NUMBER 13-15-00522-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

CHERYL D. HOLE, **Appellant,**

v.

COMMISSION FOR LAWYER DISCIPLINE, **Appellee.**

On appeal from the 92nd District Court of Hidalgo County, Texas.

NUMBER 13-15-00528-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

RONALD G. HOLE, **Appellant,**

v.

COMMISSION FOR LAWYER DISCIPLINE, **Appellee.**

On appeal from the 430th District Court of Hidalgo County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Rodriguez and Benavides
Memorandum Opinion by Justice Benavides

This consolidated appeal concerns two separate but related attorney-disciplinary proceedings. By five issues, which we construe as three, appellants Cheryl D. Hole (Cheryl) and Ronald G. Hole (Ronald) (collectively the Holes) appeal adverse grants of partial summary judgments and denials of their motions for summary judgment, all rendered in favor of appellee, the Commission for Lawyer Discipline (the Commission). Cheryl and Ronald assert that: (1) the order granting partial summary judgment and judgment of public reprimand was void because the proceedings were conducted telephonically and the judgments were signed outside the county seat of Hidalgo County; (2) the trial court erred by granting summary judgment despite the Holes proving (a) their limitations defense, (b) waiver, and (c) laches; and (3) the Commission failed to produce competent summary judgment establishing liability for violating Rule 7.01 of the Texas Rules of Disciplinary Procedure. We affirm.

I. BACKGROUND

In December 2014, the Commission filed disciplinary actions against spouses Cheryl and Ronald, who are both licensed attorneys and primarily practice in Hidalgo County.[1] The Commission alleged that in 1997, Ronald established a law firm named "Hole & Alvarez" alongside fellow attorney Micaela Alvarez. In 2004, Alvarez was appointed a United States District Judge. The Commission alleged that despite Judge Alvarez's federal appointment, Ronald and Cheryl continued to use the "Hole & Alvarez" firm name in their practices, in violation of Rules 7.01(a) and 7.01(c) of the Texas Disciplinary Rules of Professional Conduct (TDRPC).

On April 30, 2015, the Commission and the Holes filed the following relevant joint stipulations of fact:

> 3. [Ronald] and [Judge Alvarez] formed the law firm of "Hole & Alvarez, L.L.P." in 1997.
>
> . . . .
>
> 7. [Judge Alvarez] was commissioned as a United States District Court for the Southern District of Texas on December 13, 2004.
>
> . . . .
>
> 11. [Judge Alvarez] has been a person occupying a judicial position continuously since at least January 17, 2005.
>
> . . . .
>
> 13. [Judge Alvarez] has not actively and regularly practiced law with the firm of "Hole & Alvarez, L.L.P." after December 22, 2004.
>
> 14. [Judge Alvarez] has not been a member of the law firm "Hole & Alvarez, L.L.P." since December 22, 2004.

[1] The Texas Supreme Court appointed the Honorable Rhonda Hurley, Judge of the 98th District Court in Travis County to preside over these proceedings by assignment. Order, Misc. Docket No. 14-9226 (Tex. Nov. 24, 2014).

. . . .

16. No attorney with the last name “Alvarez” has been a partner in the law firm “Hole & Alvarez, L.L.P.” after December 22, 2004.

17. No attorney with the last name “Alvarez” has been a member of the law firm “Hole & Alvarez, L.L.P.” after December 22, 2004.

18. [Ronald] continues to practice law under the firm name “Hole & Alvarez, L.L.P.” through the date of these Stipulations.

19. [Ronald] has been a partner in “Hole & Alvarez, L.L.P.” from 1997 through the date of these Stipulations.

. . . .

22. [Cheryl] practices law as an attorney at “Hole & Alvarez, L.L.P.” in an “of counsel” position.

23. [Cheryl] has practiced law as an attorney at “Hole & Alvarez, L.L.P.” since 1997.

. . . .

27. [Cheryl] has been a partner in “Hole & Alvarez, L.L.P.” from December 2004 through the date of these Stipulations.

28. The Office of the Chief Disciplinary Counsel was made aware in October 2005 that [Ronald] was continuing the use of the firm name of “Hole & Alvarez, L.L.P.”

. . . .

36. No disciplinary proceeding or disciplinary action was filed against [Ronald] in 2005 regarding his use of the law firm name “Hole & Alvarez, L.L.P.”

37. No disciplinary proceeding or disciplinary action was filed against [Cheryl] in 2005 regarding her use of the law firm name “Hole & Alvarez, L.L.P.”

38. The State Bar of Texas Advertising Review Committee was made aware in August 2011 that [Ronald] was continuing to use the firm name of “Hole & Alvarez, L.L.P.”

. . . .

> 45. No disciplinary proceeding or disciplinary action was filed against [Ronald] in 2012 regarding his use of the firm name "Hole & Alvarez, L.L.P."
>
> 46. No disciplinary proceeding or disciplinary action was filed against [Cheryl] in 2012 regarding his use of the firm name "Hole & Alvarez, L.L.P."
>
> . . . .
>
> 50. In December 2004, [Ronald and Cheryl] entered into a partnership to practice law, and that partnership continued to use the firm name of "Hole & Alvarez, L.L.P."
>
> 51. The partnership between [Ronald and Cheryl] affirmatively continued to use the firm name "Hole & Alvarez, L.L.P." after [Judge Alvarez] left the firm, on or about December 22, 2004.
>
> 52. [Ronald and Cheryl] have not taken any affirmative steps to change or modify the name of the firm as it existed on December 23, 2004, since December 23, 2004.
>
> 53. [Ronald and Cheryl] have not changed the name of their partnership firm name since its inception.

On May 18, 2015, the Commission filed separate motions for partial summary judgment against Ronald and Cheryl on grounds that the Commission established as a matter of law that Ronald and Cheryl violated Rules 7.01(a) and (c) of the TDRPC. Ronald and Cheryl filed their respective responses alleging that the Commission failed to carry their burden to establish that Ronald and Cheryl violated Rules 7.01(a) and (c).

On May 18, 2015, Ronald and Cheryl also filed their own motions for summary judgment, alleging that the Commission produced no evidence to support their motion for summary judgment. Additionally, Ronald and Cheryl filed motions for summary judgment that the Commission's disciplinary actions were barred by: (1) the statute of limitations, (2) waiver, and (3) laches.

The trial court subsequently denied both Ronald and Cheryl's respective motions for summary judgment and granted partial summary judgment in favor of the Commission, concluding that the Commission established as a matter of law that Ronald and Cheryl violated Rules 7.01(a) and (c) of the TDRPC. Following these orders, the parties stipulated that the sanctions against Ronald and Cheryl "would be no greater than a public reprimand." Additionally, the parties stipulated that Ronald would pay the Commission reasonable attorney's fees not in excess of $1,500 and Cheryl would pay the Commission reasonable attorney's fees not in excess of $1,000.

On November 7, 2015, the trial court signed a final judgment of public reprimand against Cheryl for violating Rules 7.01(a) and (c) of the TDRPC, ordered that her reprimand be made public and published in the Texas Bar Journal, and ordered her to pay $1,000 in attorney's fees to the Commission. On the same day, the trial court signed a final judgment of public reprimand against Ronald for violating Rules 7.01(a) and (c) of the TDRPC, ordered that his reprimand be made public and published in the Texas Bar Journal, and ordered him to pay $1,500 in attorney's fees to the Commission. These appeals followed.

II. VALIDITY OF SUMMARY JUDGMENT

By their first issue, Cheryl and Ronald argue that the trial court's order granting partial summary judgment is void because the trial court had no jurisdiction to conduct proceedings or sign orders and judgments outside the county seat of Hidalgo County.

A. Standard of Review and Applicable Law

As a general proposition, before a court may address the merits of any case, the court must have jurisdiction over the party or the property subject to the suit, jurisdiction

over the subject matter, jurisdiction to enter the particular judgment, and capacity to act as a court. *The State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994).

Under article V, section 7 of the Texas Constitution, a district court "shall conduct its proceedings at the county seat of the county in which the case is pending, except as otherwise provided by law." TEX. CONST. art. V, § 7. This county seat requirement has been held to be jurisdictional, so that if a district court sits outside its jurisdictional geographic area, its proceedings are fundamentally defective and any order based on those proceedings is void. *Acevedo v. Comm'n For Lawyer Discipline*, 131 S.W.3d 99, 102–03 (Tex. App.—San Antonio 2004, pet. denied) (citations omitted). However, a judge who has jurisdiction over a suit pending in one county may, unless objected to by any party, conduct any of the judicial proceedings except the trial on the merits in a different county. TEX. GOV'T CODE ANN. § 74.094(e) (West, Westlaw through Ch. 49, 2017 R.S.).

Despite these provisions, however, disciplinary proceedings are not subject to the geographical restrictions imposed by the Texas Constitution and section 74.094(e). *See Acevedo*, 131 S.W.3d at 103. Original jurisdiction over a disciplinary petition is vested in the Texas Supreme Court, and the county in which the disciplinary proceedings held is a matter of venue rather than jurisdiction. *See id.*; *cf. In re G.C., Jr.*, 980 S.W.2d 908, 909–10 (Tex. App.—Corpus Christi 1998, pet. denied) (holding that juvenile courts are specialized courts created by the Legislature and authorized by the Texas Constitution and are not subject to the geographical constraints imposed by article V, section 7 of the Texas Constitution).

B. Discussion

Cheryl and Ronald argue that the trial court's orders granting partial summary judgment in favor of the Commission on the issue of their violations of Rules 7.01(a) and (c) are void because they were signed and entered outside of Hidalgo County. We disagree.

As stated above, original jurisdiction over disciplinary proceedings vest in the Texas Supreme Court. As a result, any arguments that the disciplinary proceedings are subject to the geographic restrictions imposed by the Texas Constitution and section 74.094(e) are without merit. We overrule Cheryl and Ronald's first issues.

III. SUMMARY JUDGMENTS

By their remaining issues, Cheryl and Ronald assert that the trial court erred by granting partial summary judgments in favor of the Commission and denying their motions for summary judgment on their affirmative defenses of limitations, waiver, and laches.

A. Standard of Review

We review a trial court's summary judgment de novo. *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 156 (Tex. 2004). When reviewing a summary judgment, we take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Id.* (citing *Sw. Elec. Power Co. v. Grant*, 73 S.W.3d 211, 215 (Tex. 2002)). When a party moves for a no-evidence summary judgment and a traditional summary judgment, we first review the trial court's grant under the no-evidence standards of Rule 166a(i). See *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004). If the non-movant meets her burden under Rule 166a(i), then we analyze whether the movant satisfied her Rule 166a(c) burden. *See id*.

A no-evidence summary judgment under Rule 166a(i) is essentially a pretrial directed verdict, and we apply the same legal sufficiency standard in reviewing a no-evidence summary judgment as we apply in reviewing a directed verdict. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 750–51 (Tex. 2003) (internal citations omitted). Accordingly, we review the evidence in the light most favorable to the non-movant and disregard all contrary evidence and inferences. *Id*. (citing *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex.1997)). A no-evidence point will be sustained when (a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence conclusively establishes the opposite of the vital fact. *City of Keller v. Wilson*, 168 S.W.3d 802, 810 (Tex. 2005). Thus, a no-evidence summary judgment is improperly granted if the respondent brings forth more than a scintilla of probative evidence to raise a genuine issue of material fact as to each element of its claim. *Id*. Less than a scintilla of evidence exists when the evidence is "so weak as to do no more than create a mere surmise or suspicion" of a fact. *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983).

To obtain a traditional summary judgment, a movant must either negate at least one element of the plaintiff's theory of recovery or plead and conclusively establish each element of an affirmative defense. *See* TEX. R. CIV. P. 166a(c); *Centeq Realty, Inc. v. Siegler*, 899 S.W.2d 195, 197 (Tex. 1995). Once the movant produces sufficient evidence to establish the right to summary judgment, the nonmovant must present evidence sufficient to raise a fact issue. *Centeq Realty, Inc.*, 899 S.W.2d at 197. When deciding whether a disputed, material fact issue precludes summary judgment, we take as true

evidence favorable to the nonmovant, indulge every reasonable inference in favor of the non-movant, and resolve any doubts in favor of the non-movant. *City of Keller*, 168 S.W.3d at 825 & 827; *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548–49 (Tex.1985).

B. Discussion

1. The Commission's Motions for Partial Summary Judgment

The Commission moved for partial summary judgment against Cheryl and Ronald by utilizing the following stipulations to establish violations of Rules 7.01(a) and 7.01(c) of the TDRPC: (1) Ronald and Alvarez formed a law firm in 1997 named "Hole & Alvarez, L.L.P."; (2) Cheryl has also practiced at Hole & Alvarez, L.L.P. since 1997; (3) Alvarez has not practiced law since December 2004, when she became a United States District Court judge for the Southern Division of Texas; and (4) the law firm currently operates under the name "Hole & Alvarez, L.L.P."

Rule 7.01(a) states the following:

> A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain "P.C.," "L.L.P.," "P.L.L.C.," or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.

TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 7.01(a), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app. A, State Bar Rules, Art. X § 9.

Rule 7.01(c) states the following:

> The name of a lawyer occupying a judicial, legislative, or public executive or administrative position shall not be used in the name of a firm, or in

> communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

Id. R. 7.01(c).

First, the Commission argues that the evidence establishes as a matter of law that the "Alvarez" named in the firm name is Judge Alvarez, who left the firm in December 2004 to become a federal district court judge. Despite her departure, her last name continues to remain in the firm's name of "Hole & Alvarez, L.L.P." The Commission argues that this violates Rule 7.01(c) as a matter of law. We agree with the Commission. A plain reading of Rule 7.01(c) states that the name of a lawyer occupying a judicial position shall not be used in the name of a firm, or in communications on its behalf, during a period in which the lawyer is not actively and regularly practicing with the firm. *Id.* The record conclusively shows that Judge Alvarez left the firm in December 2004, after she became a federal judge, and that Cheryl and Ronald continue to practice under the firm name of "Hole & Alvarez, L.L.P.," which bears Judge Alvarez's name. Thus, we conclude that the Commission met its burden to conclusively establish that Cheryl and Ronald violated Rule 7.01(c).

Next, the Commission argues that the evidence establishes as a matter of law that no lawyer by the name of "Alvarez" has practiced at the firm since December 2004, which proves that Cheryl and Ronald violated Rule 7.01(a) as a matter of law. In response, Cheryl and Ronald argue that despite Judge Alvarez's departure from the firm, the firm was still allowed under Rule 7.01(a) to utilize "Alvarez" in their firm name because the firm never expressly noted, advertised, or mentioned that Judge Alvarez continued to practice for the firm, but instead only used her last name in the firm's name, which was an "otherwise lawful" use under Rule 7.01(a) because she was a retired member of the firm.

The Commission argues that the Holes' interpretation is unsound and the firm's continued use of Judge Alvarez's name violates Rule 7.01(a). We, again, agree with the Commission. Disciplinary rules are treated like statutes and to resolve the meaning of these rules, we apply statutory construction principles. *See In re Caballero*, 272 S.W.3d 595, 599 (Tex. 2008). Statutory construction is a legal question, which we review de novo. *Id.*

Relevant to this case, Rule 7.01(a) permits a firm to use, or continue to include, in its name the name of a retired member of the firm. *See* TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 7.01(a). The resolution of this inquiry rests upon whether Judge Alvarez is considered a "retired member of the firm." When a statute is clear and unambiguous, we read the language of the statute according to its common meaning, without resorting to rules of construction or extrinsic aids. *Abutahoun v. Dow Chem. Co.*, 463 S.W.3d 42, 46 (Tex. 2015). We limit our statutory review to the plain meaning of the text as the sole expression of legislative intent, unless the Legislature has supplied a different meaning by definition, a different meaning is apparent from the context, or applying the plain meaning would lead to absurd results. *Id.*

"Retirement" or "retired" plainly means "termination of one's own employment or career, [especially] upon reaching a certain age or for health reasons," and it can be done voluntary or involuntary. *Retirement*, BLACK'S LAW DICITIONARY (9th ed. 2009). We use this plain meaning of retired in this case because the Legislature has not supplied a different meaning by definition, a different meaning is not apparent from the context, and applying this definition would not lead to absurd results. *See Abutahoun*, 463 S.W.3d at 46. Accordingly, applying this meaning to the facts of this case, Judge Alvarez was not a

retired member of the firm because she did not terminate her career in the practice of law by becoming a federal judge to make use of her name "otherwise lawful" under Rule 7.01(a). Accordingly, we conclude that the Commission conclusively established that Cheryl and Ronald violated Rule 7.01(a).

Thus, in light of our conclusions, the trial court did not err in granting the Commission's motions for partial summary judgment and denying Cheryl and Ronald's no-evidence motions for summary judgment because the Commission conclusively established that Cheryl and Ronald violated Rules 7.01(a) and (c) of the TDRPC.

2. The Holes' Motions for Summary Judgment

Cheryl and Ronald also filed their own traditional motions for summary judgment alleging three separate affirmative defenses: (1) statute of limitations; (2) waiver; and (3) laches. We will address each ground in turn.

a. Limitations

The Holes both argue that their alleged violations of Rules 7.01(a) and (c) occurred in December 2004, when Judge Alvarez departed the firm of Hole & Alvarez, L.L.P. Further, Cheryl and Ronald argue that the Commission filed its disciplinary petitions against them on December 4, 2014 and December 5, 2014, respectively. According to Cheryl and Ronald, these petitions fall outside the four-year statute of limitations for being disciplined for professional misconduct. *See* TEX. RULES DISCIPLINARY PROC. Rule 15.06, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A-1, Rules of Disciplinary Procedure.

As a general rule, "No attorney may be disciplined for Professional Misconduct that occurred more than four years before the date on which a Grievance alleging the Professional Misconduct is received by the Chief Disciplinary Counsel." *Id.* R. 15.06(A). The record shows—through Cheryl and Ronald's own evidence attached to their respective motions for summary judgment—that the Chief Disciplinary Counsel received a grievance dated May 12, 2014, related to the underlying disciplinary proceeding, on May 19, 2014. The grievance attached various pieces of evidence, including a May 12, 2014 printout from the State Bar of Texas website identifying Cheryl and Ronald practicing with the firm "Hole & Alvarez, L.L.P." Accordingly, the evidence conclusively shows that the grievance which served as the basis for the underlying disciplinary proceedings was received by the Chief Disciplinary Counsel on May 19, 2014, and the complained-about conduct in those grievance related to Cheryl and Ronald's actions as of May 12, 2014. Accordingly, we conclude that Cheryl and Ronald failed to conclusively prove that the Commission's petition was barred by the relevant limitations period, because the disciplinary petitions were filed within the limitations period. *See id.*; TEX. R. CIV. P. 166a(c).

b. Waiver

Cheryl and Ronald next allege the affirmative defense of waiver by arguing that the record conclusively shows that the Officer of Chief Disciplinary Counsel was aware of their use of the "Hole & Alvarez, L.L.P." in October 2005 and again in August 2011, and despite this information, the Commission failed to file disciplinary petitions against them. As a result, Cheryl and Ronald argue that the Commission waived its right to bring forth these underlying disciplinary petitions.

To support their waiver argument, Cheryl and Ronald rely upon a 2005 exchange between the Office of Chief Disciplinary Counsel and Ronald. The record shows that on October 14, 2005, Assistant Disciplinary Counsel George Smith wrote a letter to Ronald explaining that Judge Alvarez had left the firm of Hole & Alvarez, L.L.P. in 2004, and despite her departure, he continued to utilize her name in the firm name. Smith went on to write that the Office of Chief Disciplinary Counsel believed this action to be a "violation of [Rule] 7.01(c) [of the TDRPC], however [the Office of Chief Disciplinary Counsel is] not going to file a State Bar initiated grievance at this time." The letter then demanded that Ronald "change the firm name in the immediate future." Ronald replied to Smith's letter by disagreeing with the Chief Disciplinary Counsel's argument and contended that his firm was not in violation of 7.01(c) because any specific references to Judge Alvarez were removed after her appointment to the federal bench. Ronald then provided the Office of Chief Disciplinary Counsel with a letter from Judge Alvarez explaining that she retired from the firm of Hole & Alvarez "on or about December 22, 2004" but her retirement was "not reduced to any written document." Smith then replied to Ronald by writing that the Office of Chief Disciplinary Counsel was "closing [their] inquiry."

Cheryl and Ronald further rely upon written communication exchanged between Ronald and Gene Major, director of the State Bar of Texas's Advertising Review Department in late 2011 and early 2012. In that correspondence attached as summary judgment evidence, Major expressed concerns that the Hole & Alvarez, L.L.P. website violated Rule 7.01(c) of the TDRPC since Judge Alvarez is now a federal judge. Ronald wrote back reiterating that any specific references to Judge Alvarez were removed from his website, and therefore, his firm was not in violation of the relevant rules. Major then

replied to Hole notifying him that his file with the Advertising Review Committee would be referred to the Office of Chief Disciplinary Counsel.

Relying on these two batches of correspondence, Cheryl and Ronald argues that the record conclusively establishes that the Commission waived its rights to initiate disciplinary proceedings against them, after taking no action on 2005 and again in early 2012. We disagree with this argument.

Waiver is largely a matter of intent, and for implied waiver to be found through a party's actions, intent must be clearly demonstrated by the surrounding facts and circumstances. *Shields Ltd. P'ship v. Bradberry*, __ S.W.3d __, __, 2017 WL 2023602, at *10 (Tex. May 12, 2017). There can be no waiver of a right if the party sought to be charged with waiver says or does nothing inconsistent with an intent to rely upon such right. *Id.* Waiver is essentially unilateral in character and results as a legal consequence from some act or conduct of the party against whom it operates; no act of the party in whose favor it is made is necessary to complete it. *Id.* Importantly, while waiver may sometimes be established by conduct, that conduct must be unequivocally inconsistent with claiming a known right. *Id.*

After taking the summary judgment evidence in this case true and examining the evidence in a light favorable to the Commission and indulging every reasonable inference in favor of the Commission, *see City of Keller*, 168 S.W.3d at 825 & 827, we cannot conclude that the Commission waived its right to seek disciplinary proceeding again Cheryl and Ronald. Nothing in the evidence or the surrounding facts and circumstances demonstrate the Commission's intent to waive any right to bring any disciplinary proceeding against Cheryl and Ronald. *See Bradberry*, __ S.W.3d at __, 2017 WL

2023602 at *10. To the contrary, the 2005 correspondence simply states that the Office of Chief Disciplinary Counsel closed its "inquiry," and the 2011–2012 correspondence was not even sent from the Commission. This evidence does not conclusively establish that the Commission expressly or impliedly relinquished any rights to seek future disciplinary proceedings against Cheryl or Ronald. Therefore, we conclude that the trial court properly denied Cheryl and Ronald's motions for summary judgment on this ground.

3. Laches

Lastly, Cheryl and Ronald contend that they were entitled to summary judgment based on their affirmative defense of laches.

The defense of laches is an equitable doctrine designed to promote the prompt adjudication of disputed issues. *Waller v. Sanchez*, 618 S.W.2d 407, 409 (Tex. App.—Corpus Christi 1981, no writ). By encouraging parties to promptly pursue the assertion of demands and the prosecution of remedies, equity permits the raising of this defense to bar the assertion of equitable rights by dilatory parties. *Id.* Texas courts have generally held that the doctrine of laches is not imputable to a government entity while the entity is performing a government function, unless some extraordinary circumstances exist that would render inequitable the enforcement of petitioner's right after a lengthy delay. *See id.*; *Crain v. Unauthorized Practice of Law Comm. of Sup. Ct. of Tex.*, 11 S.W.3d 328, 334 (Tex. App.—Houston 1999, pet. denied); *Reyna v. Atty. Gen. of Tex.*, 863 S.W.2d 558, 559 (Tex. App.—Fort Worth 1993, no writ).

The Commission is a standing committee of the State Bar of Texas, which is a public corporation and an administrative agency of the judicial department of our state government. *See* TEX. GOV'T CODE ANN. §§ 81.011; 81.076(b) (West, Westlaw through

Ch. 49, 2017 R.S.). One of the Commission's roles is to "investigate and prosecute suits to enjoin members, nonlicensees, and nonmembers of the state bar from the practice of law." *Id.* at 81.076(g) (West, Westlaw through Ch. 49, 2017 R.S.). As such, the Commission is a subdivision of the State of Texas. *See id.* §§ 81.011; 81.076(b); *see also Willie v. Comm'n for Lawyer Disc.*, No. 14-10-00900-CV, 2011 WL 3064158, at *4 (Tex. App.—Houston [14th Dist.] July 26, 2011, pet. denied) (mem. op.) (holding that the Commission is a subdivision of the state and entitled to assert the doctrine of sovereign immunity).

Here, the record undisputedly shows that the Commission brought suit against Cheryl and Ronald pursuant to its governmental powers under the government code to investigate and prosecute suits under the TDRPC and the Texas Rules of Disciplinary Procedure. *See* TEX. GOV'T CODE ANN. § 81.076(b). Because the Commission was performing a function as a subdivision of the state, and neither Cheryl nor Ronald assert any extraordinary circumstances, the Holes are barred as a matter of law from asserting the doctrine of laches. *See Waller*, 618 S.W.2d at 409.

4. Summary

In summary, we conclude that the trial court did not err in granting the Commission's motions for partial summary judgment and denying Cheryl and Ronald's no-evidence motions for summary judgment because the Commission conclusively established that Cheryl and Ronald violated Rules 7.01(a) and (c) of the TDRPC. Additionally, we conclude that the trial court did not err in denying Cheryl and Ronald's traditional motions for summary judgment on their three affirmative defenses.

We overrule Cheryl and Ronald's remaining issues.

IV. CONCLUSION

We affirm the trial court's judgments.

GINA M. BENAVIDES,
Justice

Delivered and filed the
24th day of August, 2017.