



November 14, 2016

Board of Disciplinary Appeals

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

IN THE MATTER OF DAVID W. KNIGHT STATE BAR CARD NO. 11597325	§ § §	CAUSE NO. <u>58354</u>
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PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, David W. Knight, (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 but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at David W. Knight, 5125 Wakefield Lane, Wichita Falls, Texas 76310.

3. On or about November 19, 2015, a Professional Disciplinary Proceeding (Exhibit 1) was entered by the Supreme Court of the State of Oklahoma in a matter styled: *State of Oklahoma ex rel. Oklahoma Bar Association, Complainant, v. David William Knight, Respondent*, which states in pertinent part as follows:

...Knight violated the Rules Governing Disciplinary Proceedings and the Oklahoma Rules of Professional Conduct. Knight's license to practice law is suspended for two years and one day commencing on the date this opinion is final...

4. The Professional Disciplinary Proceeding established that Respondent received a one-year suspension of his professional license by a previous order of the Court, and his license was suspended. He practiced law in Oklahoma after the order of suspension became effective and he did not inform his clients of his suspension. The Oklahoma Bar Association filed a formal Complaint against Respondent alleging his unauthorized practice of law and his failure to cooperate with the Bar Association's investigation. A hearing was held before a trial panel of the Oklahoma Professional Responsibility Tribunal and the trial panel recommended a professional discipline by a suspension of Respondent's license for a period not less than two years and one day.

5. The Court found that Respondent violated the following Oklahoma Rules of Professional Conduct (ORPC): (1) Rule 1.16(a)(1) Declining or Terminating Representation—a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law; (2) Rule 3.3(a)(1) Candor Toward The Tribunal—a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (3) Rule 3.4(c) Fairness to Opposing Party and Counsel—a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; (4) Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law; (5) Rule 8.1(b) Bar Admission and Disciplinary Matters—an applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information

otherwise protected by Rule 1.6; (6) Rule 8.4 Misconduct—it is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice; (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

6. The Court also found that Respondent violated the following Oklahoma Rules Governing Disciplinary Proceedings (RGDP): Rule 1.3—Discipline for Act Contrary to Prescribe Standards of Conduct; Rule 5.2—Investigations; Rule 9.1—Notice to Clients; List of Other Bars to Which Admitted.

7. A certified copy of Petitioner's Exhibit 1 which is attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce a certified copy of Exhibit 1 at the time of the hearing in this case.

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 enter a judgment imposing discipline identical with that imposed by the Supreme Court of Oklahoma and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

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Rebecca (Beth) Stevens
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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 David W. Knight by personal service.

David W. Knight
5125 Wakefield Lane
Wichita Falls, Texas 76310



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 appear.
- (5) A court reporter or recorder must not lock any document that is part of the record.
- (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.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
VIA SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA

STATE OF OKLAHOMA ex rel.
OKLAHOMA BAR ASSOCIATION,

SEP 29 2015

Complainant,

) O.B.A.D. No. 2041

MICHAEL S. RICHIE
CLERK

 V_*

) S.C.B.D. No. 6262

DAVID WILLIAM KNIGHT,

) FOR OFFICIAL PUBLICATION

Respondent.

PROFESSIONAL DISCIPLINARY PROCEEDING

¶ 0 Respondent, a lawyer licensed in Oklahoma, received a one-year suspension of his professional license by a previous order of this Court, and his license is currently suspended. He practiced law in Oklahoma after the order of suspension became effective and he did not inform his clients of his suspension. The Oklahoma Bar Association filed a formal Complaint in this Court against Respondent alleging his unauthorized practice of law and his failure to cooperate with the Bar Association's investigation. A hearing was held before a trial panel of the Oklahoma Professional Responsibility Tribunal and the trial panel recommended a professional discipline by a suspension of Respondent's license for a period not less than two years and one day. We hold that the appropriate professional discipline is a suspension of Respondent's license for a period of two years and one day (2 years and 1 day) and assess costs against him in the amount of one-thousand, eight hundred and fifty-four dollars and ninety-six cents (\$1,854.96).

**RESPONDENT IS SUSPENDED FROM THE PRACTICE OF LAW
FOR TWO YEARS AND ONE DAY EFFECTIVE ON THE DATE THIS OPINION IS FINAL;
AND RESPONDENT SHALL PAY COSTS WITHIN NINETY DAYS**

Katherine Ogden, Assistant General Counsel, Oklahoma Bar Association, Oklahoma City, Oklahoma, for Complainant.

David W. Knight, Wichita Falls, Texas, pro se.

EDMONDSON, J.

¶ 1 This professional disciplinary proceeding arose after the respondent lawyer,

Exhibit

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David W. Knight, (1) practiced law in Oklahoma while his license was suspended by this Court, (2) failed to follow the rules for a lawyer with a suspended license, and (3) failed to timely and adequately respond to the Oklahoma Bar Association's requests for information in this proceeding. Knight's license to practice law is currently suspended. We suspend Knight's license to practice law for a period of two years and one day effective on the date this opinion is final and order him to pay costs in the amount of one-thousand, eight hundred and fifty-four dollars and ninety-six cents (\$1,854.96), within ninety days of the date this opinion is final.

¶ 2 Knight was admitted to the practice of law in Oklahoma on October 14, 1982. Knight has also been licensed to practice law in the State of Texas. On July 16, 2014, this Court suspended Knight's license to practice law in Oklahoma for a period of one year. *State ex rel. Oklahoma Bar Ass'n v. Knight*, 2014 OK 71, 330 P.3d 1216. This previous proceeding arose in Oklahoma as a reciprocal discipline case after the Grievance committee of the State Bar of Texas (District 14) ordered a one-year suspension of Knight's Texas license for his violation of Rules 1.01(b)(1), 1.03(a), and 1.15(d) of the Texas Disciplinary Rules of Professional Conduct (TDRPC).¹

¶ 3 Knight made no appearance in his previous Oklahoma disciplinary proceeding. His one-year suspension was imposed by the Court's opinion dated July 16, 2014, and that opinion did not explicitly find that an immediate implementation of discipline

¹ *Knight*, 2014 OK 71, at ¶ 2, 330 P.3d at 1218 citing the Texas Disciplinary Rules of Professional Conduct: "Rule 1.01(b)(1) of the TDRPC states: 'In representing a client, a lawyer shall not ... neglect a legal matter entrusted to the lawyer....' Rule 1.03(a) of the TDRPC states: 'A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.' Rule 1.15(d) of the TDRPC states, in pertinent part: 'Upon termination of representation, a lawyer shall ... [surrender] papers and property to which the client is entitled....'"

was necessary to protect the public. The Court's public docket on the internet shows that Knight's opinion imposing a one-year suspension was mailed to the parties on July 16, 2014. This internet docket was available for public viewing when the Court's opinion was filed, and Knight could have accessed this docket and verified the information when he received his copy in the mail. By application of Disciplinary Rule 6.15,² Oklahoma Supreme Court Rule 1.193,³ and the opinions of this Court explaining the effective date for imposition of lawyer discipline,⁴ Knight could have timely sought a rehearing between July 17, 2014 and August 5, 2014, and without a timely filed petition for rehearing his one-year suspension was effective on August 6, 2014.

I. Respondent's Representation of Brackett After Suspension Date

¶ 4 Brackett, a resident of Texas, paid Knight \$1,500.00 to represent him in an Oklahoma criminal misdemeanor proceeding, *State v. Brackett*, CM-2014-88, Cotton County, Oklahoma. On August 13, 2014, Knight and Brackett traveled to the Cotton County Courthouse where Knight negotiated a plea for Brackett with Assistant District

² 5 O.S. 2011, Ch. 1, App. 1-A, Rules Governing Disciplinary Proceedings, Rule 6.15 (c): "Petitions for rehearing on behalf of the respondent or the Association shall be filed with the Clerk of the Supreme Court within twenty (20) days from the date of mailing of the action or decision of the Supreme Court."

³ 12 O.S. 2011, Ch. 15, App. 1, Rule 1.193, (in part and with emphasis added): "In all original proceedings other than those to review a decision of the Workers' Compensation Court or to impose bar discipline, the decision of this Court, unless it is stayed with or without bond, shall become effective when its opinion or order is filed with the clerk."

⁴ See, e.g., *State ex rel. Oklahoma Bar Ass'n v. Giger*, 2003 OK 61, ¶ 17, 72 P.3d 27, 35 ("We hold today that a Bar disciplinary order, the effectiveness of which is not delayed by the filing of a petition for rehearing, becomes effective twenty (20) days after the decision is mailed to the parties, except where the court explicitly finds that immediate implementation of discipline is necessary to protect the public."); *State ex rel. Oklahoma Bar Ass'n v. Mothershed*, 2011 OK 84, ¶ 36, 264 P.3d 1197, 1212 (principle noted with citation to *Giger*); *State ex rel. Oklahoma Bar Ass'n v. Bourland*, 2001 OK 12, ¶ 13, 19 P.3d 289, ("Although in most cases where we exercise original jurisdiction the adjudication by the Court is effective the date Court's order or opinion is filed, a lawyer discipline case is an exception to this rule.").

Attorney Mark Clark. On that date Knight signed and acknowledged before Judge Flanagan a waiver of a jury trial on behalf of Brackett. Also at that time an order was presented to Judge Flanagan for a change of Brackett's plea. Knight executed these documents as "Attorney for Defendant."

¶ 5 After these negotiations Knight informed Brackett that he would need to appear at the next hearing and enter his negotiated plea without Knight being present. On September 26, 2014, Brackett appeared before Judge Flanagan without Knight or any other lawyer. Brackett was not told by Knight that he had been suspended from the practice of law. Knight did not file a motion to withdraw in Brackett's case.

II. Respondent's Representation of Branham after Suspension Date

¶ 6 A Court Minute shows on August 18, 2014, in Case Nos. CF-2011-48 and CM-2011-244, Cotton County, Oklahoma, Knight appeared for and with the Defendant, Blake Keith Don Branham, at a hearing where the State wanted Branham incarcerated without bond, and Branham requested a hearing on his bond. The trial judge and assistant district attorney present at Branham's criminal proceeding testified before the trial panel and explained Knight's representation of Branham, including Knight's oral argument to the trial court on behalf of Branham and the bond he sought.

¶ 7 The trial judge testified he subsequently read Knight's suspension on OSCN. In the presence of the assistant district attorney, the judge telephoned Knight concerning his continued representation in criminal cases before the judge. The judge requested Knight to file motions to "withdraw from your cases and do whatever the Bar is telling you to do so that we can handle our cases here properly." On August 27, 2014, Knight filed

a motion to withdraw in Branham's case, and requested permission to withdraw "for reason that Defendant and this attorney are unable to agree on how this case is to proceed." The trial judge and the assistant district attorney informed the Bar of the events.

III. Failure to Respond to Grievance and Failure to Obey a Subpoena

¶ 8 The Bar requested Knight's response to a formal professional Grievance. During his testimony before the trial panel, Knight stated he was aware he failed to timely respond in an appropriate manner during his private reprimand proceeding before the Oklahoma Professional Responsibility Commission in 2011 and in the Oklahoma Supreme Court proceeding in 2014. He stated his awareness of his duty to respond to a Grievance when requested by the Bar, but he did not know why he had failed to respond to the Grievance in the present proceeding.

¶ 9 When Knight failed to respond as requested by the Bar he was subpoenaed for a deposition. He contacted the Bar and the date for the deposition was continued to accommodate his schedule. During this time the Bar informed Knight he was required to respond to the Grievance, and the deposition would occur on the re-scheduled date in the absence of his required "full and adequate response." In addition to information concerning his representation in the criminal proceedings, the Bar requested information on the steps he had taken to implement the Supreme Court's 2014 order of suspension.

¶ 10 The day before the re-scheduled deposition and after the Bar offices were closed for the day, the Bar received a one-page fax from Knight stating it was his response to the Grievance. Knight's one-page fax states he thought he had thirty days from the date he received the Supreme Court's order for him to conclude his representation in Oklahoma

courts. The Bar telephoned and faxed his office immediately after receiving the fax as well as the next day with a statement that his letter was not a complete response to the Grievance and his attendance at a deposition was still necessary because his letter gave no additional information concerning his clients, notifying them of his suspension, under what circumstances he had appeared in the District Court, and what representations he had made to others and the District Court concerning his license or representing clients. The Bar offered to continue the deposition until later in the day to provide Knight time needed to travel to the Bar offices in Oklahoma City. Knight did not answer his telephone or respond to the Bar's faxes that evening or the day of the re-scheduled deposition.

IV. Knight's Participation at the Trial Panel Hearing

¶ 11 A hearing was held before a trial panel of the Professional Responsibility Tribunal. Knight appeared pro se at the hearing and testified. Knight was asked why on August 13, 2014, he failed to inform the trial judge and the assistant district attorney that he had been suspended. He said, "I thought I had 30 days from the date that I received the - - the notice from the Oklahoma Supreme Court to either petition for rehearing or to wrap up my business. And I didn't realize it was 20 days from the date of the order." He said that on August 13, 2014, the day he appeared in District Court, he thought he had 15 or 20 days left "to practice or to file a petition for rehearing."

¶ 12 He testified he thought his appearance in District Court with Branham on August 18, 2014, was proper because it was within thirty days after his receipt of the Oklahoma Supreme Court's opinion. He was asked the date he received the Supreme Court's opinion and how he calculated the thirty-day period. He responded he could not

remember the exact date he received by mail the Supreme Court's opinion or whether he still possessed the envelope used for mailing the opinion to him, and he calculated the date the order became final for purpose of suspension as "the very, very end of August or - or the first week of September."

¶ 13 He testified he was not aware of Rule 9.1 of the Rules Governing Disciplinary Proceedings and its requirement for notification of clients when a lawyer has his or her license suspended by this Court. He testified he could not remember when he told Brackett to hire another lawyer or how much he refunded to him: "I'm not sure exactly. . . I know I refunded some of his money, if not all of it."

¶ 14 Knight testified his law office is in Wichita Falls, Texas, and he was licensed to practice law in both Oklahoma and Texas. He stated during July and August 2014, he employed an office assistant to process his mail, and he had "trouble" receiving his certified mail during this period. He stated that at the time of his trial panel hearing this assistant was no longer employed by him. He also stated this same assistant was responsible for the timing for sending his letter responding to the Bar's Grievance by a fax transmission after 5:00 p.m. on the day before his rescheduled deposition. After the Bar rested its case, Knight repeated his earlier testimony "there was never any intent to violate the [Supreme] Court's order and to practice law without permission."

V. Knight's Rule 6.4 Admission and Supreme Court's Review

¶ 15 On April 6, 2015, the Bar filed a Rule 6 Complaint in this Court alleging Knight's violations of the Oklahoma Rules Governing Disciplinary Proceedings (RGDP) and the Oklahoma Rules of Professional Conduct (ORPC). The Bar alleges Knight violated

Rules 1.16(a)(1),⁵ 3.3(a)(1), 3.4(c),⁶ 5.5, 8.1(b),⁷ and 8.4 of the ORPC and Rules 1.3,⁸ 5.2,⁹ and 9.1¹⁰ of the RGDP. The Complaint alleges Knight: (1) practiced law in the District

⁵ 5 O.S. Ch. 1, App. 3-A, Rule 1.16(a)(1), ORPC: " (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law;"

⁶ 5 O.S. Ch. 1, App. 3-A, Rule 3.4(c), ORPC: "A lawyer shall not: . . . (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists"

⁷ 5 O.S. Ch. 1, App. 3-A, Rule 8.1(b), ORPC: "An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: . . . (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6."

⁸ 5 O.S. 2011 Ch. 1, App. 1-A, Rule 1.3, RGDP:
Rule 1.3. Discipline for acts contrary to prescribed standards of conduct
The commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all. Conviction in a criminal proceeding is not a condition precedent to the imposition of discipline.

⁹ 5 O.S. 2011 Ch. 1, App. 1-A, Rule 5.2, RGDP, emphasis added:
Rule 5.2. Investigations
After making such preliminary investigation as the General Counsel may deem appropriate, the General Counsel shall either (1) notify the person filing the grievance and the lawyer that the allegations of the grievance are inadequate, incomplete, or insufficient to warrant the further attention of the Commission, provided that such action shall be reported to the Commission at its next meeting, or (2) file and serve a copy of the grievance (or, in the case of an investigation instituted on the part of the General Counsel or the Commission without the filing of a signed grievance, a recital of the relevant facts or allegations) *upon the lawyer, who shall thereafter make a written response which contains a full and fair disclosure of all the facts and circumstances pertaining to the respondent lawyer's alleged misconduct unless the respondent's refusal to do so is predicated upon expressed constitutional grounds. Deliberate misrepresentation in such response shall itself be grounds for discipline. The failure of a lawyer to answer within twenty (20) days after service of the grievance (or recital of facts or allegations), or such further time as may be granted by the General Counsel, shall be grounds for discipline.* The General Counsel shall make such further investigation of the grievance and response as the General Counsel may deem appropriate before taking any action.

¹⁰ 5 O.S. 2011 Ch. 1, App. 1-A, Rule 9.1, RGDP,
Rul 9.1. Notice to clients; List of other bars to which admitted
When the action of the Supreme Court becomes final, a lawyer who is disbarred or suspended, or who has resigned membership pending disciplinary proceedings, must notify all of the lawyer's clients having legal business then pending within twenty (20) days, by certified mail, of the lawyer's inability to represent them and the necessity for promptly retaining new counsel. If such lawyer is a member of, or associated with, a law firm or professional corporation, such notice shall be given to all clients of the firm or professional corporation, which have legal business then pending with respect to which the disbarred, suspended or resigned lawyer had substantial responsibility. The lawyer shall also file a formal withdrawal as counsel in all cases pending
(continued...)

Court of Cotton County Oklahoma while his license to practice was under an order of suspension by this Court, and engaged in the unauthorized practice of law in violation of Rule 5.5;¹¹ (2) failed to notify his clients his Bar license was suspended in Oklahoma and he must cease representing them and violating Rule 9.1 RGDP; (3) failed to notify the District Court of Cotton County he must withdraw from proceedings in that court, also violating 9.1 RGDP; (4) failed to file an Answer to the Bar's Complaint in the Supreme Court, violating Rule 5.2, RGDP; (5) failed to file his Rule 9.1 affidavit with the Professional Responsibility Commission and the Supreme Court, violating that rule; (6) misrepresented

¹⁰(...continued)

in any tribunal. The lawyer must file, within twenty (20) days, an affidavit with the Commission and with the Clerk of the Supreme Court stating that the lawyer has complied with the provisions of this Rule, together with a list of the clients so notified and a list of all other State and Federal courts and administrative agencies before which the lawyer is admitted to practice. Proof of substantial compliance by the lawyer with this Rule 9.1 shall be a condition precedent to any petition for reinstatement.

¹¹ 5 O.S. Ch. 1, App. 3-A, Rule 5.5, ORPC:

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) Subject to the provisions of 5.5(a), a lawyer admitted in a United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in a jurisdiction where not admitted to practice that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates in connection with the employer's matters, provided the employer does not render legal services to third persons and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

to the District Court his status as a licensed lawyer; and (7) failed to communicate properly with the Bar.

¶ 16 At his trial panel hearing, the Bar argued Rule 1.16(a)(1) states a lawyer may not engage in representation that violates the ORPC, and practicing law without a license in good standing violates Rule 5.5 of the ORPC and thus also Rule 1.16(a)(1). The Bar argued Rule 3.3(a)(1) of the ORPC was violated by false statements of fact to a tribunal, and a failure to correct those false statements, by appearing in open court and arguing for his clients when he did not have a Bar license in good standing. The Bar argued Rule 3.3 was violated by Knight's knowingly disobeying an order or obligation. The Bar stated Knight violated Rule 8.1(b) ORPC and 5.2 RGDP by his failure to respond to the Bar's requests for information. The Bar stated Knight violated 8.4(d), conduct prejudicial to the administration of justice, by his failure to formally withdraw from the criminal proceedings where he was representing criminal defendants. The Bar also argued 1.3 RGDP was violated by Knight's acts contrary to the prescribed standard of conduct.

¶ 17 Knight appeared at the trial panel hearing where he testified, cross-examined witnesses, and argued for a one-year suspension of his Bar license. The trial panel was acting as this Court's hearing examiner in this original jurisdiction proceeding.¹² Knight's appearance before the trial panel is an appearance before this Court in this original jurisdiction proceeding.¹³ Knight did not file a post-hearing brief in this Court. We have explained a respondent's mere failure to file a brief in this Court does not prevent this

¹² *State ex rel. Oklahoma Bar Ass'n v. Mothershed*, 2011 OK 84, ¶ 51, 264 P.3d 1197, 1216 ("A trial panel functions as this Court's hearing examiner and a procedural "conduit" for the record and legal arguments making the case ready for this Court's original de novo review of the case.").

¹³ *Schweigert v. Schweigert*, 2015 OK 20, ¶ 12, 348 P.3d 696, 700.

Court from reviewing the entire record and the merits of disciplinary charges.¹⁴ However, our usual review of the entire disciplinary proceeding is altered by a respondent's admission pursuant to Rule 6.4.

¶ 18 The Bar supplied evidence Knight was properly served with notice of the Complaint in this proceeding. Knight did not file an Answer to that Complaint, or seek additional time to file an Answer. The Bar filed a motion to deem the Complaint's allegations admitted, and at the conclusion of his hearing the trial panel granted the motion.

¶ 19 Disciplinary Rule 6.4 provides that if the respondent fails to answer the complaint, the charges shall be deemed admitted except that evidence shall be submitted for the purpose of determining the discipline to be imposed.¹⁵ We have followed this rule in several proceedings.¹⁶

¶ 20 A proceeding adjudicating a lawyer's professional discipline has characteristics of an adversarial legal proceeding where the parties are required to put at issue both facts and legal arguments and this Court adjudicates the issues as framed by

¹⁴ *State ex rel. Oklahoma Bar Ass'n v. Mothershed*, 2011 OK 84, ¶ 69, 264 P.3d 1197, 1223 ("... this Court reviews the trial panel report, evidence submitted to the trial panel, stipulations, and pleadings filed in a disciplinary proceeding as well as a review of the merits of the disciplinary charges against a respondent even though he or she fails to file a brief in this Court.").

¹⁵ 5 O.S. 2011, Ch. 1, App. 1-A, Rules Governing Disciplinary Proceedings, Rule 6.4 provides: "The respondent shall within twenty (20) days after the mailing of the complaint file an answer with the Chief Justice. The respondent may not challenge the complaint by demurrer or motion. In the event the respondent fails to answer, the charges shall be deemed admitted, except that evidence shall be submitted for the purpose of determining the discipline to be imposed."

¹⁶ See, e.g., *State ex rel. Oklahoma Bar Ass'n v. McCormick*, 2013 OK 110, ¶ 5, 315 P.3d 1015, 1017 (Rule 6.4 "provides for submitting evidence for the purpose of determining the proper discipline to be imposed."); *State ex rel. Oklahoma Bar Ass'n v. Rowe*, 2012 OK 88, ¶ 18, 288 P.3d 535, 539 ("Rule 6.4 provides that if the respondent fails to answer the complaint, the charges shall be deemed admitted except that evidence shall be submitted for the purpose of determining the discipline to be imposed."); *State ex rel. Oklahoma Bar Ass'n v. Edwards*, 2011 OK 3, ¶ 2, 248 P.3d 350, 351 (same).

the parties.¹⁷ The private nature of this dispute incorporates a party's authority to waive his or her personal rights. However, a disciplinary proceeding is more than a merely private dispute, and a party's stipulation or admission *may* raise public interests relating to the merits and require the Court to consider those interests in addition to determining the discipline to be imposed.

¶ 21 Purposes of a lawyer disciplinary proceeding include, but are not limited to, protecting the public and the judiciary, preserving the integrity of the bar, and deterring similar misconduct by the attorney being disciplined and other members of the bar.¹⁸ In the context of a lawyer seeking to waive his or her personal rights by making admissions or stipulations as to unprofessional conduct and violations of the ORPC and RGDP, our opinions have recognized various public interests that require the Court to limit a lawyer's admission or stipulation in a particular proceeding. For example, a lawyer's attempt to waive certain personal procedural and substantive rights and admit to unprofessional conduct in the context of a resignation pending discipline is limited by public interest requirements for making a resignation effective.¹⁹ Another example has occurred in the

¹⁷ *State ex rel. Oklahoma Bar Ass'n v. Mothershed*, 2011 OK 84, ¶ 70, 264 P.3d 1197, 1223 ("A Bar disciplinary proceeding is adversarial in nature, and a lawyer subject to discipline is provided with a fair and open hearing before a trial panel with notice and opportunity to present evidence and argument.").

¹⁸ *State ex rel. Oklahoma Bar Ass'n v. Knight*, 2014 OK 71, at ¶ 11, 330 P.3d at 1220. *See also State ex rel. Oklahoma Bar Ass'n v. Godlove*, 2013 OK 38, ¶ 22, 318 P.3d 1086, 1094 (discipline is imposed to (1) preserve confidence in the Bar, (2) deter the respondent and other lawyers from similar conduct, and (3) to protect the public).

¹⁹ *State ex rel. Oklahoma Bar Ass'n v. Gasaway*, 1993 OK 133, 863 P.2d 1189, 1193 (The Court has declined to accept a resignation pending discipline "because it failed to specify with particularity the nature of the pending grievances, investigations, and other pending proceedings as required by Rule 8.1" of the Rules Governing Disciplinary Proceedings); *State ex rel. Oklahoma Bar Ass'n v. Perkins*, 1988 OK 65, 757 P.2d 825, 828 ("We do not consider a proffered resignation which is stated to take effect at some future date to be a resignation within the meaning of Rule 8.1 requiring our acceptance of same. We accordingly decline to accept the resignations as tendered.").

context of a trial panel proceeding when the Court has rejected admissions or stipulations when they were factually incorrect²⁰ or incorrect as a matter of law²¹ and raised a public interest issue. In summary, public interests may limit the lawyer's authority in making particular admissions or stipulations as to facts or law sought by the Bar.²² Thus, we have

²⁰ See, e.g., *State ex rel. Oklahoma Bar Ass'n v. Wilcox*, 2009 OK 81, ¶ 4, 227 P.3d 642, 647 ("Because stipulations are not binding on this Court, the stipulations must be supported by testimonial or documentary evidence to allow a meaningful review. . . . *When the documentary and testimonial evidence shows conclusively and unequivocally that the stipulations are factually incorrect, this Court will reject the stipulations*), (emphasis added). See also *Besly*, *McGee*, and *Johnston* cited in note 12, *infra*.

²¹ See, e.g., *State ex rel. Okla. Bar Ass'n v. Besly*, 2006 OK 18, ¶¶ 9, 29, 34-35, 136 P.3d 590, 596, 600-601, 602-603 (factually incorrect stipulation on the date certain documents were created could not support a stipulation that a provision of the ORPC was violated by creating the documents when the ORPC was not in effect when the documents were actually created); *State ex rel. Oklahoma Bar Ass'n v. McGee*, 2002 OK 32, ¶ 20, 48 P.3d 787, 792 ("Although Respondent has stipulated to violating Rule 1.2, ORPC, we have a duty to review the evidence *de novo* to determine if the allegations of misconduct are established by clear and convincing evidence. Stipulations of the parties and findings of fact and recommendations of the Tribunal are advisory, being neither binding nor persuasive."); *State ex rel. Oklahoma Bar Ass'n v. Johnston*, 1993 OK 91, 863 P.2d 1136, 1139, 1141, 1143 (In a professional disciplinary proceeding, a lawyer's stipulation or admission in the form of an agreed conclusion of law that his professional conduct violated Rule 8.4(c) of the ORPC did not prevent the Court from determining that the record failed to show the lawyer's motive [bad or evil intent] that was necessary for holding that the lawyer violated Rule 8.4).

²² We need not analyze specific public interests that may arise when the Bar seeks an admission from a lawyer in the context of a trial panel proceeding or a Rule 6.4 admission in the contexts of a lawyer appearing or not appearing at a trial panel hearing. But we note the following from *McGee* and *Johnston* cited in note 21 *supra*.

Public interests that may arise in a lawyer disciplinary proceeding include, but are not limited to, the public's interest in uniform non-retroactive enforcement of substantive rules impacting a Bar license. See, e.g., *Dolese Bros. Co. v. State ex rel. Okla. Tax Commission*, 2003 OK 4, ¶ 9, 64 P.3d 1093, 1098 (substantive rules are applied to conduct in effect when conduct occurred and not retroactively); *State ex rel. Oklahoma Bar Ass'n v. Flanery*, 1993 OK 97, 863 P.2d 1146, 1148 (whether a lawyer was charged with violating Rules of Professional Conduct or the former Code of Professional Responsibility was based upon which one was in effect on the date of the misconduct).

When a party combines an admission that a rule was violated with contrary or ambivalent trial panel evidence on one of the elements necessary to show a violation of that rule (such as ill motive), the issue arises whether the admission is binding on the Court. The Court's adjudication of a *public* interest will not be bound by a party's admission or stipulation. *State ex rel. State Ins. Fund v. JOA, Inc.*, 2003 OK 82, ¶¶ 6-7, 78 P.3d 534, 536-537 (law involving power or structure of government may not be adjudicated by waiver or stipulation of parties). Further, an admission or stipulation on an element used to define lawyer misconduct presents a question of law for this Court. *McQueen, Rains & Tresch, LLP v. Citgo Petroleum Corp.*, 2008 OK 66, ¶ 29, 195 P.3d 35, 45 (in the context of determining that a specific contract was not made *per se* unenforceable by the Oklahoma Rules of Professional Conduct, the Court treated the application of the scope of the Rules as a question of law for the Court). This Court has a nondelegable duty to define the elements of lawyer misconduct. *State ex rel. Oklahoma Bar Ass'n v. Garrett*, 2005 OK 91, ¶ 3, 127 P.3d 600, 602. Finally, lawyer misconduct must be shown by clear and convincing evidence. *State ex rel. Oklahoma Bar Ass'n v. Mansfield*,
(continued...)

often explained that admissions and stipulations must be supported by the record, and we will review the record to determine if a lawyer has violated the rules governing professional conduct.²³

¶ 22 When a lawyer has failed to file an answer to a formal complaint and failed to participate in a disciplinary hearing, the Court has found allegations of misconduct in the complaint deemed admitted and imposed discipline by a published order. In such cases, the Court reviews the entire disciplinary record, including the Complaint and a Bar's motion to deem the allegations admitted, and in the absence of public interests *appearing on the record* that would limit the scope of a Rule 6.4 admission, we may state our summary of

²²(...continued)

2015 OK 22, ¶ 14, 350 P.3d 108, 113.

The extent to which parties adjudicating *non-jurisdictional and private rights* may bind an appellate court on law used to adjudicate their controversy (such as parties defining the elements/defenses to an action; or admitting the existence of the action on the pleadings or evidence; or by omitting or raising their defenses to the action) when they use stipulations, admissions, or waivers presents a question not before us in this Bar disciplinary original proceeding. *But see, Keota Mills & Elevator v. Gamble*, 2010 OK 12, n. 31, 243 P.3d 1156, 1162 (in an action on a promissory note, parties presented stipulations that adjudication of action was determined by one of two statutes of limitation, but parties' litigation conduct could not prevent appellate court from applying third statute), and *Reddell v. Johnson*, 1997 OK 86, ¶¶ 7-8, 942 P.2d 200, 202-203 (when affirming trial court's grant of summary judgment in a negligence action, Court stated affirmative defenses must be raised by a party or they are waived, and intermediate appellate court erroneously applied a statute of limitations not pled by a party).

²³ See, e.g., *State ex rel. Oklahoma Bar Ass'n v. Ward*, 2015 OK 48, ¶ 31, 353 P.3d 509, 520 ("Admissions or stipulations must be supported by testimony and/or exhibits, and we will evaluate the weight and credibility of the evidence presented to determine if a lawyer has violated rules governing their professional conduct."); *State ex rel. Oklahoma Bar Ass'n v. Mansfield*, 2015 OK 22, ¶ 14, 350 P.3d 108, 113 (same); *State ex rel. Oklahoma Bar Ass'n v. Conrady*, 2012 OK 29, ¶ 6, 275 P.3d 133, 136 (same); *State ex rel. Oklahoma Bar Ass'n v. Cox*, 2011 OK 73, ¶ 10, 257 P.3d 1005, 1009 (same); *State ex rel. Oklahoma Bar Ass'n v. Smith*, 2011 OK 8, ¶ 14, 246 P.3d 1090, 1094 (Where respondent admitted to violations of both ORPC and RGDP, we stated that clear and convincing evidence supported the PRT's findings, and it remained for us to determine the appropriate discipline by looking to similar cases.); *State ex rel. Oklahoma Bar Ass'n v. Taylor*, 2003 OK 56, ¶ 2, 71 P.3d 18, 21 ("Even when the parties' stipulate to misconduct, the stipulations do not bind us for our duty is to review the evidence de novo to decide if misconduct allegations are established by clear and convincing evidence.").

the allegations deemed admitted and impose the appropriate discipline by an order.²⁴

¶ 23 We have stated “In Rule 8.4 cases we have examined the evidence for an improper motive for the misrepresentation. ‘A misrepresentation must be shown by clear and convincing evidence that the declarant had an underlying motive (i.e., bad or evil intent) for making the statement.’ We have looked at whether a lawyer was attempting to gain some advantage by a misrepresentation.”²⁵ We have applied this analysis examining intent and motive in both Rule 8.4 (c)²⁶ Rule 8.4(d)²⁷ matters. Intent is also involved in a Rule 8.4(b) matter, misconduct by committing a criminal act.²⁸ We have rejected an admission to a Rule 8.4 violation when the record showed that the underlying required

²⁴ See, e.g., *State ex rel. Oklahoma Bar Ass’n v. Kerr*, 2015 OK 40, 351 P.3d 749 (allegations deemed admitted pursuant to Rule 6.4 and order of disbarment issued after stating that: “The disciplinary proceedings, and all five counts of misconduct concern the respondent’s mishandling client’s bankruptcy cases and funds and his failure to communicate with clients and to the Bar Association.”); *State ex rel. Oklahoma Bar Ass’n v. Reynolds*, 2015 OK 17, 348 P.3d 208 (allegations deemed admitted pursuant to Rule 6.4 and order of disbarment issued after stating that: “The disciplinary proceedings, and all four counts of misconduct concern the respondent’s embezzlement of his client’s funds and his failure to communicate with clients and to the Bar Association.”).

²⁵ *State ex rel. Oklahoma Bar Ass’n v. Scroggs*, 2003 OK 21, ¶ 11, 70 P.3d 821, 826.

²⁶ *State ex rel. Oklahoma Bar Ass’n v. Wilcox*, 2014 OK 1, ¶ 35, 318 P.3d 1114, 1125, citing *Besly*, 2006 OK 18, 136 P.3d 590 and *Taylor*, 2003 OK 56, 71 P.3d 18. See also *State ex rel. Oklahoma Bar Ass’n v. Young*, 2007 OK 92, ¶ 29, 175 P.3d 371 (noting the intent element and stating respondent’s deceit violated Rule 8.4(c)); *State ex rel. Oklahoma Bar Ass’n v. Loeliger*, 2005 OK 79 ¶ 19, 127 P.3d 591 (noting intent element of Rule 8.4(c)).

²⁷ *State ex rel. Oklahoma Bar Ass’n v. Mansfield*, 2015 OK 22, ¶ 37, 350 P.3d 108, 120 (“ORPC Rule 8.4(d) provides it is professional misconduct for a lawyer to ‘engage in conduct that is prejudicial to the administration of justice.’ To establish a violation of ORPC 8.4(d), ‘[t]he interference contemplated must be serious’ and must include some element of ‘deceit, dishonesty, misrepresentation, criminality, sexual misbehavior or other morally reprehensible conduct.’”).

²⁸ See, e.g., *State ex rel. Oklahoma Bar Ass’n v. Dobbs*, 2004 OK 46, ¶ 28, 94 P.3d 31, 47-48 (“That admission would be sufficient to prove the element of intent in a criminal prosecution for perjury and it is sufficient to warrant professional discipline under Rule 8.4(b)”).

motive was not present.²⁹

¶ 24 The Bar refers to violations of both Rule 8.4³⁰ and Rule 8.4 (d). The Bar stated Knight violated 8.4(d), conduct prejudicial to the administration of justice, by his failure upon suspension to formally withdraw from the criminal proceedings where he was representing criminal defendants and the fact of his misrepresenting his Bar status to the court.³¹ The assistant district attorney and the trial judge agreed Knight's representation of his clients had been professional except for the failure to immediately file a motion to withdraw upon his suspension. They could not point to any advantage gained by Knight when he failed to withdraw upon suspension. They could not point to any detriment suffered by Knight's clients when he failed to withdraw upon suspension. The Bar did not present evidence of any monetary advantage Knight may have tried to gain by a delay in withdrawing from the cases. The Bar elicited testimony on the *potential* adverse circumstance created by a lawyer not withdrawing after a suspension of the lawyer's license; that is, a defendant using the lawyer's suspension as a basis for an appeal of a

²⁹ *State ex rel. Oklahoma Bar Ass'n v. Johnston*, 1993 OK 91, 863 P.2d 1136, 1139, 1141, 1143.

³⁰ For example, in the formal Complaint the Bar alleges a violation of "8.4, ORPC" and in its brief the Bar alleges both a violation of Rule 8.4 and Rule 8.4(d).

³¹ 5 O.S. 2011 Ch. 1, App. 3-A, Rule 8.4, ORPC:

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

his or her criminal judgment and conviction.

¶ 25 Knight testified he was ignorant of the proper ethical standards. Ignorance may be intentional or willful. For example, it has been a truism in different areas of the law that ignorance of facts provides no defense where ignorance is intentional and deliberate in circumstances that would, or should, require an ascertainment of the facts.³² While Knight's testimony shows that his conduct appears to be an intentional ignorance of his ethical obligations, the evidence fails to show a bad or evil motive for his failure to timely withdraw from the proceedings. We decline to accept part of the Rule 6.4 admission as it relates to a violation of ORPC 8.4 and Knight's failure to withdraw in a timely manner when representing criminal defendants.³³

¶ 26 The Bar argued that Rule 3.3 of the ORPC was violated by false statements of fact to a tribunal and Knight's failure to correct those false statements by (1) appearing in open court and arguing for his clients when he did not have a Bar license in good standing and (2) for failing to state the real reason for his motion to withdraw.³⁴ Knight

³² See, e.g., *Amazon Fire Ins. Co. v. Bond*, 1917 OK 96, 165 P. 414, 418, quoting *Ballard v. Nye*, 138 Cal. 596, 72 Pac. 159, (1903) (discussing the concept of facts putting a principal upon inquiry).

³³ We note that at one point in the proceeding Knight was expressly questioned by a member of the trial panel whether his claim of a lacking intention to violate an ethical rule was a defense by him to the Bar's claim he violated an ethical rule or if it was merely put forward by him for the purpose of mitigating discipline. The Bar, Knight, and the trial panel members did not address whether a respondent may admit to a violation of a particular rule when absent from the complaint's allegations and trial panel record are elements necessary to show a violation of that rule.

³⁴ 5 O.S. 2011 Ch.1, App. 3-A, Rule 3.3, ORPC:
Rule 3.3 Candor toward the tribunal.
(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called
(continued...)

admitted in the trial panel proceeding he had not stated the fact of his suspension in the motion to withdraw because "I didn't want my client to know the reason why I had done this."

¶ 27 A lawyer has a duty to know both the Oklahoma Rules Governing Disciplinary Proceedings and the Oklahoma Rules of Professional Conduct.³⁵ Knight stated that in 2014 he was not sure of the effective date of his suspension order. Knight did *not* contact the Bar in an attempt to discover the effective date of the Court's order.

¶ 28 We have explained for the purpose of Rule 3.3, a lawyer's professed subjective belief when representing a fact to a tribunal will be rejected when we determine the lawyer could not have reasonably believed what he or she claimed.³⁶ Knight represented to the trial court that he was a licensed lawyer. He believed this was correct because he had the subjective belief that he was licensed until "the very, very end of August or - - or the first week of September." We do not believe that Knight, or any licensed lawyer of this Court, could reasonably believe Knight's method for calculating an effective date for a suspension order and seek to apply it indeterminately across a week

³⁴(...continued)

by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

³⁵ 5 O.S. Ch. 1, App. 1-A, Rule 1.5, Rules Governing Disciplinary Proceedings states that lawyers will be disciplined in accordance with the Rules of Professional conduct.

"Rule 1.5, Oklahoma Rules of Professional Conduct

This Court has adopted the Oklahoma Rules of Professional Conduct, adopted by American Bar Association, acting through its House of Delegates on August 2, 1983, and adopted by the House of Delegates of the Oklahoma Bar Association on November 21, 1986, as subsequently modified by this Court, and as it may hereafter be modified by this Court, as the standard of professional conduct of all lawyers. *Any lawyer violating these Rules of Professional Conduct shall be subject to discipline, as herein provided.*" (emphasis added).

³⁶ *State ex rel. Oklahoma Bar Ass'n v. Dobbs*, 2004 OK 46, ¶ 37, 94 P.3d 31, 51.

to two-week period of time. Knight's defense of subjective ignorance does not excuse him from a Rule 3.3 prohibition of knowingly making a false statement of fact or law to a tribunal. We find no issue to prevent Knight's admission to Rule 3.3 violations.

¶ 29 ORPC 3.4(c) states that a lawyer shall not *knowingly* disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. Knight's subjective belief concerning his Bar status is unreasonable after he received notification of his suspension.

¶ 30 We have reviewed the entire record before us. There is no public interest present in the proceeding that would act to limit the scope of Knight's Rule 6.4 admission beyond that discussed herein concerning Rule 8.4. We agree with the trial panel and deem the allegations of the Complaint admitted with the single exception of an admission that Rule 8.4 was violated by Knight's untimely motion to withdraw and his misrepresentation of his Bar status.

VI. Discipline and Costs

¶ 31 Knight received a one-year suspension effective August 6, 2014. *State ex rel. Oklahoma Bar Ass'n v. Knight*, 2014 OK 71, 330 P.3d 1216. On June 15, 2015 Knight's license to practice law was suspended for nonpayment of his Oklahoma Bar Association dues. *In the Matter of Suspension of Members of the Oklahoma Bar Association for Nonpayment of Dues*, 2015 OK 46 (S.C.B.D. No. 6272). Knight's license to practice is currently suspended.

¶ 32 The Complaint alleges the prior discipline with a reference to this Court's

opinion. The Court may consider prior discipline for the purpose of enhancement of discipline.³⁷ When the Bar seeks enhancement of discipline based upon former discipline it must allege the former discipline for the purpose of enhancement to give notice to the respondent.³⁸ Pleading the prior discipline in the Complaint gives notice to a respondent that the prior discipline may be used for enhancement purposes.³⁹ Knight's previous conduct resulting in prior discipline was before the trial panel.

¶ 33 In lawyer discipline proceedings the Court utilizes a complete record and seeks to impose equal or uniform discipline in order to avoid the vice of disparate treatment given to those being disciplined.⁴⁰ We have examined the record. Knight had notice of his suspension prior to his court appearances.⁴¹ Discipline imposed for the practice of law while the lawyer was suspended by this Court has varied because of the additional violations of the ORPC that are found in all of these opinions, and discipline has ranged

³⁷ *State ex rel. Oklahoma Bar Ass'n v. Wilburn*, 2010 OK 25, ¶ 10, 236 P.3d 79, 81.

³⁸ See also 5 O.S.2011 Ch. 1, App. 1-A, Rule 6.2, Rules Governing Disciplinary Proceedings: Rule 6.2 Contents of formal complaint

The complaint shall set forth the specific facts constituting the alleged misconduct, and if prior conduct resulting in discipline, or evidence from prior investigations, is relied upon to enhance discipline, the prior acts or conduct relied upon shall be set forth.

³⁹ *State ex rel. Oklahoma Bar Ass'n v. Minter*, 1998 OK 59, ¶ 18, 961 P.2d 208, 212-213.

⁴⁰ *State ex rel. Oklahoma Bar Ass'n v. Clausing*, 2009 OK 74, ¶ 5, 224 P.3d 1268, 1273. See also *State ex rel. Oklahoma Bar Ass'n v. Godlove*, 2013 OK 38, ¶ 22, 318 P.3d 1086, 1094 ("Although this Court strives to administer discipline in a uniform manner, each proceeding is unique, and, thus, discipline must be determined on a case-by case basis.").

⁴¹ We are not presented with the circumstance of a lawyer appearing in court without notice of a suspension. See, e.g., *State ex rel. Oklahoma Bar Ass'n v. Whitworth*, 2008 OK 22, ¶¶ 25-28, 183 P.3d 984 (lawyer's court appearance two days after this Court's order suspending his license was not the unauthorized practice of law when no evidence showed that lawyer had notice of the suspension prior to the appearance).

from public censure to disbarment.⁴²

¶ 34 We have recently stated “We have ‘generally imposed severe discipline for the unauthorized practice of law by a lawyer whom we have suspended.’”⁴³ In *State ex rel. Oklahoma Bar Ass’n v. Running*,⁴⁴ the respondent also did not cease practicing law upon suspension for non-payment of dues or inform his clients as required by Rule 9.1.⁴⁵ The lawyer in *Running* was suspended for two years and one day.

¶ 35 Knight practiced law after his license had been suspended for one year in a disciplinary proceeding. Knight failed to notify his clients and knowingly represented himself to the trial court as a licensed lawyer when he knew he had been suspended. Knight failed to fully cooperate with the Bar’s investigation. Knight has received previous discipline. We have considered Knight’s recommendation that his conduct warrants a license suspension of one year.

⁴² See, e.g., *In re Reinstatement of Munson*, 2010 OK 27, n. 32, 236 P.3d 96, 104-105 (lawyers who engaged in the unauthorized practice of law and violated other provisions of the ORPC/RGDP received suspensions of public censure, six months, nine months, two years and one day, and disbarred).

⁴³ *State ex rel. Oklahoma Bar Ass’n v. Malloy*, 2006 OK 38, ¶ 12, 142 P.3d 383, 387.

⁴⁴ *State ex rel. Oklahoma Bar Ass’n v. Running*, 2011 OK 75, 262 P.3d 736.

⁴⁵ 5 O.S. 2011 Ch. 1, App. 1-A, Rule 9.1, Rules Governing Disciplinary Proceedings.
Rule 9.1 Notice to clients; List of other bars to which omitted

When the action of the Supreme Court becomes final, a lawyer who is disbarred or suspended, or who has resigned membership pending disciplinary proceedings, must notify all of the lawyer’s clients having legal business then pending within twenty (20) days, by certified mail, of the lawyer’s inability to represent them and the necessity for promptly retaining new counsel. If such lawyer is a member of, or associated with, a law firm or professional corporation, such notice shall be given to all clients of the firm or professional corporation, which have legal business then pending with respect to which the disbarred, suspended or resigned lawyer had substantial responsibility. The lawyer shall also file a formal withdrawal as counsel in all cases pending in any tribunal. The lawyer must file, within twenty (20) days, an affidavit with the Commission and with the Clerk of the Supreme Court stating that the lawyer has complied with the provisions of this Rule, together with a list of the clients so notified and a list of all other State and Federal courts and administrative agencies before which the lawyer is admitted to practice. Proof of substantial compliance by the lawyer with this Rule 9.1 shall be a condition precedent to any petition for reinstatement.

¶ 36 A lawyer practicing law in criminal matters should not need the trial judge and assistant district attorney to monitor the lawyer's status as a lawyer and request the lawyer's withdrawal after being suspended by this Court. The Bar's allegations of Knight's misconduct are admitted except as limited herein. We hereby impose a suspension of Knight's license to practice law for a period of two years and one day commencing on the date this opinion is final.

¶ 37 The Bar filed an application pursuant to Rule 6.16 to assess costs against Knight in the amount of one-thousand, eight hundred and fifty-four dollars and ninety-six cents (\$1,854.96). Rule 6.16 provides the costs of the investigation, record and disciplinary proceedings shall be surcharged against the disciplined lawyer, unless remitted for good cause by this Court.⁴⁶ The Bar's application is granted. Rule 6.16 requires the costs to be paid within ninety (90) days. Knight is ordered to pay costs in the amount of one-thousand, eight hundred and fifty-four dollars and ninety-six cents (\$1,854.96) within ninety (90) from the date this opinion is final.

VII. Conclusion

¶ 38 Knight violated the Rules Governing Disciplinary Proceedings and the Oklahoma Rules of Professional Conduct. Knight's license to practice law is suspended for two years and one day commencing on the date this opinion is final. Knight shall pay

⁴⁶ 5 O.S.2011 Ch. 1, App. 1-A, Rule 6.16, Rules Governing Disciplinary Proceedings: "The costs of investigation, the record, and disciplinary proceedings shall be advanced by the Oklahoma Bar Association (or the Professional Responsibility Commission, if provision therefor has been made in its budget). Where discipline results, the cost of the investigation, the record, and disciplinary proceedings shall be surcharged against the disciplined lawyer unless remitted in whole or in part by the Supreme Court for good cause shown. Failure of the disciplined lawyer to pay such costs within ninety (90) days after the Supreme Court's order becomes effective shall result in automatic suspension from the practice of law until further order of the Court."

costs in the amount of \$1,854.96 within ninety from the date this opinion is final.

¶ 39 REIF, C. J., KAUGER, WINCHESTER, EDMONDSON, COLBERT, and GURICH, JJ, concur.

¶ 40 COMBS, V. C. J., WATT and TAYLOR, JJ, dissent.

¶ 41 COMBS, V. C. J., joined by WATT and TAYLOR, JJ.: I would disbar the respondent.

I, Michael S. Richie, Clerk of the Appellate Courts of the State of Oklahoma do hereby certify that the above and foregoing is a full, true and complete copy of the Opin in the above entitled cause, as the same remains on file in my office.

In Witness Whereof I hereunto set my hand and affix the Seal of said Court at Oklahoma City, this 21st day of June 2016.

By [Signature] Clerk
DEPUTY