

CAUSE NO. 2020-28072

**COMMISSION FOR
LAWYER DISCIPLINE**

v.

**DANIEL J. RIZZO
File No. 201903578**

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

80th JUDICIAL DISTRICT

FIRST AMENDED DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner, the Commission for Lawyer Discipline, a committee of the State Bar of Texas (Petitioner), complains of Respondent, DANIEL J. RIZZO (Respondent), State Bar Card No. 16965400, showing the Court:

I.

Discovery Control Plan

Pursuant to Rules 190.1 and 190.3, TEXAS RULES OF CIVIL PROCEDURE (TRCP), Petitioner intends discovery in this case to be conducted under the Level II Discovery Control Plan.

II.

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex. Gov't. Code Ann. §81.001, et seq. (Vernon 1988), the Texas Disciplinary Rules of Professional Conduct, and the Texas Rules of Disciplinary Procedure. The complaint that forms the basis of the Disciplinary Petition was filed on or after January 1, 2004.

III.

Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent has his principal place of practice in Harris County, Texas.

IV.

Beginning in or around 2003, Respondent was lead prosecutor in a capital murder case against Alfred Dewayne Brown (Brown). During the prosecution of Brown, Respondent failed to make timely disclosure to the defense of evidence or information that tended to negate the guilt of Brown, specifically including but not limited to, landline telephone records of Brown's girlfriend, Ericka Dockery (Dockery).

On or about April 21, 2003 Dockery testified at a grand jury proceeding that she received a call from her apartment at 10:08 a.m. on the day of the murders from Brown at her place of employment. This corroborated Brown's alibi defense that he was in Dockery's apartment at the time of the murders. Respondent pressured and intimidated Dockery to change her testimony regarding Brown's whereabouts on the morning of the murders. Dockery changed her testimony regarding Brown's whereabouts on the morning of the murders. The next day, on April 22, 2003, law enforcement notified Respondent via email that landline phone records of Dockery appeared to corroborate Dockery's original testimony regarding receiving a phone call from her apartment at her place of employment at or around 10:08 a.m. This information was never disclosed to the defense and the records were not discovered until 2013. The email from law enforcement to Respondent regarding the corroborative records was discovered by the Harris County District Attorney's Office in February 2018.

Respondent still pursued aggravated perjury charges against Dockery. Dockery was indicted on or about August 22, 2003 for aggravated perjury in connection with her grand jury testimony.

By withholding this information, Respondent failed to abide by the Court's orders to produce any and all favorable evidence to Brown and any and all evidence showing Brown's lack of culpability. In 2005, Brown was convicted of capital murder and sentenced to death.

During the prosecution of Brown, Respondent made false or misleading statements to the

tribunal by failing to disclose the existence of a phone call from the landline of Dockery to Dockery's place of employment.

In October 2007, Brown filed a post-conviction writ of habeas corpus petition alleging that the State violated its duty to disclose exculpatory evidence under *Brady v. Maryland*¹ and failed to admit into evidence the complete cell phone records of Brown's co-defendants used at trial. In 2008, during its habeas investigation, the State confirmed that some of the records used during trial regarding cell phones were not admitted into evidence. The State's file did not contain the complete records. The habeas prosecutor obtained, by subpoena, the cell phone records of Brown's co-defendants.

On or about July 11, 2008, Respondent signed an affidavit for use in responding to Brown's writ stating he did not suppress knowledge of or information about a landline call from Dockery's apartment to Dockery's place of employment. This was a false statement.

In April 2013, the aforementioned landline records of Dockery were located. These records were never disclosed to the defense. The court found the records to be exculpatory. As a result, Brown's conviction was vacated. The charges against Brown were later dismissed at the Harris County District Attorney's request. In March 2019, the court declared Brown "actually innocent."

V.

Such acts and/or omissions on the part of Respondent as are described in Paragraph IV, hereinabove, which occurred on or after January 1, 1990, constitute conduct that violates Rules 3.03(a)(1), 3.04(a), 3.04(d), 3.09(d), and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

¹ *Brady v. Maryland*, 373 U.S. 83 (1963)

VI.

The complaint that forms the basis of the cause of action hereinabove set forth was brought to the attention of the Office of the Chief Disciplinary Counsel of the State Bar of Texas, by John Wesley Raley, III, filing a complaint on or about June 4, 2019.

The tolling provisions contained within Texas Rule of Disciplinary Procedure 17.06 are triggered in this case. As reflected in Rule 17.06(C), Respondent may be disciplined for a violation of Rule 3.09(d), Texas Disciplinary Rules of Professional Conduct, that occurred in a prosecution that resulted in the wrongful imprisonment of Brown. Brown was not released from a Penal Institution until June 8, 2015. In addition, Respondent engaged in a fraud upon the court when he failed to disclose exculpatory evidence to the accused before, during, and after the 2005 trial of Brown. Further, Respondent concealed his misconduct from the time of the misconduct forward and throughout all post-conviction litigation. Therefore, the complaint is not barred by statute of limitations.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent be disciplined, as the facts shall warrant, and that Petitioner have such other relief to which entitled, including direct expenses, costs of Court and reasonable attorney's fees.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Kristin V. Brady
Assistant Disciplinary Counsel

Rachel Craig
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel
State Bar of Texas
The Princeton
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254
Telephone: (972) 383-2900
Facsimile: (972) 383-2935
E-mail: kristin.brady@texasbar.com
E-mail: rachel.craig@texasbar.com

/s/Kristin V. Brady

Kristin V. Brady
State Bar No. 24082719

/s/Rachel Craig

Rachel Craig
State Bar No. 24090049

ATTORNEYS FOR PETITIONER

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Brittany Paynton on behalf of Kristin Brady
Bar No. 24082719
brittany.paynton@texasbar.com
Envelope ID: 63461769
Status as of 4/11/2022 3:46 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Christopher Tritico		ctritico@triticorainey.com	4/11/2022 3:30:24 PM	SENT
Joanne Turturro		jturturro@triticorainey.com	4/11/2022 3:30:24 PM	SENT
Ron Rainey		rrainey@triticorainey.com	4/11/2022 3:30:24 PM	SENT
Kristin Brady		kristin.brady@texasbar.com	4/11/2022 3:30:24 PM	SENT
Brittany Paynton		brittany.paynton@texasbar.com	4/11/2022 3:30:24 PM	SENT
Rachel Craig		rachel.craig@texasbar.com	4/11/2022 3:30:24 PM	SENT

Unofficial Copy Office of Marjorie Blum District Clerk