CAUSE NO. DC-22-02562

COMMISSION FOR LAWYER DISCIPLINE,	§	IN THE DISTRICT COURT
Plaintiff,	§	
vs.	§	
SIDNEY POWELL (File Nos. 202006349, 202006347, 202006393, 202006599, 202100006, 202100652, 202101297, 202101300, 202101301, 202103520, 202106068, 202106284, 202106181)	§	DALLAS COUNTY, TEXAS
Defendant.	§	116th JUDICIAL DISTRICT

SIDNEY POWELL'S NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT

Sidney Powell ("Ms. Powell"), requests the Court to enter a final summary judgment against the Commission for Lawyer Discipline under Texas Rule of Civil Procedure 166a on all claims, all causes of action and all theories of damages filed by the Commission for Lawyer Discipline ("Commission" "Bar"). This motion is a no-evidence motion for summary judgment under Rule 166a(i) of the Texas Rules of Civil Procedure.

PRELIMINARY STATEMENT

The purpose of the no-evidence summary-judgment procedure, which is modeled after federal summary-judgment practice, is to "pierce the pleadings" and

evaluate the evidence to see if a trial is necessary. *Benitz v. Gould Grp.*, 27 S.W.3d 109, 112 (Tex.App.–San Antonio 2000, no pet.). To accomplish this, the no-evidence summary-judgment procedure is designed to isolate and dispose of claims or defenses not supported by facts. The purpose of Fed.R.Civ.P. 56(e) is to dispose of unsupported claims and lawsuits in which the plaintiff has no evidence to support its claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

If there has ever been a case where a plaintiff has absolutely no evidence to support its petition, it is this case.

INTRODUCTION

1. After the election in 2020, as set forth in the Answer, Ms. Powell and others filed suits in four states alleging, interalious, erlection fraud in the 2020 Presidential Election. The suits are:

> (i) *Pearson, et al. v. Kemp*, et al., Case No. 120-cv-4809, United States District Court for the Northern District of Georgia, in a complaint containing 211 paragraphs with 29 exhibits including affidavits, a total of 587 pages ("Georgia Case");
>
> (ii) *King, et al. v. Whitmer, et al.*, Case No. 2:20-cv-13134-LVP-RSW, United States District Court, Eastern District of Michigan, in an amended complaint containing containing 233 paragraphs with 30 exhibits including affidavits, a total of 960 pages ("Michigan Case");
>
> (iii) *Feehan v. Wisconsin Elections Comm'n, et al.*, Case No. 2:20-cv-1771, V, United States District Court, Eastern District of Wisconsin, in a complaint containing 142 paragraphs with 19 exhibits including affidavits, a total of 354

pages ("Wisconsin Case"); and

(iv) *Bowyer v. Ducey*, Case No. 2-20-cv-02321-DJH, United States District Court District of Arizona, in a complaint containing 145 paragraphs with 31 exhibits including affidavits, a total of 377 pages ("Arizona Case").

("EFS").

2. Commencing on December 1, 2020, before any court had made any rulings in the EFS, Democrat operatives, with absolutely no connection to the EFS beban filing grievances, in groups of three, against Ms. Powell with the Bar. The Bar allegedly conducted it investigation and thirteen of those grievances were elevated to Complaints, even thought nine of them bear no valid signatures, and they were submitted to a grievance panel. While this process is allegedly confidential, that was not the case here, the grievances became public knowledge immediately.

3. The thirteen grievances were submitted to a grievance panel which decided to sanction Ms. Powell on the basis of the testimony of one witness, Michigan Attorney General Dana Nessel, who had promoted publically her grievance against Ms. Powell on the State of Michigan AG website.

4. On March 1, 2022, the Bar sued Ms. Powell; on April 7, 2022, it filed a First Amended Petition to add three more complaints; on May 17, 2022, the Bar filed a Second Amended Petition in response to special exceptions; and on September 13, 2022, a Third Amended Petition to acknowledge the denial of a sanctions motion in

the Wisconsin Case. All the petitions assert the same violations of the same six Disciplinary Rules of Professional Conduct, without specificity, including:

> § 3.01 - 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. ("Claim 1")
>
> § 3.02 - In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter. ("Claim 2")
>
> § 3.03(a)(l) - A lawyer shall not knowingly: make a false statement of material fact or law to a tribunal. ("Claim 3");
>
> § 3.03(a)(5) - A lawyer shall not knowingly: offer or use evidence that the lawyer knows to be false. ("Claim 4");
>
> § 3.04(c)(l) - A lawyer, in good conscience, shall not: except as stated in paragraph (d), in representing a client before a tribunal: habitually violate an established rule of procedure or of evidence. ("Claim 5"); and
>
> § 8.04(a)(3) - A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation. ("Claim 6").

("Claims").

5. On April 4, 2022, Ms. Powell accepted service and filed her Original Answer, asserting a general denial and affirmative defenses of: privilege and legal justification. She filed, a First Amended Answer on April 15, 2022; on November 18, 2022, she filed a Second Amended Answer adding the affirmative defenses of illusory and hearsay; and onDecember 12, 2022, she filed a Third Amended Answer to further

support the affirnmative defenses of illusory and hearsay in response to the Bar's threat to file special exceptions.

6. On May 10, 2022, Ms. Powell filed a Rule 91a Motion, which was denied.

7. On July 20, 2022, Ms. Powell filed a traditional Motion for Partial Summary Judgment, which was set for hearing on August 20, 2022, but continued on the Commission's motion, and now re-set on January 13, 2023.

BACKGROUND

8. Ms. Powell is entitled to a no-evidence summary judgment on the Claims because the Commission has had an adequate time for discovery and the Commission has no evidence of at least one essential element of each of its Claims.

9. When a no-evidence motion for summary judgment is filed before the end of the discovery period, it is considered timely as long as the nonmovant had adequate time for discovery. See Tex. R. Civ. P. 166a(i); *McInnis v. Mallia*, 261 S.W.3d 197, 200 (Tex.App.–Houston [14th Dist.] 2008, no pet.).

A. ADEQUATE TIME FOR DISCOVERY HAS PASSED:

10. To determine whether an adequate time for discovery has passed, courts consider the following nonexclusive factors: (1) the nature of the suit, (2) the evidence necessary to controvert the motion, (3) the length of time the case has been on file, (4) the length of time the motion has been on file, (5) the amount of discovery

that has already taken place, (6) whether the movant requested stricter deadlines for discovery, and (7) whether the discovery deadlines in place were specific or vague. *McInnis*, 261 S.W.3d at 201; *Cmty. Initiatives, Inc. v. Chase Bank*, 153 S.W.3d 270, 278 (Tex. App.–El Paso 2004, no pet.).

11. Plaintiff has had adequate time for discovery, to wit:

11.1. This is a baseless and illegitimate suit based solely on the political motivations of thirteen disgruntled Democrats who filed numerous grievances against Ms. Powell for legitimate suits she filed seeking relief to investigate fraud in the 2020 Presidential Election. The Bar's petition is based on hearsay and without even consulting any of the alleged Complainants and without adequate investigation by the Bar.

11.2. The Bar has the burden of proof on all the claims in its petition The Bar should have had the evidence necessary to controvert this motion is the evidence the Commission accumulated when it investigated the various grievances before they became Complaints. Moreover this case has been on file for over nine months and the Bar has only taken three depositions, has served Requests for Production and Interrogatories to which Ms. Powell has fully responded. *See Restaurant Teams Int'l v. MG Secs. Corp.*, 95 S.W.3d 336, 339–41 (Tex.App.–Dallas 2002, no pet.).

11.3. This case was filed on March 1, 2022, the case has been pending for 10 months; however, the Commission has had since December 1, 2020, the date the first grievance was filed, to conduct investigations and complete discovery in this matter. That is approximately 760 days, basically 2 years and 1 month, to conduct investigations and complete discovery. The Bar elevated thirteen of some nineteen alleged grievances to complaints after supposedly conducting thorough investigations on each as required by the State Bar Disciplinary Rules.

11.4. This motion will have been on file for at least 21 days before the hearing.

11.5. The following discovery has taken place:

11.5.1. The Commission has conducted the following oral depositions in this case at which Ms. Powell was present and had opportunity to cross-examine the witnesses: (i) August 25, 2022, Ms. Powell; (ii) September 30, 2022, Joshua Merritt; and (iii) December 14, 2022, Lewis Sessions.

11.5.2. Ms. Powell has conducted the following oral depositions, at which the Bar was present and had opportunity to cross-examine the witnesses: (i) September 12, 2022, Congressman Ted Lieu; (ii)

September 12, 2022, Paul Zoltan; (iii) September 30, 2022, Joshua Merritt; (iv) October 10, 2022, Janet Lachman; (v) October 11, 2022, Paula Goldman; and (vi) December 14, 2022, Lewis Sessions.

11.5.4. Neither party has noticed another deposition.

11.5.5. Ms. Powell has produced over 51,000 pages of document, a Privilege Log, and responded to the interrogatories of the Commission. The Commission has yet to challenge one item on the Privilege Log.

11.5.6. The parties have agreed on Level 3 Discovery Plan which provides that fact discovery ends on January 20, 2023.

11.5.7. The discovery deadlines have been specific.

B. THE COMMISSION HAS NO EVIDENCE OF AN ESSENTIAL ELEMENT OF EACH CLAIM.

12. Ms. Powell is entitled to a no-evidence summary judgment on the Bar's Claims because there is no evidence to support one or more of the essential elements of each Claim. Tex. R. Civ. P. 166a(i); *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009); *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 581–82 (Tex.2006).

13. In a no-evidence motion for summary judgment, the movant contends that no evidence supports one or more essential elements of a claim for which the nonmovant would bear the burden of proof at trial. Tex.R. Civ. P. 166a(i). The trial court must grant the motion unless the nonmovant raises a genuine issue of material

fact on each challenged element. *Hamilton v. Wilson*, 249 S.W.3d 425, 426 (Tex.2008) (per curiam) (citing Tex.R. Civ.P. 166a(i)). *See* also *Boerjan v. Rodriguez*, 436 S.W.3d 307, 310 (Tex. 2014); *Fort Brown Villas III Condo. Ass'n v. Gillenwater*, 285 S.W.3d 879, 882 (Tex. 2009).

14. Ms. Powell contends that the Bar has no evidence of an essential element of each of the Claims as follows:

14.1. To prevail on Claim 1, the Bar must prove the following essential elements of Claim 1 – In the EFS Ms. Powell: (i) **brought the suits or asserted an issue**, (ii) when she **did not have a reasonable belief she had a basis for doing so**, or (iii) that was **not frivolous**. The Bar cannot prevail on Claim 1 because the Bar has no evidence to prove Ms. Powell did not (i) **reasonably believe there was a basis for filing the EFS or asserting the issues therein** or (ii) the **EFS or issues asserted therein were frivolous**. Stated in the positive, the Bar cannot prove that in the EFS Ms. Powell:

> (i) **did not have a reasonable belief there was a basis for filing the complaints or asserting the issues therein**, and
>
> (ii) **that the complaints or issues asserted therein were frivolous**.

14.2. To prevail on Claim 2, the Bar must prove the following essential

elements of Claim 2 – In the EFS Ms. Powell: (i) **intentionally** took a position that, (ii) **unreasonably**, (iii) **increased the costs**, or **unreasonably increased other burdens of the case** or **unreasonably delayed resolution** of the EFS. The Bar cannot prevail on Claim 2 because the Bar has no evidence to prove at least one of the essential elements of Claim 2, those being: Ms. Powell in the EFS (i) **intentionally** and (ii) **unreasonably** (iii) **increased the costs**, or **other burdens of the case;** or **delayed resolution of the EFS**. Stated in the positive, the Bar cannot prove that in the EFS Ms. Powell:

> (i) **intentionally** took a position that
>
> (ii) **unreasonably**
>
> (iii) **increased the costs**, or **other burdens** or **delayed resolution of the EFS**.

14.3. To prevail on Claim 3, the Bar must prove the following essential elements of Claim 3 – In the EFS Ms. Powell: (i) **knowingly** made (ii) a **false statement of material fact to a tribunal** or (iii) **a false statement of law to a tribunal**. The Bar cannot prevail on Claim 3 because the Bar has no evidence to prove at least one of the essential elements of Claim 3, those being: Ms. Powell: (i) **knowingly** (ii) made **a false statement of material fact**; or **a false statement of law** to the courts in which the EFS were filed. Stated in the

positive, the Bar cannot prove Ms. Powell in the EFS:

(i) knowingly

(ii) made a false statement of material fact to a court or **made a false statement of law to a court in the EFS**.

14.4. To prevail on Claim 4, the Bar must prove the following essential elements of Claim 4 – In the EFS Ms. Powell: (i) **knowingly** (ii) **offered** or **used evidence** (iii) that Ms. Powell **knew** (iv) to be **false** when offered or used. The Bar cannot prevail on Claim 4 because the Bar has no evidence to prove at least one of the essential elements of Claim 4, those being Ms. Powell: (i) **knowingly offered** or **used evidence** that Ms. Powell (ii) **knew**, (iii) to be **false** when offered, (iv) any **evidence was offered** or (v) any **evidence was used**. Stated in the positive, the Bar has no evidence to prove Ms. Powell in the EFS:

(i) **knowingly offered** or **used evidence**, that she

(ii) **knew**

(iii) to be **false** when offered or used or

(iv) any **evidence was offered** or

(v) any **evidence was used**.

14.5. To prevail on Claim 5, the Bar must prove the following essential

elements of Claim 5 – Ms. Powell: (i) in representing a client in the EFS (ii) before a tribunal (iii) in **good conscience**, (iv) shall not **intentionally**, (v) **habitually violate** (vi) an **established rule of procedure** or of **evidence**. The Bar cannot prevail on Claim 5 because the Bar has no evidence to prove at least one of the essential elements of Claim 5, those being Ms. Powell in the courts in which the EFS were filed (i) in representing a client (ii) before a tribunal (iii) in **good conscience**, (iv) **habitually**, (v) **violated** an **established rule** of procedure or of evidence. Stated in the positive, the Bar has no evidence to prove Ms. Powell in the EFS:

(i) **intentionally** and

(ii) **habitually**

(iii) **violated** an **established rule** of **procedure** or **evidence**.

14.6. To prevail on Claim 6, the Bar must prove the following essential elements of Claim 6 – In the EFS Ms. Powell: (i) **intentionally** (ii) **engaged in**, (iii) **dishonesty**, (iv) **fraud**, (v) **deceit** or (vi) **misrepresentation**. The Bar cannot prevail on Claim 6 because the Bar has no evidence to prove at least one of the essential elements of Claim 6, those being Ms. Powell's conduct in the EFS: (i) was **intentional** (ii) she was **dishonest**, (iii) she **committed fraud**,

or (iv) was **deceitful** or (v) **misrepresented** the facts of the law. Stated in the positive, the Bar has no evidence to prove Ms. Powell in the courts in which the EFS were filed:

(i) **intentionally engaged**

(ii) **in dishonest conduct**, **fraud**, **deceit** or **misrepresentation**.

C. LAW APPLICABLE

15. The term "reasonable belief" means: "a belief that would be held by an ordinary and prudent man in the same circumstances as the actor." Penal Code § 1.07(a)(42).

16. The term "frivolous complaint" means: "a complaint **that is both groundless and brought in bad faith** or is **groundless and brought for the purpose of harassment**." *Sullivan v. Tex. Ethics Comm'n*, 551 S.W.3d 848, 854 (Tex. App.–Austin 2018, pet. denied)[emphasis added]. Groundlessness and bad faith are not synonymous under Texas law. Groundlessness turns on the legal merits of a claim, whereas bad faith turns on a party's motives for asserting a claim. *Donwerth v. Preston II Chrysler–Dodge, Inc.*, 775 S.W.2d 634, 637 (Tex.1989) ("[N]o basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law." Tex.R.Civ.P. 13.); *Falk & Mayfield L.L.P. v. Molzan*, 974

S.W.2d 821, 828 (Tex.App.–Houston [14th Dist.] 1998, pet. denied) ("bad faith" is not simply bad judgment or negligence. It is the "conscious doing of a wrong for dishonest, discriminatory, or malicious purposes."). In determining whether an action is groundless, the trial court makes its decision based either on undisputed fact issues, law issues or jury findings. *C.S.R., Inc. v. Industrial Mechanical, Inc.*, 698 S.W.2d 213, 217 (Tex.App.–Corpus Christi 1985, writ ref'd n.r.e.); *Mader v. Aetna Casualty & Surety Co.*, 683 S.W.2d 731, 734 (Tex.App.–Corpus Christi 1984, no writ). In deciding whether a pleading was filed in bad faith or for the purpose of harassment, the trial court must measure a litigant's conduct at the time the relevant pleading was signed. *Texas–Ohio Gas, Inc. v. Mecom*, 28 S.W.3d 129, 139 (Tex.App.–Texarkana 2000, no pet.). Reasonable inquiry means the amount of examination that is reasonable under the circumstances of the case. *Monroe v. Grider*, 884 S.W.2d 817 (Tex.App.–Dallas 1994, writ denied). A trial court's determination of frivolousness necessarily means the court has **found each issue raised is frivolous**. *Lumpkin v. Dep't of Family & Protective Servs.*, 260 S.W.3d 527 (Tex.App.–Houston [1st Dist.] 2008, no pet.).

17. The term "intentional" means: "A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result." Tex. Pen.

Code Ann. § 6.03.

18. The term "know" means: "to perceive or apprehend; to understand." To 'understand' means to apprehend the meaning of; to comprehend; to know. *Int'l-Great N. R. Co. v. Pence*, 113 S.W.2d 206, 210 (Tex. Civ. App.–El Paso 1938, writ dism'd).

19. If the defendant meets its burden, the burden shifts to the plaintiff to produce more than a scintilla of evidence to raise a genuine issue of material fact on the challenged element. Tex. R. Civ. P. 166a(i); *JLB Builders, L.L.C. v. Hernandez*, 622 S.W.3d 860, 864 (Tex. 2021); *Boerjan*, 436 S.W.3d at 312; *Forbes, Inc. v. Granada Biosciences, Inc.*, 124 S.W.3d 167, 172 (Tex. 2003).

20. The evidence must be sufficient to allow reasonable and fair-minded people to differ in their conclusions on whether the challenged fact exists; evidence that raises only a speculation or surmise is insufficient. *Forbes, Inc.*, 124 S.W.3d at 172. If less than a scintilla of evidence is produced, the defendant is entitled to a summary judgment on the plaintiff's cause of action.

ALTERNATIVE RELIEF

21. In the alternative, if the Court denies any part of this motion for summary judgment, Ms. Powell asks the Court to sign an order to either: (i) grant this motion in part on the issues, the claims, and the theories of damages that the Bar fails to meet

its burden and sign a partial summary judgment on those issues, claims, and theories of damages; or (ii) enter an order specifying the facts that are established as a matter of law. *See* Tex. R. Civ. P. 166a(e).

CONCLUSION

22. Ms. Powell is entitled to a summary judgment as to on all issues, all claims, and all theories of damages because the Bar cannot prevail on any of the Claims because it has no evidence to prove at least one essential element for each claim.

PRAYER

23. For these reasons, Ms. Powell asks the Court to grant this motion and sign an order for a final summary judgment. Ms. Powell asks for summary judgment on all issues, all claims, and all theories of damages. In the alternative, if the Court does not grant this motion in full, Ms. Powell asks the Court to either: (i) grant this motion in part on the issues, the claims, and the theories of damages that the Bar fails to meet its burden and sign a partial summary judgment on those issues, claims, and theories of damages; or (ii) enter an order specifying the facts that are established as a matter of law.

Respectfully submitted,
HOLMES LAWYER, PLLC

By: */s/ Robert H. Holmes*
Robert H. Holmes

State Bar No. 09908400
19 St. Laurent Place
Dallas, Texas 75225
Telephone: 214-384-3182
Email: rhholmes@swbell.net

S. MICHAEL MCCOLLOCH PLLC
S. Michael McColloch
State Bar No. 13431950

6060 N. Central Expressway
Suite 500
Dallas, Texas 75206
Tel: 214-643-6055
Fax: 214-295-9556
Email: smm@mccolloch-law.com

and

KAREN COOK, PLLC
Karen Cook
State Bar No. 12696860

6060 N. Central Expressway
Suite 500
Dallas, Texas 75206
Tel: 214-643-6054
Fax: 214-295-9556
Email: karen@karencooklaw.com

COUNSEL FOR POWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been delivered, by efileTexas.gov to all attorneys of record on December 27, 2022.

/s/ Robert H. Holmes
Robert H. Holmes

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Robert Holmes on behalf of Robert Holmes
Bar No. 9908400
rhholmes@swbell.net
Envelope ID: 71303853
Status as of 12/28/2022 11:51 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kristin Brady	24082719	kristin.brady@texasbar.com	12/27/2022 3:49:44 PM	SENT
S. Michael McColloch	13431950	smm@mccolloch-law.com	12/27/2022 3:49:44 PM	SENT
Brittany Paynton		brittany.paynton@texasbar.com	12/27/2022 3:49:44 PM	SENT
Karen Cook	12696860	karen@karencooklaw.com	12/27/2022 3:49:44 PM	SENT
Robert H.Holmes		rhholmes@swbell.net	12/27/2022 3:49:44 PM	SENT
Rachel Craig		rachel.craig@texasbar.com	12/27/2022 3:49:44 PM	SENT
Todd Hill		thill@collincountytx.gov	12/27/2022 3:49:44 PM	SENT