

Dear Ms. Acevedo, Mr. Bersch, and Mr. Grabowski:

Please let me introduce myself. I am one of Mr. Bennett's attorneys and will be handling his appeal with several other attorneys. As I have reviewed this matter (portions of the record and the pleadings), and the lack of cooperation by the Commission in resolving this matter prior to an appeal—particularly given the circumstances of this case, I am writing you all for two reasons.

First, we will be filing an Amended Motion for New Trial which will include additional legal arguments as well as new evidence showing the trial court that Land has now been paid. We are also going to request an oral hearing on our motions. Because we are outside the 30-day window of time, we will be filing a motion for leave to file such a motion. I would like to know whether you are opposed or unopposed to such a motion?

Second, I am writing to reach out and see if the Commission would please consider resolving this matter before we undergo an appeal. The sanction of disbarment is unquestionably an abuse of discretion and there is no evidence of any rule violation. It cannot be a violation of any rule to take an appeal when you have a right to do so—even if you lose. The Court of Appeals in this very case held that such an appeal was not frivolous. If something is not frivolous, it cannot be sanctionable or grounds for a disciplinary action—under any circumstances. Mr. Bennett's disciplinary action will be reviewed by one of the Houston Courts of Appeals (one of which has already reviewed this argument and held that it was not frivolous).

There are *numerous* other arguments that I can make in support of Mr. Bennett's right to appeal in the Land case. Those arguments are as follows.

1. ***Mr. Bennett's contract with Land specifically holds that decisions are governed by the HBA FDRC.*** Under the Terms of the Contract, the governing rules required adherence to the Rules of the HBA FDRC. Under the FDRC (Rule 8.02 (a)), any "decision may be reviewed by petition to a court having jurisdiction in accordance with the provisions of the Texas Arbitration Act." ("TAA"). The decision from the Arbitration Panel is governed by the Rule of the Houston Bar Fee Dispute Resolution Committee subject to the TTA.

2. ***The TAA gives Mr. Bennett an unequivocal right to an appeal.*** Under the TTA, Section 171.098 of the TPRC allows an appeal: "The appeal shall be taken in the manner and to the same extent as an appeal from an order or judgment in a civil action." Thus, if Mr. Bennett had a right to an appeal, there was never ANY violation of any rule in this case, particularly of Rule 3.02.
3. ***Commission's theme at trial.*** The main point of the Commission and that of the trial court was that Mr. Bennett should have paid Land the money when the district court confirmed the arbitration award. However, Mr. Bennett as he had the right to do, superseded the judgment and took an appeal. This is not a violation of DR 3.02. If it were, every time a lawyer had a fee dispute and took an appeal, it could arguably be a violation of some ethic rule. This is not and cannot be the law.
4. ***Commission's responsibility to resolve matters prior to appeal.*** Under 3.08 G. of the TRDP: "It shall be the policy of the Commission to participate in alternative dispute resolution where feasible..." Given the facts of this case, and the severe (and unwarranted) punishment, I cannot think of a better case where the Commission should adhere to its own rules and resolve this case without an appeal. There are many problems with the Commission's position in this case including the fact that the trial court does not have any support for her sanction given in this case, and the Commission did not put on any evidence to support any *actual* rule violation. What evidence supports the trial court's decision of disbarment in this case or that the trial court even considered a lesser sanction such as suspension? There is none that I have seen anywhere in the record.
5. ***Opinions of other well-respected attorneys and ethic experts.*** Lillian Hardwick, Chuck Herring, Dan Naranjo, Anthony Griffin and Don Karotkin and every ethics expert in the State who has been consulted about this case (and there has been plenty), or heard about this result, has been shocked or appalled. All of this will be part of the record on appeal and I am confident plenty of amicus briefing will be filed on Mr. Bennett's behalf by several attorneys of the Texas Bar.

In sum, at this point in the proceeding, knowing that Mr. Bennett had the *absolute* right to appeal under the TAA, and knowing this sanction is completely unwarranted (and not even sought by the Commission), why wouldn't the Commission wish to join in the post-judgment motions to "jointly" modify the trial court's erroneous judgment, or at the very least, resolve this case under Rule 3.08 G prior to an appeal to one of the Houston Courts of Appeals (one of which has already held that Mr. Bennett's appeal of the arbitration award was not frivolous)?

I respectfully ask the Commission to please consider resolving this matter before we undergo an appeal, and consider a lesser sanction (if not no sanction at all).

Thanks to you all for your time and attention to this e-mail.

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