

7336 Grace Rd.
Orlando, FL 32819
June 15, 2023

Board of Disciplinary Appeals
P.O. Box 12426
Austin, TX 78711

Re: 202302601 – Martin A. Harry – Jose Pompa Garza

Dear Sir or Madam:

I want to appeal the dismissal of the grievance I filed against Jose Garza. Attached is the BODA appeal form. I believe the decision to classify the grievance as an Inquiry on the grounds that the conduct I described “is not a violation of the disciplinary rules” is clearly erroneous.

First, Garza’s online public listing is factually wrong and misleading due to a failure by Garza to update it as required by law. (See footnote 2 of grievance.) By law, the state bar shall annually provide each attorney with a copy of the attorney’s profile. Attorneys have one month from the date a copy of the attorney’s profile is provided to correct factual errors in the attorney’s profile. According to Garza’s online listing, it was last certified on August 25, 2021, nearly 22 months ago. Clearly, there has been no annual update by Garza.

Presuming the state bar has properly met its legal requirements, Garza has violated his legal requirements. His current listed employment is wrong. The address of his primary practice location is wrong. His description of practice areas is wrong. Rule 7.01(a) of the Texas Disciplinary Rules of Professional Conduct states, “[a] lawyer shall not make...a false or misleading communication about the qualifications or services of a lawyer or law firm....A communication is false or misleading if it contains a material misrepresentation of fact or law....” The profile was wrong when Garza last *certified* it to be true and correct. My grievance alleges a false or misleading communication by Garza. The determination that this allegation does not constitute a violation of the disciplinary rules is plainly wrong.

Second, I alleged conduct that violates sworn oaths by Garza as a member of the state bar and as a public official. Garza represents the State of Texas. His official actions as district attorney constitute state action. My grievance alleges discrimination in the performance of his duties. It alleges deprivation of liberty interests without due process. Both are unconstitutional. Evidence has been provided.

As a member of the state bar, Garza swore an oath to support the Constitutions of the United States and Texas. Conduct in violation of both constitutions cannot reasonably be regarded as

consistent with this obligation. If a violation of the required oath is not a violation cognizable under the disciplinary rules, then the state bar essentially makes the oath a meaningless relic.

Third, Garza exclusively represents the State of Texas in Travis County as district attorney. As a lawyer for the state, Garza has an obligation to represent it ethically and lawfully and to do so competently. Garza, however, advises the public to disregard certain state laws, violations of which he alone is responsible for prosecuting. This directly contravenes the interests of the party he represents. Incredibly, it has been determined this unethical conduct does not violate disciplinary rules.

Even if there was any legal uncertainty about the legal and ethical impropriety of Garza's conduct before, no such uncertainty remains. The legislative and executive branches of Texas' government have amended the removal statute for district attorneys to precisely identify Garza's conduct as misconduct. Legislative hearings show this was intentional, responsive to district attorneys, including Garza, who flout acts of the legislature. The law makes Garza's public statements about nonenforcement policies a rebuttable presumption that official misconduct has been committed. I have provided direct, unrefuted, evidence of Garza's refusal to enforce state laws categorically.

The Texas State Bar is an administrative agency of the judicial department of government (subject to the Texas Sunset Act). The Supreme Court of Texas exercises administrative control over the state bar. It, like district attorneys, is subject to restrictions imposed by the constitution's separation of powers. It is clearly bad public policy for an agency of the judicial department to interpret rules in a manner that tolerates unconstitutional violations of the separation of powers by a judiciary branch official. An application of disciplinary rules that finds a district attorney who effectively abrogates *valid* legislative acts—an encroachment by the judicial branch on the power of the legislative and executive branches--does not violate those rules is contrary to good government.

Finally, the opinion that none of the conduct alleged violates disciplinary rules and the classification of the grievance as an "Inquiry" and dismissal contravenes the express purpose of the state bar to "foster and maintain on the part of those engaged in the practice of law **high ideals and integrity, learning, competence in public service, and high standards of conduct.**" Tex. Gov't Code § 81.012(3).

For the foregoing reasons, I appeal. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Martin Harry". The signature is written in a cursive, flowing style.

Martin Harry

Cc: Gov. Greg Abbott
Lt. Gov. Patrick
Rep. Dade Phelan
Chief Justice Nathan Hecht