Supreme Court of Texas

No. 24-0701

William Wesley Ruth,
Petitioner,

v.

Commission for Lawyer Discipline,
Respondent

On Petition for Review from the
Court of Appeals for the Fourth District of Texas

PER CURIAM

The Commission for Lawyer Discipline filed this disciplinary proceeding against William Ruth (the IOLTA proceeding), alleging that he engaged in professional misconduct by failing to hold client funds in a separate trust account and failing to reduce a contingency-fee agreement to writing. While the case was pending, the Commission filed a second proceeding (the no-contact proceeding) alleging that Ruth, who was then representing himself in the IOLTA proceeding, violated the disciplinary rules by communicating directly with Commission members, who were represented by counsel. Although filed second, the no-contact proceeding concluded first. The trial court rendered

judgment in that proceeding suspending Ruth from the practice of law for five years based on violations of Disciplinary Rule 4.02(a), which prohibits a lawyer, "[i]n representing a client," from communicating with persons known to be represented by another lawyer about the subject of the representation unless the other lawyer consents or the communication is authorized by law. While that judgment was on appeal, the trial court presiding over the IOLTA proceeding held a bench trial on sanctions and rendered judgment suspending Ruth from the practice of law for eighteen months.[1] The trial court took the no-contact proceeding's judgment into account in imposing the suspension. *See* TEX. RULES DISCIPLINARY P. R. 15.09(B)(2)(a) (listing "prior disciplinary record" as an aggravating factor that may be considered in imposing a sanction).

The court of appeals affirmed both judgments, and Ruth petitioned for review. While this petition was pending, we reversed the judgment in the no-contact proceeding and dismissed the case, holding that Rule 4.02(a) does not apply to a lawyer acting pro se and that Ruth therefore did not violate the rule in communicating with the represented Commission members. *Ruth v. Comm'n for Law. Discipline*, 738 S.W.3d 213, 222 (Tex. 2026) (*Ruth I*).

Because the IOLTA proceeding's judgment at issue here was already on appeal when we issued *Ruth I*, the impropriety of the trial court's consideration of the no-contact proceeding's judgment as an

[1] Before the sanctions trial in the IOLTA proceeding, the court granted partial summary judgment for the Commission on Ruth's liability. Only the sanction is at issue here.

aggravating factor in the IOLTA proceeding did not become apparent until well after it occurred. That is, only when we issued *Ruth I* did it become clear that the trial court should not have considered Ruth's "prior disciplinary record" as an aggravating factor in the IOLTA proceeding but instead should have considered the "absence of a prior disciplinary record" as a mitigating factor. *See* TEX. RULES DISCIPLINARY P. R. 15.09(C)(2)(a) (listing "absence of a prior disciplinary record" as a mitigating factor that may be considered in imposing a sanction).

Accordingly, without hearing oral argument, *see* TEX. R. APP. P. 59.1, we grant Ruth's petition for review, vacate the court of appeals' and trial court's judgments, and remand the case to the trial court to redetermine the sanction in light of our opinion in *Ruth I*.[2] We express no opinion about the proper outcome of that redetermination.

OPINION DELIVERED: November 20, 2026

[2] Ruth asserts he is entitled to a new trial. We leave to the trial court's discretion whether an entirely new trial is necessary to determine the proper sanction in accordance with this opinion and *Ruth I*.