



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

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

**IN THE MATTER OF  
BRUCE DAVID BAIN  
STATE BAR CARD NO. 00790254**

§  
§  
§

**CAUSE NO. 72645**

**PETITION FOR COMPULSORY DISCIPLINE**

**TO THE BOARD OF DISCIPLINARY APPEALS:**

The Commission for Lawyer Discipline (hereinafter referred to as the "Commission"), brings this compulsory discipline action against attorney Bruce David Bain (hereinafter referred to as "Respondent"), and would show the following:

1. This action is commenced by the Commission pursuant to Part VIII of the Texas Rules of Disciplinary Procedure. The Commission is providing Respondent a copy of this Board's procedures for handling a compulsory discipline matter by attaching a copy of such procedures to this petition.

2. Respondent, Bruce David Bain, may be served with a true and correct copy of this Petition for Compulsory Discipline and its attachments, as well as a notice of hearing, at Bruce David Bain, 3802 Joe Drive, #65, Pearland, Texas 77584-6042.

3. On or about March 28, 2025, Respondent was charged by Information (Exhibit 1) with "Theft Prop > = \$150K < 300K, Second Degree Felony," in Cause No. 475-0512-25, styled *State of Texas v. Bruce Bain*, in Smith County, Texas, that states in pertinent part as follows:

Comes now JACOB PUTMAN, Criminal District Attorney of Smith County, State of Texas, and presents to the 475TH Judicial District Court of Smith County, Texas, that heretofore and before the presentment of this Information, in the County of Smith and the State of Texas, on or about the 14th day of February, 2023, and anterior to the filing of this Information, in the County of Smith and State of Texas, BRUCE BAIN did then and there unlawfully appropriate, by acquiring or otherwise exercising control over, property, namely United States Currency, of the value of \$150,000 or more

but less than \$300,000, from Haley Walker Hall, the owner thereof, without the effective consent of the owner, and with intent to deprive the owner of the property.,

AGAINST THE PEACE AND DIGNITY OF THE STATE;

4. On or about April 23, 2025, an Order of Deferred Adjudication (Exhibit 2) was filed in Cause Number 475-0512-25, styled *The State of Texas v. Bruce Bain*, in the 475th District Court, Smith County, Texas, wherein Respondent pled guilty to the offense of Theft Prop  $\geq$ \$150K $\leq$ \$300K in violation of Texas Penal Code 31.03(e)(6)(A), a Second Degree Felony. Respondent was placed on Deferred Adjudication Community Supervision for a period of seven (7) years. Respondent was further ordered to pay restitution in the amount of \$235,551.44 and court costs in the amount of \$251.50.

5. Attached hereto are true and correct copies of the following documents in the Bain criminal case: Information filed March 28, 2025 (Exhibit 1); Order of Deferred Adjudication filed April 23, 2025 (Exhibit 2); and a set of document filed April 23, 2025, which includes the following: Agreed Punishment Recommendation; Acknowledgment of Admonishments; Waiver of Service of a Copy of the Information and Waiver of Arraignment that includes a Waiver of Trial by Jury; Waiver of Confrontation and Agreement to Stipulate; Information; Stipulation of Evidence; Agreement to Stipulate Testimony; Request for Court to Allow Waiver of Pre-sentence Investigation and Report; Advice of Defendant's Right to Appeal; and Waivers Upon Felony Plea of Guilty to Information (Exhibit 3). The Commission expects to introduce certified copies of all exhibits at the time of hearing of this cause.

6. Respondent, Bruce David Bain, whose bar card number is 00790254, is the same person as Bruce Bain who is the subject of the Information and Order of Deferred Adjudication described above, true and correct copies of which are attached hereto.

7. Attached hereto as Exhibit 4 is a true and correct copy of an affidavit of Amanda M. Kates, Attorney of Record for the Commission herein, attesting to the fact that Respondent is the same person as the person who is the subject of the Information and Order of Deferred Adjudication entered in the Bain criminal case. The Commission expects to introduce the original of said affidavit at the time of hearing of this cause.

8. The offense under TEX. PEN. CODE 31.03(e)(6)(A) for which Respondent was convicted is an Intentional Crime (as defined by Rule 1.06(V)(1) of the Texas Rules of Disciplinary Procedure) because Respondent's offense is a Serious Crime (as defined by Rule 1.06(GG), Texas Rules of Disciplinary Procedure) that requires knowledge or intent as an essential element.

9. Having pled guilty to an Intentional and Serious Crime and such judgment being final, Respondent is subject to compulsory discipline as provided in Part VIII, Texas Rules of Disciplinary Procedure.

#### PRAYER

WHEREFORE, PREMISES CONSIDERED, the Commission prays that Respondent be given notice of these proceedings as provided by law and, upon hearing of this matter, that the Board enter an order imposing compulsory discipline on Respondent and for such other and further relief to which the Commission may be entitled to receive.

Respectfully submitted,

**Seana Willing**  
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: 512.427.4253  
Email: amanda.kates@texasbar.com



Amanda M. Kates  
State Bar Card No. 24075987

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent for service on Bruce David Bain, 3802 Joe Drive, #65, Pearland, Texas 77584-6042, Via Personal Service on this 27th day of February, 2026.



Amanda M. Kates

**NOTICE OF HEARING**

NOTICE IS HEREBY GIVEN that a trial on the merits of the Petition for Compulsory Discipline heretofore sent to be filed with the Board of Disciplinary Appeals on this day, will be held in the courtroom of the Supreme Court of Texas, Tom C. Clark Building, 14th and Colorado Streets, Austin, Texas, at 9:00 a.m. on the **24th day of April, 2026**. The Board of Disciplinary Appeals will notify the parties of any changes to the hearing location or format.



Amanda M. Kates

AFFIDAVIT

THE STATE OF TEXAS     §  
  §  
COUNTY OF TRAVIS     §

BEFORE ME, the undersigned authority, on this day personally appeared Amanda M. Kates, the Commission’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, Bruce David Bain, whose Texas Bar Card Number is 00790254, is licensed as an attorney and counselor at law in the State of Texas. Based upon information and belief Bruce David Bain, named as Respondent in the Petition for Compulsory Discipline filed with the Board of Disciplinary Appeals is one and the same person as the Bruce Bain who is the subject of the Order of Deferred Adjudication in Cause Number 475-0512-25, styled *The State of Texas v. Bruce Bain*, in the 475th District Court, Smith County, Texas, wherein Respondent pled guilty to the offense of Theft Prop >=\$150K<\$300K in violation of Texas Penal Code 31.03(e)(6)(A), a Second Degree Felony. Respondent was placed on Deferred Adjudication Community Supervision for a period of seven (7) years. Respondent was further ordered to pay restitution in the amount of \$235,551.44 and court costs in the amount of \$251.50.

FURTHER Affiant saith not.

\_\_\_\_\_  
Amanda M. Kates

SWORN AND SUBSCRIBED before me on the \_\_\_\_ day of February, 2026.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

CAUSE # 475-0512-25

MAR 28 2025  
4:14 pm  
BY S. Ali DEPUTY

INFORMATION

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

Comes now JACOB PUTMAN, Criminal District Attorney of Smith County, State of Texas, and presents to the 475TH Judicial District Court of Smith County, Texas, that heretofore and before the presentment of this Information, in the County of Smith and the State of Texas, on or about the 14th day of February, 2023, and anterior to the filing of this Information, in the County of Smith and State of Texas, BRUCE BAIN did then and there unlawfully appropriate, by acquiring or otherwise exercising control over, property, namely United States Currency, of the value of \$150,000 or more but less than \$300,000, from Haley Walker Hall, the owner thereof, without the effective consent of the owner, and with intent to deprive the owner of the property.,

AGAINST THE PEACE AND DIGNITY OF THE STATE;

WITNESS MY HAND this the 28th day of MARCH, 2025.

JACOB PUTMAN  
Criminal District Attorney Smith  
County, Texas

By: [Signature]  
Assistant Criminal District  
Attorney, Smith County, Texas

Offense: THEFT PROP >=\$150K<\$300K, SECOND DEGREE FELONY, 23990201  
DA Case Number: 24-01165

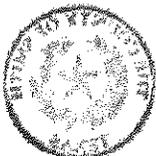
Description: D.O.B. 11/29/1967, WHITE/MALE, PID # 9347777

Address: 5819 CODEY LANE, TYLER, TX 75703



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COUNTY DISTRICT  
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CERTIFIED TO BE A



**STATE OF TEXAS - COUNTY OF SMITH**  
I, Penny Clarkston, District Clerk of Smith County, Texas,  
do hereby certify the foregoing is a true and correct copy of  
the original record, now in my lawful custody and possession,  
as appears of record in Vol. \_\_\_ Page \_\_\_ minutes of said court on  
file in my office.

Witness my official hand and seal of office on this date:

October 2, 2025

Penny Clarkston, District Clerk - Smith County, Texas

By: Jamere Zelaya Deputy



CASE NO. 475-0512-25

INCIDENT NO./TRN: 9277408480

THE STATE OF TEXAS

**FILED**  
PENNY CLARKSTON, DISTRICT CLERK  
SMITH COUNTY, TEXAS

IN THE 475TH DISTRICT

v.

APR 23 2025

COURT

BRUCE BAIN

Time 3:13pm  
BY *[Signature]* DEPUTY

SMITH COUNTY, TEXAS

STATE ID No.: TX-20902287

**ORDER OF DEFERRED ADJUDICATION**

Judge Presiding: **HON. TAYLOR HEATON** Date Proceedings Deferred: **04/22/2025**

Attorney for State: **RICHARD VANCE** Attorney for Defendant: **JAMES W. HUGGLER, Jr.**

Offense: **THEFT PROP >=\$150K<\$300K**

Charging Instrument: **INFORMATION** Statute for Offense: **31.03(e)(6)(A)**

Date of Offense: **02/14/2023** Defendant waived the right to trial by jury and entered the plea below: **GUILTY**

Degree of Offense: **Second Degree Felony** Findings on Deadly Weapon: **N/A**

1<sup>st</sup> Enhancement Paragraph: **N/A** Finding on 1<sup>st</sup> Enhancement Paragraph: **N/A**

2<sup>nd</sup> Enhancement Paragraph: **N/A** Findings on 2<sup>nd</sup> Enhancement Paragraph: **N/A**

Terms of Plea Bargain (if any): or  Terms of Plea Bargain are attached and incorporated herein by this reference. **N/A**

**ADJUDICATION OF GUILT DEFERRED;  
DEFENDANT PLACED ON DEFERRED ADJUDICATION COMMUNITY SUPERVISION.  
PERIOD OF DEFERRED ADJUDICATION COMMUNITY SUPERVISION: 7 YEARS.**

**CONFINEMENT AS A CONDITION OF DEFERRED ADJUDICATION COMMUNITY SUPERVISION:**

The Court ORDERS Defendant confined \_\_\_\_\_ DAYS in  THE COUNTY JAIL  A STATE JAIL FACILITY as a condition of deferred adjudication community supervision. The period of confinement as a condition of community supervision starts when Defendant arrives at the designated facility, absent a special order to the contrary.

Fines: \$ \_\_\_\_\_ Court Costs: \$251.50 Reimbursement Fees: \$ \_\_\_\_\_

Restitution: \$ 235,551.44 Restitution Payable to: \_\_\_\_\_ (See special finding or order of restitution which is incorporated herein by this reference.)

Defendant is required to register as sex offender in accordance with Chapter 62, Tex. Code Crim. Proc. (For sex offender registration purposes only) The age of the victim at the time of the offense was **N/A**.

Was the victim impact statement returned to the attorney representing the State? **YES**

This cause was called and the parties appeared. The State appeared by her District Attorney as named above.

**Counsel / Waiver of Counsel (select one)**

Defendant appeared with Counsel.  
 Defendant appeared without counsel and knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

**EXHIBIT**  
**2**



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Both parties announced ready for trial. Defendant waived the right of trial by jury and entered the plea indicated above. The Court admonished Defendant. It appeared to the Court that Defendant was mentally competent to stand trial, made the plea freely and voluntarily, and was aware of the consequences of the plea. The Court received the plea and entered it of record. Having heard the evidence submitted, the Court FINDS that such evidence substantiates Defendant's guilt. However, the Court FINDS that it is in the best interest of society and Defendant to defer proceedings without entering an adjudication of guilt and to place Defendant on deferred adjudication community supervision.

Therefore, the Court ORDERS no judgment entered at this time. The Court further ORDERS Defendant placed on deferred adjudication community supervision for the period of time indicated above as long as Defendant abides by the conditions of the deferred adjudication community supervision.

The Court FINDS that the Presentence Investigation, if so ordered, was done according to the applicable provisions of Subchapter F, Chapter 42A, Tex. Code Crim. Proc.

The Court ORDERS Defendant to pay the fines, court costs, reimbursement fees, and restitution as indicated above and further detailed below.

The document setting forth the conditions of deferred adjudication community supervision is attached and incorporated herein by this reference.

**Fines Imposed Include (check each fine and enter each amount as pronounced by the court):**

- General Fine (§12.32, 12.33, 12.34, or 12.35, Penal Code, or any other Code) \$ (not to exceed \$10,000)
- Add'l Monthly Fine for Sex Offenders (Art. 42A.653, Code Crim. Proc.) \$ (\$5.00/per month of community supervision)
- Child Abuse Prevention Fine (Art. 102.0186, Code Crim. Proc.) \$ (\$100)
- EMS, Trauma Fine (Art. 102.0185, Code Crim. Proc.) \$ (\$100)
- Family Violence Fine (Art. 42A.504 (b), Code Crim. Proc.) \$ (\$100)
- Juvenile Delinquency Prevention Fine (Art. 102.0171(a), Code Crim. Proc.) \$ (\$50)
- State Traffic Fine (§542.4031, Transp. Code) \$ (\$50)
- Children's Advocacy Center Fine - as Cond of CS (Art. 42A.455, Code Crim. Proc.) \$ (not to exceed \$50)
- Repayment of Reward Fine (Art. 37.073/42.152, Code Crim. Proc.) \$ (To Be Determined by the Court)
- Payment of Fine to Crime Stoppers Organization - as Cond of CS (Art. 42A.104, Code Crim. Proc.) \$ (not to exceed \$50)

**Furthermore, the following special findings or orders apply:**

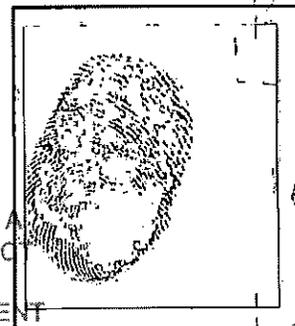
APPEAL WAIVED. NO PERMISSION TO APPEAL GRANTED.

**THE COURT FINDS THAT DEFENDANT IS REQUIRED TO PAY RESTITUTION IN THE AMOUNT OF \$235,551.44.**

Signed on 04/22/2025

X  
HON. TAYLOR HEATON  
JUDGE PRESIDING

Right Thumbprint



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**STATE OF TEXAS - COUNTY OF SMITH**  
I, Penny Clarkston, District Clerk of Smith County, Texas,  
do hereby certify the foregoing is a true and correct copy of  
the original record, now in my lawful custody and possession,  
as appears of record in Vol. \_\_\_ Page \_\_\_ minutes of said court on  
file in my office.

Witness my official hand and seal of office on this date:

October 2, 2025

Penny Clarkston, District Clerk - Smith County, Texas

By: Jamela Zebuya Deputy

NO. 475-0512-25

THE STATE OF TEXAS

FILED  
PENNY CLARKSTON DISTRICT CLERK  
SMITH COUNTY TEXAS

IN THE 475TH JUDICIAL

VS.

DISTRICT COURT OF

BRUCE BAIN

APR 23 2025

SMITH COUNTY, TEXAS

Time 3:10 PM

THEFT PROP >=\$150K<\$300K

BY [Signature] DEPUTY

**AGREED PUNISHMENT RECOMMENDATION**

As a result of negotiations between the parties, it is mutually recommended to the Court that:

- 1. ( ) Punishment be assessed at:
  - \_\_\_\_\_ years in the TDCJ-ID
  - \_\_\_\_\_ in the Smith County Jail
  - \_\_\_\_\_ in a State Jail Facility
  - \$ \_\_\_\_\_ Fine
  - ( ) \$100 fine pursuant to Tex. Code Crim. Proc. 102.0185
- 2. ( ) PROBATION is recommended of the ( ) Term ( ) Fine
- 3. (X) Both for a period of \_\_\_\_\_ years.
- 3. (X) A SPECIAL CONDITION of the recommended sentence being payment of RESTITUTION in the amount to be determined by the PSI. of \$235,551.44
- 4. ( ) Prosecution to Proceed only on COUNT \_\_\_\_\_
- 5. ( ) MOTION TO DISMISS will be filed in \_\_\_\_\_
- 6. ( ) Pursuant to PC Article 12.45, the Court can consider the following unadjudicated offenses: \_\_\_\_\_
- 7. (X) DEFERRED ADJUDICATION OF GUILT is recommended pursuant to CCP Art. 42.12 (3d) for a period of 7 years.
- 8. ( ) OPEN PLEA \_\_\_\_\_

It is expressly provided and understood by the parties that this instrument constitutes only an offer when signed and dated by the State's attorneys. Completion of this instrument in the manner stated will constitute an acceptance of the offer and the State will be absolutely bound by the terms and conditions contained herein.

It is further expressly provided and understood by the parties that no court, or judge thereof, may be bound by this instrument or required in any manner to adhere to or to follow any agreements entered into by the State, the Defendant, or his attorney.

**ANY CHANGES, ADDITIONS OR ALTERATIONS TO THE ORIGINAL CONTENT OF THIS DOCUMENT MUST BE INITIALED AND DATED BY ALL PARTIES TO THE CHANGES, ADDITIONS, OR ALTERATIONS FOR THEM TO BE VALID.**

[Signature]  
ASSISTANT CRIMINAL DISTRICT ATTORNEY

[Signature]  
DEFENDANT

4-22-25  
DATED

APR 22, 2025  
DATED

CHIEF PROSECUTOR

[Signature]  
ATTORNEY FOR DEFENDANT



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EXHIBIT  
3

NO. 475-0512-2r

~~FILED~~  
PENNY CLARK STON, DISTRICT CLERK  
SMITH COUNTY TEXAS

THE STATE OF TEXAS

IN THE 475TH JUDICIAL

VS.

APR 23 2025

DISTRICT COURT OF

Time 3:10 Pm

BRUCE BAIN

SMITH COUNTY, TEXAS

BY [Signature] DEPUTY

**ACKNOWLEDGMENT OF ADMONISHMENTS**

Comes now the defendant in the above styled and numbered cause, with his attorney of record, and would acknowledge to this Honorable Court that he has read, and understands, the admonishments enumerated below. In addition to having read and understood the admonishments, Defendant further acknowledges to this Honorable Court that he is fully aware of the consequences of the plea that he is entering in this cause. Specifically the Defendant acknowledges reading and understanding that:

1. The offense for which the Defendant is charged is:

       **3rd DEGREE** And the range of punishment for such offense is a fine not to exceed \$10,000 and imprisonment in the institutional division of the Texas Department of Criminal Justice Institutional Division for any term of not more than ten (10) years or less than two (2) years.

       **3RD DEGREE (ENHANCED ONCE)** And the range of punishment for such offense is a fine not to exceed \$10,000 and imprisonment in the Texas Department of Criminal Justice institutional Division for any term of not more than twenty (20) years or less than two (2) years.

  P   **2ND DEGREE** And the range of punishment for such offense is fine not to exceed \$10,000 and imprisonment in the Texas Department of Criminal Justice Institutional Division for any term of not more than twenty (20) years or less than two (2) years.

       **2ND DEGREE (ENHANCED ONCE)** And the range of punishment for such offense is a fine not to exceed \$10,000 and imprisonment in the Texas Department of Criminal Justice Institutional Division for life or for any term of not more than ninety nine (99) years or less than five (5) years.

       **1ST DEGREE** And the range of punishment for such offense is a fine not to exceed \$10,000 and imprisonment in the Texas Department of Criminal Justice institutional Division for life or for any term of not more than ninety nine (99) years or less than five (5) years.

       **1ST DEGREE (ENHANCED ONCE)** And the range of punishment for such offense is a fine not to exceed \$10,000 and imprisonment in the Texas Department of Criminal Justice Institutional Division for life or a term of not more than ninety nine (99) years or less than fifteen (15) years.



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\_\_\_\_ **STATE JAIL FELONY** And the range of punishment for such offense is a fine not to exceed \$10,000 and confinement in a State Jail Facility for any term not more than two (2) years or less than 180 days.

\_\_\_\_ **HABITUAL** And the range of punishment for such offense is imprisonment in the Texas Department of Criminal Justice Institutional Division for life or for any term of not more than ninety nine (99) years or less than twenty five (25) years.

\_\_\_\_ **OTHER** And the range of punishment for such offense is \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The recommendation of the Prosecuting Attorney as to punishment is not binding on the Court. Should the Court reject any plea agreement existing between the State and the Defendant, the Defendant shall be permitted to withdraw the plea of guilty or nolo contendere;
3. If the punishment assessed does not exceed the punishment recommended by the Prosecutor and agreed to by the Defendant and his attorney, the Trial court must give its permission to the Defendant before he may prosecute an appeal or any matter in the case, except for those matters raised by written motions filed prior to trial;
4. If the Defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this Country, or the denial of naturalization under Federal Law.
5. If the Defendant is placed on deferred adjudication for a felony offense under article 42.12, section 5 of the Texas Code of Criminal Procedure and subsequently receives a discharge and dismissal under section 5(a), the Defendant may petition the Court for an order of non-disclosure unless the Defendant is ineligible to pursue that right because of the nature of the offense for which the Defendant was placed on deferred adjudication of the Defendant's criminal history makes him/her ineligible. Such petition may not be filed sooner than the fifth anniversary of the discharge and dismissal. See Texas Government Code § 411.081.
6. If the Defendant is convicted of a felony as a result of this hearing, in accordance with Texas Administrative Code §176.1, the Court hereby admonishes you of the following:
  1. You are, by entry of order or judgment, ineligible under Texas law to possess a firearm or ammunition.
  2. Beginning now, if you possess a firearm or ammunition it could lead to charges against you. If you have questions about how long you will be ineligible to possess a firearm or ammunition, you should consult an attorney.
  3. Under Texas Penal Code §46.01(3):
    - a. "Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use



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- b. "Firearm" does not include a firearm that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by Penal Code Chapter 46 and that is (1) an antique or curio firearm manufactured before 1899 or (2) a replica of an antique or curio firearm manufactured before 1899 but only if the replica does not use rim fire or center fire ammunition.

The statutes listed below are a starting point for ineligibility to possess a firearm or ammunition. For more information about the laws that make you ineligible to possess a firearm or ammunition, or for more information on how long your ineligibility to possess a firearm or ammunition lasts, the Court recommends you contact an attorney.

- Code of Criminal Procedure Article 17.292 – Magistrate's Order for Emergency Protection
- Code of Criminal Procedure Article 42.0131 – Notice for Persons Convicted of Misdemeanors Involving Family Violence
- Penal Code §46.02 – Unlawful Carrying Weapons
- Penal Code §46.04 – Unlawful Possession of Firearm
- Penal Code §25.07 – Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case
- Family Code §85.026 – Warning on Protective Order

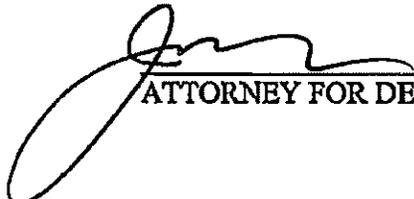
7. The Defendant acknowledges that his waiver of rights, plea of GUILTY, and stipulation of evidence, as well as, all the documents filed this date with the trial court, were made, signed, and entered into by the Defendant freely, intelligently, knowingly, and voluntarily.

Under the provisions of Texas Code of Criminal Procedure article 26.13, the Defendant hereby acknowledges that s/he has read and understands the admonishments contained on this page and that the Defendant is fully aware of the consequences of his/her plea of GUILTY. The Defendant further acknowledges that he has received both the oral and written admonishments on ineligibility to possess firearm or ammunition. The Defendant elects to waive his right to a jury trial and to enter a plea of GUILTY to the charges in this case.

Under the provisions of Article 26.13, V.A.C.C.P., Defendant hereby acknowledges that he has read and understands the aforementioned admonishments, and that the Defendant is aware of the consequences of his plea.

SIGNED on this, the 22 day of APR, 2025. **APR 22 2025**

  
DEFENDANT

  
ATTORNEY FOR DEFENDANT



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CLERK'S OFFICE

NO. 47510512-25

PENNY CLARK STON DISTRICT CLERK  
SMITH COUNTY TEXAS

THE STATE OF TEXAS  
VS.  
BRUCE BAIN

APR 23 2025

IN THE 475TH JUDICIAL  
DISTRICT COURT OF  
SMITH COUNTY, TEXAS

Time 3:10 pm  
BY [Signature] DEPUTY

**WAIVER OF SERVICE OF A COPY OF THE INFORMATION AND  
WAIVER OF ARRAIGNMENT**

Comes now the Defendant in open court, together with his/her attorney and shows this Court that I am the same person named and charged in the Information herein, that I understand the elements of the offense charged and intend to enter a plea of guilty. The Defendant would further show this Court that I understand that I have a right to be served with a copy of the Information and that I intentionally and knowingly waive my right to be served with a copy of the Indictment and to be arraigned.

[Signature]  
DEFENDANT

[Signature]  
ATTORNEY FOR DEFENDANT  
Approved: [Signature]  
JUDGE PRESIDING

APR 22 2025

**WAIVER OF TRIAL BY JURY**

Comes now the Defendant in writing and in open court, together with his/her attorney and shows this Court that I understand that I have a right to trial by jury whether I plead "guilty", "not guilty", or "nolo contendere" and that, understanding my right to trial by jury, I knowingly and intentionally waive my right to trial by jury and request a trial before the Court upon my plea of guilty.

[Signature]  
DEFENDANT

[Signature]  
ATTORNEY FOR DEFENDANT

**APPROVAL BY THE STATE**

Comes now the State, by and through her District Attorney, and consents and agrees to the Waiver of a Jury herein and to the trial of this cause before the Court.

[Signature]  
ATTORNEY FOR THE STATE

**APPROVAL BY THE COURT**

It clearly appearing to the Court that the Defendant understands his/her right to trial by jury and that s/he intentionally and voluntarily waived that right in writing and in open court and it further appearing to the Court that the State has joined in the Waiver of trial by Jury, the Court approves the Waiver of Trial by Jury of the Defendant.

APR 22 2025

[Signature]  
JUDGE PRESIDING  


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CLERK'S OFFICE

NO. 47 SF 10 E D2-25  
PENNY CLARKINGTON, DISTRICT CLERK  
SMITH COUNTY, TEXAS

THE STATE OF TEXAS  
VS.  
BRUCE BAIN

APR 23 2025  
Time 3:10 PM  
BY [Signature] DEPUTY  
IN THE 475TH JUDICIAL  
DISTRICT COURT OF  
SMITH COUNTY, TEXAS

**WAIVER OF CONFRONTATION AND AGREEMENT TO STIPULATE**

Comes now the Defendant in writing and in open court, together with his attorney and shows this Court that I understand my right to remain silent and make no statement and that any statement made by me may be used in evidence against me at my trial. The Defendant would further show this Court that I understand my right to have all witnesses appear and testify in Court and my right to confront the witnesses and to cross-examine them. The Defendant would further show this Court that understanding these rights, I intentionally and voluntarily waive my right to remain silent and my right to the appearance, confrontation and cross-examination of the witnesses and agree to the oral and written stipulation of the testimony and evidence and to the introduction of testimony by affidavits, written statements of witnesses and other documentary evidence by the State.

[Signature]  
DEFENDANT

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on the \_\_\_\_ day of \_\_\_\_\_, 2025, to certify which witness my hand and seal of office.

APR 22 2025

[Signature]  
JUDGE PRESIDING

I have explained to the Defendant his right to remain silent and his right to the appearance, confrontation and cross-examination of witnesses and I approve his waiver of those rights and his agreement to stipulate.

[Signature]  
ATTORNEY FOR DEFENDANT

**APPROVAL BY THE COURT**

It clearly appearing to the Court that the Defendant understands his right to remain silent and his right to the appearance, confrontation and cross-examination of witnesses and that he voluntarily waives those rights and agrees to stipulate the testimony and evidence, the waiver and the agreement to stipulate is hereby approved.

APR 22 2025

[Signature]  
JUDGE PRESIDING



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COUNTY DISTRICT  
CLERK'S OFFICE

CAUSE # 475-0512-25

INFORMATION

FILED  
PENNY CLERK

MAR 28 2025

Time 4:14 PM  
BY S. Ali DEPUTY

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

Comes now JACOB PUTMAN, Criminal District Attorney of Smith County, State of Texas, and presents to the 475TH Judicial District Court of Smith County, Texas, that heretofore and before the presentment of this Information, in the County of Smith and the State of Texas, on or about the 14th day of February, 2023, and anterior to the filing of this Information, in the County of Smith and State of Texas, BRUCE BAIN did then and there unlawfully appropriate, by acquiring or otherwise exercising control over, property, namely United States Currency, of the value of \$150,000 or more but less than \$300,000, from Haley Walker Hall, the owner thereof, without the effective consent of the owner, and with intent to deprive the owner of the property.,

AGAINST THE PEACE AND DIGNITY OF THE STATE;

WITNESS MY HAND this the 28th day of MARCH, 2025.

JACOB PUTMAN  
Criminal District Attorney Smith  
County, Texas

By: [Signature]  
Assistant Criminal District  
Attorney, Smith County, Texas

Offense: **THEFT PROP >=\$150K<\$300K, SECOND DEGREE FELONY, 23990201**  
DA Case Number: **24-01165**

Description: **D.O.B.11/29/1967, WHITE/MALE, PID # 9347777**

Address: **5819 CODEY LANE, TYLER, TX 75703**



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CAUSE NO. 475-0512-25

THE STATE OF TEXAS

**FILED**  
PENNY CLARKSON, DISTRICT CLERK  
SMITH COUNTY, TEXAS

IN THE 475TH JUDICIAL

VS.

APR 23 2025

DISTRICT COURT OF

BRUCE BAIN

Time 3:10 PM

SMITH COUNTY, TEXAS

BY [Signature] DEPUTY

**STIPULATION OF EVIDENCE**

My name is, BRUCE BAIN, and I am the Defendant in the above entitled and numbered cause appearing in person and with my attorney present. I hereby consent in writing and in open court to the stipulation of the evidence in this case and in so doing expressly waive the appearance, confrontation and cross-examination of witnesses. I further consent to the introduction of hearsay testimony by affidavit, written statements and other documentary evidence. Accordingly, having waived my Federal and State Constitutional and statutory rights against self-incrimination, I agree and stipulate that the following facts are true and correct and constitute the evidence in this case that in the County of Smith, State of Texas, on or about the 14th day of February, 2023, and anterior to the filing of this Information, in the County of Smith and State of Texas, BRUCE BAIN did then and there unlawfully appropriate, by acquiring or otherwise exercising control over, property, namely United States Currency, of the value of \$150,000 or more but less than \$300,000, from Haley Walker Hall, the owner thereof, without the effective consent of the owner, and with intent to deprive the owner of the property

AGAINST THE PEACE AND DIGNITY OF THE STATE;

[Signature]  
DEFENDANT

[Signature]  
ATTORNEY FOR DEFENDANT

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on the \_\_\_\_\_ day of \_\_\_\_\_, 2025, by the above named Defendant in open court during the trial of the above numbered and entitled cause.

APR 22 2025

[Signature]  
JUDGE PRESIDING



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CAUSE NO. 475-05-12-25

THE STATE OF TEXAS

FILED IN THE 475TH JUDICIAL  
PENNY C. BARKSTON, DISTRICT CLERK  
SMITH COUNTY, TEXAS

VS.

APR 23 2025

DISTRICT COURT OF

BRUCE BAIN

Time 3:10 PM SMITH COUNTY, TEXAS

BY [Signature] DEPUTY

**AGREEMENT TO STIPULATE TESTIMONY**

This day in open Court, the Defendant in the above entitled and numbered cause and his/her counsel and the State's attorney do hereby enter into an agreement that the Defendant waives the appearance, confrontation, and the cross-examination of witnesses in this cause and agrees that the testimony of said witnesses may be stipulated into the record by the State's attorney; such testimony being the same as the witnesses would give if they were present in Court and were testifying under oath, and the Defendant further consents to the introduction of testimony by affidavit, written statements of witnesses, and all other documentary evidence that may be introduced by the State.

[Signature]  
\_\_\_\_\_  
ATTORNEY FOR DEFENDANT

[Signature]  
\_\_\_\_\_  
DEFENDANT

Before the said Defendant enters his/her plea herein, each of the above requests of the Defendant herein and are hereby consented to and approved by me, the attorney representing the State herein.

[Signature]  
\_\_\_\_\_  
ASSISTANT DISTRICT ATTORNEY

The above and foregoing Waiver of Jury Trial and Agreement to Stipulate Testimony of the Defendant herein having been duly considered by the Court, and it appearing to the Court that the Defendant is herein charged with a felony, that the Defendant is represented by counsel, and that the attorney representing the state herein has given the consent and approval to same, the Defendant has waived the ten (10) day waiting period for trial, after appointment of counsel; therefore, consent and approval of the Court are hereby given to such procedure.

APR 22 2025

[Signature]  
\_\_\_\_\_  
JUDGE PRESIDING



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CAUSE NO. 475-0512-25

**FILED**  
PENNY CLARK STON, DISTRICT CLERK  
SMITH COUNTY, TEXAS

**THE STATE OF TEXAS**

**VS.**

**BRUCE BAIN**

**APR 23 2025**  
Time 3:10 PM  
BY [Signature] DEPUTY  
**DISTRICT COURT OF  
SMITH COUNTY, TEXAS**

**REQUEST FOR COURT TO ALLOW WAIVER OF PRE-SENTENCE  
INVESTIGATION AND REPORT**

Comes now the Defendant in the above styled and numbered cause, joined herein by his attorney, and having entered his/her plea of GUILTY to the charge set forth herein and, pursuant to Article 42.12, Sec. 9 of the Texas Code of Criminal Procedure, moves the Court to allow this Defendant, BRUCE BAIN, to waive the making of any required Pre-Sentence Investigation and Report.

It is further moved and requested by the Defendant as follows:

1. The State and Defendant agree that there is sufficient information in the record to permit the meaningful exercise of sentencing discretion without the necessity of a pre-sentence investigation.
2. That this Court assess punishment to this Defendant pursuant to the agreed Plea Recommendation signed by this Defendant and by the attorney representing the State, and that said assessment of punishment and subsequent sentencing be made without a Pre-Sentence Investigation and Report prepared by the Adult Probation Officer of Smith County, Texas, or one of his assistants or by any person.
3. That this Honorable Court assess punishments and sentencing forthwith.
4. That this Honorable Court allow this Defendant to waive the making, investigation or preparation of any required Pre-Sentence Investigation and Report prior to assessment of punishment and sentencing in this cause.

[Signature]  
ATTORNEY FOR DEFENDANT

[Signature]  
DEFENDANT

**ORDER**

The above and foregoing Request for Waiver of Pre-Sentence Investigation and Report having been duly considered by the Court and it appearing to the Court that the interests of justice will be served by approving and granting same, the approval of the Court is hereby given and such Defendant is hereby allowed to waive the making of such Pre-Sentence Investigation and Report.

SIGNED this \_\_\_\_\_ day of APR 22 2025, 2025.

[Signature]  
JUDGE PRESIDING



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CLERK'S OFFICE

CAUSE NO. 4-75-0512-21

PENNY CLARKSTON D. CT CLERK  
SMITH COUNTY TEXAS

THE STATE OF TEXAS

IN THE 475TH JUDICIAL

VS.

APR 23 2025

DISTRICT COURT OF

BRUCE BAIN

Time 3:10pm

BY M. M. M. M. M. DEPUTY

SMITH COUNTY, TEXAS

**ADVICE OF DEFENDANT'S RIGHT TO APPEAL**

The Court, pursuant to TEX. R. APP. P. 25.2 advised the Defendant as follows:

1. Texas law gives a defendant convicted of a crime the right to appeal his conviction.
2. If you pled guilty or no contest and accepted the punishment recommended by the prosecutor, however, you cannot appeal your conviction unless this Court gives you permission. If you waived or gave up your right to appeal, you cannot appeal your conviction.
3. If you did not plead guilty, you may have the right to appeal. If you want to appeal, you must give notice of appeal in writing to this Court's clerk within 30 days.
4. If an attorney represents you in the court of appeals, your attorney must mail a copy of the court of appeals' judgment and opinion to your last known address. You must tell your attorney, in writing, of any change of address.
5. If you are not satisfied with your appeal's result, you can ask the Court of Criminal Appeals to review your case by filing a petition for discretionary review within 30 days of the opinion's issuance in the court of appeals. If you fail to inform your attorney of any change of your address, you may lose the opportunity to seek discretionary review.

The Defendant declares the following to the Court (choose one):

1.  I read and write English. I have read and I understand this document. BA  
(Defendant initial here if true); or
2.  I speak English. BRUCE BAIN (name of reader) read this document to me. I understand its contents. BA (Defendant initial here if true); or
3.  I do not speak English. \_\_\_\_\_ (name translator) translated this document for me. I understand its contents. \_\_\_\_\_ Defendant initial here if true.)

B. Bain  
Defendant's signature

Sworn to and subscribed before me on the \_\_\_\_\_ day of APR 22 2025, 2025.

*[Handwritten Signature]*

PRESIDING JUDGE  
475TH District Court  
Smith County, Texas



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NO. 435-0512-25

FILED  
PENNY CLARKSTON, DISTRICT CLERK  
SMITH COUNTY, TEXAS

THE STATE OF TEXAS

IN THE 475TH JUDICIAL

VS.

APR 23 2025

DISTRICT COURT OF

BRUCE BAIN

Time 3:07 PM  
BY [Signature] DEPUTY

SMITH COUNTY, TEXAS

**WAIVERS UPON FELONY PLEA OF GUILTY TO INFORMATION**

**Waiver of Indictment**

Now comes the Defendant herein, accused of the non-capital felony offense of **THEFT PROP >=\$150K<\$300K** and represented by his/her attorney and having been advised by his/her attorney and by the Court of her rights and the nature of the charge against him/her and his/her right not to be tried in this case except on the indictment of a Grand Jury, hereby in open court and in writing voluntarily and knowingly waive my right to be prosecuted by a Grand Jury indictment and announce my election and consent to be charged by information.

[Signature]  
DEFENDANT

[Signature]  
ATTORNEY FOR DEFENDANT

**ORDER**

The above-named Defendant having appeared before me with his/her attorney in open court, and the Defendant having been fully advised of his/her rights and nature of the charges against him/her and that s/he has a right to be prosecuted by indictment by a Grand Jury, and the Defendant having intelligently, voluntarily and knowingly waived such right and the Defendant and his/her attorney having signed the foregoing written instrument in open court, the Court hereby approves the waiver of indictment and approves prosecution in this case by information.

APR 22 2025

[Signature]  
JUDGE PRESIDING

**Waiver of Ten Days to Prepare for Trial**

Comes now the Defendant in open court, together with his/her attorney and shows this Court that I have had ample time to prepare for trial and am prepared for trial this day, that I understand that I have the right under Article 26.04(B), C.C.P. for ten (10) days to prepare for trial and that I have the right under Article 27.11 and Article 27.12, C.C.P. for ten (10) days to file written pleadings, and that understanding these rights I knowingly and intentionally waive these rights and request the Court to proceed to trial this day.

[Signature]  
DEFENDANT  
APR 22 2025

[Signature]  
ATTORNEY FOR DEFENDANT  
JUDGE PRESIDING



CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT FILED IN THE SMITH COUNTY DISTRICT CLERK'S OFFICE

**STATE OF TEXAS - COUNTY OF SMITH**  
I, Penny Clarkston, District Clerk of Smith County, Texas,  
do hereby certify the foregoing is a true and correct copy of  
the original record, now in my lawful custody and possession,  
as appears of record in Vol. \_\_\_ Page \_\_\_ minutes of said court off  
file in my office.

Witness my official hand and seal of office on this date:

October 2, 2025

Penny Clarkston, District Clerk - Smith County, Texas

By: Jamela Zelevy Deputy

AFFIDAVIT

THE STATE OF TEXAS     §  
  §  
COUNTY OF TRAVIS     §

BEFORE ME, the undersigned authority, on this day personally appeared Amanda M. Kates, the Commission'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:

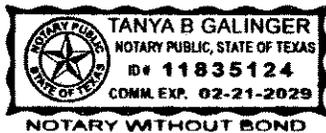
Based upon information and belief, Bruce David Bain, whose Texas Bar Card Number is 00790254, is licensed as an attorney and counselor at law in the State of Texas. Based upon information and belief Bruce David Bain, named as Respondent in the Petition for Compulsory Discipline filed with the Board of Disciplinary Appeals is one and the same person as the Bruce Bain who is the subject of the Order of Deferred Adjudication in Cause Number 475-0512-25, styled *The State of Texas v. Bruce Bain*, in the 475th District Court, Smith County, Texas, wherein Respondent pled guilty to the offense of Theft Prop >=\$150K<\$300K in violation of Texas Penal Code 31.03(e)(6)(A), a Second Degree Felony. Respondent was placed on Deferred Adjudication Community Supervision for a period of seven (7) years. Respondent was further ordered to pay restitution in the amount of \$235,551.44 and court costs in the amount of \$251.50.

FURTHER Affiant saith not.



\_\_\_\_\_  
Amanda M. Kates

SWORN AND SUBSCRIBED before me on the 19<sup>th</sup> day of February, 2026.



Tanya B. Galinger  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

**EXHIBIT**  
**4**

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



**INTERNAL PROCEDURAL RULES**  
(EFFECTIVE SEPTEMBER 24, 2024)



Mailing Address:  
P.O. Box 12426  
Austin TX 78711

1414 Colorado, Suite 610  
Austin TX 78701

Tel: 512 427-1578  
FAX: 512 427-4130  
website: [txboda.org](http://txboda.org)

# INTERNAL PROCEDURAL RULES

## BOARD OF DISCIPLINARY APPEALS

*Current through September 24, 2024*

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# INTERNAL PROCEDURAL RULES

## Board of Disciplinary Appeals

*Current through September 24, 2024*

### 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.

- (c) BODA may, upon decision of the Chair, conduct any business or proceedings—including any hearing, pretrial conference, or consideration of any matter or motion—remotely.

#### 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 or a complaint 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. If a grievance is classified as a complaint, the CDC must notify both the Complainant and the Respondent of the Respondent's 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. For a grievance classified as a complaint, the CDC must send the Respondent an appeal notice form, approved by BODA, with notice of 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 not consider documents or other submissions that the Complainant or Respondent filed with the CDC or BODA after the CDC's classification. 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.

#### **Rule 3.03. Disposition of Classification Appeal**

(a) BODA may decide a classification appeal by doing any of the following:

(1) affirm the CDC's classification of the grievance as an inquiry and the dismissal of the grievance;

(2) reverse the CDC's classification of the grievance as an inquiry, reclassify the grievance as a complaint, and return the matter to the CDC for investigation, just cause determination, and further proceedings in accordance with the TRDP;

(3) affirm the CDC's classification of the grievance as a complaint and return the matter to the CDC to proceed with investigation, just cause determination, and further proceedings in accordance with the TRDP; or

(4) reverse the CDC's classification of the grievance as a complaint, reclassify the grievance as an inquiry, and dismiss the grievance.

(b) When BODA reverses the CDC's inquiry classification and reclassifies a grievance as a complaint, BODA must reference any provisions of the TDRPC under which BODA concludes professional misconduct is alleged. When BODA affirms the CDC's complaint classification, BODA may reference any provisions of the TDRPC under which BODA concludes professional misconduct is alleged. The scope of investigation will be determined by the CDC in accordance with TRDP 2.12.

(c) BODA's decision in a classification appeal is final and conclusive, and such decision is not subject to appeal or reconsideration.

(d) A classification appeal decision under (a)(1) or (4), which results in dismissal, has no bearing on whether the Complainant may amend the grievance and resubmit it to the CDC under TRDP 2.10.

### **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 [TRDP] 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.