October 25, 2018, a copy of this letter was served on the parties listed below by electronic service and that the electronic transmission was reported as complete.

Jeffery Wagon  
Texas State Bar No. 20661600  
504 E 27<sup>th</sup> St.  
Bryan, TX 77803-4025  
(979) 703-8665 (phone)  
[wagonlawgroup@gmail.com](mailto:wagonlawgroup@gmail.com)

Barbara Gardner  
Texas State Bar No. 06503500  
602 Sawyer Street, Suite 490  
Houston, TX, 77092  
(832) 834-3210 (phone)  
[Barbara@GardnerEmploymentLaw.com](mailto:Barbara@GardnerEmploymentLaw.com)

Linda Acevedo  
Texas State Bar No. 00829825  
PO Box 12487  
Austin, TX 78711-2487  
(512) 427-1350 (phone)  
[lacedo@texabar.com](mailto:lacedo@texabar.com)

Robert M. (Randy) Roach, Jr.  
Special Assistant Disciplinary Counsel  
Texas Bar No. 16969100

Daniel W. Davis  
Special Assistant Disciplinary Counsel  
Texas Bar No. 24040767

ROACH & NEWTON, LLP  
One Westchase Center  
10777 Westheimer, Suite 212  
Houston, Texas 77042  
(713) 652-2800  
(713) 652-2029 (fax)  
[roach@roachnewton.com](mailto:roach@roachnewton.com)  
[ddavis@roachnewton.com](mailto:ddavis@roachnewton.com)



/s/ Robert S. Bennett

Robert S. Bennett

Texas State Bar No. 02150500

405 Main St. Suite 310

Houston, Texas 77002

(713) 225-6000

(713) 225-6001 (facsimile)

[bob@bennettlawfirm.com](mailto:bob@bennettlawfirm.com)