



FILED
5/5/26

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

IN THE MATTER OF
RICHARD EVERETT BIGGS,
STATE BAR CARD NO. 24064899

§
§
§

CAUSE NO. 73019

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

The Commission for Lawyer Discipline (hereinafter referred to as the “Commission”), brings this action against Respondent, Richard Everett Biggs, and would show the following:

1. This action is commenced by the Commission pursuant to Part IX of the Texas Rules of Disciplinary Procedure (the “TRDPs”). The Commission is also providing Respondent with a copy of Section 7 of this Board’s Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Richard Everett Biggs, 500 S Taylor Street, Unit 213, Amarillo, TX 79101-2445.

3. On or about February 3, 2026, a Memorandum Opinion and Order was entered in a matter styled Case No. 2:23-cv-00026-Z-BR, *Amarillo Medical Specialists, LLP, et al., v. AKOS MD IPA, LLC, et al., Defendants, Genuine Health Group, LLC, Third-Party Plaintiff, v. Mary Black, Third-Party Defendant.*, in the United States District Court for the Northern District of Texas, Amarillo Division (Exhibit 1), which states in pertinent part:

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant and Third-Party Plaintiff Genuine Health Group LLC’s (“GHG”) Motion for Sanctions (“Motion”), filed October 2, 2025.

ECF No 175. Plaintiffs responded on October 30, 2025. ECF No. 182. GHG replied on November 13, 2025. ECF No. 196. The Court held a hearing on the Motion on December 5, 2025. *See* ECF Nos. 204, 206.

The Motion is now ripe. Having considered the Motion, briefing, and relevant law, the Court **GRANTS** the Motion. The Court **AWARDS** GHG all reasonable expenses incurred in litigating this Motion, including attorney's fees.

This case is **DISMISSED** with prejudice. All other pending motions are **DENIED** as moot. ECF Nos. 125, 153, 154, 157, 170.

BACKGROUND

Plaintiffs Amarillo Medical Specialists, LLP ("AMS"), Amarillo Family Physicians LLP ("AFP"), and Amarillo Legacy Medical ACO LLC first filed this action in Texas state court on January 13, 2023. *See* ECF No. 1 at 1. Defendants received a citation and Plaintiffs' Original Petition on January 23, 2023. *See id.* Next, Defendants removed the case to this Court pursuant to 28 U.S.C. Section 1441 on February 21, 2023. *See id.*

Defendants are GHG, a Florida limited liability company, and AKOS MD IPA, LLC ("AKOS"), an Arizona limited liability company. *See id.* at 2. Plaintiffs originally brought four causes of action: (1) breach of contract; (2) tortious interference with contract; (3) fraud and fraudulent inducement; and (4) negligence. *See id.* at 8–9. Plaintiffs initially brought only the tortious interference claim against GHG, and the other claims against only AKOS. *See id.*

On April 20, 2023, Plaintiffs amended their Complaint to add "tortious interference with prospective contract" as a fifth cause of action against both Defendants. ECF No. 22 at 8. The Amended Complaint added GHG as co-defendant as to two causes of action: fraud and fraudulent inducement, and negligence and negligent misrepresentation. The Amended Complaint did not alter Plaintiffs' breach of contract (against AKOS only) and tortious interference with contract (against GHG only) claims. Plaintiffs seek damages "in the amount of at least \$3 million dollars." *Id.* at 7.

This litigation arises from a prospective business relationship between Plaintiffs and AKOS—and, as Plaintiffs allege, also with GHG. "On or around April 6, 2022," AKOS approached Plaintiffs "with a proposition for Plaintiffs to participate in" AKOS's Accountable Care Organization ("ACO"). ECF No. 155 at 9. "An ACO is an organization of health care practitioners that agrees to be accountable for the quality, cost, and overall care of Medicare beneficiaries who are enrolled in the traditional fee-for-service program who are assigned to it." ECF No. 165 at 2. "The purpose of an ACO is for a group of doctors with a patient base of at least 5,000 Medicare patients to better manage the care of its patients," with the goal of "achiev[ing] a reduction in healthcare costs over time." *Id.* (quoting

Enable Healthcare, Inc. v. Cleveland Quality Healthnet, LLC, No. 1:16 CV 2395, 2017 WL 3116680, at *1 (N.D. Ohio July 20, 2017)).

The ACO program is administered “by the federal Centers for Medicare & Medicaid Services (‘CMS’).” ECF No. 165 at 2. “CMS holds annual enrollment periods, and its enforcement of these deadlines is strict.” *Id.* (collecting authorities); *see also id.* at 3 (noting that the deadline to enroll in an ACO for 2022 was September 2); ECF No. 209 at 2 n.1 (similar). CMS incentivizes healthcare providers to participate in the ACO program by paying providers “a share of any savings when the actual per capita expenditures of their assigned Medicare beneficiaries are a sufficient percentage below their specified benchmark amount.” ECF No. 165 at 2. In other words, “if the ACO is able to reduce spending by a certain target, the savings is shared between CMS and the ACO.” *Id.* at 2–3 (quoting *Enable Healthcare*, 2017 WL 3116680, at *1). The reverse is true, too: “ACOs that lose money must pay Medicare for the losses.” *Id.* at 3 (quoting *United States v. Millennium Physician Grp.*, No. 2:16-CV-798, 2023 WL 2022228, at *2 (M.D. Fla. Feb. 15, 2023)). “A healthcare provider can only be enrolled in one ACO at a time, a fact which is common knowledge.” *Id.*

“From January 1, 2013, until December 2022,” Plaintiffs AMS and AFP “were enrolled [in] the Amarillo Legacy Medical ACO.” ECF No. 165 at 3. In 2022, AMS and AFP began considering alternative ACOs. *See id.* One option was to “continue functioning under their existing structure.” *Id.* Another was to “move to an ACO Reach, a new ACO structure under the Affordable Care Act.”¹ *Id.* AMS and AFP “had to sign with one (or more) ACO by early August” 2022, and had to “choose a single, exclusive ACO by September 2, 2022.” *Id.*

In April 2022, AFP “was approached by Mary Black, an employee of AKOS.” ECF No. 165 at 3. Ms. Black attempted to persuade AFP and AMS to join a proposed ACO Reach program run by AKOS, subject to CMS approval. *See id.*; *see also* ECF No. 155 at 17–18 (noting that AKOS had “request[ed]” CMS approval “to become an ACO Reach vendor”). At that time, CMS had *not* approved AKOS’s ACO Reach application. Plaintiffs nonetheless “began negotiating with Ms. Black.” ECF No. 165 at 3. On August 2, 2022, Dr. William Biggs² “agreed to contract with AKOS.” ECF No. 155 at 11. But this was a one-sided “contract”: AKOS never signed this “contract,” or any other “contract,” with Plaintiffs. *See* ECF No. 183 at 5–33 (Participation Agreement unexecuted by either party); *id.* at 34–36 (Provider Joinder Agreement executed only by employees of Plaintiffs). These agreements were “two parts” of the same alleged “contract.” ECF No. 182 at 2. Had the “contract” been fully executed, Plaintiffs *would* have joined AKOS’s yet-to-be-formed, still-subject-to-CMS-approval ACO Reach.

¹ *See ACO Realizing Equity, Access, and Community Health (REACH) Model*, CTRS. FOR MEDICARE & MEDICAID SERVS. 2 (Apr. 2022), <https://www.cms.gov/priorities/innovation/media/document/aco-reachgenfaqs> [<https://perma.cc/UY8P-J5VP>].

² Dr. Biggs is “managing partner of Plaintiff AMS” and “CEO and Medical Director” of Amarillo Legacy Medical ACO. ECF No. 126 at 17. He is also Plaintiffs’ designated expert witness as to damages. *See, e.g.*, ECF No. 130 at 9.

But, again, neither part of this “contract” is signed by AKOS. And GHG is not a party to either agreement. In fact, neither agreement mentions GHG at all. Despite this, Plaintiffs have repeatedly referred to AKOS and GHG as a joint entity in their briefing. *See, e.g.*, ECF No. 182 at 2 (“AFP executed a contract with AKOS/GHG”); *id.* at 3 (noting that an employee of Plaintiffs “testified that they had an agreement with AKOS/GHG”); ECF No. 165 at 16 (referring to “the AKOS/GHG ACO”).

Despite the centrality of a fully executed “contract” between Plaintiffs and AKOS, Plaintiffs never produced conclusive evidence of said “contract” in the three-plus years since filing suit.³ *See* ECF No. 182 at 2 (“Plaintiffs cannot locate their copy of the Participation Agreement”); *id.* at 4 (“AFP has clearly executed the Participation Agreement which it now cannot find.”). Even the part of the contract that Plaintiffs describe as “fully executed”—the three-page Provider Joinder Agreement, which appears to be a mere addendum—is signed only by Plaintiffs. *Id.* at 2.

Shockingly, Plaintiffs abandoned their decade-old ACO on the day of the CMS registration deadline—based on a supposed contract that they “now cannot find.” *Id.* at 4.⁴ Yet, that missing contract is a core document in this long-running lawsuit wherein Plaintiffs seek millions of dollars in damages.

While “GHG and AKOS had anticipated a potential transaction in which a yet-to-be formed subsidiary of GHG to be called Genuine Health Southwest ACL, LLC would purchase AKOS,” AKOS was *not* a subsidiary of GHG, nor was there any formal legal relationship between AKOS and GHG. ECF No. 155 at 9–10 (citation modified). GHG and AKOS were still negotiating, and GHG’s plan to purchase AKOS was contingent upon AKOS qualifying for CMS’s new ACO Reach program. *See* ECF No. 155 at 25 (noting that GHG’s agreement with AKOS provided for “automatic termination” in the event AKOS failed to qualify for Reach (citation modified)). Ultimately, AKOS failed to qualify for the ACO Reach program. *See* ECF No. 206 at 78 (counsel for GHG noting that “[w]hat happened was AKOS fell apart. They couldn’t participate in the Reach ACO”); ECF No. 155 at 10 (“But the plans for that acquisition were abandoned in December 2022 because AKOS failed to qualify to provide Reach ACO services.”).

Though GHG never completed its planned acquisition of AKOS, the parties agree that GHG was involved in the negotiations between Plaintiffs and AKOS. Plaintiffs and GHG dispute the *degree* of said involvement. Plaintiffs claim that “AKOS quickly represented that it was in a business arrangement with” GHG “and provided documents to support this.” ECF No. 165 at 3. For example, on July 26, 2022, Plaintiffs contend that AKOS sent Plaintiffs billing codes for the proposed

³ At the December 6 hearing, Mr. Biggs claimed that only AFP’s contract with AKOS is unexecuted, and that Plaintiff AMS did enter into a fully executed contract with AKOS. *See* ECF No. 206 at 38. That is not the case. *See* ECF No. 165-1 at 197, 220 (signature pages bearing only Dr. Biggs’s signature on behalf of AMS).

⁴ At the hearing, Mr. Biggs agreed: “Well, I agree it’s shocking and I’m disappointed in my client” ECF No. 206 at 106.

Reach ACO on GHG letterhead. *Id.* at 3–4. Later, during a meeting on August 4, 2022, Plaintiffs received a “Shared Savings Visual,” drafted by Sean Leimbach of GHG,⁵ that “provided a visualization of how the revenue generated under GHG’s ACO would be allocated, with GHG receiving 30% of the revenue.” *Id.* at 4. GHG presented this Visual again at a second meeting on September 2, 2022. *See* ECF No. 165 at 6–7; ECF No. 155 at 10. For its part, GHG insists that these were “hypothetical projections for illustrative purposes only.” *Id.* at 11.

Additionally—and crucial to the disposition of this case—Plaintiffs repeatedly stated that AKOS “unequivocally” and “immediately” represented that they were GHG’s direct subsidiary at an August 4 meeting, *at the time of said August 4 meeting*. The bulk of these representations came from the Affidavit of Mary Jo Zallar, who was COO of Amarillo Legacy Medical ACO and AKOS’s “primary contact with Plaintiffs.” ECF No. 33 at 3. Ms. Zallar’s Affidavit stated that AKOS “immediately represented that it was a subsidiary of GHG,” that 5 Sean Leimbach was GHG’s Chief Strategy Officer. *See* ECF No. 165 at 4. “AKOS, with the approval of GHG, repeatedly represented that it was acting as an agent for GHG,” and that GHG “wrote [to] Plaintiffs” directly on July 29, 2022. ECF No. 20-1 at 3–4. Ms. Zallar further swore that “[d]uring this meeting [Sean] Leimbach made it unequivocally clear that: (1) AKOS was GHG’s subsidiary, (2) AKOS, as GHG’s subsidiary, was acting as GHG’s agent, (3) ALMA, AMS, and AFP would be joining a GHG ACO, and (4) GHG’s ACO would provide substantially more revenue” than Plaintiffs’ “existing ACO.” *Id.* at 5.

But none of these statements were true.

During her deposition on August 6, 2024, Ms. Zallar testified that no party ever used the word “subsidiary” during the August 4 meeting:

Q. Even Mary Black never said to you . . . the word subsidiary?

A. No.

ECF No. 176-4 at 7 (citation modified for readability). Ms. Zallar also admitted that AKOS never “represented that it was acting as an agent for GHG and its ACO” and agreed that “GHG did not make the communication listed on July 29 to the Plaintiffs.” *Id.* at 7, 9. To illustrate how Ms. Zallar’s deposition testimony flatly contradicted her Affidavit, the Court quotes from her deposition:

Q. The last sentence in paragraph 10 [of your Affidavit] says: “AKOS, with the approval of GHG, repeatedly represented that it was acting as an agent for GHG and its ACO.” That never happened, did it?

A. No. That’s what we were led to believe, that it was with the approval of GHG.

Q. That’s what you assumed?

⁵ Sean Leimbach was GHG’s Chief Strategy Officer. *See* ECF No. 165 at 4.

A. Yes.

Q. But it's not a fact, as stated in your affidavit?

A. No.

Q. Why did you say it in your affidavit if it wasn't true?

A. Some of this was drafted for me, and I just—I left it as it was worded.

Q. Did you understand that this was going to be filed as a sworn statement with the Court?

A. I guess not to the extent that you're saying, yeah. I should have changed the verbiage.

Id. at 7–8 (citation modified for readability).

Ms. Zallar further admitted that she knew key portions of her Affidavit were false at the time she signed it:

Q. Would you agree with me that the language used in paragraph 10 appears to have been designed to make the relationship between GHG and AKOS something more than what it had actually been represented to be?

A. It's probably stronger than what [the relationship] was represented to be.

Q. Well, and it's not factually correct, right?

A. Well, you know, we know that now.

Q. Well, you knew it when you signed the document, to be fair; you just adopted someone else's words, right?

A. Yes.

Id. at 8 (citation modified for readability). And she admitted that Plaintiffs received no communications from GHG on July 29—contrary to her Affidavit, which stated that AKOS and GHG both “wrote Plaintiffs” on that date:

Q. Your affidavit is incorrect that the Defendants, which includes GHG, wrote anything to the Plaintiffs on July 29th, correct?

A. Well, the Defendants, as in [AKOS].

Q. But you understand that [AKOS] is one company and is not the only Defendant in this lawsuit?

A. Yes. So it should have been, “One Defendant wrote.”

Q. GHG did not make the communication listed on July 29 to the Plaintiffs?

A. Correct.

Id. at 9 (citation modified for readability).

Most troublingly, Ms. Zallar flip-flopped on *how* GHG allegedly described its relationship with AKOS. Her Affidavit stated that GHG “made it unequivocally clear” that “AKOS was GHG’s subsidiary” and Plaintiffs “would be joining a GHG ACO.” ECF No. 20-1 at 5. That was false, too:

Q. The next thing [your Affidavit] says is: During this meeting, Leimbach made it unequivocally clear to me that AKOS was GHG’s subsidiary. That’s also untrue, correct?

A. Yes.

Q. Sean Leimbach never told you that AKOS was GHG’s subsidiary?

A. I don’t believe so.

Q. Second paragraph or second bullet point in paragraph 19 states that: Leimbach made it unequivocally clear that AKOS, as GHG’s subsidiary, was acting as GHG’s agent. That’s not true, is it?

A. No. Again, this—I accepted language that was drafted for me.

Q. Language that you are now testifying to be untrue, correct?

A. Not correct, yes.

ECF No. 176-4 at 11 (citation modified for readability).

Ms. Zallar’s Affidavit caused the Court to believe that AKOS and GHG had a close relationship when the opposite was true. Ms. Zallar knew her Affidavit was false or misleading in key, material respects when she submitted it to the Court on April 20, 2023. Only when she was deposed did the truth finally come to light.

But Plaintiffs’ malfeasance did not stop at the mere *submission* of a false Affidavit. Plaintiffs cited Ms. Zallar’s Affidavit over a dozen times in asking the Court to deny GHG’s Motion to Dismiss. And the Court *relied* on said Affidavit when it denied GHG’s Motion to Dismiss on June 30, 2023. *See* ECF No. 37 (citing Plaintiffs’ Response in Opposition, which repeatedly referred the Court to the Zallar Affidavit).

For example, Plaintiffs wrote that “GHG disputes the nature of the video calls between GHG and Plaintiffs. Plaintiffs assert they were told that AKOS was GHG’s subsidiary by Sean Leimbach, the ‘Chief Strategy Officer’ at [GHG], and that Plaintiffs would be joining GHG’s ACO.” ECF No. 33 at 14 (citing ECF No. 20-1); *see also id.* at 5 (citing the Zallar Affidavit for the contention that GHG “made it unequivocally clear” that AKOS was a GHG subsidiary and GHG’s agent); *id.* (“Leimbach directly informed Plaintiffs that they would be participating in GHG’s ACO.”). As shown above, these assertions were provably false—or, at best, intentionally misleading.

The Court took Plaintiffs at their word, assumed the Zallar Affidavit was truthful, and this litigation lingered, languished, and limped along for nearly three (3) more years.

LEGAL STANDARD

Federal Rule of Civil Procedure 11 authorizes federal district courts to sanction a party or attorney who files a pleading for an improper purpose or without sufficient legal and factual backing. Rule 11(a) requires that “[e]very pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney’s name—or by a party personally if the party is unrepresented.” FED. R. CIV. P. 11(a). Rule 11(b) sets out four specific representations that parties and counsel make when they file a document in federal court:

By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

FED. R. CIV. P. 11(b).

...

ANALYSIS

The Court discerns that two independent sanctions are necessary: (1) attorney’s fees under Rule 11(c)(2), and (2) dismissal of this case under the Court’s inherent power to sanction attorneys. The Court will address Mr. Biggs’s Rule 11 violations before turning to its inherent power to sanction his other, arguably more egregious behavior.

I. Rule 11 Sanctions

Under Rule 11, “attorneys have a responsibility to conduct a reasonable inquiry into the facts and law of a case when they affix their signature on any papers filed with the court.” *SyncPoint Imaging, LLC v. Nintendo of Am. Inc.*, No. 215CV247, 2018 WL 6788033, at *4 (E.D. Tex. Dec. 26, 2018). “By signing and filing those papers with the Court, attorneys certify that, to the best of their knowledge, the allegations and factual contentions submitted to the Court have evidentiary support.” *Id.* (citing FED. R. CIV. P. 11(b)(3) (citation modified)). “Rule 11 is designed to ‘reduce the reluctance of courts to impose sanctions by emphasizing the responsibilities of attorneys and reinforcing those obligations through the imposition of sanctions.’” *Id.* (quoting *Thomas*, 836 F.2d at 870).

Rule 11 sanctions are warranted when an attorney, his law firm, or his client makes factual allegations without sufficient evidentiary support. “In assessing

whether a represented party and counsel made a reasonable factual inquiry into the basis of a filing,” courts consider:

(1) the time available to counsel for investigation; (2) the extent to which counsel relied on his client for the factual support of the allegations; (3) the feasibility of prefiling investigation; (4) the complexity of the factual and legal issues; and (5) the extent to which the development of factual circumstances underlying the claim required discovery.

SyncPoint Imaging, 2018 WL 6788033, at *5 (citing *Smith v. Our Lady of the Lake Hosp., Inc.*, 960 F.2d 439, 444 (5th Cir. 1992)); *see also Skidmore Energy, Inc. v. KPMG*, No. 3:03-CV-2138, 2005 WL 8158140, at *6 (N.D. Tex. Mar. 18, 2005) (reciting the same factors and adding a sixth, “whether the attorney accepted the case from another attorney”). “The reasonableness of the legal inquiry is determined by considering the time available to the attorney, the plausibility of the legal view contained in the document, the *pro se* status of the litigant, and the complexity of the legal and factual issues.” *Skidmore*, 2005 WL 8158140, at *6 (citing *Our Lady of the Lake Hosp.*, 960 F.2d at 444).

Here, the Zallar Affidavit submitted to the Court on April 20, 2023, violates Rule 11(b)(3). That provision of Rule 11 requires that all “factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.” FED. R. CIV. P. 11(b)(3).

Ms. Zallar’s Affidavit presents itself to the Court as an authoritative account of the events it describes, using no prefatory language such as “on information and belief.” And it repeats *ad nauseam* that “Defendants”—referring to both AKOS and GHG—took certain actions.⁶ *See* ECF No. 20-1 at 3, 4, 5, 6. But at every turn, “Defendants” meant only AKOS—even though the relationship between GHG and AKOS is the *sine qua non* of this case. Yet Mr. Biggs treated the two defendants as a single entity by submitting the Zallar Affidavit, causing the Court to believe GHG and AKOS were closer than they were.

Paragraph 19 of Ms. Zallar’s Affidavit also lacks evidentiary support. While GHG initially disputed *any* meeting took place on August 4, 2022, they conceded in their Reply and during the hearing that such a meeting “probably” did occur. *See* ECF No. 196 at 5 (“GHG agrees that a meeting took place on August 4, 2022, along with another meeting on September 2, 2022.”); ECF No. 206 at 17 (“To settle the Court’s mind, in our reply brief, we acknowledged there probably was one. We should certainly be forgiven our uncertainty on the matter in part because Mary Jo Zallar testifies in her deposition that there was no such meeting.”). Regardless of

⁶ The Court also addresses this misleading conflation of AKOS and GHG at greater length later in this Order. *See infra* Part II.B.

the initial uncertainty about whether a meeting occurred on August 4, 2022, the Affidavit's assertions about the *contents* of that meeting are most relevant here.

Ms. Zallar's Affidavit swore that at that meeting, GHG "made it unequivocally clear" that AKOS was GHG's "subsidiary" and was "acting as GHG's agent." ECF No. 20-1 at 5. But as her deposition later revealed, that was not true. *See* ECF No. 176-4 at 7 (counsel for GHG: "That never happened, did it?" Zallar: "No.")). Plaintiffs have repeatedly presented this portion of Ms. Zallar's testimony to the Court as evidence that *GHG*, not just AKOS, believed that AKOS was their agent and subsidiary.

The Court **FINDS** that these violations of Rule 11(b)(3) are the fault of Mr. Biggs rather than his clients. Indeed, all five *SyncPoint Imaging* factors—and the sixth factor from Judge Boyle's district court opinion in *Skidmore*—cut against Mr. Biggs. By signing Ms. Zallar's Affidavit, he certified that he had performed an "inquiry reasonable under the circumstances" into its underlying facts and determined that those facts had "evidentiary support." FED. R. CIV. P. 11(b). He performed no such investigation beyond speaking with his clients and transcribing their conversation, which he then submitted to the Court as a sworn affidavit:

It was all based on her own words. I'm typing it up as she's telling me over the phone and then, you know, rewording it in a more legal—you know, a more—a format more appropriate for an affidavit than a telephone conversation. It's not that I'm trying to write her own affidavit. And clearly, this isn't a fill-in the-blank affidavit. This is very customized to this case.

ECF No. 206 at 100.

Because Mr. Biggs violated Rule 11(b)(3) by filing Ms. Zallar's Affidavit without performing a reasonable prefiling investigation into its allegations, the Court now considers the appropriate sanction.⁷

...

Rule 11(c)(4) provides that sanctions "imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." FED. R. CIV. P. 11(c)(4). Rule 11(c)(2) specifically notes, however, that courts "may award to the prevailing party" in a Rule 11 motion "the reasonable expenses, including attorney's fees, incurred *for the motion*." (emphasis added).

⁷ GHG's Motion did not state whether GHG complied with Rule 11(c)(2)'s procedural requirements, particularly its "safe harbor" provision. However, GHG confirmed compliance by separate briefing. *See* ECF No. 210 (ordering GHG to submit a supplemental brief); ECF No. 211 (certifying that GHG served the proposed Motion on Plaintiffs twenty-one days before filing).

The Court finds that an appropriate Rule 11 sanction in these circumstances is awarding GHG all reasonable expenses, including attorney's fees, associated with this Motion. The amount of these fees will be determined by separate order.

This Memorandum Opinion and Order applies to both Mr. Biggs and his law firm, Mullin Hoard & Brown, LLP ("Mullin Hoard"). *See* FED. R. CIV. P. 11(c)(1) ("Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee."). If Mullin Hoard believes this case presents "exceptional circumstances" such that only Mr. Biggs should be sanctioned under Rule 11, the firm may file a Brief explaining those circumstances **within two weeks of the date of this Order**.

If Mullin Hoard does *not* believe this case presents the kind of "exceptional circumstances" contemplated by Rule 11(c), it must file a Notice to that effect by the same date. The Court will consider Mullin Hoard's filing when deciding how to apportion the attorney's fees award.

II. The Court's Inherent Sanction Power

Rule 11(c)(4) limits Rule 11 sanctions to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

FED. R. CIV. P. 11(c)(4).

Because this language limits sanctions to monetary penalties and nonmonetary directives to parties and counsel, the Court cannot dismiss this case under Rule 11. But federal courts also possess the *inherent* power to sanction the attorneys who appear before them. This inherent power exists apart from any statute or rule of court authorizing courts to impose specific types of sanctions. It "can be *limited* by statute or rule," such as Rule 11, but courts may invoke this inherent power "even if procedural rules exist which sanction the same conduct." *Chambers*, 501 U.S. at 47, 49 (emphasis added).

Thus, courts may invoke both statutorily authorized sanction powers and their inherent powers to sanction the same misconduct. Here, although Rule 11 provides for one type of sanction against Mr. Biggs, it does not prevent the Court from exercising its inherent power to impose other sanctions.

...

A. Perjured Affidavit and Discovery Abuses

The Court **FINDS** that Ms. Zallar likely perjured herself when she testified that GHG “unequivocally” and “immediately” represented to Plaintiffs that AKOS was a GHG subsidiary. But Plaintiffs’ counsel not only failed to verify key facts with Ms. Zallar. He also drafted the Affidavit and repeatedly urged the Court to credit the facts stated therein in denying GHG’s Motion to Dismiss. He performed no discernible prefiling investigation to ensure the accuracy of the Zallar Affidavit and declined to retract the false assertions after learning they were not true.

It was only when Ms. Zallar was deposed by GHG that the truth came to light: GHG never told Plaintiffs that AKOS was their subsidiary or that AKOS or Mary Black was GHG’s agent. To this day, including at the hearing the Court held on GHG’s Motion, Mr. Biggs obstinately persists in claiming that “[t]here is nothing in Ms. Zallar’s affidavit that is false.” ECF No. 206 at 26; *see also id.* at 29 (asserting that “[e]verything in [Zallar’s] affidavit is verified by other witness testimony and other documentary evidence” without directing the Court to any supposed evidence); *id.* at 27 (“What ultimately she landed on was all correct.”).

Neither party disputes that Mr. Biggs *drafted Ms. Zallar’s Affidavit for her*. He is not only lead counsel for Plaintiffs, but *sole* counsel for Plaintiffs. He prepared and submitted an Affidavit that later testimony revealed to be false. Either he knew the allegations were false or failed to verify their veracity. To date, he has not retracted or modified any of Plaintiffs’ claims since filing the Affidavit in April 2023—even repeating many of its falsehoods in later briefing. And he is intransigent when pressed on the Zallar Affidavit’s obvious distortions—even at the hearing on GHG’s Motion for Sanctions.

Mr. Biggs’s only defense of Ms. Zallar’s about-face is that her unfavorable admissions came at the end of a “full-day deposition.” ECF No. 206 at 22–23. At the hearing, Mr. Biggs candidly admitted he had “never seen a witness crash as hard as Ms. Zallar did” and that counsel for GHG “took apart my witness better than I’ve ever seen any attorney in Amarillo take apart one of my witnesses before.” *Id.* at 23.

But as GHG noted at the December 6 hearing, “Plaintiffs designated Ms. Zallar as a potential expert for purposes of this case. She can surely be held at minimum to the words she said in her affidavit, regardless of whatever sympathy we might have for a deponent after a long day.” *Id.* at 41 (citation modified). The Court agrees: A key witness who signs a sworn affidavit in opposition to a Motion to Dismiss must be held to the statements in that affidavit. Ms. Zallar was also the primary point of contact between Plaintiffs and GHG and AKOS, and thus best positioned to testify about Plaintiffs’ communications with each defendant. She cannot escape accountability simply because deposition testimony that undermines Plaintiffs’ case surfaced at the end of a long day.

B. Deposition Dodge

In a separate incident following Ms. Zallar's deposition, another witness for Plaintiffs endeavored to dodge a GHG deposition. The record before the Court reflects that Mr. Biggs was complicit in the witness's deposition dodge.

At the hearing on December 6, 2025, the Court asked the parties to explain why the Magistrate Judge took the unusual step of supervising the deposition of Dr. David Tyson, President of Plaintiff AFP. *See* ECF No. 155 at 11; ECF No. 206 at 114 ("In my 22 years of experience as a lawyer, an AUSA, and now a judge, I don't know that I've seen a magistrate judge present at a deposition. So how did we get to that point?"). Defense counsel said GHG asked "Dr. Tyson [to] present himself for a deposition over a number of weeks, if not a couple of months," but "the date kept changing on which he could be present." ECF No. 206 at 114. The parties finally "agreed on a date" and "noticed the deposition." *Id.* Then, "[t]he evening before" the deposition, Mr. Biggs emailed defense counsel to say "that Dr. Tyson was out of town and that he couldn't appear" at his deposition the next morning. *Id.* at 114–115. Counsel for GHG "went to the deposition location anyway the next morning and took a certificate of nonappearance." *Id.* at 115. Mr. Biggs responded by

fil[ing] a Motion for Protective Order to prevent the deposition that had essentially taken place in the form of a nonappearance. [GHG] then filed a Motion to Compel that deposition and that is what resulted in Judge Reno's order telling us to be at her chambers on a particular date for the deposition.

Id.; *see also* ECF No. 138 (moving to quash Dr. Tyson's deposition after he had already failed to appear).

Tellingly, the day Dr. Tyson's deposition was scheduled was "the discovery deadline under the existing scheduling order," and Magistrate Judge Reno is "very, very explicit on the prohibition of conducting discovery past the discovery cutoff." ECF No. 206 at 116. According to GHG's counsel, this incident "took place against a backdrop that had involved numerous missed deadlines by the Plaintiffs in this case," including "failure to timely designate an expert, failure to disclose the expert's opinions, [and] missed disclosure deadlines." *Id.*

Mr. Biggs noted that Dr. Tyson was one of "16 or 17 individuals," almost all of whom are practicing physicians like Dr. Tyson, that GHG wanted to depose. *Id.* at 117. Most of those depositions were canceled and "there was a dispute about whether Dr. Tyson was the right person to be deposed" in the first place. *Id.* But in fact, Mr. Biggs *admitted* that Dr. Tyson was not "unavailable" for his own deposition. He was simply "out of town"—which, the Court noted, is "not the same thing under the rules" as being "unavailable." *Id.* at 117–18; *see also* ECF No. 138 at 2 (noting that Dr. Tyson's deposition had been "unable to be scheduled" previously because Dr. Tyson "took an extended vacation during June 2025"). And why did Mr. Biggs wait until the evening before deposition, on the final day of discovery, to notify opposing counsel of Dr. Tyson's nonappearance? In his own words, Mr. Biggs conceded to the Court: "Dr. Tyson really didn't want to be deposed." ECF No. 206 at 119.

Clear and convincing evidence establishes that Mr. Biggs submitted a likely perjured affidavit to the Court and, at a minimum, behaved questionably when another key witness wanted to avoid deposition. In both situations, he dodged court orders for as long as possible. Even then, his compliance was involuntary. He has followed court orders only because he was forced to do so—in the case of the Affidavit by confronting Ms. Zallar’s deposition testimony, and in the case of Dr. Tyson’s deposition, by being ordered to appear for a deposition supervised by a federal magistrate judge.

This is precisely the kind of “bad faith or willful abuse of the judicial process” that courts should exercise their inherent sanction power to deter. *Sarco Creek*, 167 F. Supp. 3d at 845 (case citations omitted).

C. Conflation of GHG and AKOS

From the outset of this litigation, Mr. Biggs consistently misled the Court about the relationship between GHG and AKOS. At the hearing on December 6, 2025, Mr. Biggs repeatedly used the terms “GHG” or “Defendants” when referring to AKOS *alone*. This is consistent with a pattern that appears across three years of Plaintiffs’ briefing. *See, e.g.*, ECF No. 182 at 2 (“AFP executed a contract with AKOS/GHG”); *id.* at 3 (noting that an employee of Plaintiffs “testified that they had an agreement with AKOS/GHG”); ECF No. 165 at 16 (referring to “the AKOS/GHG ACO”).

Perhaps the most egregious example: Plaintiffs’ reliance on a “redlined” draft contract between Plaintiffs and AKOS. At the hearing, Mr. Biggs agreed that a party’s redlining of a contract, without more, generally does not bind the party to that contract. *See* ECF No. 206 at 61–62. Instead, Mr. Biggs averred that the “redlines” mattered because GHG *employees* held the pen:

Mr. Biggs: Your Honor, the reason I bring up the redlines isn’t because of the content of the redlines. The content of the redlines is somewhat irrelevant. It’s who is redlining it. If Mr. Biggs and Mr. Stone are entering into a contract and Mr. Stone redlines it and marks it all up and I look at it and do my redlines, we don’t have a contract yet, I agree. That’s basic hornbook law. But if Mr. Biggs and Mr. Stone are entering into a contract trying to buy a widget or sell a widget and all of a sudden Judge Kacsmark starts redlining the contract and there’s no existing relationship between Mr. Stone and Judge Kacsmark, I would be a little bit confused. That would be like hey, where did Judge Kacsmark suddenly appear in this deal?

The Court: Who’s doing the redlining?

Mr. Biggs: Counsel for GHG said that Mary Black was redlining the contracts. That’s totally false. GHG employees are redlining the

contract, and Mary Black specifically says hold up. We need to wait for GHG to finish redlining the contract.

Id. at 62–64 (citation modified for readability).⁸

But GHG never redlined anything. Mr. Biggs referred the Court to the following documents, which show the following Microsoft Word “track changes” edits by users named “MB1” and “MB2”:

...

That’s all. A few suggested revisions to a draft contract between Plaintiffs and AKOS, made by a person who appears to be Mary Black. But Mary Black is a former employee of AKOS—not GHG. Yet Plaintiffs think Mary Black’s AKOS redlines prove the existence of a “contract” with Defendant GHG. (That is, the “contract” Plaintiffs cannot produce in written or electronic form, notwithstanding their day-to-day practice in a healthcare sector replete with paperwork requirements—specifically, a Medicare practice with document-intensive CMS compliance rules and regulations.) Even if Mary Black misstated or misrepresented herself as a “bridge” between Plaintiffs and GHG, the redlines are only evidence of her misrepresentation—not a “contract” with GHG. And it certainly is not evidence of any direct communication between GHG and Plaintiffs.

At this point in the hearing, the Court was incredulous. A consistent pattern across Plaintiffs’ briefing presents AKOS and GHG as a “conjoined twin of Defendants” that, “on first read[,] might suggest that there is some sort of correspondence or contract between GHG and Plaintiffs.” ECF No. 206 at 47. “But in fact,” the Court continued, “if you disaggregate the documentary evidence, it’s always just Mary Black.” *Id.* (citation modified).

Next, the Court asked if Plaintiffs’ entire case rested on an informal logical fallacy: *petitio principii* or “begging the question.”⁹ In other words, Plaintiffs’ core thesis assumes the truth of the thing to be proved: they entered into a “contract” with GHG because GHG and AKOS (in truth, just Mary Black) are one and the same. Time and again, Plaintiffs elide and evade their burden of proof by merely *assuming* it’s true that GHG and AKOS are *interchangeable* entities for purposes of this lawsuit. But GHG clearly and loudly disagrees. And Plaintiffs offered scant evidence showing *any* connection between the two, much less a sufficiently close connection to prove any of their claims. Instead, all the alleged “connections” are rooted in Mr. Biggs’s intentional or reckless conflation of the two defendants.

This sleight of hand recurs throughout Plaintiffs’ briefing. Start with their Amended Complaint. It refers repeatedly to AKOS and GHG as “Defendants”—for example, when saying that “Defendants wrote Plaintiffs” on July 29, 2022. ECF

⁸ Mary Black was formerly Regional Vice President for AKOS. *See* ECF No. 165-1 at 11–12.

⁹ “What is the Latin for begging the question? I think it’s *petitio principii*; is that right?” ECF No. 206 at 44–45 (citation modified).

No. 22 at 4. But that email came only from AKOS, not GHG, and GHG was not even copied on it. The Amended Complaint also refers to “Defendants’ employee Mary Black” when, as we have seen, Ms. Black worked only for AKOS. *Id.* Plaintiffs repeated this as recently as their Response to the instant Motion, where they write that “AFP executed a contract with AKOS/GHG at some time before September 6, 2022.” ECF No. 182 at 2; *see also* ECF No. 165 at 4 (on September 16, 2025, writing “Defendants’ employee Mary Black” and “Defendants wrote back immediately,” referring to an email sent by Mary Black).

Whether Plaintiffs have confused the identities of AKOS and GHG intentionally or merely carelessly, they have done so for years, starting with their Amended Complaint and continuing until today. The Court is inclined to view this conflation as intentional, because it gets right to the heart of this case: What did GHG tell Plaintiffs about their relationship with AKOS? The truth, as it turns out, is *nothing*.

Because Mr. Biggs both presented a false affidavit to the Court without verifying its key claims and consistently misled the Court about the relationship between AKOS and GHG, the Court **FINDS** that dismissal of Plaintiffs’ Amended Complaint is “the only effective, appropriate sanction to remedy this misconduct and to deter future similar misconduct.” *Brown*, 664 F.3d at 80. The Court further finds that Mr. Biggs’s insistence on maintaining his “patently unreasonable litigation position[.]” constitutes a bad-faith abuse of the litigation process. *Sarco Creek Ranch*, 167 F. Supp. 3d at 845 (citing *Brown*, 664 F.3d at 76–80). In addition to dismissing this case, the Court **REPRIMANDS** Mr. Biggs.

4. As a result, Biggs was monetarily sanctioned for his conduct pursuant to Federal Rule of Civil Procedure 11, and additionally the court exercised its inherent authority to issue him a **Reprimand** for his “misconduct.” (Exhibit 1, pages 18; 25; 26).

5. A true and correct copy of the Memorandum Opinion & Order dated February 3, 2026, is attached as Exhibit 1 respectively.

6. The Commission brings this disciplinary action in accordance with the Chief Disciplinary Counsel’s mandatory administrative obligations, as set forth in TRDP 9.01.

7. Respondent was disciplined by a federal court or agency within the meaning of TRDP 9.01. The Opinion & Order dated February 3, 2026, sets forth that the United States District Court (Northern District of Texas Amarillo Division) sanctioned Respondent with a **Reprimand**.

8. Respondent self-reported his **Reprimand** to the Chief Disciplinary Counsel by

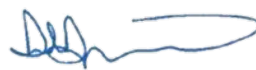
Email on March 9, 2026. (Exhibit 2)

9. The Commission prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of reciprocal discipline in this state would be unwarranted. The Commission also prays that upon trial of this matter this Board enter a judgment imposing discipline identical, to the extent practicable, with that imposed by the United States District Court for the Northern District of Texas Fort Worth Division , unless the Respondent proves by clear and convincing evidence that a Rule 9.04 defense applies. Further, the Commission requests such other relief to which it may be entitled.

Respectfully submitted,

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Chief Disciplinary Counsel

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Amanda M. Kates
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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show

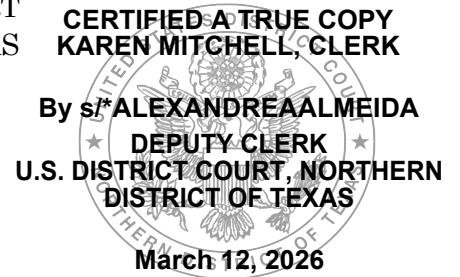
Cause, by personal service as follows:

Richard Everett Biggs
500 S Taylor Street, Unit 213
Amarillo, TX 79101-2445



Amanda M. Kates

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION



AMARILLO MEDICAL SPECIALISTS,
LLP, *et al.*,

Plaintiffs,

v.

2:23-CV-026-Z-BR

AKOS MD IPA, LLC, *et al.*,

Defendants,

GENUINE HEALTH GROUP, LLC,

Third-Party Plaintiff,

v.

MARY BLACK,

Third-Party Defendant.

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant and Third-Party Plaintiff Genuine Health Group LLC's ("GHG") Motion for Sanctions ("Motion"), filed October 2, 2025. ECF No 175. Plaintiffs responded on October 30, 2025. ECF No. 182. GHG replied on November 13, 2025. ECF No. 196. The Court held a hearing on the Motion on December 5, 2025. *See* ECF Nos. 204, 206.

The Motion is now ripe. Having considered the Motion, briefing, and relevant law, the Court **GRANTS** the Motion. The Court **AWARDS** GHG all reasonable expenses incurred in litigating this Motion, including attorney's fees.

This case is **DISMISSED** with prejudice. All other pending motions are **DENIED** as moot. ECF Nos. 125, 153, 154, 157, 170.

EXHIBIT

1

BACKGROUND

Plaintiffs Amarillo Medical Specialists, LLP (“AMS”), Amarillo Family Physicians LLP (“AFP”), and Amarillo Legacy Medical ACO LLC first filed this action in Texas state court on January 13, 2023. *See* ECF No. 1 at 1. Defendants received a citation and Plaintiffs’ Original Petition on January 23, 2023. *See id.* Next, Defendants removed the case to this Court pursuant to 28 U.S.C. Section 1441 on February 21, 2023. *See id.*

Defendants are GHG, a Florida limited liability company, and AKOS MD IPA, LLC (“AKOS”), an Arizona limited liability company. *See id.* at 2. Plaintiffs originally brought four causes of action: (1) breach of contract; (2) tortious interference with contract; (3) fraud and fraudulent inducement; and (4) negligence. *See id.* at 8–9. Plaintiffs initially brought only the tortious interference claim against GHG, and the other claims against only AKOS. *See id.*

On April 20, 2023, Plaintiffs amended their Complaint to add “tortious interference with prospective contract” as a fifth cause of action against both Defendants. ECF No. 22 at 8. The Amended Complaint added GHG as co-defendant as to two causes of action: fraud and fraudulent inducement, and negligence and negligent misrepresentation. The Amended Complaint did not alter Plaintiffs’ breach of contract (against AKOS only) and tortious interference with contract (against GHG only) claims. Plaintiffs seek damages “in the amount of at least \$3 million dollars.” *Id.* at 7.

This litigation arises from a prospective business relationship between Plaintiffs and AKOS—and, as Plaintiffs allege, also with GHG. “On or around April 6, 2022,” AKOS approached Plaintiffs “with a proposition for Plaintiffs to participate in” AKOS’s Accountable Care Organization (“ACO”). ECF No. 155 at 9. “An ACO is an organization of health care practitioners that agrees to be accountable for the quality, cost, and overall care of Medicare beneficiaries who are enrolled in the traditional fee-for-service program who are assigned to it.” ECF No. 165 at 2. “The purpose of an ACO is for a group of doctors with a patient base of

at least 5,000 Medicare patients to better manage the care of its patients,” with the goal of “achiev[ing] a reduction in healthcare costs over time.” *Id.* (quoting *Enable Healthcare, Inc. v. Cleveland Quality Healthnet, LLC*, No. 1:16 CV 2395, 2017 WL 3116680, at *1 (N.D. Ohio July 20, 2017)).

The ACO program is administered “by the federal Centers for Medicare & Medicaid Services (‘CMS’).” ECF No. 165 at 2. “CMS holds annual enrollment periods, and its enforcement of these deadlines is strict.” *Id.* (collecting authorities); *see also id.* at 3 (noting that the deadline to enroll in an ACO for 2022 was September 2); ECF No. 209 at 2 n.1 (similar). CMS incentivizes healthcare providers to participate in the ACO program by paying providers “a share of any savings when the actual per capita expenditures of their assigned Medicare beneficiaries are a sufficient percentage below their specified benchmark amount.” ECF No. 165 at 2. In other words, “if the ACO is able to reduce spending by a certain target, the savings is shared between CMS and the ACO.” *Id.* at 2–3 (quoting *Enable Healthcare*, 2017 WL 3116680, at *1). The reverse is true, too: “ACOs that lose money must pay Medicare for the losses.” *Id.* at 3 (quoting *United States v. Millennium Physician Grp.*, No. 2:16-CV-798, 2023 WL 2022228, at *2 (M.D. Fla. Feb. 15, 2023)). “A healthcare provider can only be enrolled in one ACO at a time, a fact which is common knowledge.” *Id.*

“From January 1, 2013, until December 2022,” Plaintiffs AMS and AFP “were enrolled [in] the Amarillo Legacy Medical ACO.” ECF No. 165 at 3. In 2022, AMS and AFP began considering alternative ACOs. *See id.* One option was to “continue functioning under their existing structure.” *Id.* Another was to “move to an ACO Reach, a new ACO structure under

the Affordable Care Act.”¹ *Id.* AMS and AFP “had to sign with one (or more) ACO by early August” 2022, and had to “choose a single, exclusive ACO by September 2, 2022.” *Id.*

In April 2022, AFP “was approached by Mary Black, an employee of AKOS.” ECF No. 165 at 3. Ms. Black attempted to persuade AFP and AMS to join a proposed ACO Reach program run by AKOS, subject to CMS approval. *See id.*; *see also* ECF No. 155 at 17–18 (noting that AKOS had “request[ed]” CMS approval “to become an ACO Reach vendor”). At that time, CMS had *not* approved AKOS’s ACO Reach application. Plaintiffs nonetheless “began negotiating with Ms. Black.” ECF No. 165 at 3. On August 2, 2022, Dr. William Biggs² “agreed to contract with AKOS.” ECF No. 155 at 11. But this was a one-sided “contract”: AKOS never signed this “contract,” or any other “contract,” with Plaintiffs. *See* ECF No. 183 at 5–33 (Participation Agreement unexecuted by either party); *id.* at 34–36 (Provider Joinder Agreement executed only by employees of Plaintiffs). These agreements were “two parts” of the same alleged “contract.” ECF No. 182 at 2. Had the “contract” been fully executed, Plaintiffs *would* have joined AKOS’s yet-to-be-formed, still-subject-to-CMS-approval ACO Reach.

But, again, neither part of this “contract” is signed by AKOS. And GHG is not a party to either agreement. In fact, neither agreement mentions GHG at all. Despite this, Plaintiffs have repeatedly referred to AKOS and GHG as a joint entity in their briefing. *See, e.g.*, ECF No. 182 at 2 (“AFP executed a contract with AKOS/GHG . . .”); *id.* at 3 (noting that an

¹ *See ACO Realizing Equity, Access, and Community Health (REACH) Model*, CTRS. FOR MEDICARE & MEDICAID SERVS. 2 (Apr. 2022), <https://www.cms.gov/priorities/innovation/media/document/aco-reach-genfaqs> [<https://perma.cc/UY8P-J5VP>].

² Dr. Biggs is “managing partner of Plaintiff AMS” and “CEO and Medical Director” of Amarillo Legacy Medical ACO. ECF No. 126 at 17. He is also Plaintiffs’ designated expert witness as to damages. *See, e.g.*, ECF No. 130 at 9.

employee of Plaintiffs “testified that they had an agreement with AKOS/GHG”); ECF No. 165 at 16 (referring to “the AKOS/GHG ACO”).

Despite the centrality of a fully executed “contract” between Plaintiffs and AKOS, Plaintiffs never produced conclusive evidence of said “contract” in the three-plus years since filing suit.³ See ECF No. 182 at 2 (“Plaintiffs cannot locate their copy of the Participation Agreement”); *id.* at 4 (“AFP has clearly executed the Participation Agreement which it now cannot find.”). Even the part of the contract that Plaintiffs describe as “fully executed”—the three-page Provider Joinder Agreement, which appears to be a mere addendum—is signed only by Plaintiffs. *Id.* at 2.

Shockingly, Plaintiffs abandoned their decade-old ACO on the day of the CMS registration deadline—based on a supposed contract that they “now cannot find.” *Id.* at 4.⁴ Yet, that missing contract is a core document in this long-running lawsuit wherein Plaintiffs seek millions of dollars in damages.

While “GHG and AKOS had anticipated a potential transaction in which a yet-to-be-formed subsidiary of GHG to be called Genuine Health Southwest ACL, LLC would purchase AKOS,” AKOS was *not* a subsidiary of GHG, nor was there any formal legal relationship between AKOS and GHG. ECF No. 155 at 9–10 (citation modified). GHG and AKOS were still negotiating, and GHG’s plan to purchase AKOS was contingent upon AKOS qualifying for CMS’s new ACO Reach program. See ECF No. 155 at 25 (noting that GHG’s agreement with AKOS provided for “automatic termination” in the event AKOS failed to qualify for

³ At the December 6 hearing, Mr. Biggs claimed that only AFP’s contract with AKOS is unexecuted, and that Plaintiff AMS did enter into a fully executed contract with AKOS. See ECF No. 206 at 38. That is not the case. See ECF No. 165-1 at 197, 220 (signature pages bearing only Dr. Biggs’s signature on behalf of AMS).

⁴ At the hearing, Mr. Biggs agreed: “Well, I agree it’s shocking and I’m disappointed in my client” ECF No. 206 at 106.

Reach (citation modified)). Ultimately, AKOS failed to qualify for the ACO Reach program. *See* ECF No. 206 at 78 (counsel for GHG noting that “[w]hat happened was AKOS fell apart. They couldn’t participate in the Reach ACO”); ECF No. 155 at 10 (“But the plans for that acquisition were abandoned in December 2022 because AKOS failed to qualify to provide Reach ACO services.”).

Though GHG never completed its planned acquisition of AKOS, the parties agree that GHG was involved in the negotiations between Plaintiffs and AKOS. Plaintiffs and GHG dispute the *degree* of said involvement. Plaintiffs claim that “AKOS quickly represented that it was in a business arrangement with” GHG “and provided documents to support this.” ECF No. 165 at 3. For example, on July 26, 2022, Plaintiffs contend that AKOS sent Plaintiffs billing codes for the proposed Reach ACO on GHG letterhead. *Id.* at 3–4. Later, during a meeting on August 4, 2022, Plaintiffs received a “Shared Savings Visual,” drafted by Sean Leimbach of GHG,⁵ that “provided a visualization of how the revenue generated under GHG’s ACO would be allocated, with GHG receiving 30% of the revenue.” *Id.* at 4. GHG presented this Visual again at a second meeting on September 2, 2022. *See* ECF No. 165 at 6–7; ECF No. 155 at 10. For its part, GHG insists that these were “hypothetical projections for illustrative purposes only.” *Id.* at 11.

Additionally—and crucial to the disposition of this case—Plaintiffs repeatedly stated that AKOS “unequivocally” and “immediately” represented that they were GHG’s direct subsidiary at an August 4 meeting, *at the time of said August 4 meeting*. The bulk of these representations came from the Affidavit of Mary Jo Zallar, who was COO of Amarillo Legacy Medical ACO and AKOS’s “primary contact with Plaintiffs.” ECF No. 33 at 3. Ms. Zallar’s Affidavit stated that AKOS “immediately represented that it was a subsidiary of GHG,” that

⁵ Sean Leimbach was GHG’s Chief Strategy Officer. *See* ECF No. 165 at 4.

“AKOS, with the approval of GHG, repeatedly represented that it was acting as an agent for GHG,” and that GHG “wrote [to] Plaintiffs” directly on July 29, 2022. ECF No. 20-1 at 3–4. Ms. Zallar further swore that “[d]uring this meeting [Sean] Leimbach made it unequivocally clear that: (1) AKOS was GHG’s subsidiary, (2) AKOS, as GHG’s subsidiary, was acting as GHG’s agent, (3) ALMA, AMS, and AFP would be joining a GHG ACO, and (4) GHG’s ACO would provide substantially more revenue” than Plaintiffs’ “existing ACO.” *Id.* at 5.

But none of these statements were true.

During her deposition on August 6, 2024, Ms. Zallar testified that no party ever used the word “subsidiary” during the August 4 meeting:

Q. Even Mary Black never said to you . . . the word subsidiary?

A. No.

ECF No. 176-4 at 7 (citation modified for readability). Ms. Zallar also admitted that AKOS never “represented that it was acting as an agent for GHG and its ACO” and agreed that “GHG did not make the communication listed on July 29 to the Plaintiffs.” *Id.* at 7, 9. To illustrate how Ms. Zallar’s deposition testimony flatly contradicted her Affidavit, the Court quotes from her deposition:

Q. The last sentence in paragraph 10 [of your Affidavit] says: “AKOS, with the approval of GHG, repeatedly represented that it was acting as an agent for GHG and its ACO.” That never happened, did it?

A. No. That’s what we were led to believe, that it was with the approval of GHG.

Q. That’s what you assumed?

A. Yes.

Q. But it’s not a fact, as stated in your affidavit?

A. No.

Q. Why did you say it in your affidavit if it wasn’t true?

A. Some of this was drafted for me, and I just—I left it as it was worded.

Q. Did you understand that this was going to be filed as a sworn statement with the Court?

A. I guess not to the extent that you're saying, yeah. I should have changed the verbiage.

Id. at 7–8 (citation modified for readability).

Ms. Zallar further admitted that she knew key portions of her Affidavit were false at the time she signed it:

Q. Would you agree with me that the language used in paragraph 10 appears to have been designed to make the relationship between GHG and AKOS something more than what it had actually been represented to be?

A. It's probably stronger than what [the relationship] was represented to be.

Q. Well, and it's not factually correct, right?

A. Well, you know, we know that now.

Q. Well, you knew it when you signed the document, to be fair; you just adopted someone else's words, right?

A. Yes.

Id. at 8 (citation modified for readability). And she admitted that Plaintiffs received no communications from GHG on July 29—contrary to her Affidavit, which stated that AKOS and GHG both “wrote Plaintiffs” on that date:

Q. Your affidavit is incorrect that the Defendants, which includes GHG, wrote anything to the Plaintiffs on July 29th, correct?

A. Well, the Defendants, as in [AKOS].

Q. But you understand that [AKOS] is one company and is not the only Defendant in this lawsuit?

A. Yes. So it should have been, “One Defendant wrote.”

Q. GHG did not make the communication listed on July 29 to the Plaintiffs?

A. Correct.

Id. at 9 (citation modified for readability).

Most troublingly, Ms. Zallar flip-flopped on *how* GHG allegedly described its relationship with AKOS. Her Affidavit stated that GHG “made it unequivocally clear” that “AKOS was GHG’s subsidiary” and Plaintiffs “would be joining a GHG ACO.” ECF No. 20-1 at 5. That was false, too:

Q. The next thing [your Affidavit] says is: During this meeting, Leimbach made it unequivocally clear to me that AKOS was GHG’s subsidiary. That’s also untrue, correct?

A. Yes.

Q. Sean Leimbach never told you that AKOS was GHG’s subsidiary?

A. I don’t believe so.

Q. Second paragraph or second bullet point in paragraph 19 states that: Leimbach made it unequivocally clear that AKOS, as GHG’s subsidiary, was acting as GHG’s agent. That’s not true, is it?

A. No. Again, this—I accepted language that was drafted for me.

Q. Language that you are now testifying to be untrue, correct?

A. Not correct, yes.

ECF No. 176-4 at 11 (citation modified for readability).

Ms. Zallar’s Affidavit caused the Court to believe that AKOS and GHG had a close relationship when the opposite was true. Ms. Zallar knew her Affidavit was false or misleading in key, material respects when she submitted it to the Court on April 20, 2023. Only when she was deposed did the truth finally come to light.

But Plaintiffs’ malfeasance did not stop at the mere *submission* of a false Affidavit. Plaintiffs cited Ms. Zallar’s Affidavit over a dozen times in asking the Court to deny GHG’s Motion to Dismiss. And the Court *relied* on said Affidavit when it denied GHG’s Motion to

Dismiss on June 30, 2023. *See* ECF No. 37 (citing Plaintiffs’ Response in Opposition, which repeatedly referred the Court to the Zallar Affidavit).

For example, Plaintiffs wrote that “GHG disputes the nature of the video calls between GHG and Plaintiffs. Plaintiffs assert they were told that AKOS was GHG’s subsidiary by Sean Leimbach, the ‘Chief Strategy Officer’ at [GHG], and that Plaintiffs would be joining GHG’s ACO.” ECF No. 33 at 14 (citing ECF No. 20-1); *see also id.* at 5 (citing the Zallar Affidavit for the contention that GHG “made it unequivocally clear” that AKOS was a GHG subsidiary and GHG’s agent); *id.* (“Leimbach directly informed Plaintiffs that they would be participating in GHG’s ACO.”). As shown above, these assertions were provably false—or, at best, intentionally misleading.

The Court took Plaintiffs at their word, assumed the Zallar Affidavit was truthful, and this litigation lingered, languished, and limped along for nearly three (3) more years.

LEGAL STANDARD

Federal Rule of Civil Procedure 11 authorizes federal district courts to sanction a party or attorney who files a pleading for an improper purpose or without sufficient legal and factual backing. Rule 11(a) requires that “[e]very pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney’s name—or by a party personally if the party is unrepresented.” FED. R. CIV. P. 11(a). Rule 11(b) sets out four specific representations that parties and counsel make when they file a document in federal court:

By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

FED. R. CIV. P. 11(b).

Rule 11’s “central purpose” is to “deter baseless filings in district court and thus . . . streamline the administration and procedure of the federal courts.” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990). Every attorney who appears in federal court “has a duty to conduct a ‘reasonable inquiry into the facts and law of a case at the time [at] which she affixes her signature on any papers to the court.’” *SEC v. Faulkner*, No. 3:16-CV-1735, 2018 WL 3708426, at *2 (N.D. Tex. Aug. 3, 2018) (quoting *Mercury Air Grp., Inc. v. Mansour*, 237 F.3d 542, 548 (5th Cir. 2001)). “An attorney’s conduct is judged under . . . an objective, not a subjective, standard of reasonableness.” *Snow Ingredients, Inc. v. SnoWizard, Inc.*, 833 F.3d 512, 528 (5th Cir. 2016) (citing *Whitehead v. Food Max of Miss., Inc.*, 332 F.3d 796, 802 (5th Cir. 2003) (en banc)). This means “an attorney’s subjective good faith is not enough to immunize him from sanctions based on a Rule 11 violation.” *Dodson v. Nichols*, 2024 WL 4299023, at *4 (M.D. La. Sept. 26, 2024) (citing *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 873 (5th Cir. 1988) (en banc)).

“In determining whether an attorney has made a reasonable inquiry, the court may consider: ‘the time available to the attorney to prepare the document; the plausibility of the legal view contained in the document; the pro se status of the litigant; and the complexity of the legal and factual issues raised.’” *Faulkner*, 2018 WL 3708426, at *2 (quoting *Thomas*, 836

F.2d at 875–76 (en banc)). Rule 11 sanctions “may not be imposed ‘merely for the eventual failure of a claim; rather, sanctions are to be applied only where, *at the time of the filing*, the position advocated is unwarranted.” *Id.* (quoting *Matta v. May*, 118 F.3d 410, 415 (5th Cir. 1997) (emphasis in original)). The Fifth Circuit described this requirement as a “‘snapshot’ rule.” *Skidmore Energy, Inc. v. KPMG*, 455 F.3d 564, 570 (5th Cir. 2006) (citing *Thomas*, 836 F.2d at 875); *see also id.* (“*Thomas*’s ‘snapshot’ rule ensures that Rule 11 liability is assessed only for a violation existing at the moment of filing. . . . Prior to [*Thomas*], attorneys in this Circuit had a continuing obligation to review and reevaluate their positions as the litigation developed; a document that initially satisfied Rule 11 might later become the basis for sanctions if new facts were discovered or circumstances changed such that there was no longer a good faith basis for the earlier filing.”).

The four subparts of Rule 11 provide independent bases for sanctions. *See F.D.I.C. v. Maxxam, Inc.*, 523 F.3d 566, 577 (5th Cir. 2008) (“Rule 11 requires that a party certify four specific representations A violation of any one of these can merit sanctions.” (citation modified)). And an “attorney who files court papers with no basis in fact needs no more notice of her Rule 11 violation than the existence of Rule 11 itself.” *Faulkner*, 2018 WL 3708426, at *2 (quoting *Merriman v. Sec. Ins. Co. of Hartford*, 100 F.3d 1187, 1191 (5th Cir. 1996)). “When Rule 11 has been violated, the court must ‘carefully choose sanctions that foster the appropriate purpose of the rule, depending upon the parties, the violation, and the nature of the case.’” *Id.* (quoting *Thomas*, 836 F.2d at 877).

Rule 11 is not the only rule or statute that empowers federal courts to impose sanctions. For example, 28 U.S.C. Section 1927 authorizes awards of attorneys’ fees.⁶

⁶ “Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.”

Rule 37 also “provides generally for sanctions against parties or persons unjustifiably resisting discovery.” FED. R. CIV. P. 37 Advisory Committee’s Note to 1970 Amendment. Most relevant here is the authority “inherent in all courts” to sanction the attorneys who appear before them. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Ex parte Robinson*, 86 U.S. (19 Wall.) 505, 510 (1874)). This inherent power includes not only lesser sanctions, such as “control[ing] admission” to the court’s bar, but also “outright dismissal of a lawsuit” and “assess[ing] attorney’s fees against counsel.” *Id.* at 43, 45 (citations omitted); *see also NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 894 F.2d 696, 703 (5th Cir. 1990), *aff’d sub nom., Chambers*, 501 U.S. 32 (noting that the Supreme Court has affirmed “the inherent power of a district court to enter an involuntary order to dismiss” cases sua sponte (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962))). The exercise of this “inherent power of lower federal courts can be limited by statute or rule,” such as Rules 11 and 37, but courts may invoke their inherent power to impose sanctions “even if procedural rules exist which sanction the same conduct.” *Chambers*, 501 U.S. at 47, 49.

ANALYSIS

The Court discerns that two independent sanctions are necessary: (1) attorney’s fees under Rule 11(c)(2), and (2) dismissal of this case under the Court’s inherent power to sanction attorneys. The Court will address Mr. Biggs’s Rule 11 violations before turning to its inherent power to sanction his other, arguably more egregious behavior.

I. Rule 11 Sanctions

Under Rule 11, “attorneys have a responsibility to conduct a reasonable inquiry into the facts and law of a case when they affix their signature on any papers filed with the court.” *SyncPoint Imaging, LLC v. Nintendo of Am. Inc.*, No. 215CV247, 2018 WL 6788033, at *4 (E.D. Tex. Dec. 26, 2018). “By signing and filing those papers with the Court, attorneys certify

that, to the best of their knowledge, the allegations and factual contentions submitted to the Court have evidentiary support.” *Id.* (citing FED. R. CIV. P. 11(b)(3) (citation modified)). “Rule 11 is designed to ‘reduce the reluctance of courts to impose sanctions by emphasizing the responsibilities of attorneys and reinforcing those obligations through the imposition of sanctions.’” *Id.* (quoting *Thomas*, 836 F.2d at 870).

Rule 11 sanctions are warranted when an attorney, his law firm, or his client makes factual allegations without sufficient evidentiary support. “In assessing whether a represented party and counsel made a reasonable factual inquiry into the basis of a filing,” courts consider:

(1) the time available to counsel for investigation; (2) the extent to which counsel relied on his client for the factual support of the allegations; (3) the feasibility of prefiling investigation; (4) the complexity of the factual and legal issues; and (5) the extent to which the development of factual circumstances underlying the claim required discovery.

SyncPoint Imaging, 2018 WL 6788033, at *5 (citing *Smith v. Our Lady of the Lake Hosp., Inc.*, 960 F.2d 439, 444 (5th Cir. 1992)); *see also Skidmore Energy, Inc. v. KPMG*, No. 3:03-CV-2138, 2005 WL 8158140, at *6 (N.D. Tex. Mar. 18, 2005) (reciting the same factors and adding a sixth, “whether the attorney accepted the case from another attorney”). “The reasonableness of the legal inquiry is determined by considering the time available to the attorney, the plausibility of the legal view contained in the document, the *pro se* status of the litigant, and the complexity of the legal and factual issues.” *Skidmore*, 2005 WL 8158140, at *6 (citing *Our Lady of the Lake Hosp.*, 960 F.2d at 444).

Here, the Zallar Affidavit submitted to the Court on April 20, 2023, violates Rule 11(b)(3). That provision of Rule 11 requires that all “factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.” FED. R. CIV. P. 11(b)(3).

Ms. Zallar’s Affidavit presents itself to the Court as an authoritative account of the events it describes, using no prefatory language such as “on information and belief.” And it repeats *ad nauseam* that “Defendants”—referring to both AKOS and GHG—took certain actions.⁷ See ECF No. 20-1 at 3, 4, 5, 6. But at every turn, “Defendants” meant only AKOS—even though the relationship between GHG and AKOS is the *sine qua non* of this case. Yet Mr. Biggs treated the two defendants as a single entity by submitting the Zallar Affidavit, causing the Court to believe GHG and AKOS were closer than they were.

Paragraph 19 of Ms. Zallar’s Affidavit also lacks evidentiary support. While GHG initially disputed *any* meeting took place on August 4, 2022, they conceded in their Reply and during the hearing that such a meeting “probably” did occur. See ECF No. 196 at 5 (“GHG agrees that a meeting took place on August 4, 2022, along with another meeting on September 2, 2022.”); ECF No. 206 at 17 (“To settle the Court’s mind, in our reply brief, we acknowledged there probably was one. We should certainly be forgiven our uncertainty on the matter in part because Mary Jo Zallar testifies in her deposition that there was no such meeting.”). Regardless of the initial uncertainty about whether a meeting occurred on August 4, 2022, the Affidavit’s assertions about the *contents* of that meeting are most relevant here.

Ms. Zallar’s Affidavit swore that at that meeting, GHG “made it unequivocally clear” that AKOS was GHG’s “subsidiary” and was “acting as GHG’s agent.” ECF No. 20-1 at 5. But as her deposition later revealed, that was not true. See ECF No. 176-4 at 7 (counsel for GHG: “That never happened, did it?” Zallar: “No.”). Plaintiffs have repeatedly presented this portion of Ms. Zallar’s testimony to the Court as evidence that *GHG*, not just AKOS, believed that AKOS was their agent and subsidiary.

⁷ The Court also addresses this misleading conflation of AKOS and GHG at greater length later in this Order. See *infra* Part II.B.

The Court **FINDS** that these violations of Rule 11(b)(3) are the fault of Mr. Biggs rather than his clients. Indeed, all five *SyncPoint Imaging* factors—and the sixth factor from Judge Boyle’s district court opinion in *Skidmore*—cut against Mr. Biggs. By signing Ms. Zallar’s Affidavit, he certified that he had performed an “inquiry reasonable under the circumstances” into its underlying facts and determined that those facts had “evidentiary support.” FED. R. CIV. P. 11(b). He performed no such investigation beyond speaking with his clients and transcribing their conversation, which he then submitted to the Court as a sworn affidavit:

It was all based on her own words. I’m typing it up as she’s telling me over the phone and then, you know, rewording it in a more legal—you know, a more—a format more appropriate for an affidavit than a telephone conversation. It’s not that I’m trying to write her own affidavit. And clearly, this isn’t a fill-in-the-blank affidavit. This is very customized to this case.

ECF No. 206 at 100.

Because Mr. Biggs violated Rule 11(b)(3) by filing Ms. Zallar’s Affidavit without performing a reasonable prefiling investigation into its allegations, the Court now considers the appropriate sanction.⁸ Rule 11(c)(4) provides that sanctions “imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated.” FED. R. CIV. P. 11(c)(4). Rule 11(c)(2) specifically notes, however, that courts “may award to the prevailing party” in a Rule 11 motion “the reasonable expenses, including attorney’s fees, incurred *for the motion*.” (emphasis added).

The Court finds that an appropriate Rule 11 sanction in these circumstances is awarding GHG all reasonable expenses, including attorney’s fees, associated with this Motion. The amount of these fees will be determined by separate order.

⁸ GHG’s Motion did not state whether GHG complied with Rule 11(c)(2)’s procedural requirements, particularly its “safe harbor” provision. However, GHG confirmed compliance by separate briefing. *See* ECF No. 210 (ordering GHG to submit a supplemental brief); ECF No. 211 (certifying that GHG served the proposed Motion on Plaintiffs twenty-one days before filing).

This Memorandum Opinion and Order applies to both Mr. Biggs and his law firm, Mullin Hoard & Brown, LLP (“Mullin Hoard”). *See* FED. R. CIV. P. 11(c)(1) (“Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.”). If Mullin Hoard believes this case presents “exceptional circumstances” such that only Mr. Biggs should be sanctioned under Rule 11, the firm may file a Brief explaining those circumstances **within two weeks of the date of this Order**.

If Mullin Hoard does *not* believe this case presents the kind of “exceptional circumstances” contemplated by Rule 11(c), it must file a Notice to that effect by the same date. The Court will consider Mullin Hoard’s filing when deciding how to apportion the attorney’s fees award.

II. The Court’s Inherent Sanction Power

Rule 11(c)(4) limits Rule 11 sanctions to

what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney’s fees and other expenses directly resulting from the violation.

FED. R. CIV. P. 11(c)(4).

Because this language limits sanctions to monetary penalties and nonmonetary directives to parties and counsel, the Court cannot dismiss this case under Rule 11. But federal courts also possess the *inherent* power to sanction the attorneys who appear before them. This inherent power exists apart from any statute or rule of court authorizing courts to impose specific types of sanctions. It “can be *limited* by statute or rule,” such as Rule 11, but courts may invoke this inherent power “even if procedural rules exist which sanction the same conduct.” *Chambers*, 501 U.S. at 47, 49 (emphasis added).

Thus, courts may invoke both statutorily authorized sanction powers and their inherent powers to sanction the same misconduct. Here, although Rule 11 provides for one type of sanction against Mr. Biggs, it does not prevent the Court from exercising its inherent power to impose other sanctions.

The Court hereby invokes its inherent powers to dismiss this case. The Court recognizes that dismissal is strong medicine. Even so, dismissal is well within the Court's prerogative. *See, e.g., Sarco Creek Ranch v. Greeson*, 167 F. Supp. 3d 835, 845 (S.D. Tex. 2016) (Costa, J.) ("Under its inherent power to sanction, the Court may dismiss a case (when the plaintiff has engaged in sanctionable conduct) or impose default judgment (when the defendant has engaged in sanctionable conduct) when necessary to deter 'bad faith or willful abuse of the judicial process.'" (quoting *Woodson v. Surgitek, Inc.*, 57 F.3d 1406, 1418 (5th Cir. 1995))). Dismissal "requires a finding of bad faith" on the part of the sanctioned party, and arguably also a "clear and convincing evidence burden of proof." *Id.* (citing *Chambers*, 501 U.S. at 50); *see also id.* at 845–46 (contrasting a Fifth Circuit opinion suggesting that clear and convincing evidence is not always required with another opinion in which the Fifth Circuit reviewed a bankruptcy court's dismissal for clear and convincing evidence). And while courts should be "especially reluctant to impose the extreme sanction of dismissal on a blameless party based on counsel's misconduct," this concern "is not present when the party directly engaged in the alleged misconduct as is the case with perjury." *Id.* at 846; *see also Brown v. Oil States Skagit Smatco*, 664 F.3d 71, 80 (5th Cir. 2011) (upholding dismissal where plaintiff committed perjury, "a serious offense that constitutes a severe affront to the courts and thwarts the administration of justice").

Mr. Biggs's misconduct during this litigation far exceeds a simple Rule 11 violation. Thus, dismissal of Plaintiffs' Amended Complaint is warranted.

A. Perjured Affidavit and Discovery Abuses

The Court **FINDS** that Ms. Zallar likely perjured herself when she testified that GHG “unequivocally” and “immediately” represented to Plaintiffs that AKOS was a GHG subsidiary. But Plaintiffs’ counsel not only failed to verify key facts with Ms. Zallar. He also drafted the Affidavit and repeatedly urged the Court to credit the facts stated therein in denying GHG’s Motion to Dismiss. He performed no discernible prefiling investigation to ensure the accuracy of the Zallar Affidavit and declined to retract the false assertions after learning they were not true.

It was only when Ms. Zallar was deposed by GHG that the truth came to light: GHG never told Plaintiffs that AKOS was their subsidiary or that AKOS or Mary Black was GHG’s agent. To this day, including at the hearing the Court held on GHG’s Motion, Mr. Biggs obstinately persists in claiming that “[t]here is nothing in Ms. Zallar’s affidavit that is false.” ECF No. 206 at 26; *see also id.* at 29 (asserting that “[e]verything in [Zallar’s] affidavit is verified by other witness testimony and other documentary evidence” without directing the Court to any supposed evidence); *id.* at 27 (“What ultimately she landed on was all correct.”).

Neither party disputes that Mr. Biggs *drafted Ms. Zallar’s Affidavit for her*. He is not only lead counsel for Plaintiffs, but *sole* counsel for Plaintiffs. He prepared and submitted an Affidavit that later testimony revealed to be false. Either he knew the allegations were false or failed to verify their veracity. To date, he has not retracted or modified any of Plaintiffs’ claims since filing the Affidavit in April 2023—even repeating many of its falsehoods in later briefing. And he is intransigent when pressed on the Zallar Affidavit’s obvious distortions—even at the hearing on GHG’s Motion for Sanctions.

Mr. Biggs’s only defense of Ms. Zallar’s about-face is that her unfavorable admissions came at the end of a “full-day deposition.” ECF No. 206 at 22–23. At the hearing, Mr. Biggs candidly admitted he had “never seen a witness crash as hard as Ms. Zallar did” and that

counsel for GHG “took apart my witness better than I’ve ever seen any attorney in Amarillo take apart one of my witnesses before.” *Id.* at 23.

But as GHG noted at the December 6 hearing, “Plaintiffs designated Ms. Zallar as a potential expert for purposes of this case. She can surely be held at minimum to the words she said in her affidavit, regardless of whatever sympathy we might have for a deponent after a long day.” *Id.* at 41 (citation modified). The Court agrees: A key witness who signs a sworn affidavit in opposition to a Motion to Dismiss must be held to the statements in that affidavit. Ms. Zallar was also the primary point of contact between Plaintiffs and GHG and AKOS, and thus best positioned to testify about Plaintiffs’ communications with each defendant. She cannot escape accountability simply because deposition testimony that undermines Plaintiffs’ case surfaced at the end of a long day.

B. Deposition Dodge

In a separate incident following Ms. Zallar’s deposition, another witness for Plaintiffs endeavored to dodge a GHG deposition. The record before the Court reflects that Mr. Biggs was complicit in the witness’s deposition dodge.

At the hearing on December 6, 2025, the Court asked the parties to explain why the Magistrate Judge took the unusual step of supervising the deposition of Dr. David Tyson, President of Plaintiff AFP. *See* ECF No. 155 at 11; ECF No. 206 at 114 (“In my 22 years of experience as a lawyer, an AUSA, and now a judge, I don’t know that I’ve seen a magistrate judge present at a deposition. So how did we get to that point?”). Defense counsel said GHG asked “Dr. Tyson [to] present himself for a deposition over a number of weeks, if not a couple of months,” but “the date kept changing on which he could be present.” ECF No. 206 at 114. The parties finally “agreed on a date” and “noticed the deposition.” *Id.* Then, “[t]he evening before” the deposition, Mr. Biggs emailed defense counsel to say “that Dr. Tyson was out of town and that he couldn’t appear” at his deposition the next morning. *Id.* at 114–115. Counsel

for GHG “went to the deposition location anyway the next morning and took a certificate of nonappearance.” *Id.* at 115. Mr. Biggs responded by

fil[ing] a Motion for Protective Order to prevent the deposition that had essentially taken place in the form of a nonappearance. [GHG] then filed a Motion to Compel that deposition and that is what resulted in Judge Reno’s order telling us to be at her chambers on a particular date for the deposition.

Id.; *see also* ECF No. 138 (moving to quash Dr. Tyson’s deposition after he had already failed to appear).

Tellingly, the day Dr. Tyson’s deposition was scheduled was “the discovery deadline under the existing scheduling order,” and Magistrate Judge Reno is “very, very explicit on the prohibition of conducting discovery past the discovery cutoff.” ECF No. 206 at 116. According to GHG’s counsel, this incident “took place against a backdrop that had involved numerous missed deadlines by the Plaintiffs in this case,” including “failure to timely designate an expert, failure to disclose the expert’s opinions, [and] missed disclosure deadlines.” *Id.*

Mr. Biggs noted that Dr. Tyson was one of “16 or 17 individuals,” almost all of whom are practicing physicians like Dr. Tyson, that GHG wanted to depose. *Id.* at 117. Most of those depositions were canceled and “there was a dispute about whether Dr. Tyson was the right person to be deposed” in the first place. *Id.* But in fact, Mr. Biggs *admitted* that Dr. Tyson was not “unavailable” for his own deposition. He was simply “out of town”—which, the Court noted, is “not the same thing under the rules” as being “unavailable.” *Id.* at 117–18; *see also* ECF No. 138 at 2 (noting that Dr. Tyson’s deposition had been “unable to be scheduled” previously because Dr. Tyson “took an extended vacation during June 2025”). And why did Mr. Biggs wait until the evening before deposition, on the final day of discovery, to notify opposing counsel of Dr. Tyson’s nonappearance? In his own words, Mr. Biggs conceded to the Court: “Dr. Tyson really didn’t want to be deposed.” ECF No. 206 at 119.

Clear and convincing evidence establishes that Mr. Biggs submitted a likely perjured affidavit to the Court and, at a minimum, behaved questionably when another key witness wanted to avoid deposition. In both situations, he dodged court orders for as long as possible. Even then, his compliance was involuntary. He has followed court orders only because he was forced to do so—in the case of the Affidavit by confronting Ms. Zallar’s deposition testimony, and in the case of Dr. Tyson’s deposition, by being ordered to appear for a deposition supervised by a federal magistrate judge.

This is precisely the kind of “bad faith or willful abuse of the judicial process” that courts should exercise their inherent sanction power to deter. *Sarco Creek*, 167 F. Supp. 3d at 845 (case citations omitted).

C. Conflation of GHG and AKOS

From the outset of this litigation, Mr. Biggs consistently misled the Court about the relationship between GHG and AKOS. At the hearing on December 6, 2025, Mr. Biggs repeatedly used the terms “GHG” or “Defendants” when referring to AKOS *alone*. This is consistent with a pattern that appears across three years of Plaintiffs’ briefing. *See, e.g.*, ECF No. 182 at 2 (“AFP executed a contract with AKOS/GHG . . .”); *id.* at 3 (noting that an employee of Plaintiffs “testified that they had an agreement with AKOS/GHG”); ECF No. 165 at 16 (referring to “the AKOS/GHG ACO”).

Perhaps the most egregious example: Plaintiffs’ reliance on a “redlined” draft contract between Plaintiffs and AKOS. At the hearing, Mr. Biggs agreed that a party’s redlining of a contract, without more, generally does not bind the party to that contract. *See* ECF No. 206 at 61–62. Instead, Mr. Biggs averred that the “redlines” mattered because GHG *employees* held the pen:

Mr. Biggs: Your Honor, the reason I bring up the redlines isn’t because of the content of the redlines. The content of the redlines is somewhat irrelevant. It’s who is redlining it.

If Mr. Biggs and Mr. Stone are entering into a contract and Mr. Stone redlines it and marks it all up and I look at it and do my redlines, we don't have a contract yet, I agree. That's basic hornbook law. But if Mr. Biggs and Mr. Stone are entering into a contract trying to buy a widget or sell a widget and all of a sudden Judge Kacsmark starts redlining the contract and there's no existing relationship between Mr. Stone and Judge Kacsmark, I would be a little bit confused. That would be like hey, where did Judge Kacsmark suddenly appear in this deal?

The Court: Who's doing the redlining?

Mr. Biggs: Counsel for GHG said that Mary Black was redlining the contracts. That's totally false. GHG employees are redlining the contract, and Mary Black specifically says hold up. We need to wait for GHG to finish redlining the contract.

Id. at 62–64 (citation modified for readability).⁹

But GHG never redlined anything. Mr. Biggs referred the Court to the following documents, which show the following Microsoft Word “track changes” edits by users named “MB1” and “MB2”:

The screenshot displays three sections of a document with track changes and comments:

- Section 2.1: Performance of Agreement.** The text states that Business Associate, its employees, agents, and independent contractors may use PHI solely for specific purposes. A comment from MB1 states: "Commented [MB1]: Legal at GH reviewing. Will match PPA BAA."
- Section 8: Non-Solicitation.** The text describes the relationship between AKOS and ACO Participant, including training, confidential information, and access to AKOS's beneficiaries. A comment from MB1 states: "Commented [MB1]: Language revised by legal at GH."
- Section 11: First Right of Refusal.** The text describes the right of first refusal to purchase the business. A comment from MB2 states: "Commented [MB2]: Requested to be removed. Sent to legal at GH."

ECF No. 20-1 at 54, 63–64.

⁹ Mary Black was formerly Regional Vice President for AKOS. See ECF No. 165-1 at 11–12.

That’s all. A few suggested revisions to a draft contract between Plaintiffs and AKOS, made by a person who appears to be Mary Black. But Mary Black is a former employee of AKOS—not GHG. Yet Plaintiffs think Mary Black’s AKOS redlines prove the existence of a “contract” with Defendant GHG. (That is, the “contract” Plaintiffs cannot produce in written or electronic form, notwithstanding their day-to-day practice in a healthcare sector replete with paperwork requirements—specifically, a Medicare practice with document-intensive CMS compliance rules and regulations.) Even if Mary Black misstated or misrepresented herself as a “bridge” between Plaintiffs and GHG, the redlines are only evidence of her misrepresentation—not a “contract” with GHG. And it certainly is not evidence of any direct communication between GHG and Plaintiffs.

At this point in the hearing, the Court was incredulous. A consistent pattern across Plaintiffs’ briefing presents AKOS and GHG as a “conjoined twin of Defendants” that, “on first read[,] might suggest that there is some sort of correspondence or contract between GHG and Plaintiffs.” ECF No. 206 at 47. “But in fact,” the Court continued, “if you disaggregate the documentary evidence, it’s always just Mary Black.” *Id.* (citation modified).

Next, the Court asked if Plaintiffs’ entire case rested on an informal logical fallacy: *petitio principii* or “begging the question.”¹⁰ In other words, Plaintiffs’ core thesis assumes the truth of the thing to be proved: they entered into a “contract” with GHG because GHG and AKOS (in truth, just Mary Black) are one and the same. Time and again, Plaintiffs elide and evade their burden of proof by merely *assuming* it’s true that GHG and AKOS are *interchangeable* entities for purposes of this lawsuit. But GHG clearly and loudly disagrees. And Plaintiffs offered scant evidence showing *any* connection between the two, much less a

¹⁰ “What is the Latin for begging the question? I think it’s *petitio principii*; is that right?” ECF No. 206 at 44–45 (citation modified).

sufficiently close connection to prove any of their claims. Instead, all the alleged “connections” are rooted in Mr. Biggs’s intentional or reckless conflation of the two defendants.

This sleight of hand recurs throughout Plaintiffs’ briefing. Start with their Amended Complaint. It refers repeatedly to AKOS and GHG as “Defendants”—for example, when saying that “Defendants wrote Plaintiffs” on July 29, 2022. ECF No. 22 at 4. But that email came only from AKOS, not GHG, and GHG was not even copied on it. The Amended Complaint also refers to “Defendants’ employee Mary Black” when, as we have seen, Ms. Black worked only for AKOS. *Id.* Plaintiffs repeated this as recently as their Response to the instant Motion, where they write that “AFP executed a contract with AKOS/GHG at some time before September 6, 2022.” ECF No. 182 at 2; *see also* ECF No. 165 at 4 (on September 16, 2025, writing “Defendants’ employee Mary Black” and “Defendants wrote back immediately,” referring to an email sent by Mary Black).

Whether Plaintiffs have confused the identities of AKOS and GHG intentionally or merely carelessly, they have done so for years, starting with their Amended Complaint and continuing until today. The Court is inclined to view this conflation as intentional, because it gets right to the heart of this case: What did GHG tell Plaintiffs about their relationship with AKOS? The truth, as it turns out, is *nothing*.

Because Mr. Biggs both presented a false affidavit to the Court without verifying its key claims and consistently misled the Court about the relationship between AKOS and GHG, the Court **FINDS** that dismissal of Plaintiffs’ Amended Complaint is “the only effective, appropriate sanction to remedy this misconduct and to deter future similar misconduct.” *Brown*, 664 F.3d at 80. The Court further finds that Mr. Biggs’s insistence on maintaining his “patently unreasonable litigation position[]” constitutes a bad-faith abuse of the litigation process. *Sarco Creek Ranch*, 167 F. Supp. 3d at 845 (citing *Brown*, 664 F.3d at 76–80). In addition to dismissing this case, the Court **REPRIMANDS** Mr. Biggs.

CONCLUSION

The Court **GRANTS** GHG's Motion and **AWARDS** GHG all reasonable expenses incurred in litigating its Motion, including attorney's fees. The amount of those expenses will be determined by separate order. Mullin Hoard & Brown, LLP is further **ORDERED** to file either a Brief or Notice, as described above, **within two weeks of the date of this Order**.

This case is **DISMISSED** with prejudice. This Memorandum Opinion and Order shall serve as a **REPRIMAND** to Richard Biggs.

SO ORDERED.

February 3, 2026.



MATTHEW J. KACSMARK
UNITED STATES DISTRICT JUDGE

From: [Richard Biggs](#)
To: [CDCInfo](#)
Subject: Richard Biggs/Rule 8.03 Reporting Professional Misconduct
Date: Monday, March 9, 2026 3:44:15 PM

You don't often get email from richbiggs@gmail.com. [Learn why this is important](#)

Sir,

As mandated in Texas Disc. Rule 8.03 Reporting Professional Misconduct, I (Richard Biggs) am reporting a reprimand I received in litigation in federal court. The reprimand occurred in Case # 2:23-cv-026 in the Amarillo Division of the Northern District of Texas. A copy of the reprimand is available at:

<https://law.justia.com/cases/federal/district-courts/texas/txndce/2:2023cv00026/373436/212/>

Regards,

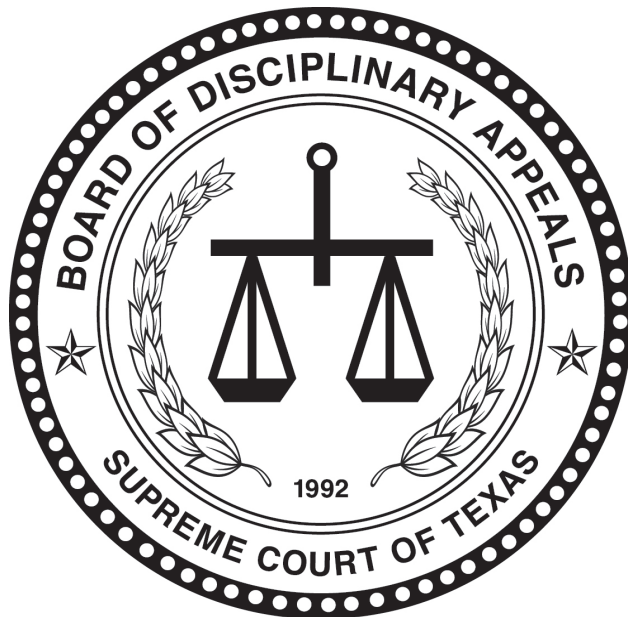
Richard Biggs
Bar #24064899



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



INTERNAL PROCEDURAL RULES
(EFFECTIVE SEPTEMBER 24, 2024)



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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

(6¹) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.

(h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

(i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

¹ So in original.

Rule 4.03. Time to File Record

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

(b) **If No Record Filed.**

(1) If the clerk's record or reporter's record has not been

timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

- (i) the appellant failed to request a reporter's record; or
- (ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

(c) Extension of Time to File the Reporter's Record.

When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

(d) Supplemental Record. If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

Rule 4.04. Copies of the Record

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05. Requisites of Briefs

(a) Appellant's Filing Date. Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) Appellee's Filing Date. Appellee's brief must be filed within 30 days after the appellant's brief is filed.

(c) Contents. Briefs must contain:

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;
- (3) an index of authorities arranged alphabetically and

indicating the pages where the authorities are cited;

(4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;

(5) a statement, without argument, of the basis of BODA's jurisdiction;

(6) a statement of the issues presented for review or points of error on which the appeal is predicated;

(7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

(11) an appendix of record excerpts pertinent to the issues presented for review.

(d) Length of Briefs; Contents Included and Excluded.

In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

(e) Amendment or Supplementation. BODA has discretion to grant leave to amend or supplement briefs.

(f) Failure of the Appellant to File a Brief. If the appellant fails to timely file a brief, BODA may:

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;
- (2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or
- (3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06. Oral Argument

(a) Request. A party desiring oral argument must note the

request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

(b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

- (1) the appeal is frivolous;
- (2) the dispositive issue or issues have been authoritatively decided;
- (3) the facts and legal arguments are adequately presented in the briefs and record; or
- (4) the decisional process would not be significantly aided by oral argument.

(c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

Rule 4.07. Decision and Judgment

(a) **Decision.** BODA may do any of the following:

- (1) affirm in whole or in part the decision of the evidentiary panel;
- (2) modify the panel's findings and affirm the findings as modified;
- (3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or
- (4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:
 - (i) the panel that entered the findings; or
 - (ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) **Mandate.** In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08. Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27 [2.26]. The committee must consist of six members: four attorney members and two public members

randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09. Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

(a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23 [2.22].

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23 [2.22], the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

Rule 5.02. Hearing

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

Rule 6.02. Interlocutory Suspension

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA

determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA must suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.

(2) If the criminal sentence is not fully probated:

(i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or

(ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

Rule 7.02. Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

Rule 7.03. Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2), or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

(c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA Chair must appoint a substitute member.

Rule 8.02. Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the

CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06.

(b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.

(c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

Rule 8.03. Discovery

(a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

(b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) Motion. The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) Report. The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

(c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

Rule 8.04. Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

Rule 8.05. Respondent's Right to Counsel

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for

indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

(b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

Rule 8.06. Hearing

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07. Notice of Decision

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

Rule 8.08. Confidentiality

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

Rule 9.02. Discovery

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

Rule 9.03. Physical or Mental Examinations

(a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.

(b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

Rule 9.04. Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

(a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after

BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.