

also filed *Petitioner's Motion to Compel* and *Petitioner's Motion for Continuance of Respondent's Motion for Summary Judgment*. See *Exhibits 2 and 3*. That same day, Respondent requested that her summary judgment motion be withdrawn from the submission docket and produced to the Commission over 45,000 pages of documents and 159 videos, approximately 3 weeks after her responses to production were originally due. Respondent's discovery responses were not organized or labeled in accordance with Tex. R. Civ. P. 193.1.

The Commission filed its *Third Amended Disciplinary Petition* on September 13, 2022, asserting that Respondent had committed professional misconduct through her misrepresentations and/or dishonest conduct in litigation before several federal courts in suits related to the 2020 presidential election. See *Exhibit 4*. The Commission specifically identified those suits as: (i) *Pearson, et. al., v. Kemp, et. al.*, in the U.S. District Court for the Northern District of Georgia, Case No. 1:20-cv-04809—TCB (the “Georgia Case”); (ii) *King, et. al., v. Whitmer, et. al.*, in the U.S. District Court for the Eastern District of Michigan, Case NO. 2:20-cv-13134-LVP-RSW (the “Michigan Case”); (iii) *Feehan v. Wisc. Elections Comm'n*, in the U.S. District Court for the Eastern District of Wisconsin, Case No. 2:20-cv-01771-PP (the “Wisconsin Case”); and (iv) *Bowyer v. Ducey*, in the U.S. District Court for the District of Arizona, Case No. 1:20-cv-02321-DJH (the “Arizona Case”). The Commission further referenced the decisions in each of those cases dismissing same, as well as the August 25, 2021, decision of the Honorable U.S. District Judge Linda Parker in the Michigan case, granting sanctions against Respondent (amongst others) for Powell's misrepresentations in her court and failure to conform to Fed. R. Civ. P 11.¹

¹ *King, et. al., v. Whitmer, et. al.*, 556 F. Supp. 3d 680 (E.D. Mich. 2021) (Judge Parker's August 25, 2021 opinion regarding the sanctions motion, finding that Plaintiffs' counsel, including Respondent, filed the Georgia Case “in bad faith and for an improper purpose”).

The court entered a new scheduling order on November 4, 2022, setting trial for April 24, 2023. On November 16, 2022, after both parties conducted more discovery, Respondent again requested her motion for summary judgment entitled *Sidney Powell's Motion for Summary Judgment, Rules §§ 3.03(a)(1); 3.03(a)(5); and; 8.03(a)(3)* (sic), be set on the submission docket, and it was set for January 18, 2023. On November 21, 2022, the Commission filed its *Petitioner's Amended Response to Respondent's Motion for Summary Judgment*, this time containing 8 exhibits labeled Exhibit A through Exhibit H (the "Commission's Amended Response"). See *Exhibit 5*. Additionally, the Commission filed its *Second Motion for Continuance of MSJ Hearing Date* arguing that Respondent had failed to comply with the Court's October 12, 2022 "letter ruling" (memorialized in the Court's November 18, 2022 Order) granting, in part, *Petitioner's Motion to Compel* filed on August 9, 2022. See *Exhibit 6*. That is, Respondent's continued failure to comply with the Commission's discovery requests and the court's subsequent discovery rulings improperly hindered the Commission's ability to fully respond to Respondent's summary judgment motions.

On December 28, 2022, Respondent filed her second summary judgment motion entitled *Sidney Powell's No-Evidence Motion for Summary Judgment* and set it to be heard on January 18, 2023, the same day as her above-referenced original motion for summary judgment. The Commission's deadline to respond to both summary judgment motions was January 11, 2023.

II. THE COMMISSION MISLABELED THE EXHIBITS ATTACHED TO ITS SECOND AMENDED RESPONSE FILED JANUARY 11, 2023

On January 5, 2023, the Commission again filed an amended response to Respondent's original summary judgment motion but mistitled it *Petitioner's Amended Response to Respondent's Motion for Summary Judgment*, containing 6 exhibits marked Exhibit A through

Exhibit F.² *See Exhibit 7.* On January 11, 2023, the Commission attempted to clarify its pleadings by filing its *Petitioner's Second Amended Response to Respondent's Hybrid Motion for Summary Judgment and Respondent's No Evidence Motion* (the Commission's "Second Amended Response"), identifying 6 exhibits (A-F), but mistakenly attaching 8 incorrectly labeled exhibits (A-H). *See Exhibit 8.* Put more simply, in its Second Amended Response, the Commission mistakenly attached the exhibits referenced in and attached to its November 21, 2022, Amended Response, while identifying the exhibits attached to its January 5, 2023, amended response. Nevertheless, all of the Commission's summary judgment exhibits identified and/or referenced in its Second Amended Response were on file with the court at the time of the submission hearing.

The Commission's amended response filed on January 5, 2023, contained the correctly labeled exhibits that it had intended to attach to its Second Amended Response. Attaching the exhibits referenced in the Commission's November 21, 2022, Amended Response to the Commission's Second Amended Response was done in error. Counsel for the Commission acknowledges and takes responsibility for any confusion this mistake may have created for the Court.

The Court's *Final Summary Judgment*, granting Respondent's summary judgment motions on February 22, 2023, states the Court "alerted the parties to difficulty locating materials cited in the Commission's brief, but the Commission responded that no corrective action was necessary." *See Exhibit 9.* Although the Commission acknowledges the potential confusion related to the exhibits identified in and attached to its Second Amended Response, the Commission disagrees with the Court's characterization of the communication between Commission's counsel and the Court regarding those exhibits. Specifically, the only communication from the Court relating to

² Mistitled, in that it had the same title as the Petitioner's Amended Response to Respondent's Motion for Summary Judgment previously filed on November 21, 2022.

an exhibit cited in the Commission’s response was the Court’s email of January 24, 2023, which stated, “[i]t appears to the Court that Exhibit E to Petitioner’s January 11th Second Amended Response is not correctly oriented and that the pages of that exhibit are not entirely visible when viewed electronically.” *See Exhibit 10.*

Upon receipt of that email from the Court, counsel for the Commission reviewed the file-marked copy of the Commission’s Second Amended Response. In the Commission’s Second Amended Response, the exhibit labeled as Exhibit E is a true and correct copy of the “Exhibit 6” attached to the *Complaint for Declaratory, Emergency, and Permanent Injunctive Relief* filed by Respondent in the Georgia Case, obtained from the Northern District of Georgia’s Public Access to Court Electronic Records (PACER) website, which was itself, misoriented. *See attached MSJ Response Exhibit D.* That is why counsel for the Commission responded to the Court’s email as follows, “Yes, exhibit E is misoriented, but that is part of our evidence. Exhibit E appears how Respondent attached it to her underlying pleading in one of the cases at issue in this matter.” One of the Commission’s contentions is that Respondent attached the misoriented exhibit to support her false allegation in the Complaint in the Georgia Case that the report was “undated” by cutting off the date that appears on the original. *See Exhibit 4.* That is an allegation of conduct on the part of Respondent that, if proven, would by itself possibly constitute conduct in violation of Texas Disciplinary Rules of Professional Conduct (the “TDRPCs”) 3.01³, 3.03(a)(1), 3.03(a)(5), and/or 8.04(a)(3).

Counsel for the Commission did not receive any other communications from the Court and was not told that the Court had any “difficulty locating materials” or locating any footnote, as

³ A lawyer shall not bring or defend a proceeding or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous. Tex. Disc. R. Prof. Cond. 3.01. Here, Respondent’s assertion that the exhibit was “undated” could be considered a frivolous contention.

described in the Court's Final Summary Judgment. Had it received this type of inquiry from the Court, counsel for the Commission would not have responded that "no corrective action was necessary." That being said, counsel for the Commission understands that its inadvertent error in mislabeling exhibits may have resulted in confusion and that the Court was under no obligation to point out this mistake.

III. THE CORRECT EXHIBITS IDENTIFIED IN, REFERENCED IN, AND/OR ATTACHED TO THE COMMISSION'S SECOND AMENDED RESPONSE, FILED ON JANUARY 11, 2023, WERE IN THE COURT'S FILE AT THE TIME OF THE SUBMISSION HEARING AND SHOULD BE CONSIDERED.

A. The exhibits attached to, identified, and/or specifically referenced in the Commission's Second Amended Response.

For clarity and convenience, the Commission again identifies the exhibits attached and specifically referenced in the arguments put forth in its Second Amended Response, filed on January 11, 2023, and attaches a courtesy copy of those exhibits with this motion for clarity as follows:

Exhibit A: Order on Petitioner's Motion to Compel signed November 18, 2022. The Commission identified this document in its Second Amended Response (January 11, 2023) on pages 2 and 5.

Exhibit B: The altered certificate attached to Respondent's pleading in the Georgia Case as Exhibit 5 thereto – which was attached to the Commission's Second Amended Response (January 11, 2023) as Exhibit D and referred to on pages 2 and 7, and 9.

Exhibit C: The altered report attached to Respondent's pleading in the Georgia Case as Exhibit 6 thereto – which was attached to the Commission's Second Amended Response (January 11, 2023) as Exhibit E, and referred to on pages 2, 7, and 9.

Exhibit D: Respondent's pleading (without exhibits) in the Georgia Case wherein she calls both the report and the certificate "undated." (Page 7, ¶12.) – which was attached to the Commission's Second Amended Response (January 11, 2023) as Exhibit F, and referenced on page 2 and throughout.

Exhibit E: Defendant’s Consolidated Brief in Support of their Motion to Dismiss and Response in Opposition to Plaintiffs’ Motion for Injunctive Relief in the Georgia Case (without exhibits) – was attached to the Commission’s Second Amended Response (January 11, 2023) as Exhibit G and referenced on page 2.

Exhibit F: Respondent’s supplemental privilege log identifying communications with affiants, which was attached to Petitioner’s Amended Response dated January 5, 2023 as Exhibit F and referenced on pages 2, 5, and 6 of the Commission’s Second Amended Response (January 11, 2023).

Notwithstanding any confusion caused by the Commission’s unintentional mislabeling and/or exclusion of identified and referenced exhibits in its Second Amended Response, all such exhibits were either attached and specifically referenced in the Second Amended Response, or on file with the court at the time of the submission hearing on Respondent’s two summary judgment motions, as described above. Respondent’s Unsworn Declaration was also on file with the court as it was attached as Exhibit 2 to *Sidney Powell’s Motion for Summary Judgment, Rules §§ 3.03(a)(1); 3.03(a)(5); and; 8.03(a)(3)* (sic). See *Exhibit 1*. Respondent’s responses to interrogatories were also on file with the Court. Thus, all such exhibits qualified as proper summary judgment evidence. *Lance v. Robinson*, 543 S.W.3d 723, 732-33 (Tex. 2018); see also, *R.I.O. Systems, Inc. v. Union Carbide Corp.*, 780 S.W.2d 489, 492 (Tex.App. – Corpus Christi-Edinburg 1989, writ denied) (holding evidence “on file prior to the summary judgment hearing,” including documents attached to earlier summary-judgment motion, were “proper summary judgment evidence”).

“While the better practice is to attach all summary judgment evidence to the motion [or response] presented to the court, [TRCP 166a] itself states that trial court shall consider all summary judgment evidence ‘on file.’” *R.I.O. Systems, Inc.*, 780 S.W.2d at 492; citing *Stewart v. United States Leasing Corp.*, 702 S.W.2d 288, 290 (Tex.App. – Houston [1st Dist.] 1985, no writ); Tex. R. Civ. Proc. 166a(c). Documents on file in a case are proper summary judgment proof when

referred to or incorporated in a motion for summary judgment. The evidence is not required to be physically attached to the motion for summary judgment. The only requirement for summary judgment proof is that it be on file, either independently or as a part of the motion for summary judgment, the reply thereto, or some other properly filed instrument. *Richards v. Allen*, 402 S.W.2d 158, 161 (Tex.1966); *McCurry v. Aetna Casualty and Surety Company*, 742 S.W.2d 863 (Tex.App.—Corpus Christi 1987, writ denied); *Stewart*, 702 S.W.2d at 290.

B. The exhibits attached to the Commission’s Second Amended Response but not properly identified in accordance with their assigned exhibit label should still be considered.

Although the arguments contained in the Commission’s Second Amended Response incorrectly made references to the exhibits labeled B, C, D, and E, said documents were attached and specifically identified in the Commission’s Second Amended Response, filed on January 11, 2023, as described above. As such, they should have been considered as evidence to support the Commission’s arguments against summary judgment despite being mislabeled.

Rule 166a(d) of the Texas Rules of Civil Procedure provides that “Discovery products not on file with the clerk may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing *specific* references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary judgment proof...”. That is, the intent required under Rule 166a(d) is satisfied when the discovery is attached to a summary judgment motion and the motion clearly relies on the attached discovery as support. See *Salmon v. Miller*, 958 S.W.2d 424, 427 (Tex.App. – Texarkana 1997, pet. denied) (ref. *McConathy v. McConathy*, 869 S.W.2d 341, 342 n.2 (Tex. 1994)). Although the Commission did not accurately reference the designated exhibit label as to each exhibit attached to its Second Amended Response, the Commission

specifically referred to Exhibits B, C, D, and E by name, as set forth above, and they were attached as Exhibits D, E, F, and G, respectively.

IV. THE RESPONDENT'S OBJECTIONS TO THE EXHIBITS ATTACHED TO THE COMMISSION'S SECOND AMENDED RESPONSE, FILED ON JANUARY 11, 2023, SHOULD BE OVERRULED.

In the *Final Summary Judgment* this court entered on February 22, 2023, the court stated it only considered "Exhibits F and G" as referenced in the Commission's response and did "not consider any document attached by the Commission that the Commission failed to cite or identify." *See Exhibit 9, page 2.* However, as set forth above, all six exhibits were attached and specifically identified in the Commission's Second Amended Response on page 2, even though they were mislabeled.

As to the court's decision to not consider Exhibit B and Exhibit C, as described above and specifically described on page 2 of the Commission's Second Amended Response (January 11, 2023), and only give limited consideration to Exhibit D (Respondent's pleading (without exhibits) in the Georgia Case) and Exhibit E (Defendant's Consolidated Brief in Support of their Motion to Dismiss and Response), the Commission would respectfully argue that these exhibits should be considered in their entirety.

Respondent objected to Exhibits B, C, D and E only on the basis that a party "cannot rely on other pleadings attached as exhibits to its own motion or response as summary-judgment evidence, even if the pleadings are verified". To support her argument, Respondent cited *Laidlaw Waste Sys. v. City of Wilmer*, 904 S.W2d 656, 660-61 (Tex. 1995). However, *Laidlaw* is not a disciplinary action against a Texas licensed attorney based on allegations that the attorney made misrepresentations in his/her pleadings to a court of law, or otherwise engaged in conduct

involving dishonesty, deceit or misrepresentation.⁴ In fact, *Laidlaw* provides no guidance on the type of evidence needed to support a disciplinary action brought to enforce TDRPCs 3.01, 3.03, and/or 8.04(a)(3).

Indeed, in disciplinary actions regarding the truth or falsity of representations made to a court by an attorney in pleadings or other writings, and the honesty (or lack thereof) of the attorney's conduct related thereto, courts *do* typically review the pleadings containing alleged misrepresentations filed by such attorneys (amongst other evidence) to determine whether such professional misconduct occurred: *See e.g., Olsen v. Commission for Lawyer Discipline*, 347 S.W.3d 876, 882-84 (Tex.App. – Dallas 2011) (partial summary judgment granted finding attorney violated TDRPC 8.04(a)(3) by filing an incomplete and improperly notarized version of a purported will, based on, amongst other things, the will actually filed by the attorney, was proper where the attorney failed to raise a genuine issue of material fact); *McIntyre v. Commission for Lawyer Discipline*, 169 S.W.3d 803, 811-14 (Tex.App. – Dallas 2005) (judge's findings in bench trial that attorney violated TDRPCs 3.03(a)(3) and 8.04(a)(3) by filing a motion for injunctive relief in state court and filing related pleadings in bankruptcy court that misrepresented both that he represented a bankruptcy trustee and that he had authority to represent a creditor in the bankruptcy proceeding, were supported by legally and factually sufficient evidence, including, amongst other things, the pleadings containing the alleged misrepresentations); *Willie v. Comm'n*

⁴ *Laidlaw* involved a declaratory action against the City of Wilmer challenging the annexation of property it had purchased to construct and operate a solid waste landfill. *Laidlaw* attempted to use his own verified pleadings to defeat the city's evidence showing that the metes and bounds description of the property in question was proper and that the City did not comply with the Opens Meeting Act related to the annexation. While *Laidlaw* cites *Hidalgo v. Surety Sav. & Loan Ass'n*, 462 S.W.2d 540, 545 (Tex. 1971) for the proposition that in a typical civil lawsuit, pleadings are generally not competent summary judgment evidence, courts have also found there are times when pleadings **can** be competent evidence even in the ordinary civil suit. *See Pine v. Gibraltar Savings Ass'n*, 427 S.W.2d 714, 718 (Tex. App – Houston 1968, no writ). Moreover, an attorney disciplinary action such as the instant case, where the representations made by an attorney in pleadings are *at the center* of allegations of professional misconduct, is not a typical civil lawsuit.

for Lawyer Discipline, No. 14-13-00872-CV, 2015 WL 1245965, at *12-14 (Tex.App. – Houston [14th Dist.] March 17, 2015, pet. denied) (mem. op.) (jury’s findings that attorney violated Rules 3.01, 3.03(a)(1) and 8.04(a)(3) by filing a brief with an appellate court containing omissions and misrepresentations of fact were supported by legally and factually sufficient evidence, including, amongst other things, the brief containing the alleged omissions/misrepresentations).

V. THE COMMISSION ALSO REQUESTS THIS COURT TO RECONSIDER *PETITIONER’S SECOND MOTION FOR CONTINUANCE OF MSJ HEARING DATE*, FILED ON NOVEMBER 21, 2022.

The Commission filed its verified *Petitioner’s Second Motion for Continuance of MSJ Hearing Date* on November 21, 2022. This second continuance motion was filed prior to *Sidney Powell’s No-Evidence Motion for Summary Judgment* on December 27, 2022, and after the Commission’s first motion to compel Respondent to respond to the Commission’s discovery requests was filed on August 9, 2022. At the time, the court set *Sidney Powell’s No-Evidence Motion for Summary Judgment* and *Sidney Powell’s Motion for Summary Judgment, Rules §§ 3.03(a)(1); 3.03(a)(5); and; 8.03(a)(3)* (sic) (filed on July 20, 2022) for submission on January 18, 2023. However, the discovery period did not conclude until January 20, 2023, and expert discovery was set to close on February 24, 2023.

A hearing was set on the *Petitioner’s Second Motion to Compel* for February 22, 2023. However, because the Court granted Respondent’s motions for summary judgment no hearing was held on *Petitioner’s Second Motion to Compel*. The Court’s decision came 5 days after the Respondent responded to some of the Commission’s discovery requests. On February 17, 2023 (almost a month after the submission deadline), Respondent provided the Commission with a text message privilege log and links to documents purportedly responsive to *Petitioner’s June 17, 2022*, discovery requests. No arguments were made to the Court on February 22, 2023, related to the

outstanding issues presented in *Petitioner's Second Motion for Continuance of MSJ Hearing Date*, filed on November 21, 2022, or *Petitioner's Second Motion to Compel*, and the Commission could not amend its Second Amended Response that was due on January 11, 2023, (and submitted on January 18, 2023) with the documentation Respondent produced on February 17, 2023.

Although no argument was heard on the Commission's pending motions, the Court entered its *Final Summary Judgment* order, dated February 22, 2023, and stated it denied *Petitioner's Second Motion for Continuance of MSJ Hearing Date*. In doing so, the court stated that the Commission's continuance motion was an "express motion," and failed to comply with Texas Rules of Civil Procedure 251 and 252. However, as set forth in the continuance motion, Assistant Disciplinary Counsel executed and attached an unsworn declaration, dated November 21, 2022, specifically stating she made her declaration "under penalty of perjury that the forgoing is true and correct." *See Exhibit 6, page 4*. In addition, said motion requested a continuance based on Respondent's failure to comply with the court's "letter ruling", dated October 12, 2022 (memorialized in this Court November 18, 2022, Order), which set forth Respondent's requirement to supplement discovery as directed by the court. *See exhibit A attached to Exhibit 6*. The Commission requests this Court to reconsider *Petitioner's Second Motion for Continuance of MSJ Hearing Date* for the following reasons:

- A. The Commission's second motion for continuance complied with Rule 251 and 252 of the Texas Rules of Civil Procedure.**

First, TEX. CIV. PRAC. & REM. CODE §132.001(a) provides, "... an unsworn declaration may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by rule, order, or requirement adopted as provided by law." In fact, Rule 132.001(f) provides specific language for a "declaration made under this section by an employee of a state agency..." See TEX. CIV. PRAC. & REM. CODE §132.001(f).⁵

Here, the unsworn declaration of Assistant Disciplinary Counsel, an employee of the State Bar of Texas, followed the specific language required of an employee of a state agency, pursuant to Rule 132.001(f), and met the requirements of Rule 251 and Rule 252 of the Texas Rule of Civil Procedure. See *Palmer v. Homeowners Association of Princeton Meadows, Inc.*, No. 05-21-00476-CV, 2022 WL 3354139 (Tex.App. – Dallas Aug. 15, 2022, no pet.) (mem. op.). Additionally, the inclusion of the phrase "under penalty of perjury" is the "key to allowing an unsworn declaration to replace an affidavit." *Dominguez v. State*, 441 S.W.3d 652, 658 (Tex.App. – Houston [1st Dist.] 2014, no pet.); see *Tex. Dep't of Pub. Safety v. Caruana*, 363 S.W.3d 558, 564 (Tex. 2012).

B. Respondent's attempts to "comply" with the Commission's discovery requests continued with production responses produced *after* the Commission's deadline to respond to the Respondent's multiple motions for summary judgment, after the submission date set by the Court for those motions, and nearly right up to the Court's summary judgment ruling.

Second, as argued in *Petitioner's Second Motion for Continuance of MSJ Hearing Date*, Respondent failed to comply with this Court's "letter ruling", filed on October 12, 2022, that was entered after the Commission filed its first motion to compel. Since that time, Respondent has produced, in a piece-meal fashion, over 11,700 pages of new documents, numerous videos, and multiple versions of privilege logs from October 1, 2022, to February 17, 2023, *after* both the

⁵ The State Bar is an agency of the Texas judicial department. TEX. GOV'T CODE ANN. § 81.011(a) (West 2017). The Commission for Lawyer Discipline is a standing committee of the State Bar and treated as an agency for the State with the authority to bring disciplinary actions. TEX. GOV'T CODE ANN. § 81.076(b) (West 2017). See *Green v. State Bar of Tex.*, 27 F.3d 1083, 1087 (5th Cir. 1994); also *Bishop v. State Bar of Texas*, 791 F.2d 435, 438, (5th Cir 1986).

Commission's due date for a response to her motions for summary judgment **and** the submission date set by the court. In fact, Respondent produced 6,334 pages of new documentation after the Commission's deadline to respond to Respondent's summary judgment motions (January 11, 2023). As set forth in the Court's record, in *Petitioner's Second Motion for Continuance of MSJ Hearing Date* filed November 21, 2022, and *Petitioner's Second Motion to Compel* filed on January 12, 2023, Respondent's request for a continuance was filed based on issues surrounding Respondent's persistent failure to comply with the Commission's discovery requests.

To paint a clearer picture of the reasons for the Commission's filing of its *Petitioner's Second Motion for Continuance of MSJ Hearing Date* on November 21, 2022, the chronology below shows the Respondent's production in relation to the Commission's deadline to respond to Respondent's multiple summary judgment motions.

| | |
|--------------------|--|
| August 9, 2022 | <u>Respondent provided:</u> 159 videos and documents bates-stamped of over 45,000 pages. |
| September 30, 2022 | <u>Respondent provided:</u> over 6,000 pages of new documents. |
| October 1, 2022 | <u>Respondent provided:</u> a 611 page Excel Privilege Log containing 4,768 entries, demonstrating that a majority of Respondent's 347,918 bates-stamped documents have been withheld. |
| October 18, 2022 | <u>Respondent provided:</u> an amended Privilege Log (containing 344 pages) |
| January 11, 2023 | Commission's Deadline to respond to Respondent's two MSJs. |
| January 16, 2023 | <u>Respondent provided:</u> 191 pages of documents |
| January 18, 2023 | <u>Respondent provided:</u> 281 pages of documents (not bates-stamped) |
| January 20, 2023 | <u>Respondent provided:</u> 3,625 pages of documents and 12 videos |
| January 25, 2023 | <u>Respondent provided:</u> an amended privilege log with 640 pages |
| February 1, 2023 | <u>Respondent provided:</u> an amended privilege log of 610 pages |
| February 8, 2023 | <u>Respondent provided:</u> an amended privilege log of 599 pages, a "Team Index" and 28 documents |
| February 14, 2023 | <u>Respondent provided:</u> 28 pages of documents |

February 17, 2023 Respondent provided: a text messages privilege log (20 pages, over 700 entries) and 360 pages of texts

One example of non-timely production by Respondent is the transcript of Respondent's May 7, 2022 testimony before the January 6th Committee, which Respondent finally produced to the Commission on January 17, 2023, *after* the Commission's deadline to respond to her summary judgment motions. *See Exhibit 11*. Respondent's January 6th testimony contains numerous statements that contradict her Unsworn Declaration dated July 22, 2022, and filed as part of Respondent's summary judgment evidence in this case, in which Powell states she "did not draft the complaints nor compile or attach exhibits attached to any of them...[and]...personally had little to no role in the detailed vetting and sorting of the information provided us."⁶ *See Exhibit 1, page 25**. Specifically, Respondent's testimony before the January 6th Committee indicates she was involved in the gathering of evidence and affidavits to support the election fraud lawsuits she filed, including those in Georgia, Michigan, Wisconsin and Arizona. *See Exhibit 11, pp. 35, 37-41, 52-53, 62, 75, 80-81, 84, and 90-97*.

Another example is Respondent's non-timely production of a collection of her e-mails on January 20, 2023, *after both* the Commission's deadline to respond to her summary judgment motions **and** the date set by the Court for submission. Several such e-mails also demonstrate Respondent's extensive involvement in managing the representations made in the pleadings filed in her election fraud lawsuits, again, in contravention of Respondent's testimony in her Unsworn Declaration. *See Exhibit 12, pp. 6, 9 & 16*.

C. The Commission has not had adequate time for discovery due to Respondent's actions.

⁶ To say nothing of the internal inconsistencies in Respondent's Unsworn Declaration in this respect. *E.g.*, Respondent both "played no role in compiling or filing and had no actual knowledge of the exhibits attached to the complaint" and "made a reasonable inquiry as to the exhibits attached to the complaints" with respect to the Georgia Case. ¶s 6 and 11, *Respondent's Unsworn Declaration*.

Third, the Commission did not have adequate time to conduct discovery prior to its deadline to respond to Respondent's summary judgment motions on or before January 11, 2023, as a result of Respondent's ongoing discovery abuses. The factors the Court should consider to determine if the Commission had adequate time to conduct discovery are: (1) the nature of the case, (2) the nature of the evidence necessary to controvert the no-evidence motion, (3) the length of time the case was active, (4) the amount of time the no-evidence motion was on file, (5) whether the movant had requested stricter deadlines for discovery, (6) the amount of discovery that already had taken place, and (7) whether the discovery deadlines in place were specific or vague. *Brewer & Pritchard, P.C. v. Johnson*, 167 S.W.3d 460, 467 (Tex.App.-Houston [14th Dist.] 2005, pet. denied); *Specialty Retailers, Inc. v. Fuqua*, 29 S.W.3d 140, 145 (Tex.App. – Houston [14th Dist.] 2000, pet. denied). A no-evidence motion for summary judgment is generally permitted after a court-imposed discovery period has expired, but not before. TEX. R. CIV. P. 166a(i), cmt to 1997 rule change. Unlike other notes and comments in the Texas Rules of Civil Procedure, this comment was specifically intended to inform the construction and application of this rule. *Specialty Retailers, Inc.*, 29 S.W.3d at 145.

While 9 months is often enough time to complete discovery in a disciplinary action, here, Respondent failed to properly respond to most, if not all, of the Commission's requests for discovery. Respondent then proceeded to provide thousands of pages of discovery well after such discovery was due including during the four weeks *after* the Commission's deadline to respond to Respondent's summary judgment motions. Such actions by Respondent were the basis for *Petitioner's Second Motion to Compel*, filed on January 12, 2023, which was set to be heard by the court on February 22, 2023.

Additionally, the Court's Order dated November 18, 2022, ordered Respondent to identify, by bates-label, file name, or other indicator, which documents or other materials produced by Respondent were responsive to each request. However, since the first document dump Respondent served on Petitioner on August 9, 2022, Respondent has improperly, in no orderly fashion, in several different file types, and without formally supplementing discovery or identifying what request the document is responsive to, produced documents to the Commission on no less than ten (10) separate occasions. Additionally, since Respondent produced four additional privilege logs *after* the Commission's deadline to respond to Respondent's summary judgment motions, the Court should reconsider its February 22, 2023, granting of Respondent's summary judgment motions and continue this matter until Respondent has fully complied with her discovery obligations.

VI. CONCLUSION

The Commission requests this Court reconsider its February 22, 2023, final judgment, and consider all documents identified, referenced, and/or attached to its Second Amended Response filed on January 11, 2023.

With the consideration of all evidence specifically referenced and attached to the Commission's Second Amended Response and Respondent's summary judgment motions, the Commission argues there exists ample evidence from which to conclude that Respondent may have engaged in conduct that, at minimum, involved dishonesty, fraud, deceit or misrepresentation in violation of TDRPCs 3.01, 3.03(a)(1), 3.03(a)(5), and/or 8.04(a)(3).

Prayer

For these reasons, and in the interest of justice and fairness, Petitioner asks the Court to grant Petitioner's Motion for Reconsideration and/or for New Trial and deny Respondent's

summary judgment motions, and/or grant its *Petitioner's Second Motion for Continuance of MSJ Hearing Date* filed on November 21, 2022.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Kristin V. Brady
Assistant Disciplinary Counsel

Rachel Craig
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel
State Bar of Texas
The Princeton
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254
Telephone: (972) 383-2900
Facsimile: (972) 383-2935
E-mail: Kristin.Brady@texasbar.com

/s/Kristin V. Brady
Kristin V. Brady
State Bar No. 24082719

/s/Rachel Craig
Rachel Craig
State Bar No. 24090049

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was forwarded to Respondent, by and through his counsel of record, Robert H. Holmes, S. Michael McColloch, and Karen Cook, on this the 23nd day of March 2023, pursuant to the Texas Rules of Civil Procedure.

/s/Kristin Brady _____
Kristin Brady

UNSWORN DECLARATION

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

My name is Rachel Craig, and I am an employee of the following governmental agency: the State Bar of Texas. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on the 23nd day of March, 2023.

/s/ Rachel Craig _____
Rachel Craig

Assistant Disciplinary Counsel
State Bar of Texas

I. EXHIBITS

- Exhibit 1: *Sidney Powell's Motion for Summary Judgment, Rules §§ 3.03(a)(1); 3.03(a)(5); and; 8.03(a)(3) filed on July 20, 2022*
- Exhibit 2: *Petitioner's Motion to Compel filed on August 9, 2022*
- Exhibit 3: *Petitioner's Motion for Continuance of Respondent's Motion for Summary Judgment filed on August 9, 2022*
- Exhibit 4: *Petitioner's Third Amended Disciplinary Petition, filed on September 13, 2022.*
- Exhibit 5: *Petitioner's Amended Response to Respondent's Motion for Summary Judgment filed on November 21, 2022*
- Exhibit 6: *Petitioner's Second Motion for Continuance of MSJ Hearing Date filed on November 21, 2022*
- Exhibit 7: *Petitioner's Amended Response to Respondent's Motion for Summary Judgment filed on January 5, 2023*
- Exhibit 8: *Petitioner's Second Amended Response to Respondent's Hybrid Motion for Summary Judgment and Respondent's No Evidence Motion filed on January 11, 2023*
- Exhibit 9: *Final Summary Judgment*
- Exhibit 10: *Email correspondence with the Court dated January 24, 2023*
- Exhibit 11: *Non-timely Produced Transcript of Respondent's Jan. 6th Committee Testimony*
- Exhibit 12: *Non-timely Produced E-mails from Respondent*

II. EXHIBITS ATTACHED TO PETITIONER'S MSJ RESPONSES

- Exhibit A: Order on Petitioner's Motion to Compel signed November 18, 2022. The Commission identified this document in its Second Amended Response (January 11, 2023) on pages 2 and 5.
- Exhibit B: The altered certificate attached to Respondent's pleading in the Georgia Case as Exhibit 5 thereto – which was attached to the Commission's Second Amended Response (January 11, 2023) as Exhibit D and referred to on pages 2 and 7, and 9.
- Exhibit C: The altered report attached to Respondent's pleading in the Georgia Case as Exhibit 6 thereto – which was attached to the Commission's Second Amended Response (January 11, 2023) as Exhibit E, and referred to on pages 2, 7, and 9.
- Exhibit D: Respondent's pleading (without exhibits) in the Georgia Case wherein she calls both the report and the certificate "undated." (Page 7, ¶12.) – which was attached to the Commission's Second Amended Response (January 11, 2023) as Exhibit F, and referenced on page 2 and throughout.
- Exhibit E: Defendant's Consolidated Brief in Support of their Motion to Dismiss and Response in Opposition to Plaintiffs' Motion for Injunctive Relief in the Georgia Case (without exhibits) – which was attached to the Commission's Second Amended Response (January 11, 2023) as Exhibit G and referenced on page 2.
- Exhibit F: Respondent's supplemental privilege log identifying communications with affiants – which was attached to Petitioner's Amended Response dated January 5, 2023, as Exhibit F and referenced on pages 2, 5, and 6 of the Commission's Second Amended Response (January 11, 2023).