

**BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS**

IN THE MATTER OF §
JOSHUA LOWELL CARPENTER, § **CAUSE NO. 56272**
STATE BAR CARD NO. 24090907 §

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Joshua Lowell Carpenter, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.
2. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at 5016 Frontier Road, Rio Rancho, New Mexico 87144.
3. On or about September 17, 2014, a document entitled Specifications of Charges (Exhibit 1) was filed Before the Disciplinary Board of the Supreme Court of the State of New Mexico in a matter styled, *In the Matter of Joshua Carpenter, Esq., An Attorney Licensed to Practice Law Before the Courts of the State of New Mexico*, Disciplinary No. 09-2014-700.

4. On or about September 16, 2014, a Conditional Agreement Not to Contest and Consent to Discipline (Exhibit 2) was filed Before the Disciplinary Board of the Supreme Court of the State of New Mexico in a matter styled, *In the Matter of Joshua Carpenter, Esq., An Attorney Licensed to Practice Before the Courts of the State of New Mexico*, Disciplinary No. 09-2014-700.

5. On or about January 6, 2015, a Panel Decision with Decision of Hearing Committee attached (Exhibit 3) was filed in the Before the Disciplinary Board of the Supreme Court of the State of New Mexico in a matter styled, *In the Matter of Joshua Carpenter, Esq.,* Disciplinary No. 09-2014-700.

6. On or about March 11, 2015, an Order (Exhibit 4) was filed in the Supreme Court of the State of New Mexico in a matter styled, No. 35,078, *In the Matter of Joshua Carpenter, An Attorney Licensed to Practice Before the Courts of the State of New Mexico* that states in pertinent part as follows:

...IT IS FURTHER ORDERED that JOSHUA CARPENTER is INDEFINITELY SUSPENDED from the practice of law UNDER Rule 17-206(A)(3) NMRA, which suspension shall be DEFERRED upon certain terms and conditions;

IT IS FURTHER ORDERED that respondent shall be placed on supervised probation under Rule 17-206(B)(1) NMRA for a period of two (2) years effective immediately;

7. The Conditional Agreement Not to Contest and Consent to Discipline, which was affirmed by the Hearing Panel and adopted by the Supreme Court of the State of New Mexico, established that Respondent failed to provide competent representation to a client; improperly revealed information related to the representation of a client; represented a client in a matter substantially or directly adverse to another client without obtaining the proper consent; knowingly made a false statement of material fact in connection with a disciplinary

matter; violated the Rules of Professional Conduct; committed a criminal act that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and engage in conduct that is prejudicial to the administration of justice. In doing so, it established Respondent violated the following rules: Rule 16-101 - failing to provide competent representation to a client; Rule 16-106(A) – Confidentiality of Information; Rule 16-107(A)(2) – Conflict of Interest; current clients; Rule 16-112 – Third Party Neutral; Rule 16-801(A) – Bar Admission and Disciplinary Matters; and Rule 16-804(A), (B), (C) and (D) – Misconduct.

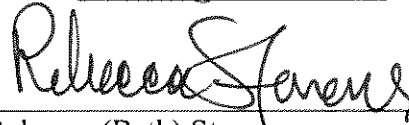
Copies of the Specification of Charges, Conditional Agreement Not to Contest And Consent to Discipline, Panel Decision with Decision of Hearing Committee attached, and Order, are attached hereto as Petitioner's Exhibits 1 through 4, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 through 4 at the time of hearing of this cause.

8. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme Court of the State of New Mexico and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

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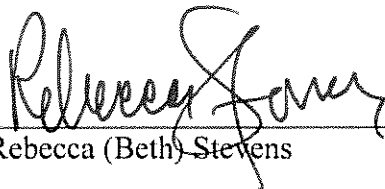


Rebecca (Beth) Stevens
Bar Card No. 24040780
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Joshua Lowell Carpenter by personal service.

Joshua Lowell Carpenter
5016 Frontier Road
Rio Rancho, New Mexico 87144



Rebecca (Beth) Stevens

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Effective February 19, 2015

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SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chair or, in the Chair’s absence, the member elected by BODA to serve as vice-chair.
- (c) “Classification” is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “BODA Clerk” is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “CDC” is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.
- (f) “Commission” is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- (g) “Executive Director” is the executive director of BODA.
- (h) “Panel” is any three-member grouping of BODA under TRDP 7.05.
- (i) “Party” is a Complainant, a Respondent, or the Commission.
- (j) “TDRPC” is the Texas Disciplinary Rules of Professional Conduct.
- (k) “TRAP” is the Texas Rules of Appellate Procedure.
- (l) “TRCP” is the Texas Rules of Civil Procedure.
- (m) “TRDP” is the Texas Rules of Disciplinary Procedure.
- (n) “TRE” is the Texas Rules of Evidence.

Rule 1.02 General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 applies to the enforcement of a judgment of BODA.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals

from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04 Appointment of Panels

- (a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.
- (b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05 Filing of Pleadings, Motions, and Other Papers

- (a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.
 - (1) **Email Address.** The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.
 - (2) **Timely Filing.** Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.
 - (3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

(4) **Exceptions.**

- (i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.
- (ii) The following documents must not be filed electronically:
 - a) documents that are filed under seal or subject to a pending motion to seal; and
 - b) documents to which access is otherwise restricted by court order.
- (iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

(5) **Format.** An electronically filed document must:

- (i) be in text-searchable portable document format (PDF);
 - (ii) be directly converted to PDF rather than scanned, if possible; and
 - (iii) not be locked.
- (b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).
- (c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:
- (1) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
 - (2) an electronic image or scanned image of the signature.
- (d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.
- (e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter

must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06 Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition may be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent’s signature.

Rule 1.07 Hearing Setting and Notice

- (a) **Original Petitions.** In any kind of case initiated by the CDC’s filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23, the hearing date must be at least 30 days from the date that the petition is served on the Respondent.
- (b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23, the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.
- (c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.
- (d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the

hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08 Time to Answer

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.09 Pretrial Procedure

(a) **Motions.**

(1) **Generally.** To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) **For Extension of Time.** All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

- (i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (ii) if an appeal has been perfected, the date when the appeal was perfected;
- (iii) the original deadline for filing the item in question;
- (iv) the length of time requested for the extension;
- (v) the number of extensions of time that have been granted previously regarding the item in question; and
- (vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference,

or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

- (1) marked;
- (2) indexed with the title or description of the item offered as an exhibit; and
- (3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10 Decisions

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

- (1) as required by the TRDP; and
- (2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11 Board of Disciplinary Appeals Opinions

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be

written. The names of the participating members must be noted on all written opinions of BODA.

- (b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.
- (c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

Rule 1.12 BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA’s adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13 Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14 Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15 Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases

- (a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.
- (b) A current BODA member must not serve as an expert witness on the TDRPC.
- (c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02 Confidentiality

- (a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.
- (b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.
- (c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction.

Rule 2.03 Disqualification and Recusal of BODA Members

- (a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.
- (b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.
- (c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of

a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him- or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Right to Appeal

- (a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.
- (b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02 Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Perfecting Appeal

- (a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21.
- (b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21.
 - (1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must

contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

- (2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.
- (c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.
- (d) **Time to File.** In accordance with TRDP 2.24, the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.
- (e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02 Record on Appeal

- (a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.
- (b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record

on appeal by written stipulation filed with the clerk of the evidentiary panel.

(c) Responsibility for Filing Record.

(1) Clerk's Record.

- (i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.
- (ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.
- (iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

- (i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:
 - a) a notice of appeal has been filed;
 - b) a party has requested that all or part of the reporter's record be prepared; and
 - c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.
- (ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he

or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) Preparation of Clerk's Record.

(1) To prepare the clerk's record, the evidentiary panel clerk must:

- (i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);
- (ii) start each document on a new page;
- (iii) include the date of filing on each document;
- (iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;
- (v) number the pages of the clerk's record in the manner required by (d)(2);
- (vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and
- (vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

- (i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;
- (ii) be double-spaced;

- (iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;
 - (iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and
 - (v) if the record consists of multiple volumes, indicate the page on which each volume begins.
- (e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:
 - (1) file each computer file in text-searchable Portable Document Format (PDF);
 - (2) create electronic bookmarks to mark the first page of each document in the clerk's record;
 - (3) limit the size of each computer file to 100 MB or less, if possible; and
 - (4) directly convert, rather than scan, the record to PDF, if possible.
- (f) **Preparation of the Reporter's Record.**
 - (1) The appellant, at or before the time prescribed for perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.
 - (2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.
 - (3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.
 - (4) The court reporter or recorder must
 - include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise
- (6) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.
- (g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.
- (h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.
- (i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

Rule 4.03 Time to File Record

- (a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from,

disregard materials filed late, or apply presumptions against the appellant.

(b) If No Record Filed.

- (1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.
- (2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:
 - (i) the appellant failed to request a reporter's record; or
 - (ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

(c) Extension of Time to File the Reporter's Record. When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

(d) Supplemental Record. If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

Rule 4.04 Copies of the Record

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05 Requisites of Briefs

- (a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.
- (b) **Appellee's Filing Date.** Appellee's brief must be filed within 30 days after the appellant's brief is filed.
- (c) **Contents.** Briefs must contain:
 - (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
 - (2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;
 - (3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;
 - (4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;
 - (5) a statement, without argument, of the basis of BODA's jurisdiction;
 - (6) a statement of the issues presented for review or points of error on which the appeal is predicated;
 - (7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;
 - (8) the argument and authorities;
 - (9) conclusion and prayer for relief;
 - (10) a certificate of service; and
 - (11) an appendix of record excerpts pertinent to the issues presented for review.
- (d) **Length of Briefs; Contents Included and Excluded.** In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction,

signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer-generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

- (e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.
- (f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:
 - (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;
 - (2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or
 - (3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06 Oral Argument

- (a) **Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.
- (b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:
 - (1) the appeal is frivolous;

- (2) the dispositive issue or issues have been authoritatively decided;
 - (3) the facts and legal arguments are adequately presented in the briefs and record; or
 - (4) the decisional process would not be significantly aided by oral argument.
- (c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

Rule 4.07 Decision and Judgment

- (a) **Decision.** BODA may do any of the following:
 - (1) affirm in whole or in part the decision of the evidentiary panel;
 - (2) modify the panel's findings and affirm the findings as modified;
 - (3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or
 - (4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:
 - (i) the panel that entered the findings; or
 - (ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.
- (b) **Mandate.** In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08 Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair

who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmation may occur if the appeal is subject to dismissal:

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

- (a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23.
- (b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23, the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

Rule 5.02 Hearing

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE

Rule 6.01 Initiation of Proceeding

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the

Respondent in accordance with the TRDP and Rule 1.06 of these rules.

Rule 6.02 Interlocutory Suspension

- (a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA may suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.
- (b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.
 - (1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.
 - (2) If the criminal sentence is not fully probated:
 - (i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or
 - (ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.
- (c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten

days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

SECTION 7: RECIPROCAL DISCIPLINE

Rule 7.01 Initiation of Proceeding

The Commission for Lawyer Discipline may initiate an action for reciprocal discipline by filing a petition with BODA under TRDP Part IX and these rules. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

Rule 7.02 Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

Rule 7.03 Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

- (a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2), or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.
- (b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee

members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

- (c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.
- (d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.
- (e) Should any member of the District Disability Committee become unable to serve, the BODA Chair may appoint a substitute member.

Rule 8.02 Petition and Answer

- (a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service may be made in person or by certified mail, return receipt requested. If service is by certified mail, the return receipt with the Respondent's signature must be filed with the BODA Clerk.
- (b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.
- (c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

Rule 8.03 Discovery

- (a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The

party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

- (b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) **Motion.** The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) **Report.** The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

- (c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

Rule 8.04 Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

- (a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for

reasonable expenses directly related to representation of the Respondent.

- (b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

Rule 8.06 Hearing

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07 Notice of Decision

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

Rule 8.08 Confidentiality

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

- (a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.
- (b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has

a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

- (c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

Rule 9.02 Discovery

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

Rule 9.03 Physical or Mental Examinations

- (a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.
- (b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.
- (c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.
- (d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.
- (e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the

petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01 Appeals to the Supreme Court

- (a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.
- (b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.
- (c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF THE STATE OF NEW MEXICO

In the Matter of

Joshua Carpenter, Esq.

Disciplinary No. **09-2014-700**

An Attorney Licensed to
Practice Law Before the Courts
of the State of New Mexico

SPECIFICATION OF CHARGES

1. Rule 17-105(B)(3)(d) NMRA 2014 of the Rules Governing Discipline empowers counsel for the Disciplinary Board to file a Specification of Charges against an attorney with the Disciplinary Board.
2. Joshua Carpenter, Esq., hereinafter "Respondent" is an attorney currently licensed to practice law before the courts of the State of New Mexico.
3. The factual allegations set forth in the Specification of Charges state acts of professional misconduct in violation of Rules 16-101, 16-106(A), 16-107(A)(2), 16-112, 16-801(A), 16-804(A), (B), (C) and (D) NMRA 2014 of the Rules of Professional Conduct.
4. Pursuant to Rule 17-309(A) NMRA 2014 of the Rules Governing Discipline, cause exists to conduct a hearing on the following charges so

that the Disciplinary Board and the Supreme Court can determine whether further action is appropriate.

COUNT I – Nash Complaint

5. On or about July 18, 2013, the Office of Disciplinary Counsel received a complaint from the Honorable Nan Nash against Respondent. The complaint alleges perceived misconduct by Respondent in his representation of Jean Brownelle Falck (hereinafter “Ms. Falck”).
6. Ms. Falck is an elderly woman (DOB: 03/18/1924) who was widowed in 2002.
7. Ms. Falck was engaged in a romantic relationship with Curtis Duke (hereinafter “Mr. Duke”) from approximately 2005 until 2013.
8. Mr. Duke lived with Ms. Falck in her home at 400 Palomas Dr., N.E., Albuquerque, New Mexico 87108, until he was forced to leave and cease all contact with Ms. Falck as ordered first in a Temporary Restraining Order entered May 30, 2013, and then in the Judgment Granting Permanent Injunction entered June 12, 2013, by the Honorable Nan Nash.
9. Respondent represented Mr. Duke for the purpose of disputing a collection notice from Financial Corp. of America from approximately September 23, 2011 to October 18, 2011.

10. Mr. Duke has a daughter by the name of Thelma Lanita Harris *nee*.
Rasak (hereinafter "Ms. Harris").
11. Respondent represented Ms. Harris in a divorce action, *Rasak v. Rasak*,
V-1226-DM-201100089, from approximately August 2011 until May
13, 2013.
12. Ms. Harris was subsequently barred from having any contact with Ms.
Falck pursuant to the Judgment Granting Permanent Injunction entered
by the Honorable Judge Nan Nash on June 12, 2013.
13. Respondent first became acquainted with Ms. Falck in late 2011.
14. In a letter dated May 2, 2013, Richard Roche, M.D., Ms. Falck's primary
care physician stated in part,

[Ms. Falck] has been a patient under my care since January 21, 2002. She began having a cognitive decline in November of 2009. Her current diagnosis on her exam today is dementia, probably Alzheimer's type. She had a mini mental state examination done on May 2, 2013, which revealed a score of 8/30. Her clock drawing test was markedly abnormal and consistent with special orientation impairment as seen in dementia, Alzheimer's type. It is in my medical opinion that at this point she is unable to make financial or medical decisions.

15. In a Report of Neuropsychological Consultation ADDENDUM Rex M.
Swanda, Ph.D. stated in part, "In my professional opinion, the evidence
of my recent examination on 5/2/2013 and the evidence of the medical

records indicate that Jean Falck has been contractually incapable since at least February 2012.”

16. On or about January 12, 2012, on behalf of Ms. Falck, Respondent filed a Complaint for Breach of Contract, Unjust Enrichment, Forgery, Fraud and Conversion in *Jean Falck v. Gerald L. Rasak*, D-202-CV-2012-00607 in the Second Judicial District (hereinafter “*Falck v. Rasak*”).
17. The basis of the complaint in *Falck v. Rasak* was that Gerald Rasak, Ms. Harris’ then husband, sold some of Ms. Falck’s property with Ms. Falck’s permission, but then absconded with \$191,538.24 of the proceeds of the sale.
18. Concurrent with his representation of Ms. Falck in *Falck v. Rasak*, Respondent was representing Thelma Lanita Harris in her divorce action, *Rasak v. Rasak*, V-1226-DM-201100089.
19. Respondent wrote an e-mail to the opposing counsel in *Rasak v. Rasak*, Julie Bishop, Esq., on or about August 18, 2012, stating,

My clients, in both the civil and divorce matter are willing to end both cases. Your client admitted in civil discovery that he took the money. What my clients are willing to do prior to the upcoming trials is allow your client to walk away with the hundreds of thousands of dollars he stole, if he is willing to be immediately done with the divorce. My clients ask for nothing further, and neither does your client. Essentially, everyone walks

away and is done right now. Let me know what you think.

20. Roxanne Gomez, "RG", entry on the billing statement for October 12, 2012, states, "Meeting with *clients* to discuss plan for settlement facilitation and plan to allow divorce settlement to take place first; memorandum to file regarding plan to proceed; Prepare facilitation conference description letter to Settlement Facilitator." (emphasis added)
21. The opposing counsel in the *Rasak v. Rasak* divorce wrote to Respondent on or about October 26, 2012, and stated in pertinent part,

Mr. Rasak offers Ms. Harris that, if the civil case is withdrawn with prejudice, he will remove his name from the deed, giving up all his rights to the approximately 397 acres of land. Mr. Rasak will also drop his claims on the Violation of the TDO and withdraw his Motion and claim for the reimbursement of the community items that have been liquidated and/or sold since the parties' separation as well as addressing the income that Ms. Harris has been receiving from the grazing from the acreage.

22. Pursuant to Respondent's billing records to Thelma Rasak (aka. Ms. Harris) in her divorce action on November 13, 2012, Respondent's associate, Doug Christopherson, "DCC", had a "meeting with client (Ms. Harris) to discuss proposed settlements from each side and to discuss dropping Jean Falck's case..."

23. Pursuant to Respondent's billing records to Thelma Rasak (Ms. Harris) in her divorce action on December 7, 2012, Respondent's assistant, Roxanne Gomez, "RG", "Review emails exchanged between client and DC regarding their offer of settlement and client's counter offer, review letter of 10/26 wherein opposing party is requesting that client (Ms. Harris) have Jean withdraw her claim in exchange of opposing party to sign over the acres of land."
24. Pursuant to Respondent's billing records to Thelma Rasak (Ms. Harris) in her divorce action on December 17, 2012, Respondent's assistant, Roxanne Gomez, "RG", had a "Telephone call from opposing counsel regarding her concerns regarding final documents, request that J. Falck also sign Release form before final docs can be submitted ..."
25. Pursuant to Respondent's billing records *to Thelma Rasak (Ms. Harris)* in her divorce action on January 2, 2012, Respondent's assistant, Roxanne Gomez, "RG", had a "Telephone call from client (Ms. Harris) regarding status of Jean Falck Release of Claims; Finalize Release for filing with Court; Memorandum to file regarding executed Release is complete and ready for filing."
26. Pursuant to Respondent's billing records *to Thelma Rasak (Ms. Harris)* in her divorce action on January 23, 2012, Respondent's assistant,

Roxanne Gomez, "RG", "Received telephone call from client (Ms. Harris) regarding request for Notice of Release of Lien, as filed by Carpenter Law, ... Review pending Liens filed in Lincoln Country; Prepare Release of Lien reflecting property owned by Ms. Jean Falck."

27. Pursuant to Respondent's billing records regarding *Falck v. Rasak* Respondent's associate, Jeremiah LaFranca, spoke to Mr. Duke on February 7, 2012 (.2) "To give him an update on the case. I informed him that we are drafting the interrogatories, serving the subpoena and preparing to contract the police to see what we can do about getting a criminal case started."
28. On or about December 17, 2012, Ms. Falck signed the Full and Final Release of All Claims in *Falck v. Rasak*.
29. A term of the Full and Final Release of All Claims in *Falck v. Rasak* is as follows:

Rasak shall pay to Falck the lesser of \$100,000.00, or Mr. Rasak's one-half (1/2) of the net sale proceeds of the residence located at 150 Easy Street, Corona, NM 88318 (Township 1 South, range 12 east, section 33, west half of north east quarter) as settlement in full for the litigation which is the subject of *Jean Falck v. Gerald Rasak* New Mexico Second Judicial District court Cause No. D-202-CV-2012-607. ... Jean Falck agrees that she shall accept as full and final settlement an amount less than \$100,000.00 pursuant to this agreement, should Rasak's one-half (1/2) share of

the net proceeds from the sale of the residence ...
be less than that amount.

30. There is no statement of a deadline to sell the property or to pay Ms.

Falck the monies owed by Mr. Rasak delineated in the Full and Final
Release of All Claims.

31. Also on or about December 17, 2012, Ms. Harris executed the Marital
Settlement Agreement in *Rasak v. Rasak* which was filed December 19,
2012.

32. A term of the Marital Settlement Agreement is as follows:

The parties are in agreement that for purposes of
this agreement, the marital residence is located at
150 East Street, Corona, NM. The parties agree
that the marital residence shall be listed for sale for
\$6000,000 by a mutually agreed upon realtor and
the proceeds shall be split between the parties. ...
The parties understand and agree that \$100,000.00,
or Mr. Rasak's one-half (1/2) of the net sale
proceeds of the martial residence should his one-
half (1/2) of the net sale proceeds be less than
\$100,000.00, shall go to Ms. Jean Falck as
settlement in full in CF-201-00607 and shall be
paid by the Title Company directly to Jean Falck.

33. There is no statement of a deadline to sell the property or to pay Ms.

Falk the monies owed by Mr. Rasak delineated in the Marital Settlement
Agreement.

34. Respondent never advised Ms. Falck to seek the advice of other counsel
nor wrote to her advising her of a possible conflict of interest.

35. Ms. Harris, Mr. Duke and Ms. Harris' current husband, David Harris, currently reside at 150 Easy Street, Corona, New Mexico.
36. The property in question has not been listed for sale as of the date of this pleading.
37. Ms. Falck has been paid no monies pursuant to the *Falck v. Rasak* as of the date of this pleading.
38. On or about July 3, 2012, a Supplemental Order from July Second Hearing was filed, stating in pertinent part,
- The evidence is clear and convincing that Jean B. Falck did not have contractual capacity when she entered into and executed the civil claim agreement with Gerald Rasak on December 17, 2012 related to the breach of contract case D202 CV 2012 00607. The Conservator, Laurie A. Hedrich, shall pursue any action she deems appropriate to protect Jean B. Falck's financial interest, including obtaining authorization to file a judgment lien against the property in Corona, New Mexico owned by Thelma Lanita Harris and Gerald Rasak to with regard to the settlement in the breach of contract civil suit D202 CV 2012 00607.
39. As of the date of this pleading no action has been taken to revoke the Full and Final Release of All Claims or revise the Marital Settlement Agreement.
40. By reason of the aforementioned conduct, Respondent has violated the following provisions of the Rules of Professional Conduct:

- a. Rule 16-101, by failing to provide competent representation to a client;
- b. Rule 16-106(A), by revealing information relating to the representation of a client without the client's informed consent;
- c. Rule 16-107(A)(2), by representing a client when the representation involved a concurrent conflict of interest because there was a significant risk that the representation of Ms. Falck was limited by the lawyer's responsibilities to Ms. Harris;
- d. 16-804(A), by violating the Rules of the Professional Conduct; and/or
- e. 16-804(D), by engaging in conduct that is prejudicial to the administration of justice.

COUNT II – Gonzales Complaint

- 41. Elisabeth Gonzales *nee*. Cordelia Elisabeth Trujillo (hereinafter "Ms. Gonzales") filed a disciplinary complaint against Respondent on or about January 27, 2014.
- 42. Ms. Gonzales and her then husband, Jonathan A. Trujillo, executed an Attorney Employment & Fee Agreement with Carpenter Law, P.C. on or about July 22, 2010. The Attorney Employment & Fee Agreement was

executed by Ryan T. Sanders, an attorney employed by Carpenter Law, P.C.

43. The Attorney Employment & Fee Agreement specified that it was for an “uncontested divorce” and the fees listed were for “Joshua Carpenter” as well as “associate attorney” and “paralegal.”
44. Ms. Gonzales states she met with Respondent as well as other associates.
45. A Marital Settlement Agreement was drafted and filed under the caption *Cordelia Elizabeth Trujillo v. Jonathan A. Trujillo*, D-202-DM-201003624.
46. The Marital Settlement Agreement states in pertinent part,
- K. Attorneys: Carpenter Law, P.C. represents neither party and has not advised either party. Carpenter Law, P.C. strictly drafted the paperwork necessary to complete this divorce at the direction of the parties.
47. Respondent informed the Office of Disciplinary Counsel that,
- Ms. Gonzales retained my services in 2010 along with her husband to complete an uncontested divorce. This means that they had a complete agreement, and simply wanted an attorney to draw up that agreement. I did so. I wrote up the paperwork, and gave it to the parties.
48. Respondent informed the Office of Disciplinary Counsel that he did not recall an associate being involved in the drafting of the Marital Settlement Agreement or participating in the initial client interactions.

49. Ms. Gonzales executed an Attorney Employment & Fee Agreement and Attorney Fees Explanation Sheet with Carpenter Law, P.C. on or about August 26, 2013. The Attorney Fees Explanation Sheet was executed by Tyler J. Bates, an attorney employed by Carpenter Law, P.C.
50. The Attorney Employment & Fee Agreement states that the type of case is "Domestic Matters."
51. Ms. Gonzales states that she met with Respondent and Mr. Bates.
52. In an e-mail dated September 16, 2013, to Ms. Gonzales, Tyler J. Bates, a Carpenter Law Firm law clerk wrote in pertinent part,

I presented your concerns to Mr. Carpenter, however, he just wants you to keep in mind that you previously agreed to the Marital Settlement Agreement, and if there were concerns of him forcing you to sign, those should have been brought up in the time it took us to draft your Marital Settlement Agreement or three years ago after it was filed with the Court. At this point the Court's just going to think you have buyer's remorse, which isn't a valid reason to nullify the agreement. As far as anything Mr. Trujillo not doing something he's required to under the Marital Settlement Agreement, our office would be happy to file a Motion to Enforce to hold him to what he agreed to, but I'll wait until your approval if you want us to prepare it.

53. Respondent never obtained the consent of Ms. Gonzales or Mr. Trujillo in writing to represent Ms. Gonzales in 2013.

54. By reason of the aforementioned conduct, Respondent has violated the following provisions of the Rules of Professional Conduct:

- a. Rule 16-112, by representing a person when precluded from doing so by previous representation as third-party neutral; and/or
- b. 16-804(A), by violating the Rules of the Professional Conduct.

COUNT III – Chief Disciplinary Complaint

55. In 2012, Respondent pointed a firearm at his associate, Jeremiah LaFranca.

56. In 2012, Respondent pointed a firearm at his associate, Joshua A. Spencer.

57. In 2012, Respondent pointed a firearm at his employee, Kelli Carlile.

58. In 2012, Respondent pointed a firearm at his employee, Michael Howe.

59. Respondent informed the Office of Disciplinary Counsel that, “he is, however, well trained in firearm handling and safety and would never point a loaded firearm at one of his employees.”

60. Respondent placed a plastic bag over the head of his employee, Kelli Carlile.

61. Respondent informed the Office of Disciplinary Counsel that, “Mr. Carpenter never placed a plastic bag over an employee’s head.”

62. Mr. Spencer, Ms. Strange, Joseph Wiseman, Mr. Howe, Ms. Carlile, Ms. Strange, Gloria Sepnieski and Linda Griego all expressed their concern to Respondent regarding his maintaining and handling of firearms in the office.
63. Respondent informed the Office of Disciplinary Counsel that, "No other employee [other than Jeremiah LaFranca] ever raised any concerns to Mr. Carpenter about his possession or handling of a firearm."
64. Respondent encouraged or "dared" an employee to place a box of feces, or material that resembled feces on another employee's desk.
65. Respondent informed the Office of Disciplinary Counsel that, "Mr. Carpenter did not encourage the 'poop wars'" and that he did not "'encourage' the incident."
66. Respondent also informed the Office of Disciplinary Counsel that he "confronted" the employee and "advised such behavior could not be tolerated, and reprimanded him" in direct contradiction to the employee's recollection.
67. By reason of the aforementioned conduct, Respondent has violated the following provisions of the Rules of Professional Conduct:
 - a. 16-801(A), by knowingly making a false statement of material fact in connection with a disciplinary matter;

- b. 16-804(A), by violating the Rules of the Professional Conduct;
- c. 16-804(C), by engaging in conduct involving
misrepresentation; and/or
- d. 16-804(B), by engaging in conduct that is criminal and reflects
on the lawyer's fitness to practice.

FACTORS IN AGGRAVATION

- 68. Respondent has displayed a pattern of misconduct. *See, ABA Standards for Imposing Lawyer Sanctions*, Standard 9.22(c);
- 69. Respondent engaged in multiple offenses. *See, ABA Standards for Imposing Lawyer Sanctions*, Standard 9.22(d);
- 70. Respondent has submitted false statements during the disciplinary process. *See, ABA Standards for Imposing Lawyer Sanctions*, Standard 9.22(f);
- 71. Respondent has refused to acknowledge the wrongful nature of his conduct. *See, ABA Standards for Imposing Lawyer Sanctions*, Standard 9.22(g);
- 72. The client was vulnerable. *See, ABA Standards for Imposing Lawyer Sanctions*, Standard 9.22(h); and/or
- 73. Respondent has substantial experience in the practice of law (2004).
See, ABA Standards for Imposing Lawyer Sanctions, Standard 9.22(i);

74. The names of witnesses presently known to disciplinary counsel are:

Joshua Carpenter
Laurie Hedrich, Esq.
Lanita Harris
Dr. Rex M. Swanda
Jeremiah LaFranca
Michael Howe
Katrina Strange
Joshua Spencer
Kelli Carlile
Linda Griego
Gloria Sepnieski
Justin Goodman
Ryan T. Sanders

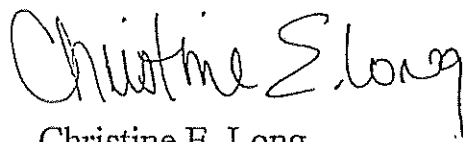
75. It is anticipated that this matter will be prosecuted by Assistant

Disciplinary Counsel, Christine E. Long.

Wherefore, by reasons of the foregoing, it is respectfully requested pursuant to Rule 17-309(C) NMRA 2014, that a hearing committee be designated to hear evidence and make findings of fact, conclusions of law, and recommendations to the Disciplinary Board and, if any of the charges are sustained, be disciplined and assessed the costs of this proceeding.

DATE: September 17, 2014

Respectfully Submitted,



Christine E. Long
Assistant Disciplinary Counsel

**BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF THE STATE OF NEW MEXICO**

In the Matter of

Joshua Carpenter, Esq.

Disciplinary No. 09-2014-700

**An attorney licensed to
practice before the Courts of
the State of New Mexico**

**Conditional Agreement Not To Contest
And Consent to Discipline**

Pursuant to Rule 17-211(A)(2), NMRA, Respondent, Joshua Carpenter, hereby tenders this conditional agreement to discipline by consent and acknowledges and agrees as follows:

I. Facts.

A. Respondent is licensed to practice law in the State of New Mexico and was admitted to practice in 2004.

B. On September 17, 2014, Disciplinary Counsel filed a Specification of Charges against Respondent alleging that Respondent violated the New Mexico Rules of Professional Conduct.

C. Although Respondent disputes the veracity of some of the allegations, Respondent agrees there exists sufficient evidence by which the following allegations could be proven and, therefore, agrees not to contest the following factual allegations for the purposes of this conditional agreement only:

1. On or about July 18, 2013, the Office of Disciplinary Counsel received a complaint from the Honorable Nan Nash against Respondent. The complaint alleges perceived violations of the Rules of Professional Conduct by Respondent in his representation of Jean Brownelle Falck (hereinafter “Ms. Falck”).
2. Ms. Falck is an elderly woman (DOB: 03/18/1924) who was widowed in 2002.
3. Ms. Falck was engaged in a romantic relationship with Curtis Duke (hereinafter “Mr. Duke”) from approximately 2005 until 2013.
4. Mr. Duke lived with Ms. Falck in her home at 400 Palomas Dr., N.E., Albuquerque, New Mexico 87108, until he was forced to leave and cease all contact with Ms. Falck as ordered first in a Temporary Restraining Order entered May 30, 2013, and then in the Judgment Granting Permanent Injunction entered June 12, 2013, by the Honorable Nan Nash.
5. Respondent represented Mr. Duke for the purpose of disputing a collection notice from Financial Corp. of America from approximately September 23, 2011 to October 18, 2011.
6. Mr. Duke has a daughter by the name of Thelma Lanita Harris *nee*. Rasak (hereinafter “Ms. Harris”).
7. Respondent represented Ms. Harris in a divorce action, *Rasak v. Rasak*, V-1226-DM-201100089, from approximately August 2011 until May 13, 2013.

8. Ms. Harris was subsequently barred from having any contact with Ms. Falck pursuant to the Judgment Granting Permanent Injunction entered by the Honorable Judge Nan Nash on June 12, 2013.
9. Respondent first became acquainted with Ms. Falck in late 2011.
10. In a letter dated May 2, 2013, Richard Roche, M.D., Ms. Falck's primary care physician stated in part,

[Ms. Falck] has been a patient under my care since January 21, 2002. She began having a cognitive decline in November of 2009. Her current diagnosis on her exam today is dementia, probably Alzheimer's type. She had a mini mental state examination done on May 2, 2013, which revealed a score of 8/30. Her clock drawing test was markedly abnormal and consistent with special orientation impairment as seen in dementia, Alzheimer's type. It is in my medical opinion that at this point she is unable to make financial or medical decisions.

11. In a Report of Neuropsychological Consultation ADDENDUM Rex M. Swanda, Ph.D. stated in part, "In my professional opinion, the evidence of my recent examination on 5/2/2013 and the evidence of the medical records indicate that Jean Falck has been contractually incapable since at least February 2012."
12. On or about January 12, 2012, on behalf of Ms. Falck, Respondent filed a Complaint for Breach of Contract, Unjust Enrichment, Forgery, Fraud and Conversion in *Jean Falck v. Gerald L. Rasak*, D-202-CV-2012-00607 in the Second Judicial District (hereinafter "*Falck v. Rasak*").

13. The basis of the complaint in *Falck v. Rasak* was the allegation that Gerald Rasak, Ms. Harris' then husband, sold some of Ms. Falck's property with Ms. Falck's permission, but then absconded with \$191,538.24 of the proceeds of the sale.
14. Concurrent with his representation of Ms. Falck in *Falck v. Rasak*, Respondent was representing Thelma Lanita Harris in her divorce action, *Rasak v. Rasak*, V-1226-DM-201100089.
15. Respondent wrote an e-mail to the opposing counsel in *Rasak v. Rasak*, Julie Bishop, Esq., on or about August 18, 2012, stating,
- My clients, in both the civil and divorce matter are willing to end both cases. Your client admitted in civil discovery that he took the money. What my clients are willing to do prior to the upcoming trials is allow your client to walk away with the hundreds of thousands of dollars he stole, if he is willing to be immediately done with the divorce. My clients ask for nothing further, and neither does your client. Essentially, everyone walks away and is done right now. Let me know what you think.
16. Roxanne Gomez, "RG", entry on the billing statement for October 12, 2012, states, "Meeting with *clients* to discuss plan for settlement facilitation and plan to allow divorce settlement to take place first; memorandum to file regarding plan to proceed; Prepare facilitation conference description letter to Settlement Facilitator." (emphasis added)

17. The opposing counsel in the *Rasak v. Rasak* divorce wrote to Respondent on or about October 26, 2012, and stated in pertinent part,

Mr. Rasak offers Ms. Harris that, if the civil case is withdrawn with prejudice, he will remove his name from the deed, giving up all his rights to the approximately 397 acres of land. Mr. Rasak will also drop his claims on the Violation of the TDO and withdraw his Motion and claim for the reimbursement of the community items that have been liquidated and/or sold since the parties' separation as well as addressing the income that Ms. Harris has been receiving from the grazing from the acreage.

18. Pursuant to Respondent's billing records to Thelma Rasak (aka. Ms. Harris) in her divorce action on November 13, 2012, Respondent's associate, Doug Christopherson, "DCC", had a "meeting with client (Ms. Harris) to discuss proposed settlements from each side and to discuss dropping Jean Falck's case..."

19. Pursuant to Respondent's billing records to Thelma Rasak (Ms. Harris) in her divorce action on December 7, 2012, Respondent's assistant, Roxanne Gomez, "RG", "Review emails exchanged between client and DC regarding their offer of settlement and client's counter offer, review letter of 10/26 wherein opposing party is requesting that client (Ms. Harris) have Jean withdraw her claim in exchange of opposing party to sign over the acres of land."

20. Pursuant to Respondent's billing records to Thelma Rasak (Ms. Harris) in her divorce action on December 17, 2012, Respondent's assistant, Roxanne

Gomez, "RG", had a "Telephone call from opposing counsel regarding her concerns regarding final documents, request that J. Falck also sign Release form before final docs can be submitted ..."

21. Pursuant to Respondent's billing records *to Thelma Rasak (Ms. Harris)* in her divorce action on January 2, 2012, Respondent's assistant, Roxanne Gomez, "RG", had a "Telephone call from client (Ms. Harris) regarding status of Jean Falck Release of Claims; Finalize Release for filing with Court; Memorandum to file regarding executed Release is complete and ready for filing."

22. Pursuant to Respondent's billing records *to Thelma Rasak (Ms. Harris)* in her divorce action on January 23, 2012, Respondent's assistant, Roxanne Gomez, "RG", "Received telephone call from client (Ms. Harris) regarding request for Notice of Release of Lien, as filed by Carpenter Law, ... Review pending Liens filed in Lincoln Country; Prepare Release of Lien reflecting property owned by Ms. Jean Falck."

23. Pursuant to Respondent's billing records regarding *Falck v. Rasak* Respondent's associate, Jeremiah LaFranca, spoke to Mr. Duke on February 7, 2012 (.2) "To give him an update on the case. I informed him that we are drafting the interrogatories, serving the subpoena and preparing to contract the police to see what we can do about getting a criminal case started."

24. On or about December 17, 2012, Ms. Falck signed the Full and Final Release of All Claims in *Falck v. Rasak*.

25. A term of the Full and Final Release of All Claims in *Falck v. Rasak* is as follows:

Rasak shall pay to Falck the lesser of \$100,000.00, or Mr. Rasak's one-half (1/2) of the net sale proceeds of the residence located at 150 Easy Street, Corona, NM 88318 (Township 1 South, range 12 east, section 33, west half of north east quarter) as settlement in full for the litigation which is the subject of *Jean Falck v. Gerald Rasak* New Mexico Second Judicial District court Cause No. D-202-CV-2012-607. ... Jean Falck agrees that she shall accept as full and final settlement an amount less than \$100,000.00 pursuant to this agreement, should Rasak's one-half (1/2) share of the net proceeds from the sale of the residence ... be less than that amount.

26. There is no statement of a deadline to sell the property or to pay Ms. Falck the monies owed by Mr. Rasak delineated in the Full and Final Release of All Claims.

27. Also on or about December 17, 2012, Ms. Harris executed the Marital Settlement Agreement in *Rasak v. Rasak* which was filed December 19, 2012.

28. A term of the Marital Settlement Agreement is as follows:

The parties are in agreement that for purposes of this agreement, the marital residence is located at 150 East Street, Corona, NM. The parties agree that the marital residence shall be listed for sale for \$6000,000 by a mutually agreed upon realtor and the proceeds shall be split between the parties. ... The parties understand and agree that \$100,000.00, or Mr. Rasak's one-half (1/2) of

the net sale proceeds of the martial residence should his one-half (1/2) of the net sale proceeds be less than \$100,000.00, shall go to Ms. Jean Falck as settlement in full in CF-201-00607 and shall be paid by the Title Company directly to Jean Falck.

29. There is no statement of a deadline to sell the property or to pay Ms. Falk the monies owed by Mr. Rasak delineated in the Marital Settlement Agreement.
30. Respondent never advised Ms. Falck to seek the advice of other counsel nor wrote to her advising her of a possible conflict of interest.
31. Ms. Harris, Mr. Duke and Ms. Harris' current husband, David Harris, currently reside at 150 Easy Street, Corona, New Mexico.
32. The property in question has not been listed for sale as of the date of this pleading.
33. Ms. Falck has been paid no monies pursuant to the *Falck v. Rasak* as of the date of this pleading.
34. On or about July 3, 2012, a Supplemental Order from July Second Hearing was filed, stating in pertinent part,

The evidence is clear and convincing that Jean B. Falck did not have contractual capacity when she entered into and executed the civil claim agreement with Gerald Rasak on December 17, 2012 related to the breach of contract case D202 CV 2012 00607. The Conservator, Laurie A. Hedrich, shall pursue any action she deems appropriate to protect Jean B. Falck's financial interest, including obtaining authorization to file a judgment lien against the property in Corona, New Mexico owned by Thelma Lanita Harris and Gerald Rasak to with regard to

the settlement in the breach of contract civil suit D202
CV 2012 00607.

35. As of the date of this pleading no action has been taken to revoke the Full and Final Release of All Claims or revise the Marital Settlement Agreement.
36. Elisabeth Gonzales *nee*. Cordelia Elisabeth Trujillo (hereinafter “Ms. Gonzales”) filed a disciplinary complaint against Respondent on or about January 27, 2014.
37. Ms. Gonzales and her then husband, Jonathan A. Trujillo, executed an Attorney Employment & Fee Agreement with Carpenter Law, P.C. on or about July 22, 2010. The Attorney Employment & Fee Agreement was executed by Ryan T. Sanders, an attorney employed by Carpenter Law, P.C.
38. The Attorney Employment & Fee Agreement specified that it was for an “uncontested divorce” and the fees listed were for “Joshua Carpenter” as well as “associate attorney” and “paralegal.”
39. Ms. Gonzales states she met with Respondent as well as other associates.
40. A Marital Settlement Agreement was drafted and filed under the caption *Cordelia Elizabeth Trujillo v. Jonathan A. Trujillo*, D-202-DM-201003624.
41. The Marital Settlement Agreement states in pertinent part,
- K. Attorneys: Carpenter Law, P.C. represents neither party and has not advised either party. Carpenter Law, P.C. strictly drafted the paperwork necessary to complete this divorce at the direction of the parties.

42. Respondent informed the Office of Disciplinary Counsel that,

Ms. Gonzales retained my services in 2010 along with her husband to complete an uncontested divorce. This means that they had a complete agreement, and simply wanted an attorney to draw up that agreement. I did so. I wrote up the paperwork, and gave it to the parties.

43. Respondent informed the Office of Disciplinary Counsel that he did not recall an associate being involved in the drafting of the Marital Settlement Agreement or participating in the initial client interactions in 2010.

44. Ms. Gonzales executed an Attorney Employment & Fee Agreement and Attorney Fees Explanation Sheet with Carpenter Law, P.C. on or about August 26, 2013. The Attorney Fees Explanation Sheet was executed by Tyler J. Bates, an attorney employed by Carpenter Law, P.C.

45. The Attorney Employment & Fee Agreement states that the type of case is “Domestic Matters.”

46. Ms. Gonzales states that she met with Respondent and Mr. Bates in August 2013.

47. In an e-mail dated September 16, 2013, to Ms. Gonzales, Tyler J. Bates, a Carpenter Law Firm law clerk wrote in pertinent part,

I presented your concerns to Mr. Carpenter, however, he just wants you to keep in mind that you previously agreed to the Marital Settlement Agreement, and if there were concerns of him forcing you to sign, those should have been brought up in the time it took us to draft your Marital Settlement Agreement or three years ago after it

was filed with the Court. At this point the Court's just going to think you have buyer's remorse, which isn't a valid reason to nullify the agreement. As far as anything Mr. Trujillo not doing something he's required to under the Marital Settlement Agreement, our office would be happy to file a Motion to Enforce to hold him to what he agreed to, but I'll wait until your approval if you want us to prepare it.

48. Respondent never obtained the consent of Ms. Gonzales or Mr. Trujillo in writing to represent Ms. Gonzales in 2013.
49. In 2012, Respondent pointed a firearm at his associate, Jeremiah LaFranca.
50. In 2012, Respondent pointed a firearm at his associate, Joshua A. Spencer.
51. In 2012, Respondent pointed a firearm at his employee, Kelli Carlile.
52. In 2012, Respondent pointed a firearm at his employee, Michael Howe.
53. Respondent informed the Office of Disciplinary Counsel that, "he is, however, well trained in firearm handling and safety and would never point a loaded firearm at one of his employees."
54. Respondent placed a plastic bag over the head of his employee, Kelli Carlile.
55. Respondent informed the Office of Disciplinary Counsel that, "Mr. Carpenter never placed a plastic bag over an employee's head."
56. Mr. Spencer, Ms. Strange, Joseph Wiseman, Mr. Howe, Ms. Carlile, Ms. Strange, Gloria Sepnieski and Linda Griego all expressed their concern to Respondent regarding his maintaining and handling of firearms in the office.

57. Respondent informed the Office of Disciplinary Counsel that, “No other employee [other than Jeremiah LaFranca] ever raised any concerns to Mr. Carpenter about his possession or handling of a firearm.”
58. Respondent encouraged or “dared” an employee to place a box of feces, or material that resembled feces on another employee’s desk.
59. Respondent informed the Office of Disciplinary Counsel that, “Mr. Carpenter did not encourage the ‘poop wars’” and that he did not “‘encourage’ the incident.”
60. Respondent also informed the Office of Disciplinary Counsel that he “confronted” the employee and “advised such behavior could not be tolerated, and reprimanded him” in direct contradiction to the employee’s recollection.

II. Conclusions of Law.

Respondent admits that the facts as pled would evidence violations of the following New Mexico Rules of Professional Conduct:

- a. 16-101 - Competence
- b. 16-106(A) – Confidentiality of Information
- c. 16-107(A)(2) – Conflict of Interest; current clients
- d. 16-112 - Third-Party Neutral
- e. 16-801(A) – Bar Admission and Disciplinary Matters
- f. 16-804(A), (B), (C) and (D) - Misconduct

III. Aggravating and Mitigating Factors.

Respondent agrees that, based on the above factual allegations, the following aggravating and mitigating circumstances would be present in this matter.

1. Respondent has displayed a pattern of misconduct. *See, ABA Standards for Imposing Lawyer Sanctions, Standard 9.22(c);*
2. Respondent engaged in multiple offenses. *See, ABA Standards for Imposing Lawyer Sanctions, Standard 9.22(d);*
3. Respondent has submitted false statements during the disciplinary process. *See, ABA Standards for Imposing Lawyer Sanctions, Standard 9.22(f);*
4. Respondent has refused to acknowledge the wrongful nature of his conduct. *See, ABA Standards for Imposing Lawyer Sanctions, Standard 9.22(g);*
5. The client was vulnerable. *See, ABA Standards for Imposing Lawyer Sanctions, Standard 9.22(h);*
6. Respondent has substantial experience in the practice of law (2004). *See, ABA Standards for Imposing Lawyer Sanctions, Standard 9.22(i); and/or*
7. Respondent has displayed a cooperative attitude toward disciplinary proceedings. *See, ABA Standards for Imposing Lawyer Sanctions, Standard 9.32e).*

IV. Recommended and Agreed to Discipline.

Respondent agrees to and accepts, and Disciplinary Counsel recommends the following discipline

- A. Respondent shall be indefinitely suspended from the practice of law pursuant to Rule 17-206(A)(3) NMRA 2014;
- B. The imposition of this Indefinite Suspension shall be deferred, and Respondent shall be placed on supervised probation pursuant to Rule 17-206(B)(1), NMRA 2014, for a period of two (2) years beginning on the date this agreement is approved by the Supreme court of New Mexico;
- C. During the period of his probation, Respondent shall comply with the following terms and conditions:
 - a. Respondent shall observe and comply with the Rules of Professional conduct and the Rules Governing Discipline;
 - b. Respondent shall pay the costs of this proceeding within fifteen (15) days of receipt of the Cost Statement provided by the Office of Disciplinary Counsel;
 - c. Respondent agrees to reimburse to the Client Protection Fund for any monies paid out on his behalf within ten (10) days of receipt of notice of such payment made by Client Protection Fund;
 - d. Respondent agrees to maintain no personal firearm of any type in his law office;

- e. Respondent agrees to write a letter of apology, approved by the Office of Disciplinary Counsel, to the following individuals: Kelli Carlile, Doug Christopherson, Justin Goodman, Linda Griego, Michael Howe, Jeremiah LaFranca, Gloria Sepnieski, Joshua Spencer, Katrina Strange and Joseph Wiseman as well as any other employee or former employee employed in 2012 and 2013 to whom an apology may be owed.
- f. Respondent agrees, at his expense, to have a law office management audit conducted by a firm or individual approved by the Office of Disciplinary Counsel to be completed within thirty (30) days of the approval of this agreement by the New Mexico Supreme Court. Respondent also agrees to provide a copy of the audit report to the Office of Disciplinary Counsel as well as a release so that a representative of the Office of Disciplinary Counsel may discuss the audit report with the auditor;
- g. Respondent shall meet with a supervising attorney, approved by the Office of Disciplinary Counsel, at least one (1) time per week to review all pending and new cases and law office procedures for the first six (6) months and then as often as the supervising attorney deems

necessary thereafter, but no less than one (1) time per month for the remainder of the probation;

h. The supervising attorney shall file a monthly report to the Office of Disciplinary Counsel regarding Respondent's level of cooperation, case and practice management and any other information he or she deems pertinent; and

i. Respondent shall be responsible for the costs of the supervising attorney and shall pay the monthly invoices submitted by the supervising attorney within fifteen (15) days of receipt.

D. Upon the completion of his two-year period of probation, Respondent shall be required to seek reinstatement to non-probationary status pursuant to Rule 17-214(H), NMRA 2014, within thirty (30) days; Respondent shall be reinstated to non-probationary status only upon demonstrating that all of the terms and conditions of his probation have been satisfied;

E. If Respondent is reinstated to non-probationary status after successfully completing all of the terms and conditions of his probation, he shall receive a Formal Reprimand pursuant to Rule 17-206(A)(5), NMRA 2014;

F. Should Respondent fail to comply with any of the above terms and conditions of his probation, or if disciplinary counsel receives additional complaints against him which give rise to the filing of formal charges for

similar misconduct prior to his reinstatement to non-probationary status, then either upon (1) the filing with the Supreme Court of New Mexico of an affidavit from disciplinary counsel attesting to his non-compliance, or (2) the filing of such formal charges, the following shall occur: (a) the deferral of the Indefinite Suspension shall be automatically revoked; (b) the Indefinite Suspension will begin immediately upon Order of the Supreme Court of New Mexico; and (c) disciplinary counsel may seek additional sanctions under the procedures set forth in the Rules Governing Discipline;

G. In addition, Respondent understands that should he violate any of the above terms and conditions, disciplinary counsel shall bring the violation to the attention of the Supreme Court of New Mexico pursuant to disciplinary counsel's duties under Rule 17-206(G), NMRA 2014, and that should Respondent be found in contempt of that Court, he may be fined, censured, suspended, disbarred, and/or have his period of probation extended or revoked;

V. Supporting Authority.

The following authority supports the recommended and agreed to discipline:

1. The Specification of Charges contain allegations, which if true, pursuant to the ABA Standards for Imposing Lawyer Sanctions would warrant the

issuance of a period of suspension or a formal reprimand. *See*, Sections 4.22/4.23, 4.32/4.33, 4.53, and/or 5.12 *ABA Standards for Imposing Lawyer Sanctions*.

2. *In re Elmore*, 1997-NMSC-020, 123 N.M. 79, “Respondent’s lackadaisical approach to the protection of his client’s interests did not meet the standard of competence required by the Rules of Professional Conduct.”

3. *In re Ortiz*, 2013-NMSC-027, ____ N.M. ___, the Supreme Court imposed a deferred suspension when an attorney “engaged in a persistent pattern of misconduct unbecoming to an attorney who has taken an oath to ‘maintain civility at all times, abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party.’ Rule 15-304.”

4. *In re Houston*, 1999-NMSC-032, 127 N.M. 582, the Supreme Court imposed a period of deferred suspension for an attorney who had a conflict of interest representing two clients.

VI. Other Terms and Conditions.

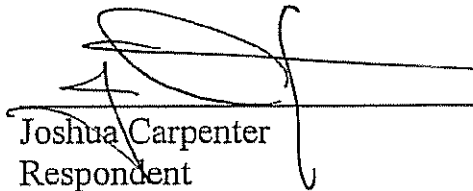
1. Respondent understands that should he violate any of the above terms and conditions, disciplinary counsel shall bring the violation to the attention of the Supreme Court of New Mexico pursuant to disciplinary counsel’s duties under Rule 17-206(G), NMRA, and that should Respondent be found in contempt of that Court, he may be fined, censured, suspended, disbarred or incarcerated.

2. Respondent acknowledges that he understands the charges against him and the proposed disposition set forth in this Agreement; that he understands if this Agreement is accepted, he is waiving his right to contest the charges listed above; that he understands he is waiving his right to appeal to the Supreme Court; and that he understands that this Agreement, if rejected, cannot be used in evidence against him or against disciplinary counsel in this or any subsequent proceeding and that any admissions contained herein shall be deemed withdrawn by all parties.

3. Respondent acknowledges that disciplinary counsel has recommended that he confer with an attorney about this matter and he has consulted with Spring V. Schofield and Gerald G. Dixon.

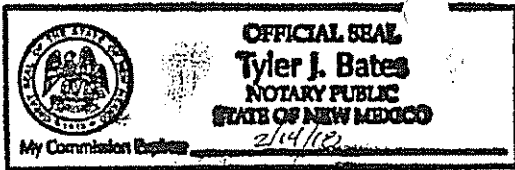
4. Respondent acknowledges that this conditional agreement is submitted voluntarily and is not the result of any threats or promises other than the agreement set forth herein.

DATED: September 16, 2014


Joshua Carpenter
Respondent

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

SUSCRIBED AND SWORN this 16 day of September, 2014 by Joshua Carpenter.



Tyler J. Bates
NOTARY PUBLIC

TYLER J. BATES
Print Name

My commission expires:

2/14/12

APPROVED:

Christine E. Long
Christine E. Long
Assistant Disciplinary Counsel
20 First Plaza NW, Suite 710
Albuquerque, NM 87102
(505) 842-5781

Spring V. Schofield
Spring V. Schofield
Dixon, Scholl, & Bailey, P.A.
Counsel for Respondent
6700 Jefferson, N.E., Bldg. B, Suite 1
Albuquerque, NM 87109
(505) 244-3890

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME
COURT OF THE STATE OF NEW MEXICO

In the Matter of
JOSHUA CARPENTER, ESQ.

Disciplinary No. 09-2014-700

PANEL DECISION

The duly appointed Hearing Panel of the Disciplinary Board reviewed and considered the Consent to Discipline and the Decision of the Hearing Committee. The Panel hereby affirms the Decision of the Hearing Committee and accepts and approves the Consent to Discipline entered into by the Respondent.

The Panel notes that the attorney chosen to monitor, supervise, and review Joshua Carpenter's law practice should be quite experienced and able to devote the time necessary to the supervisory task. Mr. Carpenter's conduct, in the Opinion of the Panel, was far beneath that expected and required of a New Mexico lawyer.

/s/William Grawlow (electronically approved 01/06/15)
William Grawlow, Chair

/s/Doug Perrin (electronically approved 01/06/15)
Doug Perrin

/s/Thomas P. Alesi (electronically approved 01/06/15)
Thomas P. Alesi

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF THE STATE OF NEW MEXICO

In the Matter of

Joshua Carpenter, ESQ.


Disciplinary No. 09-2014-700

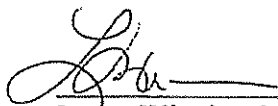
DECISION OF HEARING COMMITTEE

This matter came before the duly appointed Hearing Committee on November 18, 2014, after proper notice to all members of the Hearing Committee and counsel. Hearing Committee member Mark Farrell did not attend. Disciplinary Counsel Christine Long, Esq., Counsel for Respondent, Spring V. Schofield, Esq. and Respondent Joshua Carpenter were present. Disciplinary Counsel and Respondent, through his counsel, waived any objection to proceeding with only the Chair Paul M. Fish and Member Lorna Wiggins present. The Hearing Committee received into evidence 25 exhibits, 5 depositions and testimony from Respondent Joshua Carpenter. The Hearing Committee also heard arguments of counsel.

The Hearing Committee FINDS that the evidence presented supports the determination that all four criteria set forth in the Disciplinary Board of the New Mexico Supreme Court's Policy Concerning Hearings on Consent adopted July 18, 2014, were met in this case and that the proposed discipline is appropriate in light of the stipulated misconduct and prior conduct of the Respondent. As a result,

The Hearing Committee APPROVES the Consent to Discipline as presented.


Paul M. Fish, Chair


Lorna Wiggins, Member

I CERTIFY AND ATTEST:
A true copy was served on all parties
or their counsel of record on date filed.

Debbie H. Romero

Clerk of the Supreme Court
of the State of New Mexico

I HEREBY CERTIFY that a true and
correct copy of the foregoing was e-mailed
to the following this 16th day of November,
2014:

Spring V. Schofield, Esq.
sschofield@dsblaw.com

Christine E. Long
clong@nmdisboard.org

Mark Farrell, Hearing Committee Member
markski@aol.com

By:


Paul M. Fish, Chair

W2314609.docx

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **March 11, 2015**

3 **NO. 35,078**

4 **IN THE MATTER OF**
5 **JOSHUA CARPENTER**

6 **An Attorney Licensed to**
7 **Practice Before the Courts**
8 **of the State of New Mexico**

9 **ORDER**

10 WHEREAS, this matter came on for consideration by the Court upon
11 recommendation of the disciplinary board to adopt an conditional agreement not
12 to contest and consent to discipline, and the Court having considered said
13 recommendation and oral argument of the parties on March 11, 2015, and being
14 otherwise sufficiently advised, Chief Justice Barbara J. Vigil, Justice Petra
15 Jimenez Maes, Justice Richard C. Bosson, Justice Edward L. Chávez, and
16 Justice Charles W. Daniels concurring;

17 NOW, THEREFORE, IT IS ORDERED that the recommendation is
18 ADOPTED and the conditional agreement not to contest and consent to
19 discipline as amended by the joint supplemental submission is APPROVED AS
20 MODIFIED HEREIN;

1 IT IS FURTHER ORDERED that JOSHUA CARPENTER is
2 INDEFINITELY SUSPENDED from the practice of law under Rule 17-
3 206(A)(3) NMRA, which suspension shall be DEFERRED upon certain terms
4 and conditions;

5 IT IS FURTHER ORDERED that respondent shall be placed on
6 supervised probation under Rule 17-206(B)(1) NMRA for a period of two (2)
7 years effective immediately;

8 IT IS FURTHER ORDERED that during the period of supervised
9 probation respondent shall comply with the following terms and conditions:

- 10 1. Respondent shall observe and comply with the Rules of
11 Professional Conduct and the Rules Governing Discipline.
- 12 2. Respondent shall reimburse the Client Protection Fund for any
13 monies paid out on his behalf within ten (10) days of receipt of
14 notice of such payment made by the Client Protection Fund;
- 15 3. Respondent shall maintain no personal firearm of any type in his
16 law office;
- 17 4. Respondent shall write of letter of apology, approved by the Office
18 of Disciplinary Counsel, to Kelli Carlile, Doug Christopherson,
19 Justin Goodman, Linda Griego, Michael Howe, Jeremiah LaFranca,
20 Gloria Sepnieski, Joshua Spencer, Katrina Strange, Joseph
21 Wiseman, and any other employee or former employee employed
22 in 2012 and 2013 to whom an apology may be owed;
- 23 5. Respondent shall, at his expense, have a law office management

Amy Mayer

Clerk of the Supreme Court
of the State of New Mexico

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audit conducted by a firm or individual approved by the Office of Disciplinary Counsel to be completed within one hundred eighty (180) days of the date of this order, which shall include unannounced site visits by the auditor;

6. Respondent shall provide three (3) audit reports, at sixty (60)-day intervals, to the Office of Disciplinary Counsel along with a release so that a representative from the Office of Disciplinary Counsel may discuss the audit reports with the auditor; and
7. Respondent shall meet with a supervising attorney, approved by the Office of Disciplinary Counsel, at least one (1) time per week to review all pending and new cases and law office procedures for the first six (6) months and then as often as the supervising attorney deems necessary thereafter, but no less than one (1) time per month for the remainder of the probationary period;
8. The supervising attorney shall file a monthly report with the Office of Disciplinary Counsel regarding respondent's level of cooperation, case and practice management, and any other information that the supervising attorney deems pertinent; and
9. Respondent shall be responsible for the costs of the supervising attorney and shall pay the monthly invoices submitted by the supervising attorney within fifteen (15) days of receipt; and
10. Respondent shall pay the costs of this proceeding within fifteen (15) days of receipt of the cost statement provided by the Office of Disciplinary Counsel;

IT IS FURTHER ORDERED that, should respondent fail to comply with any of the terms and conditions of his probation, or if disciplinary counsel receives additional complaints against respondent that give rise to the filing of

1 formal charges for similar misconduct prior to his reinstatement to non-
2 probationary status, then either upon the filing with this Court of an affidavit
3 from disciplinary counsel attesting to respondent's noncompliance or the filing
4 of such formal charges, then the deferral of indefinite suspension shall be
5 automatically revoked, the indefinite suspension will begin immediately upon
6 order of this Court, and disciplinary counsel may seek additional sanctions under
7 the Rules Governing Discipline;

8 IT IS FURTHER ORDERED that, should respondent violate any term of
9 the conditional agreement, disciplinary counsel shall bring the violation to the
10 attention of this Court under Rule 17-206(G) NMRA and, should respondent be
11 found in contempt of Court, he may be fined, censured, suspended, disbarred, or
12 have his period of probation extended or revoked;

13 IT IS FURTHER ORDERED that upon the completion of the two-year
14 period of supervised probation respondent shall be required to seek
15 reinstatement to non-probationary status under Rule 17-214(H) NMRA within
16 thirty (30) days, and respondent shall be reinstated to non-probationary status
17 only upon demonstrating that all of the terms and conditions of the period of his
18 supervised probation have been satisfied;

1 IT IS FURTHER ORDERED that if respondent is reinstated to non-
2 probationary status after successfully completing all of the terms and conditions
3 of his probation he shall receive a formal reprimand under Rule 17-206(A)(5)
4 NMRA; and

5 IT IS FURTHER ORDERED that respondent shall pay the costs of this
6 proceeding to the disciplinary board in the amount of three thousand five
7 hundred thirty-five dollars and seventy cents (\$3,535.70) within the time
8 required under the terms of the conditional agreement and this order. Any
9 balance remaining thereafter shall accrue interest at the rate of eight and three-
10 fourths percent (8¾%) per annum until paid in full and shall be reduced to a
11 transcript of judgment.

12 IT IS SO ORDERED.

13 WITNESS, Honorable Barbara J. Vigil, Chief Justice
14 of the Supreme Court of the State of New Mexico, and
15 the seal of said Court this 11th day of March, 2015

16 (SEAL)

17 
18 Joey D. Moya, Chief Clerk of the Supreme
Court of the State of New Mexico