

COMMISSION FOR LAWYER
DISCIPLINE,

Plaintiff,

v.

SIDNEY POWELL,

Defendant.

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IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

116th JUDICIAL DISTRICT

FINAL SUMMARY JUDGMENT

With the parties having elected to forego oral argument, the Court considered on submission Powell's July 20, 2022 motion for summary judgment (partial) and Powell's December 28, 2022 motion for no-evidence summary judgment. The Court rules as follows:

I. COMMISSION'S MOTION FOR CONTINUANCE

On the Commission's express motion for continuance of Powell's partial motion for summary judgment, and to the extent, if any, the Commission intended to include Powell's no-evidence motion, the Court rules that the request, being unsupported by affidavit and wholly failing to comply with Texas Rules of Civil Procedure 251 and 252, is DENIED.

II. DEFECTS IN COMMISSION'S RESPONSE

Page two of the Commission's second amended response lists six documents purportedly included in its appendix, Exhibits A through F. The actual documents attached to the response were marked Exhibits A through H, and did not match the

documents described in the brief. 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.¹

The Commission's second amended response contained only three citations to purported summary judgment evidence.² The first and second citations were to Exhibit F at page 7, paragraph 12, and to Exhibit F at page 8, paragraph 12. These citations appear to refer correctly to the document marked and attached as Exhibit F, though the exhibit appears to have been originally listed as Exhibit D on page two of the Commission's response. The third citation was to Exhibit E at page 8, footnote 8, which appears to have been intended to refer to the document marked and attached as Exhibit G.

For clarity of the summary judgment record, in light of the numerous defects in the Commission's exhibits, the Court did not consider any document identified by the Commission that the Commission failed to cite or attach. Similarly, the Court did not consider any document attached by the Commission that the Commission failed to cite or identify. In short, the only exhibits considered by the Court were the two documents cited as summary judgment evidence and attached by the Commission: the documents marked Exhibits F and G.

¹ Specifically, the Commission cited to Exhibit E at page 8, footnote 8. No footnotes are visible on Exhibit E. Email communication was exchanged wherein the Court sought clarification regarding Exhibit E (copy filed separately). The Commission declined to correct its record.

² The Commission cited to other exhibits only in support of its request for a continuance, denied *supra*.

III. EVIDENTIARY OBJECTIONS

Powell's objections that the Commission's Exhibits B and C are not competent summary judgment evidence are well-taken and SUSTAINED.

Powell's objection that the Commission's Exhibit D—the document marked and attached as Exhibit F—is not competent summary judgment evidence is SUSTAINED IN PART. While pleadings are not evidence of the matters stated therein, the document marked and attached as Exhibit F is competent evidence of the fact that such pleading was filed by Powell and others, and was considered for that limited purpose.

Powell's objection that the Commission's Exhibit E—the document marked and attached as Exhibit G—is not competent summary judgment evidence is well-taken and SUSTAINED.

The Commission's hearsay objection to paragraph 10 of the MacDougald affidavit is well-taken and SUSTAINED.

The Commission's remaining objections to Powell's summary judgment evidence are OVERRULED.

IV. NO-EVIDENCE SUMMARY JUDGMENT

The Commission did not respond to Powell's no-evidence motion challenging elements of the Commission's claims under Rules 3.01, 3.02, or 3.04. Accordingly, the motion is granted as to those claims.

With the Commission's sole competent summary judgment evidence being Exhibit F, considered solely for its limited purpose—evidence of a pleading filed by

Powell and others—the Commission has failed to meet its burden on the challenged elements of the Commission’s claims under Rules 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3). Accordingly, the motion is granted as to those claims.

IT IS THEREFORE ORDERED that Powell’s no-evidence motion for summary judgment is GRANTED in its entirety.

V. PARTIAL SUMMARY JUDGMENT

IT IS FURTHER ORDERED that Powell’s partial motion for summary judgment on the Commission’s claims under Rules 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3) is GRANTED in its entirety.

This order resolves all claims between all parties and is final and appealable.

Signed on February 22, 2023.

Andre K. Boudreau
PRESIDING JUDGE

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