

**AFFIRM; Opinion Filed March 28, 2024**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-22-01102-CV**

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**RICHARD JOSEPH DEAGUERO, Appellant  
V.  
COMMISSION FOR LAWYER DISCIPLINE, Appellee**

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**On Appeal from the 193rd Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-21-14471**

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**MEMORANDUM OPINION**

Before Justices Garcia, Breedlove, and Kennedy  
Opinion by Justice Kennedy

Appellee Commission for Lawyer Discipline (“Commission”) filed an original disciplinary petition against Richard Joseph Deaguero, alleging he had violated certain disciplinary rules of professional conduct and seeking sanctions and other relief at law or in equity. The Commission moved to deem certain discovery answers admitted against Deaguero and subsequently moved and obtained partial summary judgment against him, in which the trial court determined Deaguero’s conduct constituted professional misconduct.

After conducting a sanctions hearing, the trial court ordered Deaguero's suspension from the practice of law in the State of Texas for a period of twenty-four months, with eighteen months probated. The judgment also ordered Deaguero to schedule a neuropsychological evaluation, report the diagnosis and treatment plan recommendations to the State Bar of Texas ("State Bar"), obtain weekly mental health treatment until released in writing by treatment provider, and pay attorney's fees and costs to the State Bar for amounts incurred in the instant disciplinary action and any unpaid amounts for all previous orders.

In twenty-eight issues, Deaguero appeals the trial court's judgment of partially probated suspension, as well as the partial summary judgment order and other rulings incorporated therein. We affirm the trial court's judgment. Because all dispositive issues are settled in law, we issue this memorandum opinion. *See* TEX. R. APP. P. 47.2(a), 47.4.

### **BACKGROUND**

On September 9, 2021, the Commission, a standing committee of the State Bar, filed its original petition, against Deaguero. In that petition, the Commission alleged Deaguero had entered an appearance as attorney of record for complainant Andrea M. Reyes in an appeal of a judgment against her in a property dispute, filed a brief on her behalf, and thereafter failed to keep her or the person she authorized Deaguero to speak with informed about the status of her case and "failed to explain the matter to the extent reasonably necessary to permit Reyes to make informed

decisions regarding the representation.” The Commission further alleged such conduct violated rules 1.03(a) and 1.03(b) of the disciplinary rules of professional conduct.<sup>1</sup>

Deaguero answered generally denying the Commission’s allegations, asserting affirmative defenses, asserting counterclaims for official oppression and frivolous lawsuit, and seeking attorney’s fees and injunctive relief that the State Bar retract the public admonition that the State Bar published about him. According to his answer, he and Reyes communicated for approximately three years “prior to the date of this charge” and had always communicated without incident. He also alleged that Reyes prevailed in the appeal in which he represented her, but during the pendency of the appeal, Reyes mortgaged the property at issue to finance repairs to the property and defaulted on the mortgage, leading to the lender foreclosing on the mortgage. Deaguero further alleged Reyes owed but had not paid him anything for his work in the underlying trial case and the appeal.

During the pendency of the case, the Commission filed a motion to deem admissions against Deaguero, which was granted, and subsequently became the basis for the trial court’s grant of the Commission’s motion for partial summary judgment. Deaguero filed several motions for summary judgment, none of which

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<sup>1</sup> Rule 1.03(a) requires a lawyer to “keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.” TEX. R. PRO. CONDUCT 1.03(a). Rule 1.03(b) requires a lawyer to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” *Id.* 1.03(b).

were granted. The case proceeded to a sanctions hearing, at the conclusion of which, the trial court judge stated on the record that he found Deaguero had violated rules 1.03(a) and 1.03(b) and that there was a pattern of misconduct that occurred over the previous few years. The judge then orally granted sanctions against Deaguero, including a period of suspension from the practice of law. The judge later signed a judgment of partially probated suspension, which included his findings and sanctions, as well as the terms of Deaguero's active suspension and probation. Deaguero moved for reconsideration of the trial court's partial summary judgment order (not the judgment of partially probated suspension), which was denied. This appeal followed.

### ISSUES

In his brief, Deaguero asserts twenty-eight issues, many of which contain multiple subparts or repeat previously asserted issues. We construe Deaguero's issues to be as follows:

1. Whether Reyes lacked standing to sue Deaguero when she did not put on any evidence "injury or concrete harm" caused by Deaguero in violation of Article 1, Section 13 of the Texas Constitution.
2. Whether the Commission lacked standing to sue Deaguero when it did not put on any evidence "injury or concrete harm" caused by Deaguero in violation of Article 1, Section 13 of the Texas Constitution.
3. Whether the trial court judge lacked subject matter jurisdiction over the case because neither the Commission nor Reyes put on any evidence "injury or concrete harm" caused by Deaguero in violation of Article 1, Section 13 of the Texas Constitution.

4. Whether the Commission failed to show a prima facie case against Deaguero that he had violated Texas disciplinary rules of professional conduct in support of the partial summary judgment.
5. Whether the Commission failed to show “bad faith” on the part of Deaguero and therefore cannot obtain the relief of an order suspending Deaguero from the practice of law.
6. Whether the trial court judge’s order of suspension violated the Texas State Bar Act by suspending Deaguero from practice without any evidence that Deaguero had been convicted of felonies or crimes of moral turpitude.
7. Whether the trial court judge erred by refusing to set Deaguero’s four no-evidence summary judgment motions for hearing and for failing to grant them when the Commission failed to produce evidence in response to them.
8. Whether the trial court judge erred by granting the Commission’s motion to consider certain discovery requests deemed admitted against Deaguero.
9. Whether the trial court judge erred by conducting hearings on the Commission’s motions to deem admissions and its motion for summary judgment in Collin County, instead of Dallas County, in violation of the rules of disciplinary procedure.
10. Whether the trial court judge erred by considering Reyes’ affidavit as evidence in support of the Commission’s motion for partial summary judgment.
11. Whether the trial court judge erred by granting summary judgment in favor of the Commission after failing to construe the evidence in a light most favorable to Deaguero as the nonmovant.
12. Whether the trial court’s judgment and injunction orders are void for failing to conform to the pleadings.
13. Whether the trial court judge’s rulings that require Deaguero to submit a psychiatric evaluation to be reported to the Texas State Bar and to report the instant sanction order to the State Bar of California are void because they do not conform to the pleadings.

14. Whether the trial court judge erred by permitting his court coordinator and a clerical employee of the State Bar to enter into an agreement setting the hearing date on the Commission's motion for partial summary judgment without requiring conference with Deaguero.
15. Whether the trial court judge failed to recuse himself on the basis of bias in violation of the Texas Code of Judicial Conduct and Deaguero's rights to a fair trial under the First and Fourth Amendments to the United States Constitution.
16. Whether the trial court judge violated Deaguero's rights under the First and Fourth Amendments to present a defense by retaliating against Deaguero in response to his complaint regarding his court coordinator's communications with an employee of the State Bar.
17. Deaguero reiterates his complaints in his first, second, fourth, twelfth, and thirteenth issues regarding the Commission's standing in this suit and whether the injunction orders conformed with the pleadings.
18. Whether the trial court judge abused his discretion by imposing sanctions without evidence of a relationship between the alleged offending conduct and the sanctions imposed.
19. Whether the trial court erred by awarding the Commission's attorney's fees against Deaguero.
20. Whether Deaguero is entitled to sanctions against the Commission for filing a false claim against him and making false representations to the court in violation of rule 13 of the Texas Rules of Civil Procedure and section 10.001 of the Texas Civil Practice and Remedies Code.
21. Whether Deaguero is entitled to a written apology from the trial court judge and the Commission, as well as other injunctive sanctions.
22. Whether Deaguero is entitled to additional sanctions against the trial court judge.
23. Deaguero reiterates his complaints alleged in his first and second issues regarding a lack of evidence of injury suffered by Reyes.
24. Deaguero reiterates his complaints alleged in his second issue regarding a lack of evidence of injury suffered by the Commission.

25. Whether insufficient evidence supports the trial court's finding that Deaguero violated rule 1.03(a).
26. Whether insufficient evidence supports the trial court's finding that Deaguero violated rule 1.03(b).
27. Whether insufficient evidence supports the trial court's implied finding that Reyes was available to confer with Deaguero before the appellate judgment in her favor in April 2021.
28. Whether insufficient evidence supports the trial court's implied finding that Deaguero was obligated to accept Diana Torres as a spokesperson for Reyes upon Reyes' request.

### DISCUSSION

As an initial matter, we note that, although many of Deaguero's issues challenge sufficiency of the evidence to support the trial court's grant of partial summary judgment in favor of the Commission, the appellate record is missing the Commission's motion for partial summary judgment, Deaguero's response, and the order granting such summary judgment on appeal, despite the fact that the docket sheet has notations for each and that the final judgment and the reporter's record from the sanctions hearing include references to the motion and order. An appellant bears the burden to bring forward a record that enables the appellate court to determine whether appellant's complaints constitute reversible error. *See Palla v. Bio-One, Inc.*, 424 S.W.3d 722, 727 (Tex. App.—Dallas 2014, no pet.) (citing *Enter. Leasing Co. of Houston v. Barrios*, 156 S.W.3d 547, 549 (Tex. 2004) (per curiam); *Christiansen v. Prezelski*, 782 S.W.2d 842, 843 (Tex. 1990); *Nicholson v. Fifth Third Bank*, 226 S.W.3d 581, 582 (Tex. App.—Houston [1st Dist.] 2007, no pet.). Issues depending on the state of the evidence cannot be reviewed without a complete

record. *See id.* (citing *Favaloro v. Comm'n for Lawyer Discipline*, 994 S.W.2d 815, 820 (Tex. App.—Dallas 1999, pet. stricken)). Thus, to the extent Deaguero raises an issue requiring review of the record not brought forward on appeal, we will overrule such issues. *See Barrios*, 156 S.W.3d at 549–50 (holding appellant bore burden to bring forward record of summary judgment evidence to provide appellate courts with basis to review claim of harmful error) (citing *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 689 (Tex. 1990); *Escontrias v. Apodaca*, 629 S.W.2d 697, 699 (Tex. 1982)); *see also* TEX. R. APP. P. 34.5(a) (only the items listed in Rule 34.5(a) are included in the appellate record absent a request from one of the parties)).

### ***I. Standing of the Commission***

In Deaguero's first, second, third, seventeenth, twenty-third, and twenty-fourth issues, he challenges whether the record supports a finding that Reyes had standing to file a complaint and whether the Commission, individually or on behalf of Reyes, had standing to bring suit against him and urges the trial court lacked subject matter jurisdiction because of that lack of standing.

Standing is a component of subject matter jurisdiction. *ECFN. Ridge Assocs., L.P. v. ORIX Capital Markets, L.L.C.*, 336 S.W.3d 400, 405 (Tex. App.—Dallas 2011, pet. denied) (citing *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445 (Tex. 1993)). Whether a trial court has subject matter jurisdiction is a matter of law, which we review de novo. *See id.* (citing *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004); *Tex. Ass'n of Bus.*, 852



S.W.2d at 446)). We construe the petition in favor of the pleader and, if necessary, review the entire record to determine if any evidence supports standing. *See id.* (citing *Tex. Air Control Bd.*, 852 S.W.2d at 446).

Under Article II, Section 1 of the Texas Constitution and section 81.011(c) of the State Bar Act, the Texas Supreme Court has the power to regulate the practice of law in the State of Texas. *See In re State Bar of Tex.*, 113 S.W.3d 730, 732 (Tex. 2003) (citing TEX. CONST. art. II, § 1; TEX. GOV'T CODE § 81.011(c)). The State Bar Act gives the supreme court “administrative control over the State Bar and provides a statutory mechanism for promulgating regulations governing the practice of law.” *See id.* (citing GOV'T § 81.011(c); *State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994)). Furthermore the supreme court has inherent regulatory powers, derived from Article II, Section 1 of the Texas Constitution, which implies their supervisory role in regulating the legal practice. *See id.* (citing *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398–99 (Tex. 1979)). Based on those powers, the supreme court promulgates the Texas Disciplinary Rules of Professional Conduct (the standards of conduct to which all Texas attorneys are to be held) and the Texas Rules of Disciplinary Procedure (the procedural rules by which attorney disciplinary actions are to be governed. *See id.*; *see also* GOV'T §§ 81.024, 81.072.

Each attorney admitted to the practice of law in Texas is subject to the disciplinary jurisdiction of the Texas Supreme Court and the Commission. *See* GOV'T § 81.071. Pursuant to rule 2.14 of the rules of disciplinary procedure, once

the Chief Disciplinary Counsel has determined that just cause exists to proceed on a complaint, the “rights characteristically reposed in a client by the common law of this State . . . are vested in the Commission.” TEX. R. DISCIPLINARY P. 2.14. Once just cause has been determined, the respondent attorney is provided notice and an opportunity to elect to proceed before an Evidentiary Panel of a District Grievance Committee or before a district court. TEX. R. DISCIPLINARY P. 2.15. Also, the rules of disciplinary procedure require a disciplinary petition to be filed “in the name of the Commission,” and to contain “notice that the action is brought by the Commission . . . .” TEX. R. DISCIPLINARY P. 3.01.

The Commission filed its disciplinary petition in the Dallas County District Court, alleging that Deaguero is an attorney licensed in Texas subject to the disciplinary jurisdiction of the supreme court and the Commission. Nothing in the record indicates that Deaguero elected to proceed before an Evidentiary Panel of a District Grievance Committee. Thus, the record supports an implied finding that Deaguero elected to proceed before a district court. *See id.*; *see also* GOV’T § 81.075(b)(2)(A). Accordingly, to the extent Deaguero urges the appellate record contains insufficient evidence to establish the Commission’s standing to bring this disciplinary action against him and that the district court lacked subject matter jurisdiction over the case, we disagree. *See In re State Bar of Tex.*, 113 S.W.3d at 732; *see also* GOV’T § 81.071; TEX. R. DISCIPLINARY P. 2.14. Further, to the extent it is necessary to review the entire record to resolve his challenge to the

Commission's standing, we note that he did not meet his burden on appeal to bring a complete record to support his challenge the sufficiency of the evidence. *See Palla*, 424 S.W.3d at 727; *see also ECF N. Ridge Assocs.*, 336 S.W.3d at 405 (citing *Tex. Air Control Bd.*, 852 S.W.2d at 446). Additionally, to the extent Deaguero seeks to challenge the standing of Reyes, we note that she is not a party to the underlying suit or this appeal and that the Commission did not file this underlying suit on her behalf. *See Acevedo v. Comm'n for Lawyer Discipline*, 131 S.W.3d 99, 104 (Tex. App.—San Antonio 2004, pet. denied); *see also* TEX. R. DISCIPLINARY P. 2.14.

As for Deaguero's argument that the Commission was required to allege and prove injury or concrete harm in order to establish its standing, we also disagree. Deaguero cites the open courts provision of the state constitution, which provides in relevant part, "All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." TEX. CONST. art. I, § 13. The open courts provision specifically guarantees all litigants the right to redress their grievances—to use a popular and correct phrase, the right to their day in court. *LeCroy v. Hanlon*, 713 S.W.2d 335, 341 (Tex. 1986). However, the Commission does not act as or on behalf of a private litigant to redress a private wrong, but as an administrative agency under the administrative control of the Texas Supreme Court to hold an attorney accountable for professional misconduct. *See Acevedo*, 131 S.W.3d at 104. For that reason, we find his arguments regarding lack of injury or concrete harm unavailing.

We overrule Deaguero's first, second, third, twenty-third, and twenty-fourth issues, as well as the portion of his seventeenth issue challenging standing.

***II. Sufficiency of the Evidence to Support Summary Judgment in Favor of the Commission***

In his fourth, tenth, eleventh, twenty-fifth, twenty-sixth, twenty-seventh, and twenty-eighth issues, Deaguero challenges the sufficiency of the evidence to support the trial court's grant of partial summary judgment in favor of the Commission and raises similar challenges to the trial court's consideration of certain evidence in reaching its decision to grant partial summary judgment. However, as previously noted, the appellate record does not include the Commission's motion, Deaguero's response, or the order granting partial summary judgment. And, it is Deaguero's burden as appellant to bring forward a record that enables the appellate court to determine whether appellant's complaints constitute reversible error. *See Palla*, 424 S.W.3d at 727; *see also Barrios*, 156 S.W.3d at 549–50.

Accordingly, we overrule Deaguero's fourth, tenth, eleventh, twenty-fifth, twenty-sixth, twenty-seventh, and twenty-eighth issues.

***III. Disciplinary Sanctions Not Foreclosed for Lack of Bad Faith Finding***

In his fifth issue, Deaguero argues that, because the trial court judge affirmatively stated he was not making a finding that there was bad faith, he erred by imposing sanctions upon Deaguero. In making this argument, Deaguero relies on an opinion from the supreme court in which the court held that a predicate finding of bad faith was required before a trial court judge could impose sanctions under its

inherent authority to sanction. *See Brewer v. Lennox Hearth Prods., LLC*, 601 S.W.3d 704, 723 (Tex. 2020). We find Deaguero’s reliance on *Brewer* to be misplaced because the *Brewer* court was reviewing a court’s inherent power to sanction an attorney’s conduct during litigation before that court, rather than a disciplinary action against an attorney. *See id.* at 707 n.2 (citing *See* TEX. CIV. PRAC. & REM. CODE §§ 9.001–.014; 10.001–.006 (sanctions for frivolous pleadings and motions); GOV’T § 21.002 (statutory contempt power); *In re Bennett*, 960 S.W.2d 35, 40 (Tex. 1997) (“Courts possess inherent power to discipline an attorney’s behavior.”); *Remington Arms Co., Inc. v. Caldwell*, 850 S.W.2d 167, 172 (Tex. 1993) (observing courts have inherent and statutory contempt power); TEX. R. CIV. P. 13 (sanctions for groundless and bad faith or harassing court filings), 18a(h) (sanctions for groundless and bad faith or harassing recusal motion), 215 (sanctions for discovery abuses); TEX. DISCIPLINARY R. PRO. CONDUCT, *reprinted in* GOV’T, tit. 2, subtit. G, app. A [TEX. DISCIPLINARY R. PRO. CONDUCT]; TEX. CODE JUD. CONDUCT, CANON 3 (d)(2), *reprinted in* GOV’T, tit. 2, subtit. G, app. B (disciplinary responsibilities of judges)).

After confirming the findings Deaguero violated rules 1.03(a) and 1.03(b) the trial court made in its grant of partial summary judgment, the trial court judge stated at the sanctions hearing:

Furthermore, based on evidence that was presented here today, the Court does feel that there are some significant aggravating factors, specifically the prior disciplinary record, which included private

reprimands, some of that which was actually discussed by counsel was his suspension in other states was not included in the commission's evidence but was discussed by counsel himself.

I do find that there is a pattern of misconduct that has occurred over the last few years. There are multiple violations. I will point out that I don't know that bad faith was applied in this case as it relates to obstructing these proceedings or being uncooperative during these proceedings. However, I want to mention on the record that I find Mr. Deaguero's knowledge and/or application of the law and the rules of evidence to be very disconcerting as it relates to understanding what is happening here today. And so I am not making a finding that there was bad faith. But the lack of realization as to what is going on here today is again quite concerning for the Court.

The trial court judge's statements regarding bad faith were made in the context of considering whether there was evidence of aggravating and mitigating circumstances that the trial court judge could consider in deciding what sanction to impose pursuant to rule 15.09. *See* TEX. R. DISCIPLINARY P. 15.09(B). That rule provides for aggravating factors of "bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority to uncooperative conduct during proceedings." *See id.* We note the rules of disciplinary procedure provide that if a trial court finds an attorney's conduct constitutes professional misconduct, the trial court shall determine the appropriate sanction or sanctions to be imposed. *See* TEX. R. DISCIPLINARY P. 3.09. The rules of disciplinary procedure do not require a trial court to make a finding of "bad faith" before imposing a sanction. *See id.*

Accordingly, we overrule Deaguero's fifth issue.

***IV. Suspension Did Not Require Evidence of Conviction of Felonies or Crimes of Moral Turpitude***

In his sixth issue, Deaguero asserts that the trial court's order suspending him from the practice of law violated the State Bar Act because there was no evidence he had been convicted of a felony or a crime of moral turpitude.

Section 81.078 of the State Bar Act provides for the suspension of an attorney from the practice of law “[o]n proof of an attorney’s conviction . . . of any felony involving moral turpitude or other named misdemeanors.” *See* GOV’T § 81.078(b). However, that provision does not require such proof in order to impose the sanction of suspension from the practice of law. Instead, the State Bar Act provides, “In addition to the minimum standards and procedures provided by this chapter, the supreme court, under Section 81.024 shall prepare, propose, and adopt rules it considers necessary for disciplining, suspending, disbarring, and accepting resignations of attorneys.” *See id.* § 81.072(c). As noted above, the rules of disciplinary procedure provide that if a trial court finds an attorney’s conduct constitutes professional misconduct, the trial court shall determine the appropriate sanction or sanctions to be imposed. *See* TEX. R. DISCIPLINARY P. 3.09. The rules of disciplinary procedure further define “sanction” to include “suspension for a term certain.” *See* TEX. R. DISCIPLINARY P. 1.06(FF)(4). Additionally, the rules of disciplinary procedure provide for appropriate disciplinary actions when an attorney violates a duty to a client: “Suspension is generally appropriate when . . . a Respondent knowingly . . . fails to adequately communicate with a client or . . .

engages in a pattern of . . . inadequate client communications.” See TEX. R. DISCIPLINARY P. 15.04(A)(2). We conclude no proof of any felony or crime of moral turpitude was required for the trial court judge to impose the sanction of suspension from the practice of law upon Deaguero.

Accordingly, we overrule Deaguero’s sixth issue.

**V. *No Preserved Error in Rulings on Deaguero’s Summary Judgment Motions***

In his seventh issue, Deaguero argues the trial court judge erred by refusing to set his four no-evidence summary judgment motions for hearings and for failing to grant them when the Commission failed to produce evidence in response to them.

The docket sheet reflects that Deaguero filed six motions for summary judgment, four of which were no-evidence motions. The docket sheet also reflects the Commission filed responses to all of the motions. The record contains only the first two no-evidence motions, as well as the Commission’s response to the first, but none of the Commission’s responses to Deaguero’s remaining three no-evidence motions.

A denial of a summary judgment is generally not reviewable on appeal. See *Wilson v. Capital Partners Fin. Grp. USA, Inc.*, No. 05-20-00704-CV, 2022 WL 2437595, at \*2 (Tex. App.—Dallas July 5, 2022, no pet.) (mem. op.) (citing *Cincinnati Life Ins. Co. v. Cates*, 927 S.W.2d 623, 625 (Tex. 1996)). A denial is reviewable when “both sides moved for summary judgment on the same issues and the trial court granted one motion for summary judgment and denied the other.” See



*id.* (quoting *Clark v. Dillard's, Inc.*, 460 S.W.3d 714, 724 (Tex. App.—Dallas 2015, no pet.)). As discussed above, the trial court granted partial summary judgment in favor of the Commission and did not grant any of Deaguero's motions for summary judgment. However, because we would be limited to reviewing the issues in the partial motion for summary judgment, the record of which was not provided by Deaguero, we cannot conclude the trial court erred by granting partial summary judgment in favor of the Commission and denying summary judgment in favor of Deaguero. *See Palla*, 424 S.W.3d at 727; *see also Barrios*, 156 S.W.3d at 549–50.

The record does not indicate that Deaguero sought a hearing on any of his no-evidence motions or that the trial court judge “refused to set them for hearing.” To the contrary, the docket sheet indicates that a hearing was conducted on at least two of Deaguero's motions. As for the remaining two motions, a hearing on a motion for summary judgment need not be an oral hearing; a court may choose to take up the motion by submission. *See Martin v. Martin, Martin & Richards, Inc.*, 989 S.W.2d 357, 359 (Tex. 1998). Additionally, notice of a hearing or submission of a summary judgment is required, and because nothing in the record indicates Deaguero's remaining two motions were set for hearing or submission, we cannot conclude the trial court could have properly considered those motions. *See Nkansah v. Tex. Workforce Comm'n*, No. 05-17-00281-CV, 2018 WL 2749765, at \*3 (Tex. App.—Dallas May 31, 2018, pet. denied) (mem. op.) (citing *Martin*, 989 S.W.3d at 359).

We overrule Deaguero's seventh issue. *See Palla*, 424 S.W.3d at 727.

**VI. *No Preserved Error in Rulings on Deemed Admissions***

In his eighth issue, Deaguero argues the trial court erred by granting the Commission's motion to consider certain discovery requests deemed admitted against him. More particularly, he alleges the Commission did not confer with him and he did not receive any notice of any hearing with respect to deemed admissions.

Requests for admission are "written requests that the other party admit the truth of any matter within the scope of discovery, including statements of opinion or of fact or of the application of law to fact." TEX. R. CIV. P. 198.1. "If a response is not timely served, the request is considered admitted without the necessity of a court order." TEX. R. CIV. P. 198.2(c); *see also Marino v. King*, 355 S.W.3d 629, 633 (Tex. 2011) (per curiam). An admitted matter is "conclusively established as to the party making the admission unless the court permits the party to withdraw or amend the admission." TEX. R. CIV. P. 198.3. A trial court has discretion to permit a party to withdraw an admission if: (a) the party shows good cause for the withdrawal; (b) the court finds that the other party will not be unduly prejudiced; and (c) presentation of the lawsuit's merits is served by the withdrawal. *Id.*; *see also Torres v. Lee*, No. 05-18-00631-CV, 2020 WL 38832, at \*2 (Tex. App.—Dallas Jan. 3, 2020, no pet.) (mem. op.); *Time Warner, Inc. v. Gonzalez*, 441 S.W.3d 661, 664 (Tex. App.—San Antonio 2014, pet. denied).

Although the docket sheet reflects the Commission filed a motion to deem admissions and that an order was signed, the record does not contain the motion or the order. Nor does the record establish that Deaguero made any attempt to withdraw or amend any admissions. *See* TEX. R. CIV. P. 198.3; *Torres*, 2020 WL 38832, at \*2 (“Failure to obtain a ruling on the motion for leave to file late responses precludes complaint of the action of the trial court in deeming the requests for admission admitted.”) (quoting *Laycox v. Jaroma, Inc.*, 709 S.W.2d 2, 3 (Tex. App.—Corpus Christi—Edinburg 1986, writ ref’d n.r.e)). As it was Deaguero’s burden to provide a complete appellate record that enables the appellate court to determine whether appellant’s complaints constitute reversible error, we cannot conclude the trial court erred and accordingly overrule his eighth issue. *See Palla*, 424 S.W.3d at 727.

#### ***VII. No Error in Conducting Hearings in Collin County***

In his ninth issue, Deaguero urges the trial court judge erred by conducting hearings on the Commission’s motion to deem admissions and its motion for summary judgment in Collin County, instead of Dallas County, in violation of the rules of disciplinary procedure. Deaguero argues the rules of disciplinary procedure mandate proceedings in disciplinary cases be conducted in the county where the professional misconduct occurred, in this case Dallas County, and that the trial court judge erred by conducting hearings in Collin County. However, even assuming, without deciding, Deaguero is correct that such hearings were required to be

conducted in Collin County instead of Dallas County,<sup>2</sup> he has failed to provide us with a record on appeal that the hearings on these motions indeed took place in Collin County instead of Dallas County. As it was Deaguero's burden to provide a complete appellate record that enables the appellate court to determine whether appellant's complaints constitute reversible error, we cannot conclude the trial court erred and accordingly overrule his ninth issue. *See Palla*, 424 S.W.3d at 727.

***VIII. Whether the Trial Court's Rulings, Orders, and Judgment Conformed to Pleadings***

In Deaguero's twelfth, thirteenth, and seventeenth issues, he urges the trial court's judgment and injunction orders did not conform to the pleadings. In his twelfth issue, he reiterates his complaint regarding the Commission's failure to allege injury, arguing such failure deprived the court of subject matter jurisdiction. Having resolved similar arguments against him *supra*, we overrule this issue. In his thirteenth issue, he complains, "[T]he judgment and injunctions required [him] to present psychiatric reports and to inform the California Bar about the results of this case" despite the fact that the pleadings did not request this relief and "no evidence [was] presented on these matters at trial." After reviewing the judgment and injunction orders, we cannot find any mention of reporting to the California Bar,

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<sup>2</sup> Deaguero includes in his brief a copy of rule 2.11(A) of the rules of disciplinary procedure, providing that proceedings of an investigatory panel shall be conducted by a panel for the county where the alleged professional misconduct occurred. *See* TEX. R. DISCIPLINARY P. 2.11(A). However, we note the rules further provide that the Commission files the disciplinary petition in a district court of the county of the attorney's principal place of practice. *See* TEX. R. DISCIPLINARY P. 3.03. (Feb. 26, 1991, Oct. 9, 1991), *amended eff.* Oct. 1, 1994, *amended eff.* Jan. 1, 2004, *amended eff.* Oct. 1, 2012.

only to the Texas Bar. Accordingly, we cannot conclude any error exists to address. Deaguero also complains in his seventeenth issue that the judgment violated rule 301 of the rules of civil procedure and was thus void. TEX. R. CIV. P. 301 (requiring judgment of court to conform to pleadings, nature of case proved and verdict, if any). However, because he does not specify how the judgment failed to conform with the pleadings, we cannot conclude he has presented any error for our review. *See* TEX. R. APP. P. 38.1(i).

We cannot conclude the trial court erred and accordingly overrule Deaguero's twelfth and thirteenth issues, as well as the remaining portion of his seventeenth issue.

### ***IX. Complaints Regarding the Trial Court Judge***

In his fourteenth, fifteenth, sixteenth, twenty-first, and twenty-second issues, Deaguero raises several complaints regarding the trial court judge. In his fourteenth issue, he asserts the trial court judge erred by permitting his court coordinator and a clerical employee of the State Bar to enter into an agreement setting the hearing date on the Commission's motion for partial summary judgment without requiring conference with Deaguero. In his fifteenth issue, he argues the trial court judge erred by failing to recuse himself on the basis of bias in violation of the Texas Code of Judicial Conduct and Deaguero's rights to a fair trial under the First and Fourth Amendments to the United States Constitution. In his sixteenth issue, he urges the trial court judge violated his rights under the First and Fourth Amendments to

present a defense by retaliating against Deaguero in response to his complaint regarding his court coordinator's communications with an employee of the State Bar. In his twenty-first and twenty-second issues, he asserts he is entitled to a written apology from the trial court judge, as well as other injunctive relief and additional sanctions against the trial court judge.<sup>3</sup>

We review an order denying a motion to recuse for an abuse of discretion. *See Drake v. Walker*, 529 S.W.3d 516, 528 (Tex. App.—Dallas 2017, no pet.) (citing TEX. R. CIV. P. 18a(j)(1); *In re H.M.S.*, 349 S.W.3d 250, 253 (Tex. App.—Dallas 2011, pet. denied); *Sommers v. Concepcion*, 20 S.W.3d 27, 41 (Tex. App.—Houston [14th Dist.] 2000, pet. denied)). The movant bears the burden of proving recusal is warranted, and the burden is met only through a showing of bias or impartiality to such an extent that the movant was deprived of a fair trial. *See id.* (citing *In re H.M.S.*, 349 S.W.3d at 253–54).

In his arguments concerning the foregoing issues, Deaguero raises numerous complaints about the trial court judge, most of which he raised at the trial court in his motion for recusal of the trial court judge. Initially, we note that Deaguero filed his motion after the trial court judge entered judgment in this case and was later denied by the trial court judge and thus question its timeliness. “A motion to recuse must be filed as soon as practicable after the movant knows of the ground stated in

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<sup>3</sup> To the extent Deaguero's twenty-first issue argues he is entitled to an apology from or other sanction against the Commission, we address that argument *infra*.

the motion; and must not be filed after the tenth day before the date set for trial or other hearing unless, before that day, the movant neither knew nor reasonably should have known that the judge whose recusal is sought would preside at the trial or hearing; or that the ground stated in the motion existed.” *See* TEX. R. CIV. P. 18a(b). Nothing in his motion indicates he did not know the grounds stated in the motion existed ten or fewer days prior to the sanctions hearing or entry of the judgment. To the contrary, most of the alleged complaints relate to the trial court judge’s rulings made weeks before the sanctions hearing and over a month before the judgment was entered. Nor was the motion to recuse in the appellate record verified. *See* TEX. R. CIV. P. 18a(a)(1). We overrule Deaguero’s fifteenth issue regarding whether the trial court judge erred in denying the motion to recuse or failing to recuse himself.

Deaguero does not cite, and we have not found, authority to support his request for sanctions against the trial court judge. Further, we note that Deaguero does not cite to anywhere in the record to support his allegations that the trial court judge permitted his court coordinator to act improperly or retaliated against him for complaints regarding the court coordinator. *See* TEX. R. APP. P. 38.1(i). As it was Deaguero’s burden to provide a complete appellate record that enables the appellate court to determine whether appellant’s complaints constitute reversible error, we cannot conclude the trial court committed any alleged misconduct, and we accordingly overrule Deaguero’s fourteenth, sixteenth, twenty-first, and twenty-second issues. *See Palla*, 424 S.W.3d at 727.

## ***X. No Error in Imposing Sanctions***

In his eighteenth issue, Deaguero argues the trial court judge abused his discretion by imposing sanctions without evidence of a relationship between the alleged offending conduct and the sanctions imposed. According to Deaguero, there was no evidence he had abused his clients, had engaged in dishonesty, theft, embezzlement, or other misconduct, or had any psychiatric condition, such that the sanctions imposed were more severe than necessary to satisfy the purpose of sanctions.

However, as noted above, the trial court judge determined Deaguero had committed misconduct in a partial summary judgment, the appellate record of which is incomplete. Accordingly, we cannot review the evidence of Deaguero's misconduct in order to resolve this issue. Because it was his burden to provide a complete appellate record, we overrule Deaguero's eighteenth issue. *See Palla*, 424 S.W.3d at 727; *see also Barrios*, 156 S.W.3d at 549–50.

## ***XI. Award of Attorney's Fees against Deaguero***

In his nineteenth issue, Deaguero asserts the trial court erred by awarding the Commission's attorney's fees against him. He reurges his arguments regarding the Commission's standing and the trial court's subject matter jurisdiction, as well as citing *Green International Inc. v. Solis* claiming it establishes that while the Commission, as plaintiff in this suit, may have obtained a finding on liability, it



obtained no damages, such that no attorney's fees could be awarded. 951 S.W.2d 384, 390 (Tex. 1997).

We conclude Deaguero's reliance on *Solis* is inapposite, as that case involved the interpretation of section 38.001 of the civil practice and remedies code, which applies to claims for rendered services, performed labor, furnished material, freight or express overcharges, lost or damaged freight or express, killed or injured stock, a sworn account, or an oral or written contract. *See id.* (citing TEX. CIV. PRAC. & REM. CODE § 38.001; *State Farm Life Ins. Co. v. Beaston*, 907 S.W.2d 430, 437 (Tex. 1995)). Here, the suit is a disciplinary action against a member of the state bar. *See State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 246 (Tex. 1994). As discussed above, the rules of disciplinary procedure provide that if a trial court finds an attorney's conduct constitutes professional misconduct, the trial court shall determine the appropriate sanction or sanctions to be imposed. *See* TEX. RULES DISCIPLINARY P. R. 3.09. The rules of disciplinary procedure further define "sanction" to include "Payment of Reasonable Attorneys' Fees and all direct expenses associated with the proceedings." *See* TEX. R. DISCIPLINARY P. 1.06(FF)(b).

Accordingly, we overrule Deaguero's nineteenth issue.

## ***XII. Sanctions against the Commission***

In his twentieth issue, Deaguero urges he is entitled to sanctions against the Commission for filing a false claim against him and making false representations to

the court in violation of rule 13 of the Texas Rules of Civil Procedure and section 10.001 of the Texas Civil Practice and Remedies Code.<sup>4</sup>

“We review a trial court’s ruling on a motion for sanctions for an abuse of discretion.” *Hizar v. Heflin*, 672 S.W.3d 774, 787 (Tex. App.—Dallas 2023, pet. denied) (quoting *Duncan v. Park Place Motorcars, Ltd.*, 605 S.W.3d 479, 488 (Tex. App.—Dallas 2020, pet. withdrawn)). The test for an abuse of discretion is not whether, in our opinion, the trial court's actions were appropriate under the facts and circumstances of the case. *See id.* at 787–88 (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241 (Tex. 1985)). Rather, we determine whether the trial court acted without reference to guiding rules and principles. *Id.* at 788 (citing *Downer*, 701 S.W.2d at 241). We will reverse a trial court’s sanctions order only if the ruling was arbitrary or unreasonable. *Id.* (citing *Downer*, 701 S.W.2d at 241).

Additionally, this Court has the inherent power to sanction attorneys who engage in misconduct before our Court. *See Utz v. McKenzie*, 397 S.W.3d 273, 281 (Tex. App.—Dallas 2013, no pet.) (citing *Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 732 (Tex. 1997) (order on reh’g) (“Courts possess inherent power to discipline an attorney’s behavior.”); *In re City of Lancaster*, 228 S.W.3d 437, 441 (Tex. App.—Dallas 2007, no pet.) (same)).

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<sup>4</sup> To the extent Deaguero’s twenty-first issue argues he is entitled to an apology from or other sanction against the Commission, we address that argument in this section.

Deaguero does not cite to any portion of the appellate record to support his allegations of misconduct on the part of the Commission. *See* TEX. R. APP. P. 38.1(i). Moreover, we have overruled his other issues challenging the Commission's standing, the sufficiency of the evidence to support the trial court's findings on his own misconduct, and the sanctions imposed on him. We cannot conclude this incomplete appellate record supports Deaguero's appeal of the trial court's denial of his request for sanctions or his request for similar of this Court. *See Palla*, 424 S.W.3d at 727; *see also Barrios*, 156 S.W.3d at 549–50. Accordingly we overrule his twentieth issue.

#### CONCLUSION

We affirm the trial court's judgment.

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/Nancy Kennedy/  
NANCY KENNEDY  
JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

RICHARD JOSEPH DEAGUERO,  
Appellant

No. 05-22-01102-CV      V.

COMMISSION FOR LAWYER  
DISCIPLINE, Appellee

On Appeal from the 193rd Judicial  
District Court, Dallas County, Texas  
Trial Court Cause No. DC-21-14471.

Opinion delivered by Justice  
Kennedy. Justices Garcia and  
Breedlove participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee COMMISSION FOR LAWYER DISCIPLINE recover its costs of this appeal from appellant RICHARD JOSEPH DEAGUERO.

Judgment entered this 28th day of March 2024.