

5. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the petitioner to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded. For purposes of a motion to dismiss, both determinations of whether a cause of action has any basis in law and in fact are legal questions that an appeals court will review de novo, based on the allegations in the live petition.¹ In conducting this review, the appeals court will construe the pleadings liberally in favor of the plaintiff, look to the pleader's intent, and accept as true the factual allegations in the pleadings to determine if the cause of action has a basis in law or fact.²
6. The Court should not dismiss Petitioner's suit because it has a valid basis in law. Respondent has referred to Respondent's right to file the lawsuits at issue as "unfettered³." This is incorrect. The First Amendment does not immunize an attorney from disciplinary consequences for violations of the Texas Disciplinary Rules of Professional Conduct (TDRPC). An attorney's speech rights within the confines of litigation are not absolute.⁴
7. Respondent claims that Respondent cannot be held accountable for knowingly altering and presenting altered evidence to the Court because she had an absolute right to rely on what her "clients" told her or because the altered evidence was not material, in Respondent's estimation. First, Petitioner alleges that the altered evidence was material, and the Petitioner's allegations should be taken as true in the context of a Rule 91a

¹ *Wooley v. Schaffer*, 447 S.W.3d 71, 76 (Tex. App. – Houston [1st Dist.] 2014, pet. denied)

² *Id*

³ See Resp. Motion at pg. 14

⁴ See e.g. Tex. Rule. Prof. Conduct 3.01; 3.03(a)(1); 3.06(d)

motion. Further, some of the Rules Petitioner alleges Respondent violated contain no requirement of materiality.⁵

8. In sum, If Respondent committed the acts as described in the Petition- *inter alia*, filing multiple frivolous petitions, taking positions that unreasonably delayed the resolution of the litigation, knowingly presenting altered evidence- then Petitioner is entitled to a judgment of professional misconduct against Respondent, because Respondent's alleged misconduct runs afoul of the Rules. Respondent makes many arguments regarding Respondent's lack of culpability, but whether Respondent violated the Rules is still a question of fact for the factfinder, and dismissal under Rule 91a is improper.

C. Respondent is not entitled to recover any attorney's fees

9. Respondent's motion to dismiss should not prevail. Even if Respondent were to prevail, Respondent cannot recovery any attorney's fees, pursuant to TRCP 91a.7 which states

“Award of Costs and Attorney Fees. Except in an action by or against a governmental entity or a public official acting in his or her official capacity or under color of law, the court may award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court. Any award of costs or fees must be based on evidence.” (emphasis added)

The Commission for Lawyer Discipline is a governmental entity acting under its official capacity. The Respondent cannot recover fees from the CFLD.

CONCLUSION AND PRAYER

Petitioner's allegations, if true, entitle Petitioner to the relief it seeks. Petitioner prays Respondent's Rule 91a Motion to Dismiss be denied.

Respectfully submitted,

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⁵ See TDRPC 3.03(a)(5) - A lawyer shall not knowingly: offer or use evidence that the lawyer knows to be false.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was forwarded to Respondent, by and through his counsel of record, Robert H. Holmes, S. Michael McColloch, and Karen Cook, on this the 14th day of June 2022, pursuant to the Texas Rules of Civil Procedure.

/s/Kristin V. Brady
Kristin V. Brady

/s/Rachel Craig
Rachel Craig

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