

Dec. 8, 2020

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**THE BOARD of DISCIPLINARY APPEALS**  
*Appointed by the Supreme Court of Texas*

5. On or about October 1, 2019 a Judgment in a Criminal Case (Exhibit 3) was entered in Cause No. 4:18CR00238-001, styled *United States of America v. Noe Perez*, in the United States District Court Southern District of Texas, Houston Division wherein Respondent pled guilty to Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds, and was committed to the custody of the Federal Bureau of Prisons for a total term of twenty-four (24) months and Ordered upon release from imprisonment to be on supervised release for two (2) years.

6. Attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein, are true and correct copies of the following documents in the Perez case: Information (Exhibit 1), Plea Agreement (Exhibit 2) and a Judgment in a Criminal Case (Exhibit 3). Petitioner expects to introduce certified copies of Exhibits 1 through 3 at the time of hearing of this cause.

7. Respondent, Noe L. Perez, Jr., whose bar card number is 24034625, is the same person as the Noe Perez who is the subject of the Information Plea Agreement and Judgment in a Criminal Case described above, true and correct copies of which are attached hereto as Exhibits 1 through 3.

8. Attached hereto as Exhibit 4 and made a part hereof for all intents and purposes as if the same were copied verbatim herein is a true and correct copy of an affidavit of Amanda M. Kates, Attorney of Record for Petitioner herein, attesting to the fact that Respondent is the same person as the person who is the subject of the Judgment in a Criminal Case entered in the Perez criminal case. Petitioner expects to introduce the original of said affidavit at the time of hearing of this cause.

9. The offense for which Respondent was convicted is an intentional crime as defined by Rule 1.06(V), Texas Rules of Disciplinary Procedure. It is as well a serious crime as defined

by Rule 1.06(GG), Texas Rules of Disciplinary Procedure.

10. Having pled guilty to an intentional crime, and such judgment being final, Respondent should be disbarred as provided in Rule 8.05, Texas Rules of Disciplinary Procedure.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that Respondent be given notice of these proceedings as provided by law and, upon hearing of this matter, that the Board enter its order disbarring Respondent and for such other and further relief to which Petitioner may be entitled to receive including costs of court and attorney's fees.

Respectfully submitted,

**Seana Willing**

Office of the Chief Disciplinary Counsel

**Amanda M. Kates**

Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel

STATE BAR OF TEXAS

P.O. Box 12487, Capitol Station

Austin, Texas 78711-2487

Telephone: 512.427.1350

Facsimile: 512.427.4167

Email: [akates@texasbar.com](mailto:akates@texasbar.com)



Amanda M. Kates

State Bar Card No.24075987

ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent for personal service on Noe L. Perez, Jr., 2604 Brazos Avenue, McAllen, Texas 78504 on this 8<sup>th</sup> day of December, 2020.



Amanda M. Kates

## **NOTICE OF HEARING**

Notice is hereby given that a trial on the merits of the First Amended Petition for Compulsory Discipline heretofore sent to be filed with the Board of Disciplinary Appeals on this day will be held on January 29, 2021, at 9:00 a.m. by remote appearance.

<https://txcourts.zoom.us/j/93938761857>

**Meeting ID: 939 3876 1857**

Topic: BODA En Banc Hearings

Time: January 29, 2021, 09:00 AM Central Time (US and Canada)

### **To join the Zoom trial by Video:**

Go to:

Join Zoom Meeting

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Meeting ID: 939 3876 1857

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To appear by video on Zoom, you will need to have an electronic device with an internet connection. You may use a smart phone, iPad/tablet, or webcam/built in camera with sound and video. You will also need to install the free Zoom App before the conference begins.

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+1 346 248 7799 US (Houston)

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+1 301 715 8592 US (Washington D.C)

+1 312 626 6799 US (Chicago)

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Meeting ID: 939 3876 1857

Find your local number:

<https://txcourts.zoom.us/u/aemWmbkJgQ>



Amanda M. Kates

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States District Court  
Southern District of Texas  
FILED

MAY 03 2018

DAVID J. BRADLEY, Clerk of Court

TRUE COPY I CERTIFY ATTEST:  
DAVID J. BRADLEY, Clerk of Court

CRIMINAL NO. 18-cv

Deputy Clerk

18 CR 238

UNITED STATES OF AMERICA

v.

NOE PEREZ

§  
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§  
§  
§

INFORMATION

The United States Attorney charges that:

COUNT 1

Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds  
18 U.S.C. §371 and §666

**A. INTRODUCTION**

At all times material herein:

1. Defendant is a Texas licensed attorney who practices both civil and criminal law.
2. Defendant's coconspirator, Rodolfo "Rudy" Delgado (hereinafter "Judge Delgado"), served as a district judge for the 93rd District Court of Texas, based in the town of Edinburg in Hidalgo County, Texas. Judge Delgado's responsibilities as a district judge include presiding over civil and criminal matters of Texas state law in the 93rd Judicial District and in other judicial districts of Texas by assignment.
3. The Texas Constitution creates judicial districts and decrees that there shall be at least one judge in each district. The district courts have "exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies" in Texas except those designated to other courts. As a judge for the 93rd Judicial District, Delgado was an agent of the State of Texas and Texas Judiciary.
4. At all times material to this Information, the State of Texas and the Texas Judiciary received benefits in excess of \$10,000 per year under Federal programs involving grants, contracts, subsidies,

Exhibit

loans, guarantees, insurance, and other forms of federal assistance.

## **B. THE CONSPIRACY AND ITS OBJECTS**

From in or about January 2008 and continuing at least until in or about November 2016, in the Southern District of Texas and elsewhere, defendant

### **NOE PEREZ**

did knowingly and willfully combine, conspire, confederate and agree with Judge Delgado to commit offenses against the United States, including bribery concerning programs receiving federal funds, that is, to corruptly give, offer and agree to give things of value to Judge Delgado, an agent of the state of Texas, a government that received federal benefits in excess of \$10,000 during each relevant one-year period, with the intent of influencing and rewarding Judge Delgado in connection with a transaction and series of transactions valued at \$5,000 or more, that is the criminal matters of defendants represented by defendant NOE PEREZ in violation of 18 U.S.C. §371 and §666.

## **C. THE MANNER AND MEANS OF THE CONSPIRACY**

It was part of the conspiracy that:

1. Defendant is a Texas attorney who regularly practiced before Judge Delgado.
2. During the course of the conspiracy, Judge Delgado would solicit money or other items of value from Defendant.
3. During the course of the conspiracy, Defendant paid Judge Delgado with money or other items of value in exchange for favorable judicial consideration. On some occasions, Defendant would pay Judge Delgado a bribe after being solicited to do so. On other occasions, Defendant would pay Judge Delgado a bribe on his own initiative.
4. Defendant and Judge Delgado used the telephone to contact each other to set up meetings where a bribe could occur. The communications between Perez and Judge Delgado were *ex parte*

communications that did not involve opposing counsel. These meetings occurred outside and away from the courthouse.

5. Defendant and Judge Delgado would engage in fake transactions that were actually conduits for the bribe payment.

6. The favorable judicial consideration provided by Judge Delgado included, but was not limited to, the dismissal of charges, the dismissal of cases, release from prison, reinstatement to community supervision, and personal recognizance bonds valued at \$5,000 apiece in lieu of incarceration.

#### **D. OVERT ACTS**

In furtherance of the conspiracy, and to affect the objects of the conspiracy, the following overt acts, among others, were committed in the Southern District of Texas.

1. During the course of the conspiracy, in or about November 2008, Judge Delgado appropriated a truck, valued at approximately \$15,000 from Defendant. Defendant acquiesced in Judge Delgado's taking of the truck in exchange for favorable consideration on a case involving an individual with the initials E.M. that was pending on Judge Delgado's docket. In exchange for the truck, Judge Delgado provided favorable judicial consideration for Defendant's client.

2. On at least twenty occasions, Defendant also paid Judge Delgado cash, usually between \$250 and \$350 each time, in exchange for Judge Delgado taking specific official judicial action in favor of one of Defendant's clients, who had a matter pending before Judge Delgado.

3. Defendant represented an individual with the initial R.S. Defendant paid Judge Delgado a bribe in exchange for favorable judicial consideration. Judge Delgado accepted the bribe and provided favorable judicial consideration.

4. Defendant represented an individual with the initial S.G. Defendant paid Judge Delgado a

bribe in exchange for favorable judicial consideration. Judge Delgado accepted the bribe and provided favorable judicial consideration.

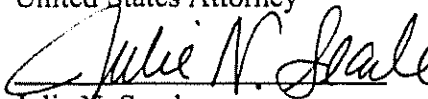
5. Defendant represented an individual with the initial J.R. Defendant paid Judge Delgado a bribe in exchange for favorable judicial consideration. Judge Delgado accepted the bribe and provided favorable judicial consideration.

7. Defendant represented an individual with the initial S.M. Defendant paid Judge Delgado a bribe in exchange for favorable judicial consideration. Judge Delgado accepted the bribe and provided favorable judicial consideration.

8. Defendant represented an individual with the initial M.N. Defendant paid Judge Delgado a bribe in exchange for favorable judicial consideration. Judge Delgado accepted the bribe and provided favorable judicial consideration.

All in violation of 18 U.S.C. §371 and §666.

RYAN K. PATRICK  
United States Attorney

  
Julie N. Searle  
Assistant United States Attorney  
Robert Guerra  
Assistant United States Attorney  
Southern District of Texas

ANNALOU TIROL  
Acting Chief  
Public Integrity Section, Department of Justice

/s/ \_\_\_\_\_  
Peter M. Nothstein  
Trial Attorney  
Public Integrity Section, Criminal Division



TRUE COPY I CERTIFY ATTEST:  
DAVID J. BRADLEY, Clerk of Court  
By [Signature] 10/4/2019  
Deputy Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

NOE PEREZ,  
Defendant.

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CRIMINAL NO. 18-CR- 238

**PLEA AGREEMENT**

The United States of America, by and through Ryan K. Patrick, United States Attorney for the Southern District of Texas, and Julie N. Searle and Robert Guerra, Assistant United States Attorneys, and AnnaLou Tirol, Acting Chief of the Public Integrity Section of the Criminal Division, and Peter Nothstein, Trial Attorney, and the defendant, Noe Perez ("Defendant"), and Defendant's counsel, Guy Womack, pursuant to Rule 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

**Defendant's Agreement**

1. Defendant agrees to plead guilty to Count 1 of the Information. Count 1 charges Defendant with conspiracy to commit bribery concerning programs receiving federal funds, in violation of Title 18, United States Code, Section 371. Defendant, by entering this plea, agrees that he is waiving any right to have the facts that the law makes essential to the punishment either charged in the information, or proved to a jury or proven beyond a reasonable doubt.

**Punishment Range**

2. The statutory maximum penalty for each violation of Title 371, United States Code, Section 371, is imprisonment of not more than five years and a fine of not more than \$250,000.00. Additionally, Defendant may receive a term of supervised release after imprisonment of up to three

Exhibit

2

years. *See* Title 18, United States Code, sections 3559(a)(3) and 3583(b)(2). Defendant acknowledges and understands that if he should violate the conditions of any period of supervised release which may be imposed as part of his sentence, then Defendant may be imprisoned for the entire term of supervised release, without credit for time already served on the term of supervised release prior to such violation. *See* Title 18, United States Code, sections 3559(a)(3) and 3583(e)(3). Defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he eligible for parole.

#### **Mandatory Special Assessment**

3. Pursuant to Title 18, United States Code, section 3013(a)(2)(A), immediately after sentencing, Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00) per count of conviction. The payment will be by cashier's check or money order, payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

#### **Immigration Consequences**

4. Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Defendant understands that if he is not a citizen of the United States, by pleading guilty he may be removed from the United States, denied citizenship, and denied admission to the United States in the future. Defendant's attorney has advised Defendant of the potential immigration consequences resulting from Defendant's plea of guilty.

### **Cooperation**

5. The parties understand this agreement carries the potential for a motion for departure under Section 5K1.1 of the Sentencing Guidelines. Defendant understands and agrees that whether such a motion is filed will be determined solely by the United States through the United States Attorney for the Southern District of Texas. Should Defendant's cooperation, in the sole judgment and discretion of the United States, amount to "substantial assistance," the United States reserves the sole right to file a motion for departure pursuant to Section 5K1.1 of the United States Sentencing Guidelines. Defendant further agrees to persist in that plea through sentencing, fully cooperate with the United States, not oppose the forfeiture of assets contemplated in this agreement. Defendant understands and agrees that the United States will request that sentencing be deferred until that cooperation is complete.

6. Defendant understands and agrees that "fully cooperate," as that term is used herein, includes providing all information relating to any criminal activity known to Defendant, including but not limited to the facts agreed to in this plea agreement. Defendant understands that such information includes both state and federal offenses arising therefrom. In that regard:

- (a) Defendant agrees that this plea agreement binds only the United States Attorney for the Southern District of Texas, the Public Integrity Section of the Criminal Division, and Defendant; it does not bind any other United States Attorney or any other unit of the Department of Justice;
- (b) Defendant agrees to testify truthfully as a witness before a grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States. Defendant further agrees to waive his Fifth Amendment privilege against self-incrimination for the purpose of this agreement;
- (c) Defendant agrees to voluntarily attend any interviews and conferences as the United States may request;

(d) Defendant agrees to provide truthful, complete and accurate information and testimony and understands any false statements made by the defendant to the Grand Jury or at any court proceeding (criminal or civil), or to a government agent or attorney, can and will be prosecuted under the appropriate perjury, false statement, or obstruction statutes;

(e) Defendant agrees to provide to the United States all documents in his possession or under his control relating to all areas of inquiry and investigation; and

(f) Should the recommended departure, if any, not meet Defendant's expectations, the Defendant understands that he remains bound by the terms of this agreement and cannot, for that reason alone, withdraw his plea.

### **Waiver of Appeal and Collateral Review**

7. Defendant is aware that Title 28, United States Code, section 1291, and Title 18, United States Code, section 3742, afford a defendant the right to appeal the conviction and sentence imposed. Defendant is also aware that Title 28, United States Code, section 2255, affords the right to contest or "collaterally attack" a conviction or sentence after the judgment of conviction and sentence has become final. Defendant knowingly and voluntarily waives the right to appeal or "collaterally attack" the conviction and sentence, except that Defendant does not waive the right to raise a claim of ineffective assistance of counsel on direct appeal, if otherwise permitted, or on collateral review in a motion under Title 28, United States Code, section 2255. In the event Defendant files a notice of appeal following the imposition of the sentence or later collaterally attacks his conviction or sentence, the United States will assert its rights under this agreement and seek specific performance of these waivers.

8. In agreeing to these waivers, Defendant is aware that a sentence has not yet been determined by the Court. Defendant is also aware that any estimate of the possible sentencing range under the sentencing guidelines that he may have received from his counsel, the United States or the Probation Office, is a prediction and not a promise, did not induce his guilty plea, and

is not binding on the United States, the Probation Office or the Court. The United States does not make any promise or representation concerning what sentence the defendant will receive. Defendant further understands and agrees that the United States Sentencing Guidelines are "effectively advisory" to the Court. *See United States v. Booker*, 543 U.S. 220 (2005). Accordingly, Defendant understands that, although the Court must consult the Sentencing Guidelines and must take them into account when sentencing Defendant, the Court is not bound to follow the Sentencing Guidelines nor sentence Defendant within the calculated guideline range.

9. Defendant understands and agrees that each and all waivers contained in the Agreement are made in exchange for the concessions made by the United States in this plea agreement.

#### **The United States' Agreements**

10. The United States agrees that:

If the Court determines that Defendant qualifies for an adjustment under section 3E1.1(a) of the United States Sentencing Guidelines, and the offense level prior to operation of section 3E1.1(a) is 16 or greater, the United States will move under section 3E1.1(b) for an additional one-level reduction because Defendant timely notified authorities of his or her intent to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the United States and the Court to allocate their resources more efficiently.

**Agreement Binding - Southern District of Texas and Public Integrity Section Only**

11. The United States Attorney's Office for the Southern District of Texas, and the Public Integrity Section of the Criminal Division, agrees that it will not further criminally prosecute Defendant in the Southern District of Texas for offenses arising from conduct charged in the information. This plea agreement binds only the United States Attorney's Office for the Southern District of Texas, the Public Integrity Section of the Criminal Division, and Defendant. It does not bind any other United States Attorney's Office. The United States Attorney's Office for the Southern District of Texas and the Public Integrity Section of the Criminal Division will bring this plea agreement and the full extent of Defendant's cooperation to the attention of other prosecuting offices, if requested.

**United States' Non-Waiver of Appeal**

12. The United States reserves the right to carry out its responsibilities under guidelines sentencing. Specifically, the United States reserves the right:

- (a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
- (b) to set forth or dispute sentencing factors or facts material to sentencing;
- (c) to seek resolution of such factors or facts in conference with Defendant's counsel and the Probation Office;
- (d) to file a pleading relating to these issues, in accordance with section 6A1.2 of the United States Sentencing Guidelines and Title 18, United States Code, section 3553(a); and
- (e) to appeal the sentence imposed or the manner in which it was determined.

### **Sentence Determination**

13. Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, which are only advisory, as well as the provisions of Title 18, United States Code, section 3553(a). Defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense(s) to which Defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable Sentencing Guidelines. Defendant understands and agrees that the parties' positions regarding the application of the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, or should the Court order any or all of the sentences imposed to run consecutively, Defendant cannot, for that reason alone, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this plea agreement.

### **Rights at Trial**

14. Defendant understands that by entering into this agreement, he surrenders certain rights as provided in this plea agreement. Defendant understands that the rights of a defendant include the following:

- (a) If Defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States, and the court all agree.
- (b) At a trial, the United States would be required to present witnesses and other evidence against Defendant. Defendant would have the opportunity to confront those witnesses and his attorney would be allowed to cross-examine them. In turn, Defendant could, but would not be required to, present witnesses and other evidence on his own behalf. If the witnesses for Defendant would not appear

voluntarily, he could require their attendance through the subpoena power of the court; and

(c) At a trial, Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if Defendant desired to do so, he could testify on his own behalf.

### **Factual Basis for Guilty Plea**

15. Defendant is pleading guilty because he is in fact guilty of the charges contained in Count 1 of the information. If this case were to proceed to trial, the United States could prove each element of the offense beyond a reasonable doubt. The following facts, among others would be offered to establish Defendant's guilt:

From in or about January 2008, and continuing at least until in or about November 2016, Defendant, Noe Perez, a Texas licensed attorney, knowingly conspired with Judge Rodolfo "Rudy" Delgado, the Texas District Judge for the 93<sup>rd</sup> District Court of Texas, to pay Judge Delgado bribes in exchange for favorable judicial consideration on cases Perez had pending on Delgado's docket. Perez knew that the purpose of his agreement with Delgado was unlawful. Perez joined the conspiracy willfully and committed multiple acts in furtherance of the conspiracy.

The Texas Constitution creates judicial districts and decrees that there shall be at least one judge in each district. The district courts have "exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies" in Texas except those designated to other courts. As a judge for the 93<sup>rd</sup> Judicial District, Delgado was an agent of the State of Texas and Texas Judiciary. The 93<sup>rd</sup> District Court of Texas is located within and covers an area that is within the Southern District of Texas. At all times material to this Information, the State of Texas and the Texas Judiciary received benefits in excess of \$10,000 per year under Federal programs involving



grants, contracts, subsidies, loans, guarantees, insurance, and other forms of federal assistance.

During the course of the conspiracy, Perez paid Delgado with money and other items of value in exchange for favorable judicial consideration. On some occasions, Perez would pay Delgado a bribe after being solicited by Judge Delgado to do so. On other occasions, Perez would pay Delgado a bribe on his own initiative. During the course of the conspiracy, Perez paid Delgado bribes in exchange for favorable judicial consideration on specific cases he had pending on Judge Delgado's docket at least twenty times.

On one occasion in 2008, Judge Delgado appropriated a truck, valued at approximately \$15,000 from Perez, and Perez acquiesced in Judge Delgado's taking of the truck in exchange for favorable consideration on a case involving an individual with the initials E.M. that was pending on Judge Delgado's docket. In exchange for the truck, Judge Delgado provided favorable judicial consideration for Perez's client.

Perez and Judge Delgado also used the telephone to contact each other to set up meetings where a bribe could occur. Perez and Delgado used coded language to set up meetings to discuss what case Perez was requesting favorable judicial consideration on and where the bribe payment could take place. The communications between Perez and Judge Delgado were *ex parte* communications that did not involve opposing counsel. The bribe meetings also occurred outside and away from the courthouse.

Perez and Delgado would engage in fake transactions that were actually conduits for the bribe payments. These fake transactions included purchasing firewood and purchasing hay. On other occasions, Delgado would ask Perez to bring a case of beer to his home. Regardless of whether the transaction was purchasing wood, hay, or bringing beer, it would be accompanied with

a bribe payment in exchange for judicial consideration on a specific case. During the meetings, Perez and Delgado would discuss the specific case Perez wanted favorable judicial consideration on and Perez would pay Delgado a bribe. The amounts of the bribes varied, but were typically between \$250 and \$350 in cash.

Perez represented multiple individuals who had cases pending in Judge Delgado's court. Some of these individuals include, but are not limited to, the following: R.S., S.G., J.R., S.M., G.R., and M.N. In each of these instances, Perez agreed to and paid Delgado a bribe, ranging between \$250 and \$350 for each case, in exchange for favorable judicial consideration. The favorable judicial consideration included, but was not limited to, dismissal of charges, dismissal of cases, release from prison, reinstatement to community supervision, and the placement of individuals on a personal recognizance bond valued at \$5,000.00 in lieu of incarceration.

#### **Breach of Plea Agreement**

16. If Defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and Defendant's plea and sentence will stand. If at any time Defendant retains, conceals, or disposes of assets in violation of this plea agreement, or if Defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by Defendant, whether prior to or subsequent to this plea agreement, and all leads derived therefrom, will be used against defendant in any prosecution.

17. In the event of such a breach: (a) the United States will be free from its obligations under the Plea Agreement; (b) the defendant will not have the right to withdraw the guilty plea;

(c) the defendant shall be fully subject to criminal prosecution for any other crimes, including perjury and obstruction of justice; and (d) the United States will be free to use against the defendant, directly and indirectly, in any criminal or civil proceeding, all statements made by the defendant and any of the information or materials provided by the defendant, including such statements, information, and materials provided pursuant to this Plea Agreement or during the course of any debriefings conducted in anticipation of, or after entry of this Plea Agreement, including the defendant's statements made during proceedings before the Court pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

18. The defendant understands that Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. The defendant knowingly and voluntarily waives the rights arising under these rules.

19. The defendant understands and agrees that the United States shall only be required to prove a breach of this Plea Agreement by a preponderance of the evidence. The defendant further understands and agrees that the United States need only prove a violation of federal, state, or local criminal law by probable cause in order to establish a breach of this Plea Agreement.

20. Nothing in this Plea Agreement shall be construed to permit the defendant to commit perjury, to make false statements or declarations, to obstruct justice, or to protect the defendant from prosecution for any crimes not included within this Plea Agreement or committed by the defendant after the execution of this Plea Agreement. The defendant understands and agrees that the United States reserves the right to prosecute the defendant for any such offenses.

The defendant further understands that any perjury, false statements or declarations, or obstruction of justice relating to the defendant's obligations under this Plea Agreement shall constitute a breach of this Agreement. In the event of such a breach, however, the defendant will not be permitted to withdraw this guilty plea.

#### **Restitution, Forfeiture, and Fines – Generally**

21. This Plea Agreement is being entered into by the United States on the basis of Defendant's express representation that he will make a full and complete disclosure of all assets over which he exercises direct or indirect control, or in which he has any financial interest. Defendant agrees not to dispose of any assets or take any action that would effect a transfer of property in which he has an interest, unless Defendant obtains the prior written permission of the United States.

22. Defendant agrees to make complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500 or similar form) within 14 days of signing this plea agreement. Defendant agrees to authorize the release of all financial information requested by the United States, including, but not limited to, executing authorization forms permitting the United States to obtain tax information, bank account records, credit histories, and social security information. Defendant agrees to discuss and answer any questions by the United States relating to Defendant's complete financial disclosure.

23. Defendant agrees to take all steps necessary to pass clear title to forfeitable assets to the United States and to assist fully in the collection of restitution and fines, including, but not limited to, surrendering title, executing a warranty deed, signing a consent decree, stipulating to facts regarding the transfer of title and the basis for the forfeiture, and signing any other documents

necessary to effectuate such transfer. Defendant also agrees to direct any banks which have custody of his assets to deliver all funds and records of such assets to the United States.

24. Defendant understands that forfeiture, restitution, and fines are separate components of sentencing and are separate obligations.

#### **Restitution**

25. Defendant agrees to pay full restitution to the victim(s) regardless of the count(s) of conviction. Defendant understands and agrees that the Court will determine the amount of restitution to fully compensate the victim(s). Defendant agrees that restitution imposed by the Court will be due and payable immediately and that Defendant will not attempt to avoid or delay payment. Subject to the provisions of above, Defendant waives the right to challenge in any manner, including by direct appeal or in a collateral proceeding, the restitution order imposed by the Court.

#### **Forfeiture**

26. Defendant stipulates and agrees that the property listed in any supplemental Notices is subject to forfeiture, and Defendant agrees to the forfeiture of that property.

27. Defendant agrees to waive any and all interest in any asset which is the subject of a related administrative or judicial forfeiture proceeding, whether criminal or civil, federal or state.

28. Defendant consents to the order of forfeiture becoming final as to Defendant immediately following this guilty plea, pursuant to Federal Rule of Criminal Procedure 32.2(b)(4)(A).

29. Subject to the provisions above, Defendant waives the right to challenge the forfeiture of property in any manner, including by direct appeal or in a collateral proceeding.

### Fines

30. Defendant understands that under the Sentencing Guidelines the Court is permitted to order Defendant to pay a fine that is sufficient to reimburse the government for the costs of any imprisonment or term of supervised release, if any. Defendant agrees that any fine imposed by the Court will be due and payable immediately, and Defendant will not attempt to avoid or delay payment. Subject to the provisions of above, Defendant waives the right to challenge the fine in any manner, including by direct appeal or in a collateral proceeding.

### Complete Agreement

31. This written plea agreement, consisting of 16 pages, including the attached addendum of Defendant and his attorney, constitutes the complete plea agreement between the United States, Defendant, and Defendant's counsel. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. Defendant acknowledges that no threats have been made against him and that he is pleading guilty freely and voluntarily because he is guilty.

32. Any modification of this plea agreement must be in writing and signed by all parties.


Filed at Houston, Texas, on May 11, 2018.

[Signature]  
Defendant

Subscribed and sworn to before me on May 11, 2018.

DAVID J. BRADLEY, Clerk  
UNITED STATES DISTRICT CLERK


By:


  
Deputy United States District Clerk

APPROVED:

Ryan K. Patrick  
United States Attorney


By:

  
Julie N. Searle  
Robert Guerra  
Assistant United States Attorney  
Southern District of Texas

  
Guy Womack  
Attorney for Defendant

AnnaLou Tirol  
Acting Chief  
Public Integrity Section, Criminal Division

By:

  
Peter Nothstein  
Trial Attorney  
Public Integrity Section, Criminal Division

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

NOE PEREZ,  
Defendant.

§  
§  
§  
§  
§  
§

CRIMINAL NO. 18-CR-

PLEA AGREEMENT -- ADDENDUM

I have fully explained to Defendant his rights with respect to the pending information. I have reviewed the provisions of the United States Sentencing Commission's Guidelines Manual and Policy Statements and I have fully and carefully explained to Defendant the provisions of those Guidelines which may apply in this case. I have also explained to Defendant that the Sentencing Guidelines are only advisory and the court may sentence Defendant up to the maximum allowed by statute per count of conviction. Further, I have carefully reviewed every part of this plea agreement with Defendant. To my knowledge, Defendant's decision to enter into this agreement is an informed and voluntary one.

  
Attorney for Defendant

5-11-18  
Date

I have consulted with my attorney and fully understand all my rights with respect to the information pending against me. My attorney has fully explained, and I understand, all my rights with respect to the provisions of the United States Sentencing Commission's Guidelines Manual which may apply in my case. I have read and carefully reviewed every part of this plea agreement with my attorney. I understand this agreement and I voluntarily agree to its terms.

  
Defendant

5-11-18  
Date



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
Holding Session in Houston**ENTERED**

October 01, 2019

David J. Bradley, Clerk

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE**

v.

**NOE PEREZ**

CASE NUMBER: 4:18CR00238-001

USM NUMBER: 41542-479

Jesus Contreras

Defendant's Attorney

**THE DEFENDANT:**

- ☒ pleaded guilty to count(s) 1 on May 11, 2018.
- ☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.
- ☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| <u>Title &amp; Section</u> | <u>Nature of Offense</u>   | <u>Offense Ended</u> | <u>Count</u> |
|----------------------------|--|----------------------|--------------|
| 18 U.S.C. §§ 371 and 666   | Conspiracy to commit bribery concerning programs receiving federal funds | 11/30/2016           | 1            |

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_
- ☐ Count(s) \_\_\_\_\_ dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 25, 2019

Date of Imposition of Judgment

Signature of Judge

**ALFRED H. BENNETT****UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

September 30, 2019

Date

**TRUE COPY I CERTIFY ATTEST:****DAVID J. BRADLEY, Clerk of Court**By 10/4/2019

Deputy Clerk

Exhibit

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DEFENDANT: **NOE PEREZ**  
CASE NUMBER: **4:18CR00238-001**

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 24 months.

This term consists of TWENTY-FOUR (24) MONTHS as to Count 1.

- ☐ See Additional Imprisonment Terms.
- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at \_\_\_\_\_ on \_\_\_\_\_
- ☐ as notified by the United States Marshal.
- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on \_\_\_\_\_
- ☒ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **NOE PEREZ**  
CASE NUMBER: **4:18CR00238-001**

## SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 2 years.

This term consists of TWO (2) YEARS as to Count 1.

## MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
  - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

## STANDARD CONDITIONS OF SUPERVISION

- ☐ See Special Conditions of Supervision.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: **NOE PEREZ**  
CASE NUMBER: **4:18CR00238-001**

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

|               | <u>Assessment</u> | <u>JVTA Assessment*</u> | <u>Fine</u> | <u>Restitution</u> |
|---------------|-------------------|-------------------------|-------------|--------------------|
| <b>TOTALS</b> | \$100             | \$                      | \$          | \$                 |

- ☐ See Additional Terms for Criminal Monetary Penalties.
- ☐ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss**</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|---------------------|----------------------------|-------------------------------|
|                      | \$                  | \$                         |                               |

- ☐ See Additional Restitution Payees.

|               |    |    |
|---------------|----|----|
| <b>TOTALS</b> | \$ | \$ |
|---------------|----|----|

- ☐ Restitution amount ordered pursuant to plea agreement \$\_\_\_\_\_
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:
- ☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AFFIDAVIT


THE STATE OF TEXAS     §  
                                     §  
COUNTY OF TRAVIS     §

BEFORE ME, the undersigned authority, on this day personally appeared Amanda M. Kates, Petitioner's attorney of record, who, being by me duly sworn, deposed as follows:

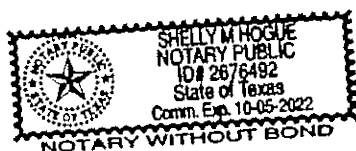
"My name is Amanda M. Kates. I am over the age of 18 years, of sound mind, capable of making this affidavit, and state the following:

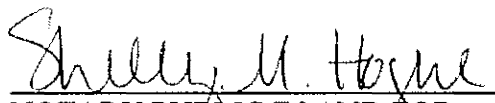
Based upon information and belief, Noe L. Perez, Jr., whose Texas Bar Card Number is 24034625, is licensed as an attorney and counselor at law in the State of Texas. Based upon information and belief, Noe L. Perez, Jr., named as Respondent in the Petition for Compulsory Discipline filed with the Board of Disciplinary Appeals is one and the same person as the Noe Perez who is the subject of the judgment entered in Cause No. 4:18CR00238-001, styled *United States of America v. Noe Perez*, in the United States District Court Southern District of Texas, Houston Division wherein Respondent pled guilty to Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds, and was committed to the custody of the Federal Bureau of Prisons for a total term of twenty-four (24) months and ordered upon release from imprisonment to be on supervised release for two (2) years."

FURTHER Affiant saith not.

  
Amanda M. Kates

SWORN AND SUBSCRIBED before me on the 30 day of October 2019.



  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

Exhibit

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# 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

(6<sup>1</sup>) 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.

<sup>1</sup> 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.