



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

IN THE MATTER OF §
GWENDOLYN JEAN SHOTWELL § CAUSE NO. 64557
STATE BAR CARD NO. 18304210 §

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called “Petitioner”), brings this action against Respondent, Gwendolyn Jean Shotwell, (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 Gwendolyn Jean Shotwell, 3171 S. Emerson Street, Englewood, Colorado 80113.

3. A Stipulation, Agreement and Affidavit Containing the Respondent’s Conditional Admission of Misconduct was entered in the Supreme Court, State of Colorado, Before the Presiding Disciplinary Judge, in a matter styled: *Complainant: The People of the State of Colorado, Respondent: Gwendolyn Jean Shotwell, #32238*. (Exhibit 1)

4. On or about November 8, 2019, an Order Approving Conditional Admission of Misconduct and Imposing Sanctions Under C.R.C.P. 251.22 was entered in the Supreme Court, State of Colorado, Before the Office of the Presiding Disciplinary Judge, in a matter styled:

Complainant: The People of the State of Colorado, Respondent: Gwendolyn Jean Shotwell, #32238, Case No. 19PDJ075, that states in pertinent part as follows:

. . . Upon review of the stipulation, the Court ORDERS:

1. The stipulation is APPROVED.
2. GWENDOLYN JEAN SHOTWELL, attorney registration number 32238, is SUSPENDED from the practice of law for a period of ONE YEAR AND ONE DAY, ALL TO BE STAYED upon the successful completion of a ONE-YEAR period of PROBATION, subject to the conditions set forth in paragraphs 17 and 18 of the stipulation.
3. Respondent violated Colo. 8,4(b) . . .

(Exhibit 2).

5. In the Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct Respondent admitted the following: In April 2019, Shotwell pleaded guilty to two charges in Denver District Court. The first count was a fourth-degree felony charge of driving under the influence with three priors. The second count was a misdemeanor count of driving under the influence per se. Shotwell received a three-year deferred judgment and sentence with probationary conditions and community service. She also served ninety days in the Denver County jail RISE program and paid court costs and fees, and she is completing 160 hours of counseling. The numerous mitigating factors present in this case include that Shotwell was immediately suspended from the practice of law in June 2019 based on her felony conviction. Through her conduct, Shotwell violated Colo. RPC 8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects). The case file is public per C.R.C.P. 251.31.

6. Copies of the Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct and Order Approving Conditional Admission of

Misconduct and Imposing Sanctions Under C.R.C.P. 251.22 are attached hereto as Petitioner's Exhibits 1 and 2, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 and 2 at the time of the hearing in this case.

7. 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 the State of Colorado and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

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Chief Disciplinary Counsel

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Amanda M. Kates
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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 Gwendolyn Jean Shotwell, by personal service.

Gwendolyn Jean Shotwell
3171 S. Emerson Street
Englewood, Colorado 80113



Amanda M. Kates

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

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INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. 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 [17.01] 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 must 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 [2.22], 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 [2.22], 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.

II. 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.

III. 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.

IV. 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 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21 [2.20].

(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 [2.20].

(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 [2.23], 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

(6¹) 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.

¹ So in original.

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 [2.26]. 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 affirmance 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.

V. 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 [2.22].

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23 [2.22], 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.

VI. 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 must 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.

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. 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.

VIII. 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 must 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 must comply with Rule 1.06.

(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.

IX. 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.

X. 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.

SUPREME COURT, STATE OF COLORADO

ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE
PRESIDING DISCIPLINARY JUDGE

1300 Broadway, Suite 250
Denver, Colorado 80203

Complainant:
THE PEOPLE OF THE STATE OF COLORADO

Respondent:
GWENDOLYN JEAN SHOTWELL, # 32238

Erin Robson Kristofco, #33100
Assistant Regulation Counsel
Attorneys for Complainant
1300 Broadway, Suite 500
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▲ COURT USE ONLY ▲

Case Number:

**STIPULATION, AGREEMENT AND AFFIDAVIT CONTAINING THE
RESPONDENT'S CONDITIONAL ADMISSION OF MISCONDUCT**

On this day of November 2019, Erin R. Kristofco, Assistant Regulation Counsel and attorney for the complainant, Gwendolyn Jean Shotwell, the Respondent who is represented by attorney John Scott Gleason in these proceedings, enter into the following Stipulation, Agreement, and Affidavit Containing Respondent's Conditional Admission of Misconduct ("Stipulation") and submit the same to the Presiding Disciplinary Judge for his consideration.

RECOMMENDATION: Suspension for one year and one day, all stayed upon successful completion of a one year probation, with conditions including compliance with all terms of Respondent's criminal deferred judgment and sentence, ethics school and payment of costs.

1. The Respondent has taken and subscribed to the oath of admission, was admitted to the bar of this Court on October 16, 2000, and is registered as an attorney upon the official

EXHIBIT

1

records of this Court, registration no. 32238. Respondent is subject to the jurisdiction of this Court and the Presiding Disciplinary Judge in these proceedings.

2. Respondent enters into this Stipulation freely and voluntarily. No promises have been made concerning future consideration, punishment, or lenience in the above-referenced matter. It is Respondent's personal decision, and Respondent affirms there has been no coercion or other intimidating acts by any person or agency concerning this matter.

3. This matter has not become public under the operation of C.R.C.P. 251.31(c) as amended. However, Respondent specifically acknowledges that, if the Presiding Disciplinary Judge should decide to accept this Stipulation, and impose the agreed-to discipline contained herein, then this Stipulation and the discipline imposed will be matters of public record.

4. Respondent is familiar with the rules of the Colorado Supreme Court regarding the procedure for discipline of attorneys and with the rights provided by those rules. Respondent acknowledges the right to a full and complete evidentiary hearing on the above-referenced complaint. At any such hearing, Respondent would have the right to be represented by counsel, present evidence, call witnesses, and cross-examine the witnesses presented by Complainant. At any such formal hearing, Complainant would have the burden of proof and would be required to prove the charges contained in the complaint with clear and convincing evidence. Nonetheless, having full knowledge of the right to such a formal hearing, Respondent waives that right.

5. Respondent and Complainant specifically waive the right to a hearing pursuant to C.R.C.P. 251.22(c)(1).

6. Respondent and Complainant stipulate to the following facts and conclusions:

a) On April 1, 2019, Ms. Shotwell pleaded guilty to two charges in Denver District Court case number: 2019CR000115, as follows:

Count One: Driving Under the Influence With 3 Priors; CRS §42-4-1301(1)(a); Felony 4

Count Five: Driving Under the Influence Per Se; CRS §42-4-1301(2)(a); Misdemeanor.

b) Respondent was sentenced to a three year deferred judgment, served 90 days in jail, three years probation, community service, and she paid \$3,762.50 in court costs and fees.

c) Respondent is also completing 160 hours of counseling. Respondent may receive early termination of her probation, as it is estimated she will complete all aspects of her probation on or before April 2022.

d) Respondent timely self-reported her conviction to OARC on April 12, 2019.

e) The People petitioned for Respondent's immediate suspension based on deferred

judgment for a felony. Respondent did not object and she was immediately suspended on June 10, 2019, per C.R.C.P. 251.20(d), in case 19SA96.

- f) Through Respondent's conduct described above, Respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 251.5. Respondent has also violated Colo. RPC 8.4(b).

7. Pursuant to C.R.C.P. 251.32, Respondent agrees to pay costs in the amount of \$224.00 (a copy of the statement of costs is attached hereto as **Exhibit A**) incurred in conjunction with this matter within thirty-five (35) days after acceptance of the Stipulation by the Presiding Disciplinary Judge, made payable to Colorado Supreme Court Attorney Regulation Offices. Respondent agrees that statutory interest shall accrue from thirty-five (35) days after the Presiding Disciplinary Judge accepts this Stipulation. Should Respondent fail to make payment of the aforementioned costs and interest within thirty-five (35) days, Respondent specifically agrees to be responsible for all additional costs and expenses, such as reasonable attorney fees and costs of collection incurred by Complainant in collecting the above stated amount. Complainant may amend the amount of the judgment for the additional costs and expenses by providing a motion and bill of costs to the Presiding Disciplinary Judge, which identifies this paragraph of the Stipulation and Respondent's default on the payment.

8. This Stipulation represents a settlement and compromise of the specific claims and defenses pled by the parties, and it shall have no meaning or effect in any other lawyer regulation case involving another respondent attorney.

9. This Stipulation is premised and conditioned upon acceptance of the same by the Presiding Disciplinary Judge. If for any reason the Stipulation is not accepted without changes or modification, then the admissions, confessions, and Stipulations made by Respondent will be of no effect. Either party will have the opportunity to accept or reject any modification. If either party rejects the modification, then the parties shall be entitled to a full evidentiary hearing; and no confession, Stipulation, or other statement made by Respondent in conjunction with this offer to accept discipline of suspension of one year and one day, all stayed, with conditions, may be subsequently used. If the Stipulation is rejected, then the matter will be heard and considered pursuant to C.R.C.P. 251.18.

10. Respondent's counsel, John Scott Gleason, hereby authorizes Respondent, Gwendolyn Shotwell, and the non-lawyer individual in the Office of Attorney Regulation Counsel who is responsible for monitoring the conditions set forth herein to communicate directly concerning scheduling and administrative issues or questions. Respondent's counsel will be contacted concerning any substantive issue which may arise.

11. Prior to entering into this Stipulation, Complainant and Respondent have read and carefully considered the language of C.R.S. §18-1.3-401(3), which provides:

Every person convicted of a felony, whether defined as such within or outside this code, shall be disqualified from ... practicing as an attorney in any courts of this state during the actual time of confinement or commitment to imprisonment or release from actual

confinement on conditions of probation....

a) The parties agree that the statute C.R.S. §18-1.3-401(3), does not preclude the agreed upon sanction in this matter. Furthermore, as noted below, the attorney discipline cases related to the statute do not preclude the Court from accepting this Stipulation. The analysis must begin with the specific wording of both the statute and C.R.C.P. 251.20(e) & (h). Rule 251.20(e)(1) describes a serious crime as “any felony.” Rule 251.20(h) defines conviction to include a plea of guilty “irrespective of whether entry of judgment or imposition of sentence is suspended or deferred by the court.” However, application of the language in Rule 251.20(h) is limited to the Rules of Procedure Regarding Attorney Discipline and Disability Proceedings. Specifically, Rule 251.20(h) states in pertinent part: “Conviction Defined. The term conviction **as used in these Rules....**” (Emphasis added). The Respondent’s immediate suspension is based on the application of this definition to the requirements of Rule 251(d)(conviction of serious crime – immediate suspension).

b) C.R.S. §18-1.3-401(3) incorporates the definition of conviction set forth in Rule 251.20(h). Specifically, the pertinent language of the statute states: “[E]very person convicted of a felony, **whether defined as such within or outside this code...**” (emphasis added). However, later in the same statute, the language related to the “disqualification from...practicing as an attorney” does have limiting language. Specifically, the statute applies to “an attorney...**during the actual time of confinement or commitment to imprisonment or release from actual confinement on conditions of probation.**” (emphasis added). The Respondent in this matter was confined for a period of 90 days in the Denver County Jail (RISE Program) and released on the terms provided herein. She was never imprisoned. .

c) In an attorney reinstatement case the Supreme Court construed the application of C.R.S. §18-1.3-401(3) to disqualification of a convicted felon practicing law under the terms of the statute. *In the Matter of Michael T. Miranda*, 289 P.3d 957 (Colo. 2012). Miranda pled guilty to vehicular homicide/DUI, a class three felony under C.R.S. 18-3-106(1)(b)(l). *Id.* at 958. The Court held that Miranda could not be reinstated to practice law until he completed his felony sentence. *Id.* The facts in *Miranda* are substantially different from the facts in this Stipulation.

1. The attorney in *Miranda* was sentenced to **actual confinement** for a period of eight years followed by five years of mandatory parole. (Emphasis added). The Respondent in this matter received a deferred judgment and sentence, and is not serving parole.
2. The attorney in *Miranda*, although confined to the Department of Corrections when he initially filed his petition for reinstatement, was serving mandatory parole at the time of his initial reinstatement hearing. *Id.* at 959. The attorney’s mandatory parole included “nine standard and nine ‘additional conditions’...as well as the twenty-plus directives dictated by his parole officer.” The Respondent in this matter is not serving parole and is not subject to any similar conditions. The Respondent is on *probation* and her terms of probation require as follows: a. monitored sobriety with random UA’s throughout the entire length of her probation; b. successfully

complete MRT (moral reconnection therapy) (she is nearly done with the requirement); c. 180 hours of level II treatment (she is nearly done with the requirement); d. pay all fines and costs; e. 24 hours community service; e. meet with her probation officer as required; and, f. attend all required court appearances. There are no terms of probation that limit the Respondent's ability to represent clients. Interestingly, although the term *probation* is used in conjunction with a deferred sentence/judgment it is more akin to "probation-like" terms. "A deferred judgment and sentence, as authorized by statute, is a unique dispositional alternative to the traditional guilty plea. *People v. Widhalm*, 642 P.2d 498, 500 (Colo.1982). Under section 18-1.3-102(1), C.R.S. (2013), a court may defer entry of judgment of conviction and imposition of sentence on a defendant's guilty plea for up to four years. See *Kazadi v. People*, 291 P.3d 16, 21 (Colo. 2012). In exchange for the continuance, the defendant stipulates to probation-like conditions of supervision. § 18-1.3-102(2); *Kazadi*, 291 P.3d at 21.

3. The attorney in *Miranda* was subject to mandatory parole which "constitutes part of a felon's sentence." Additionally, the Court held that a "felony offender's penalty or sentence consists of both an incarceration element and a mandatory parole element." *Miranda*, 289 P.3d 960 (Colo. 2012). The Respondent here is not on parole. As such, the Respondent is not subject to the restriction in the statute that requires a felon to complete her "felony sentence before becoming eligible...to practice law." *Id.*
4. The attorney in *Miranda* lost his civil rights due to his felony conviction. *Id.* at 961. The Respondent here was not convicted of a felony as defined under the criminal statutes, and did not lose her civil rights.

d) Toward the end of the Court's decision in *Miranda* it talks about the use of the term probation versus parole in the statute. *Id.* at 962. The language is confusing and if applied literally in this matter would result in an untenable and unwarranted result. As stated in *Miranda* the court in *Danielson v. Dennis*, 139 P.3d 688, 692 (Colo. 2006) noted that parole did not exist at the time Colorado enacted its constitution. Colorado adopted the concept of parole in 1899. *Id.* at 692. (The precursor statute to the current statute is C.R.S. 1963, 39-10-17. The statute, as then written, barred anyone convicted of a felony from ever practicing as an attorney. See, *People v. Buckles*, 453 P.2d 404 (Colo. 1968)). The critical distinction between parole and probation is that someone paroled remains in the legal custody of the penitentiary. Furthermore, a person on parole is still serving out "his full term of imprisonment." *Danielson*, 139 P. 3d 691-693 (Colo. 2006). Probation, on the other hand, is "an alternative to a prison sentence." *Id.* at 963. The confusing and troubling (for purposes of this Stipulation) statement by the Court is its holding that the statute applies "equally to parolees and persons on probation pursuant to a felony conviction." *Miranda*, 289 P.3d 962 (Colo. 2012). Virtually immediately following this statement the Court distinguishes the parolees from probation by concluding that the "Legislature has used its police power to bar convicted felons from practicing law in our courts while they serve out their sentences." *Id.* at 963. Arguably, the Court was simply referring to the antiquated language of the statute and was not using the terms parole and probationary

interchangeably. The practical difference between the two terms is significant and important to the Court's analysis of this Stipulation.

e) The untenable and unwarranted result (if this Court were to interpret *Miranda* as to preclude this Stipulation) would be that the Respondent would remain suspended (based on her immediate suspension pursuant to C.R.C.P. 251.20(d)) until her probation status likely ends in April 2022, while at the same time disciplinary case law warrants a fully stayed suspension for similar misconduct.

f) As such, the Parties argue that based on the facts of this case the Court should accept this Stipulation because: (1) the Respondent has not been convicted for purposes of applying C.R.S. 18-1.3-401(3), but rather received a deferred sentence/judgment; (2) the Respondent is not on parole; (3) the Respondent is not limited in her ability to represent clients; and, (4) applying the statute would result in an unfair and unreasonable result.

PRIOR DISCIPLINE

12. Since June 10, 2019, Respondent has been on immediate suspension per C.R.C.P. 251.20(d), based on her plea to a felony. The case no. is 19SA96. Respondent has no other prior discipline.

ANALYSIS OF DISCIPLINE

13. Respondent underwent a voluntary and independent medical and mental health evaluation by Dr. Doris Gundersen in August 2019. Dr. Gundersen's recommendation is as follows:

In summary, Ms. Shotwell suffers from an Alcohol Use Disorder of moderate severity. It is my professional opinion, stated with reasonable medical certainty that she is able to practice law with reasonable skill and safety from a medical/psychiatric perspective in the context of ongoing treatment and urine drug screen monitoring. I would recommend that in addition to her current recovery activities, she consider utilizing COLAP as a resource as well as attending Lawyers Helping Lawyers meetings. Because of her interest in physical fitness, I would also recommend that she explore Phoenix Multisport which sponsors physical fitness activities for individuals in recovery.

A period of approximately 18 years passed between her second and third DUI. The conduct which led to her third DUI was inconsistent with her conduct for the past nearly two decades. There was no accident associated with her recent DUI.

14. Pursuant to American Bar Association *Standards for Imposing Lawyer Sanctions* 1991 and Supp. 1992 (“ABA *Standards*”), §3.0, the Court should consider the following factors generally:

- a. The duty violated: Respondent violated her duty to maintain personal integrity, and to comply with the criminal laws of Colorado.
- b. The lawyer’s mental state: Knowing.
- c. The actual or potential injury caused by the lawyer’s misconduct: Respondent caused potential injury to the public by driving while intoxicated. By violating the criminal laws of Colorado, Respondent caused injury to the legal profession by undermining the public trust in the profession.
- d. The existence of aggravating or mitigating factors:

ABA Standard 9.22: Aggravating factors present:

(k) illegal conduct, including that involving the use of controlled substances. Respondent was convicted for driving under the influence of alcohol.

ABA Standard 9.32: Mitigating factors present:

(a) absence of a prior disciplinary record; Although Respondent is currently immediately suspended per C.R.C.P. 251.20(d), based on her plea to the felony at issue here, Respondent had no prior discipline.

(b) absence of a dishonest or selfish motive; Respondent relapsed into alcohol use and had no dishonest or selfish motive.

(c) personal or emotional problems; Respondent’s confidential IME is attached as **Exhibit B**, filed under seal.

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; Respondent has been responsive and cooperative throughout the disciplinary investigation.

(k) imposition of other penalties or sanctions; Respondent has or will pay all costs and fines assessed as part of her criminal prosecution.

(l) remorse; Respondent is very remorseful for her conduct and regrets her lapse in maintaining her personal integrity.

15. Pursuant to ABA *Standard* § 5.12,

Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

16. In support of the sanction stipulated by the parties in this matter, the following cases are similar and support the agreed upon sanction. Some of the cases below are opinions and findings of a hearing board, or discipline imposed by the Presiding Disciplinary Judge after accepting a Conditional Admission of Misconduct. The parties cite these cases fully cognizant of the Supreme Court's language in *In re Roose*, 63 P.3d 43, 47 (Colo. 2003) in which Justice Coats wrote for the Court,

. . . [E]very case proceeds before a different panel and the outcome of that case cannot logically be controlled by cases decided by a previous Hearing Board. On the other hand, opinions issued by the Hearing Boards are officially published for the benefit of the profession in order to advise and instruct practicing attorneys of conduct that has resulted in discipline, the basis for and severity of the discipline, and the reasoning of the Hearing Board. In addition, the opinions of the Hearing Boards serve to instruct and guide, but not bind, future Hearings Boards in their decisions; and serve to inform the public of the proceedings.

The rationale of the Hearing Board in a particular case can neither serve as *stare decisis* precedent for future cases nor constitute the law of the jurisdiction. This court, and only this court, has the power to determine the law of this jurisdiction as applied in disciplinary proceedings. In the event a Hearing Board decision is not appealed to us, or for any other reason we do not address a legal interpretation of the board, this court's silence cannot be understood as an implicit adoption of the Hearing Board's conclusions of law so as to be entitled to *stare decisis* effect in future proceedings.

Id.

Prior decisions of hearing boards and the PDJ are not cited herein in any way as being binding on the PDJ; rather they are cited as being helpful to determine the proportionality of the agreed upon sanction in this case. And, Justice Coats made an additional point in *Roose*:

The purpose behind the creation of these [ABA] Standards [for Imposing Lawyer Sanctions] was to enhance the consistency of sanctions imposed in attorney disciplinary proceedings. *See* ABA Standards, Preface.

Id.

Consistency is important in attorney discipline matters and it is important to gauge consistency by what both the PDJ and the Office of Attorney Regulation have done in the past. For that reason and to ensure proportionality in the sanction agreed upon in this matter, the parties cite the following cases.

People v. Gumaer. 09PDJ013. (Respondent pled guilty to Second Degree Burglary in violation of C.R.S. §18-4-203(1), (2)(a) (F3), Criminal Mischief in violation of C.R.S. §18-4-501 (F4), and Harassment in violation of C.R.S. §18-9-111(1)(f) (M3) following events that took place on November 2, 2007. The district court imposed a deferred sentence of two years on the burglary and criminal mischief felony charges, with supervision by the adult diversion program. On the

misdeemeanor count, the district court imposed a one-year period of probation to run concurrent with the first two counts, with supervision by the adult diversion program. The Presiding Disciplinary Judge approved a Conditional Admission of Misconduct and suspended Respondent from the practice of law for a period of one year and one day, all stayed upon the successful completion of a thirty-month probation with conditions).

People v. Marrs. 09PDJ090. (Respondent knowingly submitted a fraudulent prescription to a pharmacy for ninety pills of Percocet. Investigation by the police revealed that Respondent had created fraudulent prescriptions on her home computer and had submitted them to obtain Oxycodone, Hydrocodone, and Diazepam on several occasions since July 2007. Respondent pled guilty to one count of obtaining a controlled substance by fraud or deceit, a class 5 felony in violation of C.R.S. §18-18-415(1)(a). She received a deferred judgment and sentence and prosecutors dismissed four additional felony charges. The Presiding Disciplinary Judge approved a Conditional Admission of Misconduct and suspended Respondent from the practice of law for a period of one year and one day, all but four months stayed upon the successful completion of a three-year period of probation with conditions).

People v. Redman. 08PDJ031. (Respondent was charged with assault in the second degree, a class 4 felony in violation of C.R.S. §18-3-203(1)(g), and assault in the third degree, a class 1 misdemeanor in violation of C.R.S. §18-3-204. On January 18, 2008, Respondent pled guilty to an added count (F6) and the district court dismissed the original counts. The Presiding Disciplinary Judge approved a Conditional Admission of Misconduct and suspended Respondent from the practice of law for a period of one year and one day, all but six months stayed upon the successful completion of a two-year period of probation.

People v. Richardson, 10PDJ036. (six month suspension, all stayed upon completion of two years probation, for lawyer who entered a guilty plea to possession of a controlled substance, more than one gram (class 4 felony) as part of a two-year deferred sentence).

People v. Gould, 912 P.2d 556 (Colo. 1996) (attorney's possession of cocaine in violation of state and federal controlled substance laws warranted public censure, rather than suspension, considering in mitigation lack of prior discipline or complaint, absence of dishonest or selfish motive, providing of full and free disclosure, imposition of other penalties or sanctions, demonstration of remorse, and success in completing terms of deferred prosecution).

CONDITIONS

17. **Probation.** The parties stipulate that Respondent is eligible for probation pursuant to C.R.C.P. 251.7(a). See paragraph 11.(a)-(f) above. Successful completion of all these terms shall stay the imposition of the one year and one day suspension.

- a. Respondent shall be on probation for a one year period of time.
- b. Respondent shall comply with all terms of her criminal deferred judgment and sentence, and all recommendations of her therapist(s).

- c. **Mandatory Rule Condition.** During the period of probation, Respondent shall not engage in any further violation of the Colorado Rules of Professional Conduct. *See* C.R.C.P. 251.7(b) (“The conditions [of probation]...shall include no further violations of the Colorado Rules of Professional Conduct”).
- d. Respondent shall attend and successfully pass the one-day ethics school sponsored by the Office of Attorney Regulation Counsel within one year of the date this Stipulation is approved. Respondent shall register and pay the costs of ethics school within thirty-five (35) days of the date this Stipulation is approved. Attendance at ethics school will count as 8 general CLE credits, including 7 ethics credits. Respondent may obtain the registration form for the ethics school on-line at www.coloradosupremecourt.com. (Go to the section for Lawyers, Practice Resources, and then Practice Management. The instructions for registering are on the registration forms) Instructions for registering are on the registration form.

18. Respondent shall also be responsible for all costs of evaluation, treatment and supervision incurred as part of any condition of this probation. Failure to pay these costs prior to termination of probation shall constitute a violation of the probation.

19. **Violation of Conditions.** If, during the period of probation, the Office of Attorney Regulation Counsel receives information that any condition may have been violated, the Regulation Counsel may file a motion with the Presiding Disciplinary Judge specifying the alleged violation and seeking an order that requires the attorney to show cause why the stay should not be lifted and the sanction activated for violation of the condition. *See* C.R.C.P. 251.7(e). The filing of such a motion shall toll any period of suspension and probation until final action. *Id.* Any hearing shall be held pursuant to C.R.C.P. 251.7(e). When, in a revocation hearing, the alleged violation of a condition is Respondent's failure to pay restitution or costs, the evidence of the failure to pay shall constitute *prima facie* evidence of a violation. *Id.* If Respondent's probation is revoked and the balance of the suspension is activated, the Respondent shall be required to file a petition for reinstatement of his/her license to practice law and prove a case for reinstatement pursuant to C.R.C.P. 251.29 (c) and (d).

20. **Successful Completion of Conditions.** Within twenty-eight (28) days and no less than fourteen (14) days prior to the expiration of the period of probation, Respondent shall file an affidavit with the Regulation Counsel stating that Respondent has complied with all terms of probation and shall file with the Presiding Disciplinary Judge notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. *See* C.R.C.P. 251.7(f). Upon receipt of this notice and absent objection from the Regulation Counsel, the Presiding Disciplinary Judge shall issue an order showing that the period of probation was successfully completed. *Id.* The order shall become effective upon the expiration of the period of probation. *Id.*

RECOMMENDATION FOR AND CONSENT TO DISCIPLINE

Based on the foregoing, the parties hereto recommend that a fully stayed one year and one

day suspension, with conditions as described above, be imposed upon Respondent. Respondent consents to the imposition of discipline of a fully stayed one year and one day suspension, with conditions. The parties request that the Presiding Disciplinary Judge order that the effective date of such discipline be immediate.

Gwendolyn Jean Shotwell, Respondent; John Scott Gleason , attorney for Respondent; and Erin Robson Kristofco, attorney for the Complainant, acknowledge by signing this document that they have read and reviewed the above and request the Presiding Disciplinary Judge to accept the Stipulation as set forth above.

Gwendolyn Jean Shotwell
3171 S. Emerson Street
Englewood, CO 80113
Telephone: (720) 319-2398

Respondent

STATE OF COLORADO)
)ss:
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 2019, by
_____, the Respondent.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Erin Robson Kristofco, #33100
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Attorney for the Respondent

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO	Case Number: 19PDJ075
Respondent: GWENDOLYN JEAN SHOTWELL, #32238	
ORDER APPROVING CONDITIONAL ADMISSION OF MISCONDUCT AND IMPOSING SANCTIONS UNDER C.R.C.P. 251.22	

Before the Presiding Disciplinary Judge (“the Court”) is a “Stipulation, Agreement and Affidavit Containing the Respondent’s Conditional Admission of Misconduct” filed by Erin R. Kristofco, Office of Attorney Regulation Counsel (“the People”), and John Scott Gleason, counsel for Gwendolyn Jean Shotwell (“Respondent”), on November 5, 2019. In their stipulation, the parties waive their right to a hearing under C.R.C.P. 251.22(c).

Upon review of the stipulation, the Court **ORDERS:**

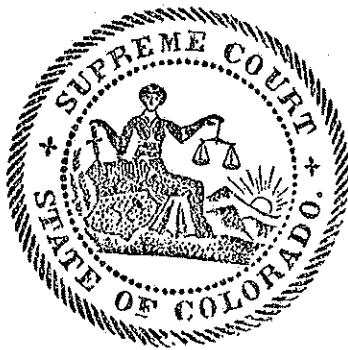
1. The stipulation is **APPROVED**.¹
2. **GWENDOLYN JEAN SHOTWELL**, attorney registration number 32238, is **SUSPENDED** from the practice of law for a period of **ONE YEAR AND ONE DAY, ALL TO BE STAYED** upon the successful completion of a **ONE-YEAR** period of **PROBATION**, subject to the conditions set forth in paragraphs 17 and 18 of the stipulation.
3. Respondent violated Colo. 8.4(b).
4. If, during the period of probation, the People receive information that any probationary condition may have been violated, the People may file a motion under C.R.C.P. 251.7(e) specifying the alleged violation and seeking an order that requires Respondent to show cause why the stay should not be lifted and the sanction activated. Under C.R.C.P. 251.7(e), the filing of such a motion tolls any period of suspension or probation until final action. When the alleged violation in a revocation hearing is a respondent’s failure to pay restitution or costs, evidence of failure to pay constitutes *prima facie* evidence of a violation.

¹ The Court approves the stipulation solely on the basis set forth in paragraph 11(f)(1) of the stipulation.

5. Per C.R.C.P. 251.7(f), no more than twenty-eight days and no fewer than fourteen days prior to expiration of the period of probation, Respondent shall file an affidavit with the People attesting to compliance with all terms of probation and shall file with the Court notice and a copy of such affidavit and application for an order terminating probation. Upon receipt of this notice and absent objection from the People, the Court will issue an order terminating probation, to take effect on the date the period of probation expires.

6. Under C.R.C.P. 251.32, Respondent shall pay costs incurred in conjunction with this matter in the amount of \$224.00 within thirty-five days of the date of this order. Costs are payable to the Colorado Supreme Court Attorney Regulation Office. Statutory interest shall accrue from thirty-five days after the date of this order. Should Respondent fail to pay the aforementioned costs within thirty-five days, Respondent will be responsible for all additional costs and expenses, including reasonable attorney's fees, incurred by the People in collecting the above-stated amount. The People may seek to amend the amount of the judgment for additional costs and expenses by providing a motion and bill of costs to the Court.

THIS ORDER IS ENTERED THE 8th DAY OF NOVEMBER, 2019. THE EFFECTIVE DATE OF THE PROBATION IS THE 8th DAY OF NOVEMBER, 2019.



William R. Lucero
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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