



THE BOARD *of* DISCIPLINARY APPEALS
APPOINTED BY THE SUPREME COURT *of* TEXAS

REPORT 2011

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

CHAIR

W. Clark Lea, *Midland*

VICE CHAIR

JoAl Cannon Sheridan, *Austin*

MEMBERS

Alice A. Brown, *Houston*

David A. Chaumette, *Houston*

Jack R. Crews, *Temple*

Gary R. Gurwitz, *McAllen*

Marvin W. Jones, *Amarillo*

Kathy J. Owen, *Dallas*

Deborah J. Race, *Tyler*

Ben Selman, *Waco*

Charles L. Smith, *San Antonio*

Thomas J. Williams, *Fort Worth*

SUPREME COURT OF TEXAS LIAISON

The Honorable Justice Dale Wainwright

STAFF

Christine E. McKeeman, *Executive Director/General Counsel*

Gayle Vickers, *Deputy Director/Counsel*

Jackie L. Truitt, *Executive Assistant*

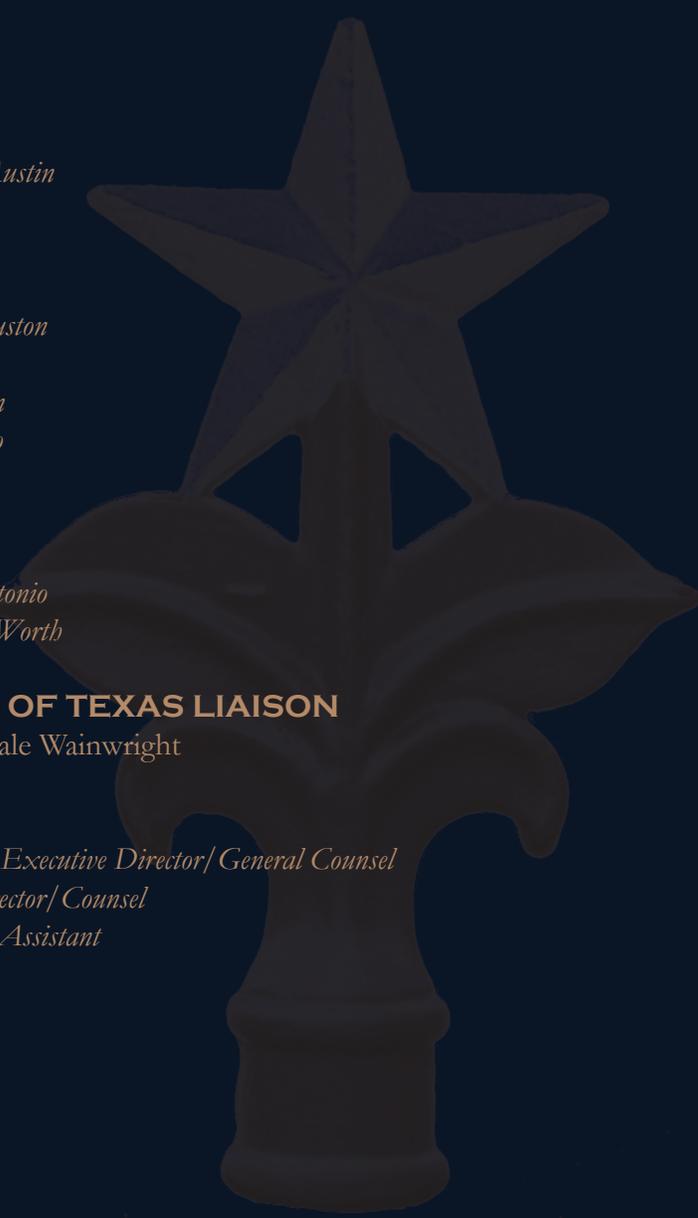
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THE BOARD *of* DISCIPLINARY APPEALS APPOINTED BY THE SUPREME COURT OF TEXAS

On behalf of the members and staff of the Board of Disciplinary Appeals, I submit this report summarizing BODA's activities for the 2010-2011 fiscal year. The report details BODA's activities during the year and describes its members, staff, jurisdiction and operations.

In 2010-2011, and while sitting in three member panels, BODA disposed of 1,991 grievances appealed to it with an average decision time falling 19 days after BODA's receipt of the appeal. On average, each volunteer member of BODA read and decided 498 grievances; BODA staff read each grievance appealed and participated in each panel hearing (66 in all). In addition to deciding appeals of grievance classifications, BODA members met in Austin on four different occasions for *en banc* hearings of appeals from evidentiary judgments, probation revocations, compulsory discipline cases and other proceedings within its jurisdiction. Using conservative numbers, each volunteer member of BODA spent over 150 hours during this fiscal year in addressing the matters that come before BODA. BODA's staff of three reviewed each of the 1,991 grievances appealed, communicated with each member of the public appealing a grievance, prepared briefing on appropriate matters, reviewed and coordinated action on each of the 42 other matters decided by BODA (evidentiary appeals, compulsory discipline etc.), kept information available and accessible as appropriate and supported the volunteer members of BODA.

In this fiscal year, BODA began videotaping its *en banc* hearings and posting the hearings on its website, txboda.org. By making its hearings available in this way, participants unfamiliar with BODA's proceedings are now able to gain a better understanding of the process, and the general public has open access to this aspect of the attorney grievance system.

The Supreme Court of Texas, who appoints the attorney volunteer members of BODA, has provided skilled individuals to carry out BODA's mission. Further, the Supreme Court of Texas has provided guidance on a myriad of matters that do not involve pending BODA matters. We especially thank Justice Wainwright, the Court's liaison to BODA, for his wise counsel. BODA could not exist without the Court's support, the dedication of its volunteer members and the tireless professional work of staff. I credit all three groups for making BODA a court that deals efficiently with the matters before it while never losing sight of the importance of the role it plays in the grievance system.

We are available to discuss this report, provide any additional information or answer any questions.



W. Clark Lea
Chair, 2010-2011

THE BOARD *of* DISCIPLINARY APPEALS

APPOINTED BY THE SUPREME COURT OF TEXAS

MEMBERS 2010-2011



*Back row: Deborah J. Race, David A. Chaumette, Thomas J. Williams, Jack R. Crews, Marvin W. Jones,
Gary R. Gurwitz, Kathy J. Owen*
Front row: Alice A. Brown, Charles L. Smith, W. Clark Lea, JoAl Cannon Sheridan, Ben Selman

The Board of Disciplinary Appeals is a tribunal of 12 attorneys appointed by the Supreme Court of Texas to serve up to two three-year terms. Members represent diverse geographic and law practice areas, from small firm to large multi-state firm, corporate counsel, appellate specialist, experienced family practitioners, corporate and business litigators, complex commercial litigators, and employment and first amendment lawyers. Several board members have previous experience serving on grievance committees.

Chair, **W. Clark Lea** is a shareholder in Cotton Bledsoe Tighe & Dawson P.C. in Midland. He graduated from Baylor Law School in 1990 and was appointed to BODA in 2007. Lea has served as vice chair of the State Bar of Texas Law Office Management Committee and is a life fellow of the Texas Bar Foundation.

Vice Chair, **JoAl Cannon Sheridan**, appointed to BODA in 2008, specializes in family law with Ausley, Algert, Robertson and Flores, L.L.P. in Austin. She received her J.D. from Baylor Law School. She is a former director of the State Bar of Texas and served on the District 2A Grievance Committee. She currently serves on the board of the State Bar of Texas Family Law Section. She is a sustaining life fellow of the Texas Bar Foundation.

Alice A. Brown is government environmental litigation coordinator for Exxon Mobil Corp. in Houston, where she supervises and manages environmental litigation brought by governmental agencies. She graduated from the University of Houston Law Center in 1982 and was appointed to BODA in 2006.

BOARD MEMBERS 2010-2011

David A. Chaumette was appointed to BODA in 2008 and is a partner with De la Rosa & Chaumette in Houston. He has tried a wide variety of commercial matters in state and federal court involving oil and gas issues, securities, software licensing, and real estate disputes. He graduated from the University of Chicago Law School. He is the treasurer of the Houston Bar Association and is a former president of the Houston Young Lawyers Association.

Jack R. Crews is a shareholder of Baird, Crews, Schiller & Whitaker, P. C. in Temple, Texas. He graduated from the Baylor University School of Law in 1983 and was named Bell County Bar Association Lawyer of the Year in 2006. Mr. Crews served on the District 8C Grievance Committee and is a fellow of the Texas Bar Foundation. He was appointed in September 2009.

Gary R. Gurwitz is managing partner of Atlas & Hall, L.L.P. in McAllen. He graduated from the University of Texas School of Law. He is a past member of the State Bar of Texas Board of Directors and the Texas Disciplinary Rules of Professional Conduct Committee and a fellow of the American College of Trial Lawyers. Mr. Gurwitz is a leader in his community and is a recipient of the Hidalgo County Bar Association's Lifetime Achievement Award. He was appointed in September 2009.

Marvin W. Jones is a shareholder in Sprouse Shrader Smith P.C. in Amarillo. He graduated from Baylor University School of Law in 1977 where he served as editor-in-chief of the Baylor Law Review. He is board certified in civil trial law by the Texas Board of Legal Specialization and is a fellow of the American College of Trial Lawyers. He is a member of the Texas Association of Defense Counsel and the International Association of Defense Counsel. He was appointed to the Board in September 2009.

Kathy J. Owen is a partner in the Dallas office of DLA Piper L.L.P. She graduated from Baylor University Law School in 1989. Ms. Owen was a member of the District 6A Grievance Committee of the State Bar of Texas from 1996 until 2000. She was first appointed to BODA in 2000, serving until 2006, including a term as vice chair. She was reappointed in 2008.

Deborah J. Race is a partner at Ireland, Carroll & Kelley, P.C. in Tyler. She graduated from the University of Houston Law Center in 1982 and was appointed to BODA in 2007. She is board certified in civil appellate law by the Texas Board of Legal Specialization. Ms. Race previously served as chair of the State Bar of Texas District 2-A Grievance Committee. She is a life fellow of the Texas Bar Foundation. She currently serves as President of the Smith County Bar Association.

Ben Selman is a shareholder in Naman, Howell, Smith & Lee, PLLC in Waco. He graduated from Baylor Law School in 1973 and was initially appointed to BODA in 1995, serving as chair and vice chair. Selman was reappointed to the Board in 2006. From 2003 to 2006, he served on the State Bar of Texas Commission for Lawyer Discipline.

Charles L. Smith is of counsel to Jackson Walker L.L.P. in San Antonio. He graduated from St. Mary's School of Law in 1955 and was appointed to BODA in 2006. Smith served as president of the State Bar of Texas and as chair of the State Bar Board of Directors, the Commission on Judicial Conduct, and the Commission for Lawyer Discipline. In 2007, he received the Texas Bar Foundation's Outstanding 50-Year Lawyer Award.

Thomas J. Williams is a partner in Haynes and Boone, L.L.P. in Fort Worth. He graduated from the University of Texas School of Law in 1975 and was appointed to BODA in 2007. Williams is a former chair of the Tarrant County Bar Foundation and is a life fellow of the Texas Bar Foundation. He is a past recipient of the Tarrant County Bar Association's Professionalism Award.

DEVELOPMENTS 2010-2011

During the last year BODA implemented changes designed to increase access to BODA hearings, case information and decisions, as well as to increase operational efficiency.

VIDEO RECORDINGS OF BODA HEARINGS

With assistance from Blake Hawthorne, Clerk of the Supreme Court of Texas, and Martin Perez from St. Mary's Law School, BODA began video recording all oral arguments and *en banc* hearings open to the public in 2010. Hearing videos became available on the BODA website at txboda.org in early 2011. BODA holds hearings in Austin every three months, or as requested, which include compulsory discipline, reciprocal discipline, revocations of probation, reinstatements from disability suspensions, and oral argument in appeals from judgments of evidentiary panels. Videos on the BODA website are indexed both by hearing date for the most recent hearings as well as by a link from the individual case information in recent and archived decisions.

WEBSITE REDESIGN

BODA completely redesigned and updated its website in 2010-2011 to improve presentation and access to case information as well as to prepare for future electronic filing of petitions, pleadings and appeals. When launched in fall 2011, the new site will include case, hearing, and decision information that is completely searchable across the site. Search criteria include case number, hearing date, attorney's name and bar card number, type of case, and decision/sanction.

DIGITAL CASE FILES

BODA continues to utilize electronic transmission and storage of case files and other documents to reduce costs associated with paper records. These efforts include emailing classification appeal forms, receiving all classification appeal files and evidentiary appeal records files digitally from the Chief Disciplinary Counsel, distributing case files through a secure ftp site to BODA members, conducting hearings with digital case records, storing all case files and administrative records digitally, and transmitting digital records on appeals to the Supreme Court of Texas.

REVISION OF INTERNAL PROCEDURAL RULES PENDING

A comprehensive revision of the BODA Internal Operating Rules is currently pending at the Supreme Court of Texas. The last significant revision to the BODA Rules was in 2004. The current proposed revisions reorganize the rules in a more logical and familiar arrangement by tracking more closely the Texas Rules of Disciplinary Procedure and the Texas Rules of Appellate Procedure, update the rules to reflect BODA's written published opinions, detail pre-hearing and hearing procedure and make hearings more consistent with proceedings in district court, update the rules to incorporate electronic filing, record storage, and transmission of documents, and revise language to clarify certain rules. The proposed changes include new rules for original proceedings filed with BODA.

BODA OPINIONS 2010-2011

Joe Marr Wilson v. Commission for Lawyer Discipline

BODA case 46432; affirmed a Judgment of Public Reprimand; January 28, 2011; appeal from District 13 Grievance Committee

Supreme Court of Texas appeal of BODA decision; case 11-0133; pending as of October 2011

BODA found substantial evidence to support the finding below that Mr. Wilson violated Texas Disciplinary Rule of Professional Conduct 1.14(c) as a matter of law by disbursing trust account funds entrusted to him by a client for a specific purpose when he was not entitled to them. Wilson's testimony and billing records proved that he paid himself funds given him by the client designated for payment to her ex-husband to settle a dispute over past-due child support. Wilson testified that he had "offset" part of the funds he held for the client as payment for attorney's fees she owed him without her knowledge or consent after the client fired him. Whether the original purpose for which the funds were held no longer existed or the fact that the client had not disputed the fee were immaterial, BODA said, because funds, once entrusted to a lawyer for a particular purpose, can only be used for that purpose. Any unused portion must be returned to the client with a full accounting. BODA affirmed the public reprimand.

Heather Schaefer v. Commission for Lawyer Discipline

BODA case 44292; vacated a Judgment of Disbarment; July 30, 2010; denied motion for rehearing January 28, 2011; appeal from District 01A-2 Grievance Committee

Supreme Court of Texas case 10-0609; affirmed BODA decision on August 19, 2011; motion for rehearing pending as of October 2011

BODA held that an evidentiary panel of a grievance committee that failed to meet the mandatory statutory composition requirements of two-thirds attorneys and one-third public members did not have capacity to convene a hearing and render judgment. Where the record disclosed on its face that the evidentiary panel lacked the required members, the defect could be raised for the first time on appeal. The Supreme Court of Texas and the Texas Legislature carefully structured the requirements for grievance committees and committee panels to protect the public and to create accountability and openness in the attorney disciplinary system, thereby upholding the integrity of the system. BODA vacated the judgment and remanded the case for a new evidentiary hearing.

BODA opinions are available at txboda.org.

BODA JURISDICTION

ORIGINAL JURISDICTION

Compulsory Discipline

BODA has exclusive original jurisdiction to hear petitions for compulsory discipline filed by the State Bar of Texas Chief Disciplinary Counsel's Office on behalf of the Commission for Lawyer Discipline when an attorney has been convicted of, or placed on deferred adjudication for, an "Intentional Crime."

Reciprocal Discipline

BODA has exclusive original jurisdiction to hear petitions for reciprocal discipline filed by the State Bar of Texas Chief Disciplinary Counsel's Office on behalf of the Commission for Lawyer Discipline. Attorneys licensed in Texas and another jurisdiction are subject to reciprocal discipline in Texas following a disciplinary sanction in the second jurisdiction.

Revocations of Probation

BODA has exclusive original jurisdiction for the full term of a probated suspension imposed by a State Bar Grievance Committee to hear petitions to revoke the probation if the attorney violates a term or condition of probation.

Disability Cases and Reinstatements

BODA has exclusive original jurisdiction under Part XII of the TRDP to suspend indefinitely an attorney who is suffering from a disability: any physical, mental, or emotional condition, with or without a substantive rule violation, which results in the attorney's inability to practice law or otherwise carry out his or her professional responsibilities to clients, the courts, the profession, or the public. A specialized District Disability Committee appointed by BODA first holds a hearing to determine whether the attorney is disabled and to certify its finding to BODA. BODA has concurrent jurisdiction with district courts to hear petitions for reinstatement to terminate an indefinite disability suspension.

APPELLATE JURISDICTION

Grievance Screening and Classification Appeals

The State Bar of Texas Chief Disciplinary Counsel's Office screens every writing received that alleges professional misconduct to determine whether the writing describes conduct which, if true, would violate the Texas Disciplinary Rules of Professional Conduct. If the CDC determines that the writing does not allege misconduct and dismisses the grievance, the complainant can appeal that decision to BODA. Approximately 40 percent of dismissed grievances were appealed to BODA during 2010-2011.

Appeals from Evidentiary Judgments

Either the Commission for Lawyer Discipline or an attorney against whom discipline has been imposed by a State Bar Grievance Committee may appeal any judgment from an evidentiary proceeding, including a dismissal, findings of professional misconduct, or sanction imposed. Appeals to BODA from evidentiary judgments proceed similarly to civil appeals with a notice of appeal, record, briefs, and oral argument.

For more detailed information about BODA jurisdiction and procedures, visit txboda.org.

OVERVIEW

Who BODA Is

BODA is a statewide tribunal of 12 lawyers appointed by the Supreme Court of Texas with original and appellate jurisdiction to hear six types of attorney discipline cases as well as disability matters. BODA elects its own chair and vice chair and proposes its own rules of administration and procedure to the Supreme Court of Texas for promulgation. BODA members represent a broad range of practice contexts, geography, ethnicity, and specialty areas. In hearing and determining disciplinary proceedings, BODA exercises the powers of a trial court or appellate court. *In re State Bar of Texas*, 113 S.W.3d 730, 734 (Tex. 2003) (orig. proceeding).

AUTHORITY

Every lawyer admitted or specially admitted to practice in Texas is subject to the disciplinary and disability jurisdiction of the Supreme Court of Texas, which has the inherent power under the Texas Constitution to regulate the practice of law. Tex. Gov't Code § 81.071 (Subtitle G to Title 2, Judicial Branch "State Bar Act"). The Texas Supreme Court created BODA by implementing Texas Rules of Disciplinary Procedure (TRDP) in 1992 and outlined BODA jurisdiction and authority. Tex. Gov't Code § 81.072(b)(7) & (8); Part VII, Texas Rules of Disciplinary Procedure, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G, app. A-1 (2005) (Tex. State Bar R. Art. X, § 9). The TRDP have the force and effect of statute. *O'Quinn v. State Bar of Texas*, 763 S.W.2d 397, 399 (Tex. 1988). The Texas Supreme Court has delegated to BODA the authority to hear and determine disciplinary and disability cases.

WHAT BODA DOES

BODA reviews grievance classification screening dismissals by the State Bar of Texas Chief Disciplinary Counsel's Office; decides appeals from State Bar district grievance committee evidentiary judgments; has exclusive original jurisdiction to hear compulsory and reciprocal discipline cases; hears petitions to revoke probations imposed by grievance committees; and handles attorney disability and reinstatement cases. With the exception of appeals from classification screening decisions, which are final, BODA decisions are appealable directly to the Supreme Court of Texas. The chair of BODA may also assign any matter to a panel of three members to decide.

BODA proposes rules of procedure and administration to the Supreme Court for promulgation. In 2010, BODA sent to the Texas Supreme Court proposed revisions to its internal rules that incorporate provisions for electronic filing and delivery of documents, reflect recent changes to the State Bar Act and TRDP, provide clarity regarding the confidentiality of the grievance process, model the rules governing appellate cases after the Texas Rules of Appellate Procedure (TRAP), revise procedures for disability matters, and establish procedure in compulsory discipline cases in light of recent Texas Supreme Court opinions. BODA last revised the Internal Procedural Rules in 2004 with the changes to the Texas Rules of Disciplinary Procedure.

WEBSITE

BODA maintains a website at txboda.org. In addition to all published BODA opinions, the website provides information about BODA members, jurisdiction, and operations, and answers to frequently asked questions. Copies of the Annual Report from 2005 to present with case statistics are available. The current hearings docket is posted and all recent decisions and archived decisions since 2002 are fully searchable. The website also has copies of the Texas Disciplinary Rules of Professional Conduct, the Texas Rules of Disciplinary Procedure, and the BODA Internal Procedural Rules.

OVERVIEW

CLASSIFICATION APPEAL CONFERENCES

BODA decides appeals from classification screening decisions through panels in weekly telephone conferences with a typical docket of approximately 30 grievances. These panels consist of three BODA members assigned randomly. A member may refer any classification appeal to the full Board for consideration for any reason. The Board considers those matters at the next scheduled *en banc* conference. Grievance screening decisions, the appeals, and all associated files are confidential.

During 2010-2011, BODA conducted 66 telephone conferences and decided 1,902 classification appeals. BODA notifies the complainants and attorneys of its decision by letter.

EN BANC HEARINGS

BODA typically considers all other cases including compulsory discipline, reciprocal discipline, revocations of probation, and appeals from evidentiary judgments *en banc*, with or without hearing. BODA holds hearings in the courtroom of the Supreme Court of Texas with the assistance of the Clerk of the Supreme Court Blake A. Hawthorne and his deputy, Blanca Valdez, who arrange for security and videotaping assistance. Martin Perez with St. Mary's Law School oversees the video services. BODA hearings, other than certain disability proceedings and appeals from private reprimands, are open to the public.



*Martin Perez,
Blanca Valdez and
Blake A. Hawthorne*

STAFF

BODA's administrative offices and all records are located on the sixth floor of the Texas Law Center in Austin. The State Bar of Texas provides support services for BODA, including information technology, accounting, and human resources services.

BODA's staff consists of the Executive Director/General Counsel, Christine E. McKeeman, who administers and supervises BODA operations, advises the Board, and serves as the official custodian of BODA records; the Deputy Director/Counsel, Gayle Vickers, who assists with all operations and has primary responsibility for the disability docket, acts as the clerk for District Disability Committees and appeals from BODA to the Supreme Court, and who maintains the BODA website; and the Executive Assistant, Jackie Truitt, who has primary responsibility for classification panels, assists with office management, case intake and management, docket control, hearings coordination, and requests for information and assistance from the public and attorneys. BODA staff has a combined 46 years of experience working for the Board of Disciplinary Appeals.

RECORD RETENTION

For several years, BODA has made electronic copies of all files and now retains the paper file for only one year. This change to electronic records has greatly reduced the space and associated expense of on-site and off-site storage.

OVERVIEW

INFORMATION ABOUT THE GRIEVANCE PROCESS

BODA responds daily to requests for information concerning the grievance system from attorneys and the public. Except for restrictions discussing pending matters and confidential deliberations, BODA assists the public and the bar by providing information concerning disciplinary procedure and operations. As a tribunal, BODA cannot directly assist a party to any disciplinary proceeding with the underlying complaint.

PROFESSIONAL DEVELOPMENT AND EXCHANGE WITH OTHER GRIEVANCE ENTITIES

In addition to its adjudicatory functions, BODA members and staff regularly participate in local and national seminars, conferences, and committees to provide information about current ethical issues and rules revisions. In addition to writing and speaking at ethics seminars, BODA members and staff meet with local and national disciplinary entities to develop procedures to improve the discipline system and discuss substantive issues.

The Executive Director served as president-elect of the National Council of Lawyer Disciplinary Boards, Inc. (ncldb.org) during 2010-2011. Formed in 2003 with Texas as a founding member, the NCLDB is a forum for the exchange of information and ideas about the administration, conduct, and improvement of formal disciplinary and related proceedings for lawyers admitted to practice law in one or more jurisdictions in the United States. The NCLDB meets annually in conjunction with the American Bar Association mid-year meeting.

BODA meets annually with the Grievance Oversight Committee of the Supreme Court of Texas to discuss issues. BODA strongly encourages and supports coordination between the Board, the State Bar of Texas, the Commission for Lawyer Discipline, the Grievance Oversight Committee, and related groups to identify and propose improvements to the existing disciplinary system.



W. Clark Lea (chair), Texas Supreme Court Justice Dale Wainwright (BODA Liaison), Jo Al Cannon Sheridan (vice chair), Texas Supreme Court Chief Justice Wallace Jefferson

COMPULSORY DISPOSITIONS

June 1, 2010– May 31, 2011

BODA has original jurisdiction to suspend or disbar attorneys convicted of certain crimes. The Chief Disciplinary Counsel of the State Bar of Texas files a petition for compulsory discipline with BODA under Part VIII of the TRDP. BODA must find that the crime for which the respondent attorney was convicted is an Intentional Crime as defined in TRDP 1.06T: any Serious Crime that requires proof of knowledge or intent as an essential element or any crime involving misapplication of money or other property held as a fiduciary. Serious Crimes include barratry, any felony involving moral turpitude, any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property, or any attempt, conspiracy or solicitation of another to commit any of these.

If an attorney convicted of an Intentional Crime has been sentenced to imprisonment, BODA must disbar the attorney. If the attorney's criminal sentence is fully probated, BODA has discretion to disbar the attorney or suspend for the term of the criminal probation. If an attorney convicted of an Intentional Crime has appealed the conviction and the appeal is still pending at the time the Chief Disciplinary Counsel files the compulsory action, BODA will place the attorney on interlocutory suspension pending the outcome of the appeal. BODA retains jurisdiction to enter final judgment when the appeal of the conviction is final.

During the last fiscal year, BODA disposed of 20 petitions for compulsory discipline and motions for final judgment in compulsory cases. Additional details are available at txboda.org under "Archived Decisions."

Attempted Sexual Performance of a Child

Attorney sentenced seven years in prison for attempted sexual performance of a child. Attorney agreed to suspension pending the appeal of his criminal conviction. Mark Adrian Clark; State Bar of Texas Card No. 04292200; BODA case 48191.

Burglary of a Habitation with Intent to Commit Assault

Attorney received five years deferred adjudication for pleading nolo contendere to burglary of a habitation with intent to commit assault. Attorney agreed to suspension from the practice of law during the term of his deferred adjudication. Brian Jose Chavez; State Bar of Texas Card No. 00796343; BODA case 48190.

Impersonation of a Public Servant

Attorney sentenced to community supervision for three and a half years and ordered to perform 240 hours of community service for impersonating a public servant. Case dismissed upon the motion of the Chief Disciplinary Counsel of the State Bar of Texas. Brian McClain; State Bar of Texas Card No. 24027487; BODA case 46728. Attorney subsequently agreed to a partially probated suspension. A0031113666 (April 1, 2011)

Obstruction of Justice

Attorney sentenced to probation for three years and home detention for three months for obstruction of justice. Attorney suspended from the practice of law during the term of his criminal probation. Noel A. Gage; State Bar of Texas Card No. 07566400; BODA case 48192.

COMPULSORY DISPOSITIONS

June 1, 2010– May 31, 2011

Tax Evasion

Attorney sentenced to 30 months in prison for tax evasion. Attorney disbarred. Barry Joseph Jewell; State Bar of Texas Card No. 24033546, BODA case 44743.

Conspiracy to Commit Bribery, Extortion and Money Laundering

Attorney sentenced to 216 months in prison for conspiracy to commit bribery, conspiracy to commit extortion, extortion by public official and aiding and abetting and conspiracy to commit money laundering. Attorney suspended pending the appeal of his criminal conviction. Donald W. Hill; State Bar of Texas Card No. 09628400; BODA case 46727.

Extortion

Attorney sentenced to one year and one day in prison for extortion. Attorney disbarred. John Jerome Lewis; State Bar of Texas Card No. 12294020; BODA case 46726.

Fraudulent Use of Identifying Information

Attorney sentenced to 730 days in State Jail (suspended and placed on two years of community supervision) for the fraudulent use of identifying information. Attorney suspended pending the appeal of his criminal conviction. Todd R. Phillippi; State Bar of Texas Card No. 00790178; BODA case 48193.

Conspiracy to Defraud and Falsely Bill Medicare and Medicaid

Attorney sentenced to 30 months in prison for conspiracy to defraud and falsely bill Medicare and Medicaid. Attorney disbarred. Mazen Y. Abdallah; State Bar of Texas Card No. 24054175; BODA case 45332.

Fraudulent Scheme of Artifice; Obstructing Criminal Investigation or Prosecution

Attorney sentenced to five years in prison and three years community supervision for two counts of fraudulent scheme or artifice and one count of obstructing criminal investigation or prosecution. Attorney suspended pending the appeal of his criminal conviction. Edward P. Bolding; State Bar of Texas Card No. 02565550; BODA case 46774.

Conspiracy to Commit Mail Fraud, Wire Fraud and Insurance Fraud

Attorney sentenced to probation for five years and home detention for one year after he pled guilty to conspiracy to commit mail fraud, wire fraud and insurance fraud. Attorney suspended from the practice of law for the term of his criminal probation. John E. S. Kramar; State Bar of Texas Card No. 11703300; BODA case 47840.

Wire Fraud; Deprivation of Honest Services; Material False Statement

Attorney sentenced to 60 months in prison and three years supervised release for wire fraud, deprivation of honest services, and making a material false statement as to a matter within the jurisdiction of the United States Department of Justice, Federal Bureau of Investigation. Attorney suspended pending the appeal of his criminal conviction. Manuel L. Barraza; State Bar of Texas Card No. 01805270; BODA case 47270.

COMPULSORY DISPOSITIONS

June 1, 2010– May 31, 2011

Violation of Securities Registration Regulations; Securities Fraud; Wire Fraud

Attorney sentenced to 96 months in prison and three years supervised release for violation of securities registration regulations, securities fraud and wire fraud. Attorney suspended pending the appeal of his criminal conviction. Phillip Windom Offill Jr.; State Bar of Texas Card No. 75004273; BODA case 47265.

Insurance Fraud

Attorney received two years deferred adjudication after pleading nolo contendere to insurance fraud. Attorney suspended during the term of his deferred adjudication. Charles Ernest Hill; State Bar of Texas Card No. 09625300; BODA case 47839.

Encouraging and Inducing Illegal Immigration; Visa Fraud; Money Laundering

Attorney sentenced to time served in prison (14 months) for encouraging and inducing illegal immigration, visa fraud and money laundering. Attorney resigned from the practice of law in lieu of discipline. Kenneth L. Rothey; State Bar of Texas Card No. 17317100; BODA case 47263.

Reckless Misapplication of Fiduciary/Financial Property

Attorney received two years deferred adjudication after he pled guilty to two counts of reckless misapplication of fiduciary/financial property. Attorney suspended during the term of his deferred adjudication. Ronald Leon Sutton; State Bar of Texas Card No. 19536000; BODA case 47264.

Theft; Tampering with a Witness

Attorney sentenced to probation for 10 years and 60 days in jail for theft and sentenced to two years in prison for tampering with a witness. Attorney suspended pending the appeal of the conviction for tampering with a witness. Emeka M. Uyamadu; State Bar of Texas Card No. 00788571; BODA case 46776.

Wiretapping

Attorney received five years deferred adjudication for unlawful interception, use or disclosure of wire, oral or electronic communication. Case dismissed upon the motion of the Chief Disciplinary Counsel of the State Bar of Texas. Floyd Gilbert Olivares; State Bar of Texas Card No. 24000306; BODA case 47266.

Manufacture and Delivery of a Controlled Substance

Attorney sentenced to five years in prison for the manufacture and delivery of a controlled substance. Attorney resigned from the practice of law in lieu of discipline. Alice Degregori Morales; State Bar of Texas Card No. 05641900; BODA case 46725.

Unlawfully Obtaining a Controlled Substance from a Registered Pharmacist

Attorney received three years deferred adjudication in each of six cases of unlawfully obtaining from a registered pharmacist a controlled substance by use of a false and forged prescription. The deferred adjudication was extended for an additional 12 months. Attorney disbarred. Robert Eugene Easley; State Bar of Texas Card No. 24036514; BODA case 46775.

EVIDENTIARY APPEAL DISPOSITIONS

June 1, 2010 – May 31, 2011

BODA has appellate jurisdiction to review a judgment by a District Grievance Committee evidentiary panel, including findings of professional misconduct, dismissal of a complaint, or sanction imposed. BODA may affirm in whole or in part, modify the judgment and affirm as modified, reverse the judgment in whole or in part and render the judgment it determines should have been entered, or reverse the judgment and remand the complaint for a new hearing. BODA may grant or deny oral argument. If oral argument is granted, the matter is heard *en banc* unless specially assigned to a three-member panel.

Vacated and remanded for new trial on the merits the judgment of disbarment by the District 01A-2 Grievance Committee. Heather Schaefer; State Bar of Texas Card No. 24027840; BODA case 44292. Appealed to the Supreme Court of Texas; case 10-0609; BODA decision affirmed; motion for rehearing pending as of October 2011.

Affirmed the judgment of public reprimand by the District 13 Grievance Committee. Joe Marr Wilson; State Bar of Texas Card No. 42169770; BODA case 46432. Appealed to the Supreme Court of Texas; case 11-0133.

Dismissed for want of prosecution the appeal from a judgment of disbarment signed by the District 4 Grievance Committee. Teknari Wariboko; State Bar of Texas Card No. 00786330; BODA case 46281.

Dismissed for want of prosecution the appeal from a judgment of partially probated suspension signed by the District 08-2 Grievance Committee. Jason C. Galvez; State Bar of Texas Card No. 07599750; BODA case 46203.

Dismissed for want of prosecution the appeal from a judgment of partially probated suspension signed by the District 10-1 Grievance Committee. Demitrius J. Davis; State Bar of Texas Card No. 24029274; BODA case 46773.

Granted a joint motion to reverse the judgment of disbarment signed by the District 4C06 Grievance Committee and remand the case for rendition of an agreed judgment of partially probated suspension. Shawn R. Roberts; State Bar of Texas Card No. 00794540; BODA case 45059.

Dismissed for want of prosecution the appeal from a judgment of disbarment signed by the District 6C1 Grievance Committee. Lauren Cannon LaRue; State Bar of Texas Card No. 11960730; BODA case 45601.

Dismissed for want of jurisdiction the appeal from a judgment of disbarment signed by the District 06A Grievance Committee. Dell Edward James; State Bar of Texas Card No. 24002342; BODA case 45870.

EVIDENTIARY APPEAL DISPOSITIONS

June 1, 2010 – May 31, 2011

Affirmed the judgment of disbarment by the District 07A-1 Grievance Committee. Joan Myers, State Bar of Texas Card No. 14761600; BODA case 44774. Appealed to the Supreme Court of Texas; case 10-0608; BODA decision affirmed.

Affirmed the judgment of active suspension by the District 4E09 Grievance Committee. Kristin Wilkinson; State Bar of Texas Card No. 24037708; BODA case 45060.

Affirmed in part and reversed in part the judgment of active suspension by the District 09-2 Grievance Committee and remanded for new hearing on sanctions. Mustafa Engin Derkunt; State Bar of Texas Card No. 00785818; BODA case 45773. Appealed to the Supreme Court of Texas; case 10-0607; appeal dismissed.

Granted a joint motion to reverse the modified judgment of partially probated suspension signed by the District 10-4 Grievance Committee and remand the case for rendition of an agreed judgment of partially probated suspension. Morris Joseph Kirschberg; State Bar of Texas Card No. 11533300; BODA case 47915.

Dismissed for want of prosecution the appeal from a judgment of disbarment signed by the District 4F Grievance Committee. Robert Greg Cochran; State Bar of Texas Card No. 00796010; BODA case 47549.

Granted a joint motion to set aside the judgment of disbarment signed by the District 4D7 Grievance Committee and remand the case for a new evidentiary hearing. Beatrice E. Oliver; State Bar of Texas Card No. 00789847; BODA case 44505.

Dismissed for want of prosecution the appeal from a judgment of disbarment signed by the District 6A-2 Grievance Committee. Kenny Ray Kirby; State Bar of Texas Card No. 11498400; BODA case 45955.

Dismissed on appellant's motion the appeal from a judgment of partially probated suspension signed by the District 3A Grievance Committee. Glenn Allen Engle; State Bar of Texas Card No. 00789280; BODA case 46613.

RECIPROCAL DISCIPLINE DISPOSITIONS

June 1, 2010 – May 31, 2011

BODA has exclusive original jurisdiction to hear petitions for reciprocal discipline filed by the State Bar of Texas Chief Disciplinary Counsel's Office on behalf of the Commission for Lawyer Discipline. Attorneys licensed in Texas and another jurisdiction are subject to reciprocal discipline in Texas following a disciplinary sanction in the second jurisdiction.

Arizona

Attorney censured by Supreme Court of Arizona. Finding that the conduct does not constitute professional misconduct in Texas, BODA imposed no discipline. Thomas Matthew Corea; State Bar of Texas Card No. 24037906; BODA case 47269.

Maine

Attorney publicly reprimanded by the State of Maine Board of Overseers. Finding that the conduct does not constitute professional misconduct in Texas, BODA imposed no discipline. Stephen E. Langsdorf; State Bar of Texas Card No. 11922700; BODA case 47838.

Ohio

Attorney suspended from the practice of law for 18 months with 12 months stayed by the Supreme Court of Ohio. BODA imposed the same sanction. F. Benjamin Riek III; State Bar of Texas Card No. 16906190; BODA case 46778.

Louisiana

Attorney permanently disbarred by default by the Supreme Court of Louisiana. BODA imposed disbarment. John J. Arbour; State Bar of Texas Card No. 00786993; BODA case 46091.

Louisiana

Attorney suspended from the practice of law for one year and one day by default by the Supreme Court of Louisiana. BODA imposed the same sanction. Nancy Johnson Leonard; State Bar of Texas Card No. 00792182; BODA case 44741.

REVOCATIONS OF PROBATION

June 1, 2010 – May 31, 2011

BODA has exclusive original jurisdiction for the full term of a probated suspension imposed by a State Bar Grievance Committee to hear petitions to revoke the probation if the attorney violates a term or condition of probation.

Motion to revoke probation dismissed by the Chief Disciplinary Counsel. Edward P. Black; State Bar of Texas Card No. 24009903; BODA case no. 47403.

DISABILITY SUSPENSIONS

June 1, 2010 – May 31, 2011

BODA has exclusive original jurisdiction under Part XII of the TRDP to suspend indefinitely an attorney who is suffering from a disability: any physical, mental, or emotional condition, with or without a substantive rule violation, which results in the attorney's inability to practice law or otherwise carry out his or her professional responsibilities to clients, the courts, the profession, or the public.

Attorney agreed to an indefinite disability suspension. Kenneth W. Smith; State Bar of Texas Card No. 18635300; BODA case 46612.

BODA CASE STATISTICS

June 1, 2010 – May 31, 2011

BODA CASES

| | |
|-----------------------------------|-------|
| Total cases filed with BODA | 1,946 |
| Appeals from grievances dismissed | 1,902 |
| Other cases filed | 44 |
| Total BODA dispositions | 2,040 |

HEARINGS AND CONFERENCES

| | |
|--|---------------------------|
| <i>En banc</i> conferences and hearing dates | 4 |
| Panel conferences by telephone | 66 |
| Average panel docket | 30 classification appeals |

TOTAL BODA DISPOSITIONS

| | Filed | Decided |
|---|-------|---------|
| Appeals from grievances dismissed | 1,902 | 1,991 |
| Appeals from evidentiary judgments | 18 | 16 |
| Compulsory discipline | 15 | 20 |
| Reciprocal discipline | 7 | 4 |
| Petitions to revoke probation | 2 | 1 |
| Emergency Stay | 1 | 1 |
| Disabilities | 0 | 1 |
| Reinstatement after disability suspension | 0 | 0 |
| Mandamus | 0 | 0 |

APPEALS FROM BODA DECISIONS TO SUPREME COURT OF TEXAS

All BODA decisions appealed to Supreme Court during FY 2010-2011 were affirmed

| | |
|--|---|
| BODA decisions appealed | 6 |
| Compulsory discipline | 1 |
| Evidentiary appeal | 3 |
| Reciprocal discipline | 2 |
| Supreme Court dispositions of cases appealed from BODA decision | 8 |
| Compulsory discipline | 2 |
| Evidentiary appeal | 3 |
| Revocation of probation | 1 |
| Reciprocal discipline | 2 |

BODA CASE STATISTICS

June 1, 2010 – May 31, 2011

CLASSIFICATION APPEALS TO BODA

Grievances filed with Office of the Chief Disciplinary Counsel, State Bar of Texas

Source: Office of the Chief Disciplinary Counsel, State Bar of Texas

| | | |
|--|-------|-------|
| Total grievances filed with CDC | 7,328 | |
| Total grievances upgraded for investigation by CDC | 2,047 | (28%) |
| Total grievances dismissed by CDC | 4,778 | (65%) |
| Screening decision pending | 506 | (7%) |

Grievances dismissed by the Chief Disciplinary Counsel and appealed to BODA

| | | |
|---|-------|--------|
| Total grievances dismissed by CDC | 4,778 | |
| Total dismissed grievances appealed to BODA | 1,902 | (40%) |
| Total appeals from dismissals decided by BODA | 1,991 | |
| Total appeals from dismissals granted by BODA | 169 | (8.5%) |

Appeals granted by BODA (169): disposition after investigation by CDC

| | | |
|--|----|--------|
| Just cause found – in litigation | 16 | (9.5%) |
| Just cause pending | 10 | |
| Dismissed at Summary Disposition after investigation | 26 | |
| Dismissal at Summary Disposition pending | 16 | |
| Case closed – other | 1 | |

Appeals from dismissed grievances to BODA by regional location of attorney

| | Filed | Decided | Reversed |
|-------------|-------|---------|----------|
| Austin | 204 | 204 | 12 |
| Dallas | 738 | 778 | 66 |
| Houston | 529 | 554 | 47 |
| San Antonio | 431 | 455 | 44 |

All grievances are initially reviewed and either dismissed or upgraded for further investigation by the Austin office of the Chief Disciplinary Counsel.

| | |
|---|---------|
| Average time to decide classification appeal once file received | 19 days |
| Average time to receive file from State Bar CDC | 17 days |
| Total appeal time from appeal filed until decision | 36 days |

BUDGET

| | |
|---------------------------|-----------|
| Total budget FY 2010-2011 | \$460,633 |
| Funds expended | \$382,106 |
| Variance (favorable) | (17%) |

THE BOARD *of* DISCIPLINARY APPEALS OATH

I do solemnly swear (or affirm) that I will faithfully execute my duties as a member of the Board of Disciplinary Appeals, as required by the Texas Rules of Disciplinary Procedure, and will, to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of the State of Texas. I further solemnly swear (or affirm) that I will keep secret all such matters and things as shall come to my knowledge as a member of the Board of Disciplinary Appeals arising from or in connection with each Disciplinary Action and Disciplinary Proceeding unless permitted to disclose the same in accordance with the Rules of Disciplinary Procedure or unless ordered to do so in the course of a judicial proceeding or a proceeding before the Board of Disciplinary Appeals. I further solemnly swear (or affirm) that I have neither directly paid, offered, or promised to pay, contributed any money or valuable thing, or promised any public or private office to secure my appointment. So help me God.

— *Texas Rule of Disciplinary Procedure 7.04*