

NO. 19-1193

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IN THE  
**Supreme Court of the United States**

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KRISTIN D. WILKINSON,

*Petitioner*

vs.

COMMISSION FOR LAWYER DISCIPLINE,

*Respondent*

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On Petition for Writ of Certiorari  
To The Supreme Court of Texas

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Does the standard for assessing the protection of Due Process Clause rights of lawyers in disciplinary proceedings announced in *In re Ruffalo*, fail to protect the Fifth and Fourteenth Amendment right to due process when the attorney is not given a meaningful opportunity to present evidence in her defense, such as when states have statutes protecting the confidentiality of lawyers' clients when those clients are not the complainant, and where a lawyer, a professionally trained individual who has invested substantial financial resources in their professional careers are at risk of losing substantial property rights and their reputations, is the subject of a disciplinary action filed by a third-party non-client and the evidence necessary to defend themselves is protected by statutory confidentiality requirements and not waived, and disciplinary boards and courts can deny relief from those statutes and subject the lawyer to trial knowing the evidence is confidential and unavailable -- and still use broad form jury questions without proper instructions -- to produce an outcome of disbarment?

**PARTIES TO THE PROCEEDINGS BELOW**

Kristin Wilkinson, petitioner, was the petitioner below.

The Commission for Lawyer Discipline of the Supreme Court of Texas was the respondent below.

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**PETITION FOR WRIT OF CERTIORARI**

Kristin Wilkinson respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Texas (SCT).

**OPINIONS BELOW**

The Supreme Court of Texas, on October 25, 2019, denied, without addressing the constitutional issues presented and without opinion, the Petition for Review of the decision of the Texas Court of Appeals for the Ninth District. Its notice appears at Appendix C.

The memorandum opinion of the Texas Court of Appeals for the Ninth District, *Wilkinson v. Comm'n for Lawyer Discipline*, No. 09-17-00444-CV (Tex. App. July 25, 2019), affirmed the trial court's judgment without review of the issue presented regarding the trial court's violation of a pertinent Texas statute that protects client confidentiality, is in Appendix A.

The Judgment of Disbarment appears at Appendix B to the petition.

**JURISDICTION**

The Supreme Court of Texas denied on October 25, 2019, the Petition for Review of the decision of the Ninth District Court of Appeals. This Court has jurisdiction under 28 U.S.C. § 1257(a).

**CONSTITUTIONAL PROVISIONS INVOLVED**

The U.S. Constitution's Fourteenth Amendment provides, in relevant part: ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any

State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The U.S. Constitution's Fifth Amendment provides, in relevant part: "...; nor shall [any person] be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; . . . .

The Texas Government Code, Section 81.072(h) provides: "(h) The state bar or a court may not require an attorney against whom a disciplinary action has been brought to disclose information protected by the attorney-client privilege if the client did not initiate the grievance that is the subject of the action."

Other relevant state statutes that govern the practice of law in Texas are reproduced in Appendix D due to their length and include: Texas Government Code Sections 81.071 and 81.101; Texas Rules of Disciplinary Procedure, Rule 2.23; and Texas Disciplinary Rules of Professional Conduct, Rule 8.04(a)7.

## INTRODUCTION

This petition asks to the Court to consider whether Texas attorneys receive the federally protected procedural due process this Court assured they were entitled in its holding in *In re Ruffalo*, 390 U.S. 544, 551-52, 88 S. Ct. 1222, 20 L.Ed.2d 117 (1968), in administrative regulatory discipline proceedings. The right of attorneys to due process is no small or insignificant matter. Their property rights and investment in their professional lives is substantial and meaningful. This petition demonstrates

that the *Ruffalo* standard is disregarded so badly in Texas, or that it is so in need of clarification, that sole practitioner's have virtually no ability to defend themselves against procedural abuses by the Commission for Lawyer Discipline, (CFLD), of Due Process Clause protection lawyers are entitled. The CFLD is a state agency that uses its authority to adjudicate contractual fee disputes as disciplinary matters when it otherwise would have no jurisdiction. It causes involuntary servitude and allows favored competitors to use disciplinary complaints for the purpose of purloining business and simultaneously destroying valuable property rights, reputation and destruction of business.

Kristin Wilkinson graduated cum laude with a BBA in Economics from The University of St. Thomas. She attended law school as a second career and was stalked by a law professor throughout her matriculation. When she requested help from the law school she was ridiculed, ostracized, called a lesbian, threatened by the school's vice-dean that she would never practice law if she reported the behavior to law enforcement; her grades were manipulated, and other students who came to her aid received like treatment, especially to their grades. Kristin's bar grades were manipulated and when she sought a correction, she was ridiculed because she was represented by Richard "Racehorse" Haynes, her employer and supervising attorney at the time. Richard had won a highly publicized case against the attorney handling the Board of Law Examiner matter Kristin brought and it clearly impacted the Board's attorney's impartiality. Instead of correcting a grading error, Kristin was told she had to retake the Bar exam because similar errors had likely been made impacting other students -- although

Kristin had been invited to a function held solely for new attorneys who had taken and passed the Bar exam in Dallas, Texas. The invitation fortunately had been arranged through a process where bar exam grades were provided upon request prior to publication to students. Fortunately, because the invitation evidenced that the bar exam grades are shared prior to informing students - a fact that would have gone unnoticed without the invitation, (and per Richard Haynes -- the grades are sent to law schools prior to publication to students as well and sometimes changed prior to publication to students). Any lawyer knows the financial devastation caused by delaying income in order to retake the bar exam.

After Kristin became licensed, Richard referred Kristin her first case: a seven-year old child who had been molested by a prominent Houston attorney. After years of litigation, through Kristin's sole representation, she obtained a jury verdict in the amount of \$8,910,000.00 for the child. Kristin's dedication to her practice was always in line with her dedication to all of her work, in conscientious concern for others. After obtaining the judgment, at every turn Kristin was refused satisfaction of the judgment by local state district courts who protected *ad nauseam* the now deceased defendant's assets in complete disregard of rights provided in turnover orders Kristin obtained. Kristin represented the child throughout the litigation, in two attempts at bankruptcy filed by the defendant, in trial, in appeal, in post-judgment collection and turnover proceedings, and assisted the federal court attorneys by allowing them free use of her briefs in their federal child pornography case against the same defendant. Kristin went into debt in order to see that this child did not lose representation in spite of the prolonged

litigation that began in 2002 and still has not seen satisfaction of the judgment nor has Kristin been paid. It is truly nauseating to experience the kind of behavior grown adult lawyers and judges have perpetuated in the continued denial of Kristin's child-client's compensation the jury gave her for her injuries and Kristin the compensation she earned for her work. Instead, Kristin has become the target of incessant disciplinary actions, financial ruin, and constant humiliation from opposing attorneys who obtain information from the CFLD and insert that information into their own, completely unrelated pleadings and scream them out at hearings in order to harass, embarrass, stimulate bias, public disdain and ridicule against her, and create a lack of objectivity among the judiciary, juries, and the public, interfering with her work and ability to support herself, her law practice, and her family. When third party attorneys began to claim in court that they represented Kristin's client under Kristin's contract, which they absolutely did not, the CFLD found no wrongdoing after Kristin filed a complaint. The unprofessional behavior perpetuated by the CFLD, whose agents have stated in no uncertain terms to Kristin directly, that it has as its mission to find against her regardless of the evidence, is the root cause of the need to establish stronger rights of lawyers to Due Process in regulatory proceedings and protect their clients from the damage caused by the CFLD. In this case, the trial court stated on the record that it did not agree with the jury's decision. The CFLD confessed that it did not have jurisdiction over the matters that had been tried to the jury and requested no restitution, only its legal fees incurred. But relief was denied by Texas's highest court in a decision were no oral argument was allowed on appeal at the Ninth Court of Appeals as well as in the Texas

Supreme Court and no appellate court opinion even addressed the federal constitutional issues.

There is clearly no authority to whom Texas attorneys can turn for justice in attorney regulatory matters if the Court does not take action to clarify and enforce constitutional standards in Texas attorney discipline matters. No one knows this as much as Kristin: a right to be heard that consists of no more than a right to file an appeal is completely meaningless.

#### **STATEMENT OF THE CASE**

##### **1. Factual Background**

Kristin Wilkinson drafted legal instruments while working as a paralegal for attorney Larry Longer while she was not admitted to practice law. (RR 14: Resp. Exs. 18-23, 26-28, 31). She then became the trustee for Joy Guinn, who was a defendant in civil and criminal animal cruelty matters in 2014. (RR 14: Resp. Ex. 10). Ms Guinn had mental and medical issues requiring 4-12 hours of care every day. (RR 14: Resp. Exs. 12, 48); (RR 14: Resp. Exs. 1, 46).

While Ms. Guinn was in a mental hospital at The Menninger Clinic, her former attorney Kyle Frazier, who had performed legal work for her in 1997, began interfering in the affairs of the trust and obtained a revocation of Wilkinson's power of attorney from Ms. Guinn. (RR 14: Resp. Exs. 44, 45). He threatened to file a grievance against Wilkinson if she did not yield to his demand that she turn over Ms. Guinn's money to him in his personal capacity. (RR 11: Pet. Ex. 1). (RR 6:25, line 9 - RR 6:27, line 6). Wilkinson sought legal advise which

she followed by filing a request with the Probate Court in Harris County to determine Ms. Guinn's competency and requested appointment of temporary attorney and guardian ad litem. (RR 11: Pet. Ex. 2). Ms. Guinn met with Wilkinson and advised her not to comply with Frazier's demand and a response to Frazier's threat letter was made, signed by both Wilkinson and Guinn, and sent to Frazier. (RR 11:Pet. Ex. 3). The guardian ad litem at an hearing offered a partial copy of the trust agreement, leaving out crucial pages 29-32 that stated Wilkinson had no duty to post a bond, in order to persuade the court to remove Wilkinson if she chose not to post a bond. (RR 11: 5, 10, 13). The court appointed Mark E. Kunik, MD, MPH who performed the medical exam of Ms. Guinn, a former veterinarian, and found her to be competent but with a mild neurocognitive disorder, hoarding disorder, autism spectrum disorder, and requiring 4-12 hours of care every day. (RR 14:Resp. Ex. 12). At Frazier's request, the Commission filed suit on September 2, 2016, alleging Wilkinson practiced law when she worked on preparing the trust as a paralegal for Larry Longer, alleging improprieties in her accounting, of which no evidence was presented at trial and regarding which the CFLD presented no witness at trial. (CLR 1:11). Significant to this case and the Due Process violation, the client, Joy Guinn neither filed the grievance nor joined the grievance, therefore, any privileged information could not be disclosed by Kristin in the CFLD matter. The trial court entered a summary judgment for the CFLD on its claim that Kristin practiced law while she was a paralegal under the supervision of attorney Larry Longer. The CFLD's jurisdiction is confined to attorneys admitted to practice in Texas as set out in the Texas Government Code

Section 81.071 and it has no authority to take action under the Texas Rules against anyone not licensed to practice law.

The only matter not resolved by the summary judgment that were tried to a jury involved the management of the trust, also during a time Kristin was not admitted to practice law.

## 2. Summary Judgment Proceedings

Kristin was plagued by concerns over the need to divulge confidential information in order to defend herself against the allegations made by the CFLD. The district court refused to consider supplemented evidence to her motion for summary judgment and to her response to the CFLD's motion for partial summary judgment prior to its ruling and denied relief she requested in her motion to reconsider. (CLR 1:150-191), (CLR 1:280-403), (CLR 1:192-275) (CLR 1:404-421), (CLR 1:424-428), (CLR 1:433-524), (CLR 1:525), (CLR 1:529-538), (CLR 1:539-542), (CLR 1:545-546), (CLR 1:547), (CLR 2:574-1013), (CLR 1:550-561), (CLR 2:1017-1022), (CLR 2:1028), (CLR 2:1029).

On April 11, 2017, Kristin filed "Respondent's First Supplement to Respondent's Original Answer and Request for Disclosure" wherein she moved the district court for leave to consider the arguments and supplemental evidence attached. The Court denied the motion for leave on April 28, 2017. (CLR 1:433-523), (CLR 1:529-538), (CLR 1:539-542), (CLR 1:545-546) (CLR 1:547).

On April 28, 2017, the district court signed the "Order Granting Petitioner's Motion For Partial

Summary Judgment And Order Denying Respondent's Motion For Summary Judgment." (CLR 1:550-561). In its Order the district court shifted the burden to Kristin in finding for the CFLD by finding Kristin did not deny practicing law; it disregarded her evidence that she was working as a paralegal and long-established recognition that legal assistants are persons who perform "substantive legal work under the direction and supervision of an attorney." *All Seasons Window and Door v. Red Dot Corp.*, 181 S.W.3d 490, 504 (Tex. App.—Texarkana 2005, *no pet.*). (CLR 1:552-557). (CLR 1:150-151). (CLR 1:404-421). The district court also erroneously found that Kristin's motion did not rebut the Commission's response. (CLR 1:558). The district court required Kristin to guess what claims the CFLD brought against her instead of requiring the CFLD to bring forth admissible evidence supporting its claims, all of which were stated in Kristin's motion. (CLR 1:558-560). The district court also reviewed the CFLD's no-evidence motion as a traditional one. (CLR 1:560-561). The district court said that Kristin "failed to properly account for or justify" trust expenses or purported "loss" relying on the CFLD's pleadings as proof; there was no evidence of a breach of the trust agreement. (CLR 1:558-559).

On April 20, 2017, Kristin had requested the district court order the Commission to obtain a waiver of the confidentiality privilege from Joy Guinn, the settlor/beneficiary and the client for whom the work was performed as part of Kristin's employment by attorney Larry Longer so that she could disclose material information in the accounting. (CLR 1:529-539). The district court denied Kristin's motion. (CLR 1:547). The

only evidence Kristin could obtain without revealing privileged information was that during the relevant timeframe, Kristin communicated with Larry Longer's expert witness in the underlying legal representation, Carmen Petzold, Ph.D., that she was not practicing law during the relevant period of July 2014 - April 2015. (CLR 1:529-538). The district court erroneously denied Kristin's motions regarding her request for a waiver and to supplement her evidence without a waiver. (CLR1:545-547).

The Commission's jurisdiction is confined to attorneys admitted to practice in Texas, as set out in the Texas Government Code Section 81.071. The CFLD has no authority to take action under the Texas Rules against anyone not licensed to practice law -- at least insofaras the statute says. Kristin was under a disciplinary suspension that began July 26, 2013, and expired on July 25, 2015, during which time she did not have her license, she was not admitted to practice, paid no Bar dues and received no benefits of Bar membership.

The CFLD's position, that the district and appellate courts agreed with, is that performing substantial legal work is always practicing law. To the contrary, paralegals and legal assistants have been recognized for a long time as persons who perform substantive legal work under the direction and supervision of an attorney. The CFLD pointed to no statute that would provide notice to suspended attorneys that they are not allowed to work as a paralegal. In fact, many of them do so and the CFLD does not allege that they are practicing law, as they did with Kristin. Kristin actually worked for another lawyer

who also hired former lawyers during their suspension to work for him and the CFLD was aware of that employment where Kristin performed important briefings for the lawyer and the CFLD did not claim that her work was the practice of law.

Here, the State Bar alleged Kristin violated the suspension by working as a paralegal, but its jurisdiction to enforce, modify or revoke the suspension expired before it brought suit against her. Likewise, the CFLD has no jurisdiction to bring an action for discipline on behalf of a third-party antagonist who lacks standing. This is directly applicable to the entire case that was tried to the jury because the partial summary judgment was granted on the issue of whether Kristin was practicing law. The trial encompassed issues of whether Kristin breached her duty owed only to Joy Guinn, the settlor and beneficiary who did not join the grievance. Lastly, if there were meritorious claims by Kyle Frazier related to the trust administration they should have been brought in Probate Court where Kristin instituted a competency/guardianship case, but they were not.

Kristin had no duty to post a bond as was alleged and had no duty to account to Kyle Frazier as alleged, therefore, the CFLD's case lacked merit as well as jurisdiction. Over objection, extremely broad form questions were submitted to a jury that had no basis in law or evidence; the questions and instructions had invalid elements and those invalid elements prevented the appellate court from determining whether the jury based its findings on those invalid elements.

Because Ms. Guinn did not join the grievance, her

confidentiality was still privileged and required protection. In protecting Ms. Guinn's privilege, much of the evidence could not be disclosed. Juries may not make inferences from evidence that is unavailable or not offered because of a claim of privilege. Yet the CFLD's entire case involved Ms. Guinn's confidential matters. The CFLD had the burden of proof. It did not call Kristin, Ms. Guinn, or any person with direct knowledge of Kristin's work for the attorney or Kristin's trust administration and was erroneously allowed to use records it obtained by secret subpoenas to third parties without properly notifying Kristin under procedural rules and over Kristin's objections was allowed to admit them into evidence, without live testimony of the custodians.

No breach of the trust agreement was proved and not even a true and correct copy of the actual trust agreement was admitted into evidence.

The evidence was legally and factually insufficient and the CFLD had the opportunity to correct its submitted charge after Kristin objected and filed proposed jury questions and instructions, but did not.

#### **REASONS FOR GRANTING THE PETITION**

##### **I. THE PREVAILING *RUFFALO* STANDARD IS NOT CLEAR ENOUGH TO PROTECT AN ATTORNEY'S FUNDAMENTAL RIGHT TO DUE PROCESS OWED THEM BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.**

In 1968 this Court created a standard in attorney disbarment proceedings that requires that "notice

should be given to the attorney of the charges made and opportunity afforded him for explanation and defense." *In re Ruffalo*, 390 U.S. 544, 550, 88 S. Ct. 1222, 20 L.Ed.2d 117 (1968). This Court found there that the attorney had no notice of the allegations against him. *Id.* at 550-551. This case presents an opportunity for the Court to clarify and strengthen the understanding and enforcement of fundamental Due Process Clause rights owed to all citizens, including lawyers in proceedings against them aimed at taking their law license and other valuable property rights as well as damage to their reputation when clients or non-clients file grievance actions against them. The Court should also clarify what constitutes an enforceable disciplinary judgment when there are no factual findings recited in the judgment. This Court should make positive changes in the law in order to protect lawyers from abuses of their due process rights and enforce its judgment retroactively to include the underlying case.

This Court held that "[u]nder the Due Process Clause, 'reasonable notice' must include disclosure of 'the specific issues [the party] must meet,' and 'appraisal of 'the factual material on which the agency relies for decision so that he may rebut it'." *In re Gault*, 387 U.S. 1, 33-34, 87 S.Ct. 1428, 1446-1447, 18 L.Ed.2d 527 (1967); *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 288, n. 4, 95 S.Ct. 438, 443 n.4, 42 L.Ed.2d 447 (1974). In *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 671-672, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985), this Court held that "[w]here there is an 'absence of fair notice as to the reach of the grievance procedure and the precise nature

of the charges,' so that the attorney is not given a meaningful opportunity to present evidence in his defense, the proceedings violate due process. *Id.*, at 671-72, citing *In re Ruffalo*, 390 U.S. 544, 552, 88 S. Ct. 1222, 20 L.Ed.2d 117 (1968).

In *Cole v. State of Arkansas*, 333 U.S. 196, 201-202, 68 S.Ct. 514, 92 L.Ed. 644 (1948), this Court held that issues raised regarding the validity of a state statute under the Fourteenth Amendment and brought to the attention of the Arkansas Supreme Court yet not addressed by that court, specifically a state statute that in practice was too vague and indefinite to conform to due process, was a violation of the Fourteenth Amendment and the equal protection of the laws. *Id.* at 202. There, the Court held that the vagueness of the state statute in practice created an allusion only that a trial had been conducted based upon the statutes involved while the actual trial had ignored the relevant statute entirely. *Id.* at 202-203.

The Court has held, in Justice Brennan's concurring (in part) opinion, the following:

"These guarantees apply fully to attorney disciplinary proceedings. *In re Ruffalo*, 390 U.S. 544, 550, 88 S. Ct. 1222, 1225, 20 L.Ed.2d 117 (1968). Given the traditions of the legal profession and an attorney's specialized professional training, there is unquestionably some room for enforcement of standards that might be impermissibly vague in other contexts; an attorney in many instances may properly be punished for 'conduct

which all responsible attorneys would recognize as improper for a member of the profession.' *Id.*, at 55, 88 S.Ct., at 1228 (WHITE, J., concurring in result). But where '[t]he appraisal of [an attorney's] conduct is one about which reasonable men differ, not one immediately apparent to any scrupulous citizen who confronts the question,' and where the State has not otherwise proscribed the conduct in reasonably clear terms, the Due Process Clause forbids punishment of the attorney for that conduct. *id.*, at 555-556, 88 S.Ct., at 1228-1229."

*Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 666, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985) (BRENNAN, J., concurring in part). A mere opportunity to bring an appeal does not constitute the "meaningful 'chance to be heard'" guaranteed by the Due Process Clause" in attorney disciplinary matters, for it is a mere mockery of the due process of law guaranteed every citizen accused of wrongdoing. *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 673-674, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985). Vague statutes do not meet the fair notice standards required because they allow for harsh and discriminatory enforcement against particular persons "deemed to merit [official] displeasure." *Id.* at 667 n. 10.

**II. THIS CASE IS NATURALLY DISPOSED  
TOWARD REVISITING RUFFALO TO  
ENSURE IN CASES INVOLVING THE  
REGULATION OF THE PRACTICE OF LAW,**

**THE CONSTITUTION IS NOT TREATED AS  
IRRELEVANT IN THE VERY PROFESSION  
BOUND TO UPHOLD IT.**

The statute at issue here, prohibiting the state bar or a court from requiring an attorney against whom a disciplinary action has been brought to disclose information protected by the attorney-client privilege if the client did not initiate the grievance that is the subject of the action, must narrow the scope of those proceedings. When a client does not involve herself in a grievance proceeding, and where she is not even called to testify -- as in this case -- the presupposition is that the scope of the proceeding will not require proof that is protected by the attorney-client privilege. The statute provides no guidance at all in such instances and does not limit the conduct of the State Bar or a court in those circumstances. This is the very nature of prohibition against statutory vagueness the First, Fifth and Fourteenth Amendments prevent. Kristin brought this concern to the district court's attention and argued that if she fully responded to requests of the State Bar and/or argued in her own behalf using confidential client material, she would be required to violate the Texas Statute that protected her client from disclosure of her confidential information. Texas law prohibits this:

"(h) The state bar or a court may not require an attorney against whom a disciplinary action has been brought to disclose information protected by the attorney-client privilege if the client did not initiate the grievance that is the subject of the action."

TEX. GOV'T CODE § 81.072(h). The district court refused to order the State Bar to obtain a waiver of the privileged information or to protect Kristin's Due Process Clause rights in any way. Instead, the district court pressed her to trial knowing that she would have to violate the Texas Government Code Section 81.072(h) in order to adequately defend herself because her evidence remained confidential and unavailable. In doing this, the trial court then allowed the jury to make inferences from evidence unavailable because it is privileged. In Texas, the factfinder is not allowed to make inferences from evidence unavailable or not offered because of a claim of privilege; without proof of the purpose for which Wilkinson did or did not act, the Commission could not prove scienter or the elements of its claims. *Romero v. KPH Consol., Inc.*, 166 S.W.3d 212, 222 and note 33 (Tex. 2015). This is significant to the entire case, not just the trial, because it involved the evidence needed at the summary judgment phase of the litigation as well as the trial. The absence of evidence is not legally sufficient to support a finding of scienter. *Id.* at 224-25. The CFLD had the burden of proving the expenditures made by Wilkinson as the trustee because its claim alleged "Respondent has failed to properly account for or justify these expenditures and/or loss of assets." (CLR 1:13). The Commission did not prove expenditures made in administering the trust were in bad faith, contrary to the terms of the trust, much less the reasonableness of the expenditures. When no probative evidence other than expenditures was offered by the Commission, no reasonable jury could infer the expenditures alone constitute serious and willful wrongdoing or support a finding of gross mismanagement, dishonesty, fraud, deceit,

misrepresentation, lack of honesty or trustworthiness or fitness as a lawyer or a crime. *Kappus v. Kappus*, 284 S.W.3d 83, 835-39 (Tex. 2009); *In re Guardianship of Hollis*, 14-13-00659-CV at 6-9 (Tex. App.- Houston [14<sup>th</sup> Dist.] Nov. 4, 2014, *no pet., mem.*).

The position of being forced to either divulge a client's privileged information and breach a fiduciary duty or lose a lawsuit where an attorney has been alleged to violate the disciplinary rules in a grievance case is untenable. The confidentiality statute at issue prohibits the State Bar or a court from requiring the disclosure of confidential information but at the same time allows a court to find against an attorney when the attorney cannot defend herself unless she divulges that information. The disclosure of a client's confidential information is either right or it is wrong under these circumstances. It is not both. In holding otherwise, the trial court violated Kristin's Due Process Clause protection. The Ninth Court of Appeals did not address the issue in its opinion and the Supreme Court of Texas affirmed without opinion. This has been held to be the very sort of procedure that makes a mockery of the Constitution because it does not provide "a meaningful 'chance to be heard in a trial of the issues.'" *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 673, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985).

#### CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. Alternatively, this Court should summarily vacate the judgment below and remand for an analysis of *Ruffalo* in light of this case and the

opinions in *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 673, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985).

Respectfully submitted,

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