Opinion issued August 25, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-18-01115-CV

GEORGE M. BISHOP, III, Appellant

V.

COMMISSION FOR LAWYER DISCIPLINE, Appellee

On Appeal from the 21st District Court
Washington County, Texas
Trial Court Case No. 36282

MEMORANDUM OPINION

Appellant, George M. Bishop, III, challenges the trial court's modified judgment of partially probated suspension, entered after a jury trial, in the suit by appellee, the Commission for Lawyer Discipline (the "Commission"), against

Bishop for violating Texas Disciplinary Rule of Professional Conduct 1.01(b)(1).[1] In five issues,[2] Bishop contends that the trial court erred in allowing certain witnesses to testify about the Texas electronic-filing system (the "Texas e-filing system") and the Texas Family Code, stating at trial that certain witnesses were testifying to "custom and practice in Washington County," not allowing him to make a bill of exception, reading-back only certain testimony when the jury made a request under Texas Rule of Civil Procedure 287,[3] not granting his amended motion for new trial, and assessing an excessive sanction against him.

We affirm.

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1 *See* TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01(b)(1), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G., app. A ("In representing a client, a lawyer shall not: (1) neglect a legal matter entrusted to the lawyer . . . .").

2 In the "Argument and Authorities" section of his brief, Bishop lists five "[p]oint[s]." These "[p]oint[s]" correspond with the five issues addressed in this memorandum opinion. However, in the "Issues Presented" section of his brief, Bishop lists seven "[i]ssues," and in his "Outline of Statement of Facts" section, Bishop lists eleven purported errors committed by the trial court. To the extent that appellant has raised issues in either his "Issues Presented" or "Outline of Statement of Facts" sections of his brief that do not match the points of error addressed in his "Argument and Authorities" section, we hold that he has waived those complaints as inadequately briefed. *See* TEX. R. APP. P. 38.1(i); *Richardson v. Marsack*, No. 05-18-00087-CV, 2018 WL 4474762, at *1–2 (Tex. App.—Dallas Sept. 19, 2018, no pet.) (mem. op.); *M.D. Mark, Inc. v. PIHI P'ship*, No. 01-98-00724-CV, 2001 WL 619604, at *12 (Tex. App.—Houston [1st Dist.] June 7, 2001, no pet.) (not designated for publication) ("There is no 'argument and authority' section corresponding to the three points of error listed in the table of contents [of appellant's brief]. As such, they are not properly before the Court.").

3 *See* TEX. R. CIV. P. 287 ("Disagreement As to Evidence").

Background[4]

In its second amended disciplinary petition, the Commission alleged that on September 10, 2015, Ginger Fuchs hired Bishop, an attorney licensed to practice law in Texas, to represent her in her divorce proceeding against her now-ex-husband. Before contacting Bishop, Fuchs had requested and obtained a protective order against her ex-husband because he had physically assaulted her. Bishop agreed to represent Fuchs on a pro bono basis in her divorce proceeding if Fuchs paid all filing fees associated with the litigation. Fuchs requested that Bishop file a divorce petition on her behalf, but he did not. Instead, Fuchs's ex-husband unexpectedly filed and served her with a petition for divorce.

The Commission further alleged that temporary orders were entered in Fuchs's divorce proceeding and those orders required Fuchs's ex-husband to make child support payments to Fuchs and to have only supervised visitation with Fuchs's child. When Fuchs's ex-husband stopped making child support payments, Fuchs asked Bishop to file a motion for contempt, which Bishop did not do.

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[4] Bishop has attached numerous documents to his brief. The attachment of documents as exhibits to an appellate brief does not constitute formal inclusion of such documents in the record for appeal. To the extent that such documents are not otherwise included in the appellate record, we do not consider them in our review. *See McCann v. Spencer Plantation Invs., Ltd.*, No. 01-16-00098-CV, 2017 WL 769895, at *4 n.5 (Tex. App.—Houston [1st Dist.] Feb. 28, 2017, pet. denied) (mem. op.).

Additionally, during the divorce proceeding, Fuchs's ex-husband served Bishop with two sets of discovery requests. When the second set of discovery requests was not timely answered, Fuchs's ex-husband filed a motion to compel her responses. A hearing was set on the motion to compel. Fuchs's ex-husband provided notice of the hearing date when he filed his motion to compel. Bishop did not attend the hearing on the motion to compel, and the trial court signed an order requiring Fuchs to provide adequate discovery responses to her ex-husband's second set of discovery requests. The order also stated that if Fuchs did not provide adequate discovery responses, she would be ordered to pay attorney's fees and all of her pleadings in the divorce proceeding would be struck. Bishop did nothing to assist Fuchs in complying with the trial court's order, and Fuchs's ex-husband was ultimately granted a default divorce because Fuchs's pleadings were struck by the trial court and could not be considered in her divorce proceeding.

As to Fuchs's own discovery requests, Bishop represented to Fuchs that he had served her ex-husband with discovery requests in March 2016. In reality, Bishop served Fuchs's discovery requests in July 2016.

The Commission alleged that Bishop violated Texas Disciplinary Rule of Professional Conduct 1.01(b)(1), which provides that, "[i]n representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer."[5]

Bishop answered, denying the allegations in the Commission's petition.

Fuchs's Trial Testimony

At trial, Fuchs testified that Bishop represented her in her divorce proceeding against her ex-husband. According to Fuchs, Bishop reached out to her about representing her in her divorce proceeding; Fuchs did not contact Bishop. Fuchs wanted a divorce from her ex-husband because he had abused her, including abusing her in front of her child, and he had assaulted her with a knife. Fuchs also sought to have criminal charges for assault brought against her ex-husband in addition to seeking a divorce.

Fuchs had her first meeting with Bishop at his house on September 23, 2015. Bishop agreed to represent Fuchs in her divorce proceeding if she would pay the filing fees and service fees associated with the litigation. Around the time Bishop began representing Fuchs, Fuchs obtained a temporary protective order against her

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[5] The Commission also alleged that Bishop violated Texas Disciplinary Rule of Professional Conduct 8.04(a)(3), which provides that "[a] lawyer shall not . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." *See* TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 8.04(a)(3), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G., app. A. This allegation is not relevant to our memorandum opinion.

ex-husband. The temporary protective order, a copy of which the trial court admitted into evidence, prohibited Fuchs's ex-husband from, among other things, committing family violence and having contact or communicating with Fuchs or her child. It also granted Fuchs exclusive possession of her child. Fuchs provided Bishop with a copy of the temporary protective order when she first met with him.

Fuchs further testified that, on or about September 26, 2015, she gave Bishop $350 in cash to cover the filing fees and service fees for her petition for divorce. And Fuchs believed that Bishop was going to file a petition for divorce on her behalf. Bishop went so far as to send a completed draft of the divorce petition to Fuchs, which she signed, had notarized, and returned to Bishop. Bishop never told Fuchs that he did not file her petition for divorce.

On October 20, 2015, Fuchs independently learned that Bishop had not filed her petition for divorce against her ex-husband. When Fuchs attempted to contact Bishop to discuss his failure, Bishop told her that he had not filed the petition for divorce and he was "in trial and . . . devoting full time to [another] case." Because her petition for divorce had not been filed, Fuchs became concerned that the criminal case against her ex-husband would not be taken seriously and that she could be seen as a liar. Ultimately, Fuchs's ex-husband filed a petition for divorce against Fuchs, and Bishop filed a counterclaim for divorce on Fuchs's behalf three days later.

Fuchs also testified that in the course of her divorce proceeding, she and her ex-husband agreed to temporary orders. Those temporary orders required her ex-husband to make monthly child support payments to her and required that his visitation with her child be supervised.

After the temporary orders were in place, Fuchs's ex-husband served her with his first set of discovery requests. The trial court admitted into evidence a copy of Fuchs's ex-husband's February 2016 motion to compel discovery responses from Fuchs. That filing states that Fuchs's ex-husband served Fuchs with interrogatories, requests for production, and requests for disclosure on December 11, 2015, and he, as of February 10, 2016, had not received any response from Fuchs.[6] Fuchs testified that Bishop did not notify her of her ex-husband's discovery requests until two weeks after they had been served and he only told her that she "needed to get them answered." Bishop never told Fuchs about any motion to compel filed by her ex-husband.

The trial court admitted into evidence a copy of an email, dated December 19, 2015, from Bishop to counsel for Fuchs's ex-husband. In the email, Bishop states: "I have received 55 interrogatories from you . . . . Please consider this an objection to these oppressive questions. If you prefer[,] we can file an objection with the court.

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[6] The trial court took judicial notice that Fuchs's discovery responses were due thirty days after the discovery requests were served. *See* TEX. R. CIV. P. 194.3, 196.2, 197.2.

If you will pick 25 questions, we will answer them . . . . We will not answer them until after January 10th as I am leaving for Australia on Monday and will not be back until January 10, 2016."[7] Fuchs testified that at the time Bishop sent the December 19, 2015 email he had not yet mentioned her ex-husband's discovery requests to her. The trial court also admitted into evidence a copy of an email dated January 26, 2016, in which Bishop requested an additional one-week extension to respond to Fuchs's ex-husband's first set of discovery requests.

Fuchs stated that after Bishop returned from Australia, she went to his home to answer the discovery requests. Bishop handwrote the answers to the discovery requests. On February 17, 2016, Bishop sent Fuchs a copy of her responses to her ex-husband's interrogatories for her to sign and have notarized. He also sent her responses to the requests for disclosure to check for correctness. Fuchs noted that this occurred about three weeks after Bishop's January 26, 2016 email to her ex-husband's counsel in which he stated that he only needed a week extension to complete Fuchs's discovery responses. Fuchs signed the interrogatory responses and returned them to Bishop in February 2016. Fuchs also returned her responses to the requests for disclosure and provided Bishop with documents responsive to her ex-husband's requests for production around the same time.

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7 *See id.* 197.2.

Fuchs further testified that in February 2016, she and Bishop discussed sending discovery requests to her ex-husband. On March 1, 2016, Bishop sent her an email stating: "Look at these interrogatories and let me know what you think."[8] Fuchs responded to Bishop with some suggestions. Initially, Fuchs believed that her ex-husband was served with her discovery requests in spring 2016, but she later learned that he was not served with her discovery requests until July 20, 2016. Fuchs's ex-husband was served with only interrogatories; he was never served with requests for admissions, requests for disclosure, or requests for production.

Additionally, Fuchs testified that in June 2016, her ex-husband stopped making his child support payments and he allowed Fuchs's child's health insurance to lapse. Fuchs notified Bishop of this in June 2016. Bishop told her that he would contact her ex-husband's counsel about filing a motion for contempt, but on August 9, 2016, Fuchs had to send Bishop a text message, a copy of which the trial court admitted into evidence, stating: "Can you please file a motion for [my ex-husband] to pay his child support. We are at three months and [my child] still has no insurance[.]" On August 11, 2016, Fuchs sent Bishop another text message, asking: "What is the status of [the] filing on [my ex-husband] to pay the child support[?]" Bishop responded to Fuchs's text message, stating: "I am in

[8] The trial court admitted into evidence a copy of Bishop's email.

Washington with grandchildren until Monday night will deal with it when I return." Fuchs stated that Bishop did not "deal with it" when he returned.

On August 18, 2016, Bishop sent Fuchs an email with "[a] first draft" of a motion for contempt for her to review.[9] But the motion for contempt sent by Bishop was for two other individuals and did not relate to Fuchs's divorce proceeding. Bishop then sent Fuchs another motion for contempt by email,[10] but Fuchs did not believe that Bishop ever filed that motion. Instead, on August 19, 2016, Bishop sent Fuchs another draft of a motion for contempt and asked her to review that one for any proposed changes.[11] Bishop told Fuchs that he would finalize and file the motion, but he never did so. On September 8, 2016, Fuchs sent Bishop a text message, a copy of which the trial court admitted into evidence, asking if he "would have time to e-file for child support next week." Although Bishop responded, "Yes," he did not file any motion related to the unpaid child support that Fuchs's ex-husband owed her. According to Fuchs, although she had signed a motion for contempt and returned it to Bishop, he never filed any motion for contempt about her ex-husband's failure to make child support payments. Fuchs stated that she believed that the $350 in cash that she had previously given Bishop would have covered the filing fees and

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9 The trial court admitted into evidence a copy of Bishop's email.

10 The trial court admitted into evidence a copy of Bishop's email.

11 Fuchs agreed that Bishop sent her four different versions of a motion for contempt, and he told her that the final one needed to be signed and notarized.

service fees for the motion for contempt because Bishop never used that money to file a petition for divorce on her behalf, the cost of filing a counterclaim for divorce was less than $350, and Bishop had not asked Fuchs for any more money to file the motion for contempt.

Fuchs also testified that on July 18, 2016, she was served with a second set of discovery requests from her ex-husband.[12] Bishop forwarded her the additional discovery requests the next day.[13] At the time, Fuchs was confused as to why she was being sent a second set of discovery requests when her ex-husband had not yet responded to her discovery requests which she thought Bishop had served on her ex-husband in spring 2016. When Fuchs brought this up to Bishop, he told her that she had to answer her ex-husband's second set of discovery requests. Bishop did not tell Fuchs that she could object to the discovery requests because her ex-husband had already reached his limit for requesting certain discovery.

According to Fuchs, the second set of discovery requests was not timely answered,[14] and her ex-husband, on August 30, 2016, filed a motion to compel her

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12 The trial court admitted into evidence copies of the Additional Written Interrogatories and the Request for Additional Production and Inspection sent to Bishop on July 18, 2016.

13 The trial court admitted into evidence a copy of Bishop's email exchange with counsel for Fuchs's ex-husband.

14 Fuchs testified that she answered the discovery requests by the date that Bishop told her to answer by.

discovery responses and requested sanctions against her, including a request that Fuchs's pleadings be stricken.[15] That motion, a copy of which the trial court admitted into evidence, stated that on July 20, 2016, Fuchs had been served with interrogatories and requests for production, and by August 30, 2016, she had not responded to the discovery requests. The motion to compel also included a notice of hearing, stating that a hearing on the motion would be held on September 6, 2016.

Fuchs testified that she responded to her ex-husband's second request for production on September 2, 2016 and she responded to his additional interrogatories on September 7, 2016.[16] When she delivered her responses to Bishop, Bishop did not discuss any hearing that was scheduled on a motion to compel. Two or three days after the September 6, 2016 hearing for the motion-to-compel, Bishop told Fuchs that because neither of them had shown up for the motion-to-compel hearing, she had been sanctioned by the trial court and her pleadings in her divorce proceeding had been struck. Bishop did not tell Fuchs that she actually had an opportunity to supplement her discovery responses and could avoid having her pleadings struck.

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15 The trial court admitted into evidence a copy of an email that counsel for Fuchs's ex-husband sent to Bishop on August 23, 2016, asking when Fuchs's responses to the additional discovery requests would be ready.

16 The trial court admitted into evidence a copy of Fuchs's responses to her ex-husband's second set of discovery requests. Her responses to his Additional Written Interrogatories and to his Request for Additional Production and Inspection are both dated and signed by Fuchs on September 2, 2016.

The order on Fuchs's ex-husband's motion to compel, a copy of which the trial court admitted into evidence, states that Fuchs had failed to provide adequate answers to her ex-husband's Request for Additional Production and Inspection. But it allowed Fuchs to produce responsive documents to the request by September 21, 2016 to avoid having her pleadings struck. Fuchs was prohibited from doing any further discovery until she provided documents responsive to her ex-husband's request.

In response to the trial court's order on Fuchs's ex-husband's motion to compel, Bishop told Fuchs not to worry, he "would get it taken care of," and he would file a motion for rehearing stating that he had not been given notice of the hearing. Bishop did not advise Fuchs to produce anything to comply with the trial court's order. Instead, Bishop told her "not to be concerned."

As to Bishop's purported lack of notice of the September 6, 2016 motion-to-compel hearing, Fuchs testified that Bishop was sent her ex-husband's motion to compel by certified mail on September 2, 2016, but Bishop did not pick it up from the post office until September 8, 2016. Fuchs also stated that Bishop had "opened an e-file" on August 30, 2016 that stated the court date for the hearing on the motion to compel. Documents that the trial court admitted into evidence show that Bishop opened Fuchs's ex-husband's motion to compel, which had been sent to him through the Texas e-filing system on August 30, 2016 at 10:55 a.m. According

to Fuchs, Bishop had notice of the September 6, 2016 motion-to-compel hearing; he just did not attend.

Ultimately, in October 2016, Fuchs requested that Bishop withdraw as her attorney in her divorce proceeding. Bishop filed a motion to withdraw with the trial court but did not tell Fuchs that the motion was set for a hearing or provide her with a copy of his motion. Another attorney represented Fuchs at the hearing on her motion for rehearing in her divorce proceeding. During that hearing, the trial court considered whether or not to strike her pleadings. In the end, the trial court struck Fuchs's pleadings after it found that Bishop had been notified of the September 6, 2016 motion-to-compel hearing and just did not show up. Based on the trial court's ruling, Fuchs was "no longer allowed to have a defense" in her divorce proceeding, "not allowed to say a word" during the trial, and she could not put on any evidence of her ex-husband's abuse. This was significant to Fuchs because her ex-husband had been charged with the criminal offense of assault and Fuchs believed that under such circumstances he would not be allowed to serve as a joint managing conservator of her child and his visitation with the child would have to be supervised. But because Fuchs could not present a defense and could not "put on any evidence . . . about [her ex-husband's] criminal charges" and the abuse she suffered, her ex-husband was appointed as joint managing conservator of Fuchs's child and he received extended unsupervised possession of the child. Fuchs stated that

ultimately her pleadings in her divorce proceeding were struck because Bishop did not appear for the September 6, 2016 motion-to-compel hearing.

As to any additional failings of Bishop in his representation of Fuchs, Fuchs stated that in February 2016, she gave Bishop the names of individuals that would testify on her behalf in the divorce proceeding. But, as the time for trial in her divorce proceeding neared, Bishop had not spoken to any of Fuchs's witnesses. When Fuchs asked Bishop to seek a continuance because she did not believe that he was adequately prepared to represent her at trial, Bishop did not agree to ask for a continuance. Fuchs also testified that on multiple occasions, Bishop failed to address her concerns related to her divorce proceeding and the ultimate outcome.

Casaretto's Trial Testimony

Michael Casaretto, an attorney, testified that he represented Fuchs in her divorce proceeding after Bishop withdrew.[17] At the time of trial in Bishop's disciplinary proceeding, Casaretto was still representing Fuchs in connection with her divorce proceeding and that litigation was ongoing. Casaretto had filed motion for a temporary restraining order to protect Fuchs's child, which had been granted, in part, and he had also filed a motion to modify the parent-child relationship. As to the difficulties in Fuchs's divorce proceeding after Fuchs's pleadings were struck by

[17] The record indicates that another attorney represented Fuchs in her divorce proceeding immediately after Bishop withdrew as Fuchs's counsel. Casaretto then took over representation of Fuchs from that other attorney.

the trial court, Casaretto testified that Fuchs's ex-husband had been "convict[ed] [of] domestic violence against . . . Fuchs," he should not have been appointed as a joint managing conservator of Fuchs's child, and issues had arisen about the health and safety of Fuchs's child because Fuchs's ex-husband was granted joint managing conservatorship and unsupervised visitation of the child.

Casaretto also testified that he was familiar with the Texas e-filing system. And, as to certain documents that the trial court had admitted into evidence, Casaretto stated that they contained "an envelope receipt from the [Texas] e-filing system." Such a receipt allows a person to see the history of when an attorney opens a document that has been e-filed and served. According to Casaretto, the documents admitted into evidence showed that on August 30, 2016, at 10:55 a.m., Bishop opened the motion-to-compel filed by her ex-husband and that meant that he had notice of the September 6, 2016 hearing on the motion to compel.

As to conservatorship under the Texas Family Code, Casaretto testified that a parent cannot be appointed as a joint managing conservator of a child if there is a credible evidence of domestic violence or other family abuse.

Bishop's Trial Testimony

Bishop testified that Fuchs came to see him on September 23, 2015 and told him that her ex-husband had assaulted her and she did not have any money. Bishop agreed that he would represent Fuchs for free, but she would have to pay for

expenses. Bishop told Fuchs that he would file a petition for divorce on her behalf. Fuchs did not know exactly where her ex-husband was at the time—she only knew that he was "on an oil well somewhere in Louisiana." Fuchs gave Bishop her ex-husband's cellular telephone number and an approximate location. Although Bishop prepared a petition for divorce, he told Fuchs that he could not serve her ex-husband with it if he did not know where he was located. After Fuchs's ex-husband filed a divorce petition in October 2015, Bishop changed Fuchs's previously-drafted petition for divorce to a counterclaim for divorce, and Fuchs paid the filing fees for the counterclaim. Bishop admitted that he could have filed Fuchs's petition for divorce without serving her ex-husband.

According to Bishop, he spent three or four days reviewing the proposed temporary orders related to Fuchs's divorce proceeding and he received Fuchs's approval for those orders. The temporary orders required Fuchs's ex-husband to make child support payments to her. After Fuchs's ex-husband stopped making his child support payments, Bishop attended a hearing because the ex-husband filed a motion seeking to have the amount of his child support payments reduced. As to the filing of a motion for contempt due to the failure to make child support payments, Bishop stated that he sent Fuchs "four different versions" of a motion for contempt, although one version was for another client. But he "never saw a signed sworn motion for contempt" from Fuchs that he could file. Further, Bishop stated that he

could not serve any motion for contempt on Fuchs's ex-husband because he could not find him. Fuchs would have been responsible for paying any fees associated with trying to serve her ex-husband with a motion for contempt.

Bishop also testified that any assertion that he did not send discovery requests to Fuchs's ex-husband until July 2016 was "false," but he also did not have any documents showing that he had served discovery requests on Fuchs's ex-husband before that time. And Bishop admitted that an email from July 20, 2016, a copy of which the trial court admitted into evidence, states that he was taking Fuchs's interrogatories to her ex-husband's counsel "now." According to Bishop, he never filed a motion to compel responses to Fuchs's discovery requests because he "tr[ies] to work these things out by agreement and not go to court." When Fuchs's ex-husband sent additional discovery requests in July 2016, Bishop "tried to get . . . Fuchs to come in and answer [the requests]," but she refused. Fuchs eventually answered her ex-husband's additional discovery requests on September 2, 2016.

As to the September 6, 2016 hearing on Fuchs's ex-husband's motion to compel, Bishop stated that he did not know about the hearing. He explained:

> [T]o be quite frank, considering my age and my hobbies, huh, I left Labor Day weekend to go down to Hidalgo County, Texas, for the opening of white-wing season. And, so, I was not there over that weekend. The case came up apparently on the 6th of September, and I wasn't even back from Hidalgo County yet and I had no notice of the setting of any motion. They had sent the notice by certified mail. I live

> on a farm in Chappell Hill. It's in a rural area. They do not deliver certified mail. They will put a notice there. You can't go pick it up that day. You can pick it up on some subsequent date the post office is open. . . . I did pick it up at 9:55 a.m. on September 8th and found out there had been a hearing set for the 6th. I didn't know anything about the hearing, but I was not too concerned . . . .

Bishop testified that he filed a motion for rehearing based on the fact that he did not have notice of the September 6, 2016 motion-to-compel hearing, but he could not have the motion for rehearing heard because there was "no judge" for the divorce proceeding.

Additionally, Bishop testified that while he represented Fuchs, she made numerous demands on him and sent him text messages and emails. But she did not "thank" him. Bishop withdrew as Fuchs's attorney when she asked him to do so.

Jury Verdict and Trial Court's Judgment

The trial court submitted the following question to the jury: "In representing . . . Fuchs, did . . . Bishop neglect a legal matter entrusted to him by . . . Fuchs?"[18] The jury answered this question in the affirmative, and the trial court proceeded with the sanctions phase of trial.

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[18] *See* TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01(b)(1). The trial court submitted a second question to the jury, asking whether "Bishop engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in representing . . . Fuchs in [her divorce proceeding]?" The jury did not find that Bishop had done so. *See id.* 8.04(a)(3) ("A lawyer shall not: . . . (3) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation[.]").

The trial court heard evidence during the sanctions phase of trial. And at the conclusion of the sanctions phase, the trial court signed a Modified Judgment of Partially Probated Suspension, finding that the jury had determined that Bishop had violated Texas Disciplinary Rule of Professional Conduct 1.01(b)(1), Bishop had committed misconduct as defined in the Texas Rules of Disciplinary Procedure, and the "appropriate discipline [was] a suspension from the practice of law in the State of Texas for a period of two (2) years, with twelve (12) months of [the] suspension [being] an active suspension, and twelve (12) months of [the] suspension [being] probated," in accordance with certain terms and conditions set forth in the trial court's judgment. Thus, the trial court ordered that Bishop "be suspended from the practice of law for a period of two (2) years, beginning May 1, 2018, and ending April 30, 2020." Bishop's active suspension from the practice of law was to be from May 1, 2018 to April 30, 2019. And if he complied with the trial court's terms and conditions, his probated suspension would be from May 1, 2019 to April 30, 2020. Bishop was also ordered to pay $10,000 in attorney's fees and expenses.

Bishop filed an amended motion for new trial and two supplements to his amended motion for new trial. The trial court denied Bishop's amended motion for new trial and supplements.[19]

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19 *See* TEX. R. CIV. P. 329b(c).

Admission of Evidence

In his first issue, Bishop argues that the trial court erred in allowing Casaretto, Fuchs's current attorney in her divorce proceeding, to testify about the Texas e-filing system because "[a] discussion of the Texas e-filing system requires some degree of specialized knowledge and experience" and Casaretto was not designated as an expert witness. Bishop also argues that the trial court erred in allowing Casaretto and Fuchs to testify about Texas Family Code section 153.004 because they were not designated as expert witnesses, their testimony involved questions of law and was conclusory, and "[t]heir opinions were incorrect." Finally, Bishop argues that the trial court erred in stating during trial that Casaretto and Fuchs were testifying as to "custom and practice in Washington County."

The Texas Rules of Evidence provide for the general admissibility of all evidence having any tendency to make a fact of consequence more or less probable. *See* TEX. R. EVID. 401, 402; *Diamond Offshore Servs. Ltd. v. Williams*, 542 S.W.3d 539, 544 (Tex. 2018).

A. Texas E-Filing System

Whether expert testimony is necessary to prove a particular issue is a question of law that we consider de novo. *AKIB Constr. Inc. v. Shipwash*, 582 S.W.3d 791, 802 (Tex. App.—Houston [1st Dist.] 2019, no pet.).

In a portion of his first issue, Bishop argues that the trial court erred in allowing Casaretto to testify about the Texas e-filing system because he was a fact witness, he was not designated as an expert witness, and "the operation of the [Texas] e-filing system was beyond the common understanding of [the] jurors and required expert testimony."

We do not consider unpreserved issues on appeal. *See Fed. Deposit Ins. Corp. v. Lenk*, 361 S.W.3d 602, 604 (Tex. 2012); *see also Allright, Inc. v. Pearson*, 735 S.W.2d 240, 240 (Tex. 1987) ("A point of error not preserved, is not before the appellate court for review."). Generally, to preserve a complaint for appellate review, the record must show that the complaint was made to the trial court by a timely request, objection, or motion and the trial court either ruled on the party's request, objection, or motion, or refused to rule, and the party objected to that refusal. TEX. R. APP. P. 33.1(a). The complaint raised in the trial court must state the grounds for the ruling sought "with sufficient specificity to make the trial court aware of the complaint." *Id.* 33.1(a)(1)(A); *Patel v. Hussain*, 485 S.W.3d 153, 174 (Tex. App.—Houston [14th Dist.] 2016, no pet.). If a party fails to do this, error is not preserved, and the complaint is waived. *Bushell v. Dean*, 803 S.W.2d 711, 712 (Tex. 1991); *see also Bay Area Healthcare Grp., Ltd. v. McShane*, 239 S.W.3d 231, 235 (Tex. 2007) ("Error is waived if the complaining party allows the evidence to be introduced without objection."); *Pirtle v. Gregory*, 629 S.W.2d 919, 920 (Tex. 1982)

("[O]ne should not be permitted to waive, consent to, or neglect to complain about an error at trial and then surprise his opponent on appeal by stating his complaint for the first time.").

Bishop only objected to Casaretto's testimony about the Texas e-filing system on the ground that it was "leading." Bishop did not object to Casaretto's testimony because he was not designated as an expert witness and "the operation of the e-filing system was beyond the common understanding of [the] jurors and required expert testimony." *See* TEX. R. APP. P. 33.1(a). Error is not preserved when an appellant's complaint on appeal does not match his objection made in the trial court. *See Hussain*, 485 S.W.3d at 174. Thus, we hold that Bishop has not preserved for appellate review his complaint that Casaretto should not have been allowed to testify about the Texas e-filing system.[20]

[20] Bishop is also barred from raising his complaint about Casaretto's testimony because he cross-examined Casaretto about the Texas e-filing system. *See Birchfield v. Texarkana Mem'l Hosp.*, 747 S.W.2d 361, 365 (Tex. 1987); *McInnes v. Yamaha Motor Corp., U.S.A.*, 673 S.W.2d 185, 188 (Tex. 1984) ("A party on appeal should not be heard to complain of the admission of improper evidence offered by the other side, when he, himself, introduced the same evidence or evidence of a similar character."); *Varel Mfg. Co. v. Acetylene Oxygen Co.*, 990 S.W.2d 486, 499 (Tex. App.—Corpus Christi–Edinburg 1999, no pet.) ("[A] party is not entitled to complain of responsive answers to questions that party asked the witness on cross-examination."); *Kahanek v. Rogers*, 12 S.W.3d 501, 503 (Tex. App.—San Antonio 1999, pet. denied) (party could not complain about witness's testimony where he vigorously cross-examined witness on same issues).

B. Texas Family Code

In another portion of his first issue, Bishop argues that the trial court erred in allowing both Casaretto and Fuchs to testify about Texas Family Code section 153.004 because they had not been designated as expert witnesses, their testimony involved questions of law and was conclusory, and "[t]heir opinions were incorrect."

Bishop did not object to the testimony of either Casaretto or Fuchs as conclusory or "incorrect."[21] *See* TEX. R. APP. P. 33.1(a); *Bushell*, 803 S.W.2d at 711–12; *see also Martinez Jardon v. Pfister*, 593 S.W.3d 810, 831–32 (Tex. App.—El Paso 2019, no pet.). Thus, we hold that Bishop has not preserved for appellate review his complaint that the trial court erred in allowing Casaretto and Fuchs to testify about the Texas Family Code because their testimony was conclusory and "incorrect."

As to Bishop's assertion that Casaretto should not have been able to testify about Texas Family Code section 153.004 because he was not designated as an expert witness, during Bishop's cross-examination of Casaretto, the Commission "move[d] to . . . certif[y] [Casaretto] as an expert" because of the type of questions being asked of Casaretto by Bishop. In response, Bishop stated that he wanted to question Casaretto as an expert witness. The trial court then ruled: "[I]f you are

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[21] For purposes of this memorandum opinion, we need not consider whether an objection that a witness's opinion is "incorrect" is an appropriate and valid objection. *See* TEX. R. APP. P. 47.1.

going to question him as an expert, then the [Commission] will be allowed to do so as well." Bishop did not object to the trial court's ruling and continued questioning Casaretto in the same manner. *See* TEX. R. APP. P. 33.1(a). We hold that Bishop has waived for appellate review his complaint that Casaretto should not have been allowed to testify about Texas Family Code section 153.004.[22] *See Tittizer v. Union Gas Corp.*, 171 S.W.3d 857, 862 (Tex. 2005) ("[A] party cannot complain on appeal that the trial court took a specific action that the complaining party requested . . . ."); *Keith v. Keith*, 221 S.W.3d 156, 163 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (party may not complain on appeal that trial court granted his own request); *Neasbitt v. Warren*, 22 S.W.3d 107, 112 (Tex. App.—Fort Worth 2000, no pet.) ("It is elementary that a party may not 'invite' error by requesting that the trial court take [a] specific action and then complain on appeal that the trial court erred in granting the request."); *see also Landers v. State*, No. 07-10-0130-CR, 2011 WL 1496154, at

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[22] Bishop also asserts that trial court erred in allowing Casaretto to testify about Texas Family Code section 153.004 because his testimony involved a question of law. In doing so, Bishop relies on *Greenberg Traurig of New York, P.C. v. Moody*, 161 S.W.3d 56 (Tex. App.—Houston [14th Dist.] 2004, no pet.) and *Mega Child Care, Inc. v. Texas Department of Protective & Regulatory Servs.*, 29 S.W.3d 303 (Tex. App.—Houston [14th Dist.] 2000, no pet.). Bishop's reliance on these cases is misplaced. Further, even if we were to presume that the trial court erred in allowing Casaretto to testify about Texas Family Code section 153.004, error regarding evidentiary rulings is usually not reversible unless the judgment turns on the particular excluded or admitted evidence, which we cannot conclude that it does in this particular case. *See Bennett v. Bennett*, No. 09-17-00162-CV, 2019 WL 1940859, at *8 n.4 (Tex. App.—Beaumont May 2, 2019, no pet.) (mem. op.); *Port Terminal R.R. Ass'n v. Richardson*, 808 S.W.2d 501, 510 (Tex. App.—Houston [14th Dist.] 1991, writ denied).

*2 (Tex. App.—Amarillo Apr. 19, 2011, pet. ref'd) (mem. op., not designated for publication) (where party effectively acquiesced to trial court's decision, party could not complain on appeal about decision to which he had agreed).

As to Bishop's assertion that the trial court should not have allowed Fuchs to testify about Texas Family Code section 153.004 because she was not designated as an expert witness, Fuchs *did not* identify, discuss, or reference Texas Family Code section 153.004 in her testimony. In fact, after Bishop's multiple objections and the parties' discussions with the trial court, on direct examination, Fuchs was only asked, relevant to Bishop's appellate complaint, what her "understanding [was] of the impact or the ramifications on [her] [ex-]husband's criminal charges on the custody and visitation of [her] daughter?" In response, Fuchs testified that her "understanding was that [her ex-husband] would not be allowed to . . . [serve] as a joint managing conservator" for her child and his visitation with her child "would be required to be supervised."

Both lay and expert witnesses can offer opinion testimony. *See Osbourn v. State*, 92 S.W.3d 531, 535 (Tex. Crim. App. 2002).[23] Lay witness testimony is admissible under Texas Rule of Evidence 701 when it is (a) rationally based on the witness's perception and (b) helpful to a clear understanding of the witness's

[23] Because the Texas Rules of Evidence apply to both civil and criminal cases, Texas criminal cases may be looked at for guidance. *See* TEX. R. EVID. 101(b); *Benson v. Chalk*, 536 S.W.3d 886, 896–87 (Tex. App.—Houston [1st Dist.] 2017, pet. denied).

testimony or the determination of a fact issue. TEX. R. EVID. 701; *Rivera v. 786 Transport., LLC*, No. 01-14-00430-CV, 2015 WL 3981708, at *5 (Tex. App.—Houston [1st Dist.] June 30, 2015, no pet.) (mem. op.). The general rule is that "observations which do not require significant expertise to interpret and which are not based on a scientific theory can be admitted as lay opinions if the requirements of Rule 701 are met." *Osbourn*, 92 S.W.3d at 537. "It is only when the fact-finder may not fully understand the evidence or be able to determine the fact in issue without the assistance of someone with specialized knowledge that a witness must be qualified as an expert." *Id.*

Here, in testifying about her divorce proceeding, Fuchs stated that she believed that because of her ex-husband's criminal charges, he could not be named as joint managing conservator of her child and he would be required to have supervised visitation with the child. An examination of the substance of Fuchs's testimony shows that it does not require specialized knowledge, skill, experience, training, or education to be presented to the jury. *See* TEX. R. EVID. 702*; Reuter v. State*, No. 01-04-00936-CR, 2006 WL 348146, at *12 (Tex. App.—Houston [1st Dist.] Feb. 16, 2006, no pet.) (mem. op., not designated for publication) (to determine whether witness is testifying as expert, "the focus is on the substance of the witness'[s] testimony and whether the testimony requires specialized knowledge, skill, experience, training, or education to present it to the jury"). Rather, Fuchs

testified about her own understanding of the impact her ex-husband's criminal charges could have on his custody of and visitation with her child.

Because Fuchs did not specifically testify about Texas Family Code section 153.004 and the testimony she gave was only as a lay witness, we hold that this portion of Bishop's first issue presents nothing for our review.[24]

C. Custom and Practice

In the remaining portion of his first issue, Bishop argues that the trial court erred in spontaneously stating, during trial, that Casaretto and Fuchs were testifying as to the "custom and practice in Washington County" because the statement by the trial court made Bishop's objections to their testimony appear frivolous.

Texas Rule of Appellate Procedure 38.1(i) requires an appellant's brief to contain a clear and concise argument with appropriate citations to authorities and record. *See* TEX. R. APP. P. 38.1(i). The failure to provide appropriate record citations waives a complaint on appeal. *See In re A.S.*, No. 12-13-00206-CV, 2014 WL 1922635, at *2 (Tex. App.—Tyler May 14, 2014, no pet.) (mem. op.); *WorldPeace v. Comm'n for Lawyer Discipline*, 183 S.W.3d 451, 460 (Tex. App.—Houston [14th Dist.] 2005, pet. denied); *San Saba Energy, L.P. v. Crawford*, 171

[24] Bishop also argues that the trial court erred in allowing Fuchs to testify about Texas Family Code section 153.004 because an expert witness may not testify about questions of law. We need not address this complaint because Fuchs did not testify as an expert witness. *See* TEX. R. APP. P. 47.1.

S.W.3d 323, 338 (Tex. App.—Houston [14th Dist.] 2005, no pet.) ("[P]arties asserting error on appeal still must put forth some specific argument and analysis showing that the record and the law supports their contentions."); *see also Valadez v. Avitia*, 238 S.W.3d 843, 845 (Tex. App.—El Paso 2007, no pet.) (appellate court has no duty or right to perform independent review of record and applicable law to determine whether there was error). Bishop does not direct this Court to any portion of the record where the trial court stated, in reference to Fuchs's testimony, that she was testifying as to "custom and practice." Thus, his complaint about the trial court's purported statement during Fuchs's testimony is waived.

As to Casaretto's testimony, the trial court did state during trial that Casaretto was "testifying basically to custom and practice . . . in [Washington] [C]ounty." But, Bishop did not object. *See* TEX. R. APP. P. 33.1(a). To preserve error for appellate review, a party must object to a trial court's alleged improper conduct or comment when it occurs, unless the conduct or comment cannot be rendered harmless by proper instruction, such as an instruction to disregard. *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001); *Haynes v. Union Pac. R.R.*, 598 S.W.3d 335, 350–53 (Tex. App.—Houston [1st Dist.] 2020, pet. abated); *Brazos River Auth. v. Berry*, 457 S.W.2d 79, 80 (Tex. App.—Tyler 1970 writ ref'd n.r.e.) ("The appellant should have made the proper objection, calling the remark more specifically to the trial judge's attention, and asked for proper instructions to the

jury. An objection to improper conduct or comment on the part of the court in the trial of a case generally must be made at the time of the occurrence if the error is to be preserved for appellate review unless the conduct or comment is of a character that cannot be rendered harmless by proper instruction."). Bishop does not assert that the complained-of statement made by the trial court was incurable, and he does not assert that his failure to preserve error should be excused. *See* TEX. R. APP. P. 38.1(i); *Dow Chem. Co.*, 46 S.W.3d at 241; *In re Commitment of Stuteville*, 463 S.W.3d 543, 557 (Tex. App.—Houston [1st Dist.] 2015, pet. denied) (appellant bears burden to show how any comments made by trial court were incurable or would excuse his failure to preserve error). We hold that Bishop has not preserved for appellate review his complaint that the trial court should not have stated that Casaretto was testifying as to "custom and practice in Washington County."

We overrule Bishop's first issue.

Bill of Exception

In his second issue, Bishop argues that the trial court erred in not allowing him to make a bill of exception related to several exhibits, which purportedly "show[] that . . . Fuchs was a horse trainer and took [Bishop's] horse . . . to train him," but never returned the horse, because the exhibits were relevant to Fuchs's credibility, which was placed at issue when she testified.

Texas recognizes two types of offers to preserve error: the offer of proof, also referred to as an informal bill of exception, and the formal bill of exception. *In re Estate of Miller*, 243 S.W.3d 831, 837 (Tex. App.—Dallas 2008, no pet.); *Fletcher v. Minn. Mining & Mfg. Co.*, 57 S.W.3d 602, 606 (Tex. App.—Houston [1st Dist.] 2001, pet. denied); *see* TEX. R. EVID. 103(a), (c); TEX. R. APP. P. 33.2. To challenge the exclusion of evidence by the trial court on appeal, a complaining party must present the excluded evidence to the trial court by an offer of proof at trial or by a formal bill of exception after trial. *See Jacob v. Jacob*, No. 01-16-00835-CV, 2018 WL 2141976, at *1 (Tex. App.—Houston [1st Dist.] May 10, 2018, no pet.) (mem. op.); *In re Estate of Miller*, 243 S.W.3d at 837; *see also* TEX. R. EVID. 103(a), (c); TEX. R. APP. P. 33.2.

An offer of proof, or an informal bill of exception, consists of the complaining party's making the substance of the excluded evidence known to the trial court as soon as practicable after the trial court's ruling excluding the evidence, but before the trial court reads its charge to the jury. TEX. R. EVID. 103(a), (c); *In re Estate of Miller*, 243 S.W.3d at 837. The offer of proof must be (1) made before the trial court, the court reporter, and opposing counsel, but outside the presence of the jury and (2) be preserved in the reporter's record. *In re Estate of Miller*, 243 S.W.3d at 837; *Fletcher*, 57 S.W.3d at 607; *see also Jacob*, 2018 WL 2141976, at *2 (noting offer of proof must be presented during trial). To be sufficient to preserve error, an

offer of proof must describe or show the nature of the excluded evidence specifically enough that the reviewing court can determine its admissibility. *Jacob*, 2018 WL 2141976, at *2; *Lone Starr Multi–Theatres, Ltd. v. Max Interests, Ltd.*, 365 S.W.3d 688, 703 (Tex. App.—Houston [1st Dist.] 2011, no pet.). While the offer of proof does not need to establish the specific facts that the excluded evidence would reveal, the offering party must reasonably summarize the offered evidence. *See Jacob*, 2018 WL 2141976, at *2; *PNS Stores, Inc. v. Munguia*, 484 S.W.3d 503, 511 (Tex. App.—Houston [14th Dist.] 2016, no pet.).

When there is no offer of proof made before the trial court, the complaining party must introduce the excluded evidence into the record by a formal bill of exception. *In re Marriage of Rangel & Tovias-Rangel*, 580 S.W.3d 675, 680 n.3 (Tex. App.—Houston [14th Dist.] June 27, 2019, no pet.); *In re Estate of Miller*, 243 S.W.3d at 837; *Sw. Country Enters., Inc. v. Lucky Lady Oil Co.*, 991 S.W.2d 490, 494–95 (Tex. App.—Fort Worth 1999, pet. denied); *see* TEX. R. APP. P. 33.2. Texas Rule of Appellate Procedure 33.2(c) sets forth the specific written and procedural requirements for a formal bill of exception. TEX. R. APP. P. 33.2(c); *Lancaster v. Lancaster*, No. 01-12-00909-CV, 2013 WL 3243387, at *1 (Tex. App.—Houston [1st Dist.] June 25, 2013, no pet.) (mem. op.); *In re Estate of Miller*, 243 S.W.3d at 837. A formal bill of exception must be presented to the trial court for its approval, and if the parties agree to the contents of the bill, the trial court must sign the bill

and file it with the trial court clerk. TEX. R. APP. P. 33.2(c)(1), (2); *Lancaster*, 2013 WL 3243387, at *1; *In re Estate of Miller*, 243 S.W.3d at 837–38. If the parties or the trial court do not agree with the contents of the bill, the appellate rules provide a procedure for presenting the bill. TEX. R. APP. P. 33.2(c)(2); *Lancaster*, 2013 WL 3243387, at *1; *In re Estate of Miller*, 243 S.W.3d at 837–38. Simply filing the excluded evidence with the trial court is "not sufficient to make a proper bill of exception[]," even though it may be part of the record on appeal. *See In re Estate of Miller*, 243 S.W.3d at 838 (internal quotations omitted).

Before trial, the Commission filed a motion in limine, requesting that the trial court instruct Bishop that he must first obtain a ruling from the court before mentioning, referring to, interrogating about, or attempting to convey to the jury in any manner about:

> [A] horse [that] died while in the care of . . . Fuchs or that [Bishop] d[id] not know what happened to any horse, that . . . Fuchs "refused" to return the horse to [Bishop], or that he never saw any horse again after the horse was transported to . . . Fuchs's property[.]

The trial court granted the Commission's motion, ruling that, "as to the case in chief," Bishop and all witnesses were to refrain from any mention or interrogation, directly or indirectly, including offering documentary evidence, about the above referenced horse without first requesting and obtaining a ruling from the Court.

A trial court's ruling on a motion in limine is not a final ruling on the evidence and preserves no error for appellate review. *See Acord v. Gen. Motors Corp.*, 669

S.W.2d 111, 116 (Tex. 1984); *Ulogo v. Villanueva*, 177 S.W.3d 496, 500 (Tex. App.—Houston [1st Dist.] 2005, no pet.). A motion in limine merely precludes reference to the subject of the motion without a party first obtaining a ruling during trial on the admissibility of the matter outside the presence of the jury. *Ulogo*, 177 S.W.3d at 500–01.

During trial, Bishop did not seek to question Fuchs or any other witness about the horse. And at no point during trial did Bishop request that the trial court admit any exhibits related to the horse.[25] Bishop never approached the trial court to obtain a ruling on the admissibility of any evidence about the horse. *See Estate of Veale v. Teledyne Indus., Inc.*, 899 S.W.2d 239, 242 (Tex. App.—Houston [14th Dist.] 1995,

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[25] To the extent that Bishop complains in his brief about the admission of certain redacted exhibits—Petitioner's Exhibits 25, 26, and 27—during trial, Bishop did not object when the Commission sought to have them admitted into evidence. *See* TEX. R. APP. P. 33.1(a). And to the extent that Bishop asserts that the trial court erred in failing to admit the unredacted versions of such exhibits, Bishop did not attempt to introduce the unredacted versions of the exhibits for admission into evidence during trial. To preserve error about the exclusion of evidence, the complaining party must: (1) attempt during the evidentiary portion of the trial to introduce the evidence; (2) if an objection is lodged, specify the purpose for which the evidence is offered and give the trial court reasons why the evidence is admissible; (3) obtain a ruling from the trial court; and (4) if the trial court rules the evidence inadmissible, make a record, through a bill of exception, of the precise evidence the party desires admitted. *Estate of Veale v. Teledyne Indus., Inc.*, 899 S.W.2d 239, 242 (Tex. App.—Houston [14th Dist.] 1995, writ denied); *see* TEX. R. APP. P. 33.1(a). Thus, we hold that Bishop did not preserve for appellate review any complaint about the admission of Petitioner's Exhibits 25, 26, and 27 or any complaint about the trial court's failure to admit the unredacted versions of the exhibits.

writ denied) (complaining party must do certain things, including "attempt[ing] during the evidentiary portion of the trial to introduce the evidence").

Instead, after both Fuchs and Casaretto testified, Bishop asked to recall Fuchs, outside the presence of the jury, so that he could "have a bill of exception on . . . the matters in the [m]otion for [l]imine," specifically "matters concerning . . . the offer by . . . Fuchs to train a horse of [Bishop's] for . . . [his] grandchildren to ride," the giving of the horse by Bishop to Fuchs, and the purported fact that Bishop "never saw the horse again." In response to Bishop's request, the trial court stated that a bill of exception "ha[d] not yet become relevant" because the court "ha[d] not been approached" by Bishop, had not been asked to admit evidence related to the horse, and had not yet made any rulings on the admissibility of any evidence related to Bishop's horse.[26]

On appeal, it is not clear whether Bishop complains that the trial court refused to allow him to make an offer of proof (an informal bill of exception) or a formal bill of exception. *See* TEX. R. EVID. 103(a), (c); TEX. R. APP. P. 33.2. But, in either case, in order to be entitled to make an offer of proof or a formal bill of exception, Bishop was required to first attempt to introduce evidence during trial related to the horse and obtain a ruling from the trial court excluding such evidence. *See* TEX. R.

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[26] *See Ulogo v. Villanueva*, 177 S.W.3d 496, 500 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (trial court's ruling on motion in limine not final ruling on admissibility of evidence).

APP. P. 33.1(a); *Estate of Veale*, 899 S.W.2d at 242 (before complaining party is entitled to make record through bill of exception he must: (1) "attempt during the evidentiary portion of the trial to introduce the evidence"; (2) "if an objection is lodged, specify the purpose for which [the evidence] is offered and give the trial [court] reasons why the evidence is admissible"; [and] (3) "obtain a ruling from the [trial] court"); *see also Wright v. First Nat'l Bank of Bastrop*, No. 03-12-00594-CV, 2013 WL 1748741, at *4 (Tex. App.—Austin Apr. 19, 2013, no pet.) (mem. op.) (error not preserved for appeal where party did not offer tape recording into evidence and obtain a ruling from trial court); *Ulogo*, 177 S.W.3d at 501–02 (because party did not obtain ruling from trial court excluding witness's testimony, party did not make offer of proof concerning that testimony); *Richards v. Comm'n for Lawyer Discipline*, 35 S.W.3d 243, 252 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (party may "make a record, through a bill of exception[] [formal or informal], of the precise evidence [he] desires admitted," if he *first* attempts during evidentiary portion of trial to introduce evidence and trial court rules evidence inadmissible after objection); *Bean v. Baxter Healthcare Corp.*, 965 S.W.2d 656, 660 (Tex. App.—Houston [14th Dist.] 1998, no writ) (party only entitled to make record through bill of exception of evidence he seeks to admit after "attempt[ing] during the evidentiary portion of the trial to introduce the evidence" and after obtaining ruling from trial court regarding admissibility).

Because Bishop did not attempt to introduce evidence related to the horse during trial and did not obtain a ruling from the trial court excluding the evidence,[27] Bishop was not entitled to make either an offer of proof or a bill of exception. We hold that the trial court did not err in purportedly not allowing Bishop to make a bill of exception.

We overrule Bishop's second issue.

Rule 287

In his third issue, Bishop argues that the trial court erred in refusing to allow his testimony to be read to the jury when the jury "requested . . . the 'transcript' of testimony regarding Petitioner's Exhibit 30" because "[t]here was no valid basis for refusing to read [his] testimony."

Texas Rule of Civil Procedure 287 states, in pertinent part:

> If the jury disagree as to the statement of any witness, they may, upon applying to the court, have read to them from the court reporter's notes that part of such witness' testimony on the point in dispute . . . .

TEX. R. CIV. P. 287. The trial court is given broad discretion in determining what portions of the testimony are relevant to the jury's request to have testimony re-read. *Krishnan v. Ramirez*, 42 S.W.3d 205, 225 (Tex. App.—Corpus Christi–Edinburg

[27] Again, the trial court's ruling on the Commission's motion in limine was not a final ruling on the evidence related to Bishop's horse and it preserved nothing for appellate review. *See Acord v. Gen. Motors Corp.*, 669 S.W.2d 111, 116 (Tex. 1984); *Ulogo*, 177 S.W.3d at 500.

2001, pet. denied); *Tex. Emp'rs' Ins. Ass'n v. Dempsey*, 508 S.W.2d 858, 860 (Tex. App.—Houston [1st Dist.] 1974, writ ref'd n.r.e.); *see also Aetna Cas. & Sur. Co. v. Scott*, 423 S.W.2d 351, 354 (Tex. Civ. App.—Houston [14th Dist.] 1968, writ dism'd by agr.). The jury is entitled to hear only the specific part of the testimony relevant to the point in dispute, and only when the jury notifies the court that it disagrees upon the statement made by the witness. *Krishnan*, 42 S.W.3d at 225; *Hill v. Robinson*, 592 S.W.2d 376, 384 (Tex. Civ. App.—Tyler 1979, writ ref'd n.r.e.); *Aetna Cas. & Sur. Co.*, 423 S.W.2d at 354. Because of the broad discretion afforded to the trial court, its decision will only be held erroneous where the trial court's error results in harm. *Dempsey*, 508 S.W.2d at 860; *see also* TEX. R. APP. P. 44.1(a); *Aetna Cas. & Sur. Co.*, 423 S.W.2d at 354.

The trial court's charge to the jury asked two questions. First, it asked whether "[i]n representing . . . Fuchs, did . . . Bishop neglect a legal matter entrusted to him by . . . Fuchs?"[28] Second, it asked whether "Bishop engage[d] in conduct involving dishonesty, fraud, deceit, or misrepresentation in representing . . . Fuchs in [her divorce proceeding]?"[29] During deliberations, the jury notified the trial court that it had answered the first question in the trial court's charge, but it had not yet answered the second question. The trial court instructed the jury to continue to deliberate

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28 *See* TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01(b)(1).

29 *See* TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 8.04(a)(3).

about the second question. The jury then notified the trial court that it wanted the "transcripts involving [Petitioner's Exhibits] #3, #31, #17, [and] #30."

In response to the jury's question, the trial court read back portions of testimony that referenced Petitioner's Exhibit 30—a motion for contempt that Bishop had drafted for Fuchs's divorce proceeding. Bishop, however, requested that the trial court read certain portions of his testimony to the jury because he believed he had referenced Petitioner's Exhibit 30 in more general terms and not by name. The trial court denied Bishop's request.

Here, we cannot say that the trial court erred in determining which portions of testimony were relevant to the jury's request. *See Krishnan*, 42 S.W.3d at 225–26; *Dempsey*, 508 S.W.2d at 860; *Aetna Cas. & Sur. Co.*, 423 S.W.2d at 354 (jury is entitled to hear only specific part of testimony relevant to point in dispute); *see also Garcia v. Brown & Root, Inc.*, No. 01-97-00865-CV, 1998 WL 268821, at *1 (Tex. App.—Houston [1st Dist.] May 28, 1998, pet. denied) (not designated for publication) (trial court did not err where it provided relevant portion of testimony that answered question jury disagreed about).

Yet, even if the trial court had erred, Bishop has not asserted that the trial court's purported error resulted in harm. *See* TEX. R. APP. P. 38.1(i); *see also* TEX. R. APP. P. 44.1(a); *Dempsey*, 508 S.W.2d at 860; *Aetna Cas. & Sur. Co.*, 423 S.W.2d at 354 ("[T]he judge must be given broad discretion and his action held erroneous

only where there is an abuse of that discretion *with resulting harmful effects*." (emphasis added)).

Texas Rule of Appellate Procedure 38.1(i) requires that an appellant's brief "contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(i). Thus, a party must "provide [an appellate court] with such discussion of the facts and the authorities relied upon as may be requisite to maintain the point at issue." *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied); *see also Barham v. Turner Constr. Co. of Tex.*, 803 S.W.2d 731, 740 (Tex. App.—Dallas 1990, writ denied) (appellant bears burden of discussing his assertions of error). "This is not done by merely uttering brief conclusory statements, unsupported by legal citations." *Tesoro Petroleum*, 106 S.W.3d at 128. Appellate issues are waived if an appellant fails to support his contentions by citations to appropriate authority or if his brief fails to contain a clear and substantive argument for the contentions made. *See Marin Real Estate Ptrs., L.P. v. Vogt*, 373 S.W.3d 57, 75 (Tex. App.—San Antonio 2011, no pet.); *Izen v. Comm'n for Lawyer Discipline*, 322 S.W.3d 308, 321–22 (Tex. App.—Houston [1st Dist.] 2010, pet. denied); *Huey v. Huey*, 200 S.W.3d 851, 854 (Tex. App.—Dallas 2006, no pet.); *see also Saudi v. Brieven*, 176 S.W.3d 108, 120 (Tex. App.—Houston

[1st Dist.] 2004, pet. denied) (failure to cite authority and provide analysis in initial brief waived issue on appeal).

In a single sentence, without analysis and citation to appropriate authority, Bishop asserts that "[t]he action of the trial court was clearly prejudicial, causing the jury to believe that perhaps [he] never explained his reasons for not filing the [m]otion for [c]ontempt." *Cf. Littles v. Riverwalk Council of Co-Owners, Inc.*, No. 01-16-00790-CV, 2018 WL 4781142, at *6 (Tex. App.—Houston [1st Dist.] Oct. 4, 2018, no pet.) (mem. op.) (appellate complaint waived where appellant offered little discussion and even less support for her argument); *In re G.P.*, No. 01-16-00346-CV, 2016 WL 6216192, at *24–25 (Tex. App.—Houston [1st Dist.] Oct. 25, 2016, no pet.) (mem. op.) (briefing insufficient where party asserted, without explanation, analysis, or citation to appropriate legal authority, that trial court's error was harmful); *see also Howeth Invs., Inc. v. City of Hedwig Vill.*, 259 S.W.3d 877, 902 (Tex. App.—Houston [1st Dist.] 2008, pet. denied.) (declining to reach, for lack of adequate briefing, appellate complaint having insufficient analysis and lacking citation to authority). This is insufficient to address how and why the trial court's purported error in determining which portions of testimony were relevant to the jury's request resulted in harm. *See* TEX. R. APP. P. 44.1(a); *Dempsey*, 508 S.W.2d at 860; *Aetna Cas. & Sur. Co.*, 423 S.W.2d at 354.

Based on the above, we hold that the trial court did not err in determining, under Texas Rule of Civil Procedure 287, the portions of testimony that were relevant to the jury's request about Petitioner's Exhibit 30. *See Garcia*, 1998 WL 268821, at *1 (overruling appellant's Rule 287 complaint where trial court provided relevant portion of testimony that answered question jury disagreed about and appellant cited no case that reversed judgment because of trial court's error in deciding what testimony to read to jury).

We overrule Bishop's third issue.

New Trial

In his fourth issue, Bishop argues that the trial court erred in not granting his amended motion for new trial because although he did not appear at the September 6, 2016 hearing on Fuchs's ex-husband's motion to compel, the order signed by the visiting judge at that hearing was void. Bishop also asserts that the trial court erred in not holding a hearing on his amended motion for new trial.

A. Amended Motion for New Trial

We review the trial court's denial of a motion for new trial for an abuse of discretion. *See Dolgencorp of Tex., Inc. v. Lerma*, 288 S.W.3d 922, 926 (Tex. 2009); *In re R.R.*, 209 S.W.3d 112, 114 (Tex. 2006). Thus, the trial court's ruling on the motion will not be disturbed on appeal absent a showing of an abuse of discretion. *Strackbein v. Prewitt*, 671 S.W.2d 37, 38 (Tex. 1984). A trial court abuses its

discretion if its decision is arbitrary, unreasonable, and without reference to guiding rules and principles. *See Goode v. Shoukfeh*, 943 S.W.2d 441, 446 (Tex. 1997); *Imkie v. Methodist Hosp.*, 326 S.W.3d 339, 344 (Tex. App.—Houston [1st Dist.] 2010, no pet.).

A trial court may grant a new trial for good cause, on motion of a party or on the court's own motion. TEX. R. CIV. P. 320. A party seeking a new trial on grounds of newly-discovered evidence must demonstrate to the trial court that (1) the evidence came to his knowledge since the trial, (2) his failure to discover the evidence sooner was not due to lack of diligence, (3) the evidence is not cumulative, and (4) the evidence is so material it would probably produce a different result if a new trial were granted. *Waffle House, Inc. v. Williams*, 313 S.W.3d 796, 813 (Tex. 2010).

In his amended motion for new trial, Bishop asserted that in Fuchs's divorce proceeding there was not a properly assigned visiting judge for the September 6, 2016 hearing on Fuchs's ex-husband's motion to compel; and, thus, although the visiting judge, during that hearing, struck Fuchs's pleadings for failure to respond to her ex-husband's Request for Additional Production and Inspection, that order was void and Bishop could not be neglectful for not appearing at that hearing. Bishop attached to his amended motion "[c]ertified copies of the Divorce Docket

Sheets . . . show[ing] no appointment of a visiting judge." (Internal quotations omitted.)

In his brief, Bishop makes no attempt to show that (1) his purportedly newly-discovered evidence came to his knowledge after the trial, (2) his failure to discover the evidence sooner was not due to lack of diligence, (3) the evidence is not cumulative, and (4) the evidence is so material it would probably produce a different result if a new trial were granted. *See Waffle House*, 313 S.W.3d at 813.

An appellant bears the burden of discussing his assertions of error. *See Barham*, 803 S.W.2d at 740; TEX. R. APP. P. 38.1(i). Appellate issues are waived if an appellant fails to support his contentions by citations to appropriate authority or if his brief fails to contain a clear and substantive argument for the contentions made. *See Marin Real Estate Ptrs.*, 373 S.W.3d at 75; *Izen*, 322 S.W.3d at 321–22; *Huey*, 200 S.W.3d at 854; *see also Saudi*, 176 S.W.3d at 120.

Bishop does not provide this Court with a developed argument, including citation to appropriate authority, showing how and why the trial court erred in denying his amended motion for new trial. He wholly fails to analyze how he satisfied the requirements necessary for obtaining a new trial based on newly-discovered evidence. We hold that Bishop has waived for appellate review his complaint that the trial court erred in denying his amended motion for new trial. *See* TEX. R. APP. P. 38.1(i); *Huey*, 200 S.W.3d at 854; *Ho v. Univ. of Tex. at*

Arlington, 984 S.W.2d 672, 681 (Tex. App.—Amarillo 1998, pet. denied) (party waived complaint trial court erred in denying new-trial motion based on newly-discovered evidence); *see also Kaminetzky v. Park Nat'l Bank of Houston*, No. 01-96-01002-CV, 2001 WL 832350, at *11 (Tex. App.—Houston [1st Dist.] July 19, 2001, pet. denied) (not designated for publication) (party waived complaint trial court erred in denying new-trial motion, where he did not show how he satisfied criteria for obtaining new trial on grounds of newly-discovered evidence).

B. Hearing

As to Bishop's additional complaint that the trial court erred in not holding an evidentiary hearing on his amended motion for new trial, generally, whether to hold an evidentiary hearing on a motion for new trial in a civil matter is within the trial court's discretion. *See Hamilton v. Pechacek*, 319 S.W.3d 801, 807 (Tex. App.—Fort Worth 2010, no pet.); *see also Emanuel v. Citibank (S.D.), N.A.*, No. 01-10-00768-CV, 2011 WL 5429042, at *2 (Tex. App.—Houston [1st Dist.] Nov. 10, 2011, no pet.) (mem. op.); *Landis v. Landis*, 307 S.W.3d 393, 394 (Tex. App.—San Antonio 2009, no pet.) (hearing on motion for new trial generally not mandatory). A trial court is only required to conduct a hearing after it is requested by a party and the motion for new trial presents a question of fact upon which evidence must be heard. *Hensley v. Salinas*, 583 S.W.2d 617, 618 (Tex. 1979); *Emanuel*, 2011 WL 5429042, at *2; *Olsen v. Comm'n for Lawyer Discipline*, 347

S.W.3d 876, 887 (Tex. App.—Dallas 2011, pet. denied); *J.L.L. v. State*, No. 01-09-00808-CV, 2011 WL 1631915, at *13 (Tex. App.—Houston [1st Dist.] Apr. 28, 2011, no pet.) (mem. op.) ("In a civil case, a trial court is obligated to conduct a hearing on a motion for new trial if (1) the motion properly requests a hearing, (2) the motion presents a question of fact upon which evidence must be heard, and (3) the motion alleges facts that if true would entitle the movant to a new trial." (internal quotations omitted)).

Bishop fails to adequately brief, with analysis and citation to appropriate authority, his complaint that the trial court erred in not holding a hearing on his amended motion for new trial. *See* TEX. R. APP. P. 38.1(i); *see*, *e.g.*, *Bentley v. Snodgrass*, No. 10-17-00319-CV, 2018 WL 4623940, at *3 (Tex. App.—Waco Sept. 26, 2018, no pet.) (mem. op.) (complaint trial court erred in denying motion for new trial without hearing waived where appellant did not provide argument or authorities in support of issue); *Olsen*, 347 S.W.3d at 887–88 (complaint trial court erred in refusing to conduct hearing on motion for new trial waived where brief failed to provide clear and concise argument with appropriate citations to legal authority and appellate record). Thus, we hold that Bishop has waived for appellate review his complaint that the trial court erred in failing to hold an evidentiary hearing on his amended motion for new trial.

Sanctions

In his fifth issue, Bishop argues that the trial court erred in assessing a sanction of "a twelve-month period of active suspension to begin the day after the modified judgment was signed" because Bishop agreed to assist Fuchs in her divorce proceeding for free, "false claims [of neglect] . . . were allowed in evidence," and the Commission recommended three months active suspension as a sanction for Bishop.

The trial court has broad discretion to determine whether an attorney guilty of professional misconduct should be reprimanded, suspended, or disbarred. *See State Bar of Tex. v. Kilpatrick*, 874 S.W.2d 656, 659 (Tex. 1994); *Curtis v. Comm'n for Lawyer Discipline*, 20 S.W.3d 227, 234–35 (Tex. App.—Houston [14th Dist.] 2000, no pet.). We review the sanction imposed on an attorney for professional misconduct for an abuse of discretion. *See Neely v. Comm'n for Lawyer Discipline*, 196 S.W.3d 174, 186 (Tex. App.—Houston [1st Dist.] 2006, pet. denied); *McIntyre v. Comm'n for Lawyer Discipline*, 169 S.W.3d 803, 807 (Tex. App.—Dallas 2005, pet. denied). A court abuses its discretion only when it acts in an unreasonable and arbitrary manner, or when it acts without reference to any guiding principles. *See Neely*, 196 S.W.3d at 186; *McIntyre*, 169 S.W.3d at 807. A judgment of a trial court in a disciplinary proceeding may be so light or heavy as to amount to an abuse of discretion. *See Love v. State Bar of Tex.*, 982 S.W.2d 939, 944 (Tex. App.—Houston

[1st Dist.] 1998, no pet.). But the mere fact that the trial court may decide a matter differently than an appellate court does not demonstrate an abuse of discretion. *See id.* at 945.

Sanctions for professional misconduct may include disbarment, resignation in lieu of disbarment, indefinite disability suspension, suspension for a certain term, probation of suspension, interim suspension, public reprimand, and private reprimand. TEX. RULES DISCIPLINARY P. R. 1.06(FF), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A-1; *Rodgers v. Comm'n for Lawyer Discipline*, 151 S.W.3d 602, 618 (Tex. App.—Fort Worth 2004, pet. denied). In determining the appropriate sanction in an attorney-disciplinary proceeding, the trial court must consider: (1) the nature and degree of the professional misconduct for which the attorney is being sanctioned; (2) the seriousness of and circumstances surrounding the professional misconduct; (3) the loss or damage to clients; (4) the damage to the profession; (5) the assurance that those who seek legal services in the future will be insulated from the type of professional misconduct found; (6) the profit to the attorney; (7) the avoidance of repetition; (8) the deterrent effect on others; (9) the maintenance of respect for the legal profession; (10) the conduct of the attorney during the course of the disciplinary proceedings; (11) the trial of the case; (12) other relevant evidence concerning the attorney's personal and professional background; and (13) the attorney's disciplinary record. *See* TEX. R. DISCIPLINARY P. R. 3.10,

reprinted in TEX. GOV'T CODE ANN., tit. 2, subtit. G app. A-1; *Washington v. Comm'n for Lawyer Discipline*, No. 03-15-00083-CV, 2017 WL 1046260, at *11 (Tex. App.—Austin Mar. 17, 2017, pet. denied) (mem. op.); *Neely*, 196 S.W.3d at 186–87; *see also Neely v. Comm'n for Lawyer Discipline*, 302 S.W.3d 331, 349 (Tex. App.—Houston [14th Dist.] 2009, pet. denied) (trial court obligated to determine punishment based on these guidelines). The trial court is not required to find that every rule 3.10 factor has been satisfied before imposing a sanction. *Thawer v. Comm'n for Lawyer Discipline*, 523 S.W.3d 177, 188 (Tex. App.—Dallas 2017, no pet.).

During the sanctions phase of trial, the trial court admitted into evidence a copy of a September 2000 Interlocutory Order of Suspension, finding that Bishop had been "found guilty and convicted of two counts of Federal Tax Evasion and one count of Filing False Federal Income Tax Return" and that he had been "sentenced to eighteen (18) months imprisonment as to each of [the] three counts." The Interlocutory Order orders Bishop to be suspended from the practice of law in Texas and "in the event that [his criminal] conviction is affirmed," that he be disbarred. The trial court also admitted into evidence a copy of a subsequent July 2003 Judgment of Disbarment, finding that Bishop's criminal conviction had become final and ordering that he be disbarred from the practice of law in Texas.

Bishop testified that his license to practice law in Texas was reinstated in September 2014, but he was no longer board certified in civil trial law or civil appellate law. Bishop stated that he was disbarred from the practice of law because he was convicted "for filing a false tax return."

The trial court also admitted into evidence a copy of an original petition filed by Bishop as "Power of Attorney," during the time Bishop was disbarred from the practice of law,[30] and a copy of a petition filed in litigation over a sewer plant. Bishop testified that he drafted the petition for the sewer-plant litigation during the time he was disbarred, but he stated that he did not represent "the[] people [listed as plaintiffs] as their attorney." Bishop did agree that he was the person who filed suit in the sewer-plant litigation.

In connection with the sewer-plant litigation, the trial court admitted into evidence a copy of a flyer or notice titled: "Save Historic Chappell Hill[.] Warning! Proposed wastewater plant to dump into live creek." That flyer encouraged people to "[j]oin . . . in favor of preserving [the] extraordinary community," set up a meeting on November 4, 2013 at Bishop's home, and stated: "Call George Bishop . . . for information, he is offering free legal support, stand up for Chappell

[30] Bishop testified that he filed suit as an "assignee" and not as an attorney.

Hill."[31] And the trial court admitted into evidence a 2013 email sent by Bishop, during the time he was disbarred, about the sewer-plant litigation. That email states:

> I have completed the petition and my research today concerning the proposed development . . . . I intend to file suit this week, and need to know who wants to join . . . . I am contending in the suit that the waste water in the open creeks will harm the quality of life and change the community. *. . . If you wish to join the suit this week, send or bring me $50.00 for your share of the court costs. I am not charging for my time to anyone that joins the suit initially. If you want to hire your own lawyer, you are welcome to do so. . . . If you choose to join the suit later, I cannot guarantee that you will not be charged attorney[']s] fees.*

(Emphasis added.)

Additionally, the trial court admitted into evidence a photograph of a sign posted at the front of Bishop's farm which was taken on July 14, 2014—during the time Bishop was disbarred from the practice of law. The sign states: "Board Certified Attorney George Bishop." The sign also includes a picture of the scales of justice, Bishop's telephone number, and a "By Appointment" notation. Bishop testified that he had put tape over the "Board Certified Attorney" portion of the sign, while he was disbarred, but it must have been removed. According to Bishop, the sign remained up during the time that he was disbarred from practicing law and it continued to show his name and telephone number, the "By Appointment" notation, and the scales of justice picture.[32]

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[31] Bishop stated that he did not draft the notice, but it was displayed in public.

[32] Bishop testified that the scales of justice picture represented his Zodiac sign.

Finally, the trial court admitted into evidence a copy of a check written by Bishop during the time he was disbarred. The check is written to the Washington County District Clerk for a "cash bond." Bishop's name is listed on the check as "George M. Bishop Board Certified Attorney." Bishop admitted that he wrote the check at a time when he was not licensed to practice law in Texas.

Here, we cannot conclude that the trial court erred in ordering the sanction of "suspension from the practice of law in the State of Texas for a period of two (2) years, with twelve (12) months of [the] suspension [being] an active suspension, and twelve (12) months of [the] suspension [being] probated" subject to certain terms and conditions set forth in the trial court's Modified Judgment of Partially Probated Suspension.[33] The evidence supports a determination that Bishop violated Texas Disciplinary Rule of Professional Conduct 1.01(b)(1),[34] and the sanction imposed by the trial court is consistent with the above-referenced guidelines. *See Kaufman v. Comm'n for Lawyer Discipline*, 197 S.W.3d 867, 878–79 (Tex. App.—Corpus Christi–Edinburg 2006, pet. denied).

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33 "[A]s an additional sanction arising from [Bishop's] professional misconduct," the trial court ordered that "the State Bar of Texas shall have [a] judgment against [Bishop] for reasonable and necessary attorneys' fees and expenses of litigation in the amount of $10,000." Bishop has not challenged this portion of the trial court's Modified Judgment of Partially Probated Suspension.

34 During the sanctions phase of trial, the trial court took judicial notice of the testimony and evidence from the prior phase of trial.

To the extent that Bishop argues that the trial court erred in assessing an excessive sanction against him because he agreed to represent Fuchs in her divorce proceeding for free, he provides no support for his argument. *See* TEX. R. APP. P. 38.1(i); *cf. McCleery v. Comm'n for Lawyer Discipline*, 227 S.W.3d 99, 107 (Tex. App.—Houston [1st Dist.] 2006, pet. denied) (holding trial court's sanction in disciplinary action not excessive in case where attorney represented client pro bono). Further, as to his assertion that the trial court assessed an excessive sanction against him because the Commission recommended "three (3) months active suspension," Bishop provides no support for his argument that the trial court is bound by the Commission's recommendation. *See* TEX. R. APP. P. 38.1(i). And although at the beginning of the sanctions phase of trial, the Commission stated that it requested that the trial court "enter a partially probated suspension for two years with three months active suspension," the Commission, during its closing argument to the trial court, simply requested that the trial court assess an appropriate sanction against Bishop.

We hold that the trial court did not err in imposing the sanction of "suspension from the practice of law in the State of Texas for a period of two (2) years, with twelve (12) months of [the] suspension [being] an active suspension, and twelve (12) months of [the] suspension [being] probated" subject to certain terms and conditions set forth in the trial court's Modified Judgment of Partially Probated Suspension.

We overrule Bishop's fifth issue.

Conclusion

We affirm the judgment of the trial court.

Julie Countiss
Justice

Panel consists of Justices Keyes, Goodman, and Countiss.