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Honorable 14th Court of Appeals
301 Fannin, Suite 245
Houston, Texas 77002

RE: 14-17-00521-CV: Robert S. Bennett v. Commission For Lawyer Discipline, An Appeal from Cause No. 2013-56866, Filed in the District Court of Harris County, Texas 334th District Court

Dear Honorable Court:

Robert S. Bennett, appealed the sanction imposed by the Hon. Craig Smith in the above referenced case.

Mr. Bennett was disbarred in a Disciplinary Action under the same cause number listed above. Mr. Bennett appealed that decision, and this Court, in Case No. 14-14-00470-CV, reversed the trial court on the punishment of disbarment, the violation of TDRPC 1.15(d), and affirmed the trial court's finder of a violation of TDRPC 3.02. This court remanded the case for a punishment hearing regarding the Rule 3.02 violation.

I am a Texas attorney interested in the outcome of the case. I served as counsel for Mr. Bennett at all phases of this trial, although the appeals are being handled by other lawyers. I was present at all phases of the underlying trial. I have also reviewed the Amicus Briefs filed in the current and prior appeal of this case. I am receiving no compensation for serving as an amicus curiae. My interest is in the proper and equal application of the Disciplinary Rules to all. It is important that this Court's opinion lay down limits on the scope of Rule 3.10, and reestablish that the rule of law must be the guiding principle of our bar. The undersigned requests to be heard on these important matters.

Texas Rule of Disciplinary Procedure 3.10 sets forth a number of factors which the trial Court shall to consider when assessing the proper sanction. They are:

A. The nature and degree of the Professional Misconduct for which the Respondent is being sanctioned: One violation of DR 3.02 Minimizing the Burdens and Delays of Litigation. There is not one appellate decision nor is there a single District Court or Evidentiary hearing case/cite where a Texas Attorney has been punished under DR 3.02 standing alone. It is never used since it is so subjective. No witness, client or former client, or expert testified against Bennett as to how he violated this one DR. (No evidence was presented by the Commission at trial on this consideration.)

B. The seriousness of and circumstances surrounding the Professional Misconduct: Bar counsel stated that if Bennett had inserted the one word "may" into the engagement agreement there would not be a case. Five experts at the trial were prepared to testify that a violation had not occurred. (No evidence was presented at trial by the Commission on this consideration.) No witness, client or former client, or expert witness testified against Bennett as to how the public or the former client was harmed, damaged, or suffered any loss since the fee in dispute was deposited in the court registry.

C. The loss or damage to clients: Bennett posted a Cash Bond into the Registry of the Court for the amount in controversy. Bennett was not required to do so, but did so to insulate his former client from perceived harm. (No evidence was presented at trial on this consideration.) There was no loss or damage to the client.

D. The damage to the profession: No witness, client or former client, or expert witness testified against Bennett as to any damage to the profession. On the other hand, Bennett has been continuously engaged in providing free CLEs to the State Bar of Texas members and has testified in Austin on Sunset Legislation on how to improve the Bar. There are numerous references in the 300 letters previously noted on how Bennett has sought to improve the Bar and legal services to Texans.

E. The assurance that those who seek legal services in the future will be insulated from the type of Professional Misconduct found: With respect to factor E, regret and remorse hardly relate to "insulating" a client from misconduct. Whether a lawyer puts in place mechanisms to insulate a client from his conduct has little bearing on his remorse. People insulate themselves from wild

animals with fences, not remorse. Mr. Bennett informed the court that he put in place a plan to prevent against any issues of future claimed misconduct. That is equally as important as the remorse he expressed in trial and punishment.

F. The profit to the attorney: None. (No evidence was presented at trial by the Commission on this consideration.) The Court can note that the loss of Bennett's main source of income – the practice of law for two years, and the hiring of attorneys for the duration of the litigation to defend Bennett's law license has been very expensive. No witness, client or former client, or expert witness testified against Bennett that any form of profit was derived from the alleged professional misconduct that occurred.

G. The avoidance of repetition: With respect to factor G, I submit the following analogy as was done in another amicus brief. A driver who studies the cause of an accident can more effectively prevent its future occurrence than a driver who simply feels sorry about the accident. One can learn how not to repeat the mistake of stepping in a snake pit without having to apologize for doing so in the first place. Again this focuses more on the quantity and quality of remorse, rather than measures taken to prevent such occurrences in the future.

H. The deterrent effect on others: With respect to factor H, it is unclear to the undersigned how sufficient regret or contrition could deter other potential offenders from committing the same offense. There is no question that Bennett has learned his lesson, and has taken steps necessary to ensure that similar misconduct will not recur. Bennett also actively participates in CLE presentations where he talks about his experience and fall from grace. Those activities, rather than expressing regret to the trial judge, have a more positive deterrent effect on others.

I. The maintenance of respect for the legal profession: With respect to factor H, an admission of wrongdoing, contrition and regret would certainly be important. We all make mistakes. Owning up to those mistakes certainly would improve the overall profession, recognizing that lawyers are in fact, human. However, Bennett has admitted his wrongdoing, expressed regret, acted with contrition towards his conduct, and taken steps necessary to prevent recurrence. It is not appropriate for the Commission to have argued, and the Court expressed its opinion, that Bennett's regret and contrition wasn't enough.

J. The conduct of the Respondent during the course of the Committee action: There is no evidence that has been presented that during this long ordeal the Respondent's conduct has not been anything but completely professional and appropriate. (No evidence was presented at trial

by the Commission on this consideration.) However, the same cannot be said for the other participants in the process if the 300+ Letters and nearly 30 amicus briefs (mainly written by officers of the Court) are to be believed. No witness, client or former client, or expert witness testified against Bennett that his conduct was not appropriate and respectful for all concerned.

K. The trial of the case: With respect to factor K, there was no evidence to support any conclusion that Bennett did not act appropriately at trial. Bennett acted professionally and appropriately while his character and 40 year legal career were being attacked and dismantled, and while he was being disbarred at least in part for a rule violation that this Court has determined Bennett was innocent.

L. Other relevant evidence concerning the Respondent's personal and professional background. . The only evidence before the Court is that no sanction is appropriate. (No evidence presented at trial on this consideration.) The Court is referred to www.ocdc.revealed.com to view the numerous letters of those who participated in the Case and observed the case. The Respondent's disciplinary record and evidence thereof, or more importantly, the lack of disciplinary history, shows that the Respondent never before or since had a complaint or grievance filed against him.

The Commission offered no oral testimony or written testimony as to the appropriate sanction to be imposed. Nothing. It is also clear that the record in the entirety of this case support any sanction in this case.

No witness testified that the Respondent violated any of the 12 Considerations. No written evidence offered by the Commission connected in any way the Respondent to the 12 Considerations that the Court "shall consider". At neither the first trial nor the argument at the punishment hearing, was evidence ever presented whereby the Court considered the 3.10 factors. The evidence submitted in the first part of the trial was simply copies of documents. The Commission's case for punishment was simply referring the Court to the documents and argument of counsel. On the other hand, Bennett presented evidence, and attempted to present evidence specific to each of the factors, much of which was not permitted by the trial judge. At punishment, again the Commission's case was directed by arguments of counsel, with the main emphasis being that the Commission's attorney did not feel like Bennett expressed sufficient remorse for his conduct for which he was held liable. And the Court agreed.

The Court should either dismiss the proceeding or enter a finding of no sanction. No purpose would be served by remanding this case for further consideration, including a probated suspension or giving a suspension of time already served. Considering the lack of evidence, the career crushing improper penalty already imposed by the disbarment order that cannot be effectively remedied, Bennett's lack of disciplinary history, and a history of unblemished service to the Bar for over forty years, a no sanction finding should be entered.

Respectfully submitted,

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Letter Brief to the Court was forwarded to the following counsel of record via certified letter, electronic service, or facsimile on this 26th day of August, 2018, pursuant to the Texas Rules of Civil Procedure.

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/s/ Jeffery D. Wagon

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