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State Bar of Texas
By: _____

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STATE BAR OF TEXAS

Office of the Chief Disciplinary Counsel

August 24, 2023 *CMRRR #7022 0410 0002 8292 0939*

George W. Crawford, II
2302 1st Street NW
Washington, DC 20001-1018

Re: Cause No. 68195; *In the Matter of George W. Crawford, II, State Bar Card No. 05038500,* Before the Board of Disciplinary Appeals, Appointed by the Supreme Court of Texas

Dear Mr. Crawford:

Attached please find the following documents in connection with the above-styled and numbered cause:

1. Order to Show Cause on Petition for Reciprocal Discipline and Hearing Notice issued by the Board of Disciplinary Appeals setting this matter for Friday, October 27, 2023, at 9:00 a.m. in the courtroom of the Supreme Court of Texas, Austin, Texas; and

2. Petition for Reciprocal Discipline, which includes Supreme Court of Texas, Board of Disciplinary Appeals Internal Procedural Rules.

The Chief Disciplinary Counsel is required to proceed with the initiation of reciprocal discipline as set out in the Texas Rules of Disciplinary Procedure, Part IX, Reciprocal Discipline, which states:

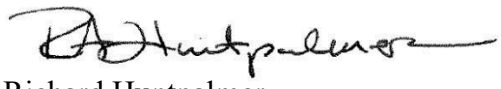
> Rule 9.01 Orders From Other Jurisdictions: Upon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, the Chief Disciplinary Counsel shall diligently seek to obtain a certified copy of the order or judgment of discipline from the other jurisdiction, and file it with the

> Board of Disciplinary Appeals along with a petition requesting that the attorney be disciplined in Texas. A certified copy of the order or judgment is prima facie evidence of the matters contained therein, and a final adjudication in another jurisdiction that an attorney licensed to practice law in Texas has committed Professional Misconduct is conclusive for the purposes of a Disciplinary Action in this state...

The Texas Rules of Disciplinary Procedure mandate that the Chief Disciplinary Counsel of the State Bar of Texas seeks reciprocal discipline against a Texas-licensed lawyer when discipline has been imposed upon him or her in another jurisdiction. Our office has no discretion in this regard under the Rules.

Please contact me if you wish to discuss this matter further.

Sincerely,



Richard Huntpalmer
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas

RH/tbg
Attachments: Order to Show Cause on Petition for Reciprocal Discipline
Petition for Reciprocal Discipline

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

IN THE MATTER OF	**§**	
GEORGE W. CRAWFORD, II	**§**	**CAUSE NO. 68195**
State Bar of Texas Card No. 05038500	**§**	

ORDER TO SHOW CAUSE
ON PETITION FOR RECIPROCAL DISCIPLINE
AND HEARING SETTING

Pursuant to Texas Rules of Disciplinary Procedure ("TRDP") Part IX, the Chief Disciplinary Counsel of the State Bar of Texas filed a Petition for Reciprocal Discipline against Respondent George W. Crawford, II, on August 18, 2023. The Petition states that on or about March 16, 2023, the District of Columbia Court of Appeals issued a Per Curiam Opinion and Order in Cause No. 22-BG-0937, *In Re George W. Crawford, II*, suspending Respondent for six months, with reinstatement conditioned upon a showing of fitness to practice law, the payment of any outstanding sanctions, and compliance with pending court orders. A true and correct copy of the Petition for Reciprocal Discipline, which includes the Per Curiam Opinion and Order, is attached hereto and incorporated herein in its entirety for all purposes as if set forth in full.

It is, therefore, **ORDERED** that, Respondent, George W. Crawford, II, shall, within thirty (30) days from the date of service of this Order to Show Cause on Petition for Reciprocal Discipline, show cause why the imposition of identical discipline, to the extent practicable, in Texas by the Board of Disciplinary Appeals pursuant to TRDP 9.02 would be unwarranted. If Respondent is served by mail, Respondent shall show cause within thirty (30) days from the date of mailing of this Order to Show Cause. Respondent should consult TRDP Part IX regarding the

failure to file an answer. Failure to file a timely answer may waive Respondent's right to raise the defenses set forth in TRDP 9.04, and may result in the matter being heard on submission of the pleadings or limit the scope of a hearing to exclude presentation of any defenses under TRDP 9.04. *See* TEX. RULES DISCIPLINARY P. R. 9.01–04; BODA INTERNAL PROCEDURAL RULES R. 7.03.

It is further **ORDERED** that this reciprocal discipline case is set for in-person hearing before the Board on Friday, October 27, 2023, at 9:00 a.m. in the courtroom of the Supreme Court of Texas, Austin, Texas. Any objection to the method of appearance and request for relief shall be made by motion in accordance with BODA Internal Procedural Rule 1.09(a)(1) and should present good cause for the objection and relief requested. Any request for continuance likewise shall be made by motion in accordance with Rule 1.09(a). Any such motions should be filed at least seven (7) days prior to the hearing setting.

SIGNED this 22nd day of August 2023.

CHAIR PRESIDING

STATE BAR OF TEXAS

Office of the Chief Disciplinary Counsel

68195

August 18, 2023

Ms. Jenny Hodgkins
Board of Disciplinary Appeals
Supreme Court of Texas
P. O. Box 12426
Austin, Texas 78711

Via e-filing to filing@txboda.org

Re: *In the Matter of George W. Crawford, II, State Bar Card No. 05038500;* Before the Board of Disciplinary Appeals, Appointed by the Supreme Court of Texas

Dear Ms. Hodgkins:

Attached please find the Petition for Reciprocal Discipline of Respondent, George W. Crawford, II. Please file the original Petition with the Board and return a copy to me.

Pursuant to Rule 9.02 of the Texas Rules of Disciplinary Procedure, request is hereby made that the Board issue a show cause order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice why the imposition of the identical discipline upon Respondent in this State would be unwarranted.

Thank you for your assistance in this matter. Please do not hesitate to call if you have any questions.

Sincerely,

Richard Huntpalmer
Assistant Disciplinary Counsel
State Bar of Texas

RH/tbg

P.O. Box 12487, Capitol Station, Austin, Texas 78711-2487, 512.427.1350, Fax 512.427.4167

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

IN THE MATTER OF	§	
GEORGE W. CRAWFORD, II	§	**CAUSE NO.** 68195
STATE BAR CARD NO. 05038500	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, George W. Crawford, II, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a licensed member of the State Bar of Texas and is not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at George W. Crawford, II, 2302 1st Street NW, Washington, DC 20001.

3. On or about December 9, 2022, a Report and Recommendation of the Board of Professional Responsibility (Exhibit 1) was issued in the District of Columbia Court of Appeals Board on Professional Responsibility, styled *In the Matter of: George W. Crawford, II, Respondent. A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 311639)*, Board Docket No. 15-BD-108, Bar Docket No. 2013-D022, which states in pertinent part as follows:

I. INTRODUCTION

> Before the Board is the Ad Hoc Hearing Committee's Report and Recommendation, finding by clear and convincing evidence that Respondent, George W. Crawford, II, violated Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(a), 8.4(c), and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rule" or "Rules") based on misconduct related to a civil judgment against him and a subsequent settlement agreement. The Committee recommended that Respondent be suspended for six months, with reinstatement conditioned upon a showing of fitness, payment of any outstanding sanctions, and compliance with any pending court orders. The Board finds that Respondent violated each of the charged Rules and adopts the Hearing Committee's recommended sanction.

VI. CONCLUSION

> For the foregoing reasons, the Board recommends that the Court conclude that that[sic] Respondent violated Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(a), 8.4(c), and 8.4(d). We recommend that he should be suspended for six months, with reinstatement conditioned upon (i) his demonstrating his fitness to practice law, (ii) his compliance with any pending court orders, and (iii) his payment of any outstanding sanctions awards. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

4. On or about March 16, 2023, an Opinion Order (Exhibit 2) was issued in the District of Columbia Court of Appeals, in No. 22-BG-0937, *In Re George W. Crawford, II, Respondent. A Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 311639),* On Report and Recommendation of the Board on Professional Responsibility (DDN: 2013-D022), which states in pertinent part as follows:

> PER CURIAM: The Board on Professional Responsibility recommends that respondent George W. Crawford, II, be suspended for six months from the practice of law in this jurisdiction with reinstatement conditioned upon a showing of fitness, the payment of any outstanding sanctions, and compliance with any pending court orders. Mr. Crawford was charged with violating numerous Rules of Professional Conduct arising from his failure to pay a judgment entered against him and to satisfy a subsequent settlement agreement, which led to the imposition of sanctions and Mr. Crawford's incarceration for his failure to purge a finding of civil

> contempt. Mr. Crawford's misconduct included violations of Rule 3.1 (defending a proceeding, and asserting or controverting an issue therein, although there was no basis in law for doing so that was not frivolous); Rule 3.3(a) (knowingly making false statements of fact to a tribunal or failing to correct false statements of material fact previously made to the tribunal); Rule 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists); Rule 8.4(a) (violating or attempting to violate the Rules, knowingly assisting or inducing another to do so, or doing so through the acts of another); Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(d) (engaging in conduct that seriously interfered with the administration of justice). Mr. Crawford has not filed any exception to the Board's Report and Recommendation, nor has he filed the required D.C. Bar R. XI, § 14(g) affidavit after the court imposed an interim suspension on February 15, 2023.
>
> Under D.C. Bar R. XI, § 9(h)(2), "if no exceptions are filed to the Board's report, the [c]ourt will enter an order imposing the discipline recommended by the Board upon the expiration of the time permitted for filing exceptions." *Id.; see In re Viehe*, 762 A.2d 542, 543 (D.C. 2000) ("When . . . there are no exceptions to the Board's report and recommendation, our deferential standard of review becomes even more deferential."). Because no exceptions have been filed, we accept the Board's recommendation of a six-month suspension with a fitness requirement for Mr. Crawford's misconduct. Thus we predicate Mr. Crawford's reinstatement upon a showing of fitness, the payment of any outstanding sanctions, and compliance with pending court orders.
>
> Accordingly, it is ORDERED that respondent George W. Crawford, II, is hereby suspended for six months from the practice of law in this jurisdiction and, as a condition of reinstatement, he must establish fitness to practice law, and demonstrate that he has paid any outstanding sanction awards and complied with any pending court orders in *First Washington Insurance Co. v. Kelly*, No. 2007 CA 005890 B; *Crawford v. First Washington Insurance Co.*, No. 2010 CA 006309 B; and *In re Crawford*, No. 2012 CCC 022. Mr. Crawford's attention is directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

5. A certified copy of the Report and Recommendation of the Board of Professional Responsibility (Exhibit 1), and a certified copy of the Opinion Order of the District of Columbia Court of Appeals (Exhibit 2), are attached hereto as Petitioner’s Exhibits 1 and 2 and made a part hereof for all intents and purposes as if the same was copied verbatim herein. Petitioner expects to

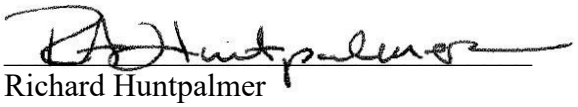
introduce a certified copy of Exhibits 1 and 2 at the time of hearing of this cause.

6. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the District of Columbia Court of Appeals and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Richard Huntpalmer
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
Telephone: 512.427.1350
Telecopier: 512.427.4253
Email: richard.huntpalmer@texasbar.com



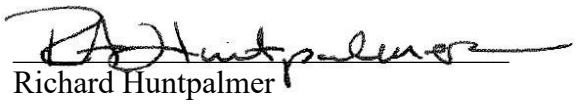
Richard Huntpalmer
Bar Card No. 24097857

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on George W. Crawford, II, by certified mail, return receipt requested.

George W. Crawford, II
2302 1st Street NW
Washington, DC 20001



Richard Huntpalmer

CERTIFICATION

Re: In the Matter of George W. Crawford, II
Board Docket No. 15-BD-108
Bar Docket No. 2013-D022

I, James T. Phalen, Executive Attorney, Board on Professional Responsibility, do hereby certify that the enclosed is the true and correct copy of the Report and Recommendation of the Board on Professional Responsibility in In the Matter of George W. Crawford, II, Board Docket No. 15-BD-108, Bar Docket No. 2013-D022, as filed with the District of Columbia Court of Appeals on December 9, 2022.

James T. Phalen
Executive Attorney

Dated: March 21, 2023

EXHIBIT
1

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
December 9, 2022

In the Matter of:	:	
	:	
GEORGE W. CRAWFORD II,	:	
	:	Board Docket No. 15-BD-108
Respondent.	:	Bar Docket No. 2013-D022
	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 311639)	:	

REPORT AND RECOMMENDATION OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

Before the Board is the Ad Hoc Hearing Committee's Report and Recommendation, finding by clear and convincing evidence that Respondent, George W. Crawford II, violated Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(a), 8.4(c), and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rule" or "Rules") based on misconduct related to a civil judgment against him and a subsequent settlement agreement. The Committee recommended that Respondent be suspended for six months, with reinstatement conditioned upon a showing of fitness, payment of any outstanding sanctions, and compliance with any pending court orders. The Board finds that Respondent violated each of the charged Rules and adopts the Hearing Committee's recommended sanction.

* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any prior or subsequent decisions in this case.

The Board "'must accept the Hearing Committee's evidentiary findings, including credibility findings, if they are supported by substantial evidence in the record.'" *In re Krame*, No. 19-BG-674, 2022 WL 16642018, at *9 (D.C. Nov. 3, 2022); *In re Klayman*, 228 A.3d 713, 717 (D.C. 2020) (per curiam) (quoting *In re Bradley*, 70 A.3d 1189, 1193 (D.C. 2013) (per curiam)); *see also In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990) (per curiam) (defining "substantial evidence" as "enough evidence for a reasonable mind to find sufficient to support the conclusion reached"). We review *de novo* its legal conclusions and its determinations of ultimate fact. *See Klayman*, 228 A.3d at 717; *Bradley*, 70 A.3d at 1194 (The Board owes "no deference to the Hearing Committee's determination of 'ultimate facts,' which are really conclusions of law and thus are reviewed *de novo*."). Where the Board makes its own findings of fact, we employ a clear and convincing evidence standard. *See* Board Rule 13.7.

Neither Respondent nor Disciplinary Counsel have taken exception to the Committee's report. Under D.C. Bar R. XI § 9(b), "[i]f no exceptions are filed, the Board shall decide the matter on the basis of the Hearing Committee record."

II. OVERVIEW

Respondent was sued in the District of Columbia Superior Court because he had agreed to be a guarantor for funds lent to co-defendants who defaulted on the loans. After two years of litigation, the court granted a motion for summary judgment against Respondent and entered a judgment against him in the amount of $1,158,701.40. Thereafter, Respondent agreed to a settlement with the plaintiffs wherein he promised to pay $10,000 to the plaintiffs, instead of the judgment. Over the next six years, Respondent engaged in obstructionist behaviors in an effort to avoid payment of the settlement, which resulted in his incarceration for civil contempt. In doing so, he spurned his obligations as an officer of the court and repeatedly violated the disciplinary rules.

III. KEY FINDINGS OF FACT

On or around June 7, 2006, Respondent personally guaranteed a secured loan in the amount of $850,000 made by First Washington Insurance Company ("First Washington") to Joy Kelly and Sunshine WV, LLC (the "Borrowers"). FF 6, 8. Respondent had introduced the Borrowers to First Washington's majority owner, Gerald Schaeffer, and received an $8,500 finder's fee (1% of the loan amount) for the referral. FF 4-9. Respondent believed that four properties, valued at $2.4 million total, would serve as collateral for the loan. FF 8. He believed that the value of one of the collateral properties ("the 9th & Upshur Property") underlying the loan was

itself worth $895,000 – $45,000 more than the loan amount.[1] FF 8. Unbeknownst to Respondent or First Washington, the Borrowers had used the 9th & Upshur Property to secure a separate loan with a different bank prior to the closing. Tr. 202-06. The Borrowers soon defaulted on both loans. Tr. 46-47. On August 23, 2007, Mr. Schaeffer filed suit against the Borrowers in D.C. Superior Court for breach of contract, Respondent for breach of personal guaranties, and First American Title Insurance Company ("First American") for negligence in their handling of the closing. (*First Washington Insurance Co. v. Kelly*, No. 2007 CA 005890B (the "-5890 Action")). *See* Tr. 45-46. Respondent asserted cross-claims against First American. Tr. 51.

On March 6, 2009, Judge Brian F. Holeman orally granted First Washington's motion for summary judgment against Respondent and other defendants in the -5890 Action. On December 1, 2009, the court ordered the clerk to enter judgments against Respondent totaling $1,158,701.40. FF 11. Following the Superior Court's entry of the judgments, the court ordered the parties to participate in mediation. FF 13. During a January 7, 2010 mediation session, Respondent, First Washington, and First American entered into a partial settlement of the case, agreeing to resolve all the claims and cross-claims against each other.[2] FF 13-14; DCX 23. Specifically,

[1] The Hearing Committee found that the record evidence "suggested that First Washington would have had the first priority lien position only on the 9th & Upshur Property, not all four properties." FF 9.

[2] Although ordered to do so, the Borrowers did not appear and the settlement had no effect on First Washington's judgments against them. *See* DCX 23.

First American agreed (provided Respondent's cross-claim against it would be dismissed), to pay First Washington $100,000, subject to execution of a mutually acceptable release and settlement agreement. First American also agreed to dismiss its claims against Respondent with prejudice. In return, First Washington agreed to dismiss the claims against First American with prejudice. *See* DCX 23. Respondent agreed to the following terms:

> First Washington would release Respondent from the $1.2 million judgment against him subject to (1) his execution of an affidavit detailing all of his assets and liabilities, (2) his agreement to pay plaintiffs a total of $10,000 over the next three years, and (3) his signing a promissory note consistent with D.C. law confirming his payment obligation. As part of this settlement, Respondent also agreed to dismiss the cross-claims he had asserted against First American Title.

FF 15-16; DCX 23-24. Shortly after agreeing to the settlement, Respondent began attempts to avoid complying with its terms. The Hearing Committee found that those efforts included engaging in frivolous litigation, disregard of court orders, and dishonesty to the court. We discuss each in turn below.

A. Respondent's Motions to Vacate the Judgment and for Rule 11 Sanctions

On March 15, 2010, Respondent filed a Motion to Vacate Judgment, pursuant to D.C. Superior Court Rules 12-I and 60, in which he contended that First Washington's $1.2 million judgment against him was void because it had been obtained by fraud, misrepresentation, and misconduct. FF 49-52. The basis of Respondent's fraud claim was that First American had procured his guaranty by misrepresenting that First Washington would have first priority lien position on the collateral properties securing the loans. FF 50. Respondent also claimed that First

Washington's counsel had engaged in fraud by failing to assert a fraud claim on behalf of First Washington against First American and by failing to pose deposition questions that would have provided evidence of the alleged fraud. FF 63. The Hearing Committee found that Respondent knew that First Washington did not have first priority lien position by November 2006 – mere months after he signed as a loan guarantor, almost a year before the lawsuit to enforce the guaranty was filed, and more than three years before he filed the motion to vacate the judgment. FF 54-55.

The court denied Respondent's motion to vacate at a May 28, 2010 hearing, finding that the motion was frivolous. FF 87; DCX 30 at 49-52. The court found that Respondent filed the motion in an attempt to avoid the judgment or post-judgment settlement. DCX 30 at 51. The court also suggested that Respondent had "gone to sleep on [his] fraud claims that should have been brought by the exercise of due diligence." DCX 30 at 49-52.

Undeterred by the court's order, less than three months after the court denied his motion to vacate the judgment, Respondent filed a motion seeking Rule 11 sanctions against First Washington, asserting the same fraud claims contained in the motion to vacate the judgment. FF 109 *et seq*. [3] The court denied the Rule 11 motion in a May 31, 2012 omnibus order, stating, among other things, that Respondent was

[3] Disciplinary Counsel originally charged that Respondent filed two additional frivolous motions – a motion for clarification and a motion for reconsideration. The Hearing Committee found that those motions did not violate Rules 3.1 or 8.4(d). Because Disciplinary Counsel did not take exception the Hearing Committee's conclusions, we do not address these motions herein.

"resurrect[ing] the same baseless claims" made in the prior motion – claims that the court had rejected as frivolous and meritless at the May 28, 2010 hearing. The court issued sanctions against Respondent in the amount of $30,517.35. *See* FF 112, 125.

B. Contempt Proceedings Against Respondent

Despite the court's order awarding sanctions against Respondent, he failed to pay them. At an August 17, 2012 hearing on contempt motions filed by First Washington and First American, the court found Respondent to be in contempt for failing to pay the $30,517.35 sanctions award. *See* FF 164, 182. The court advised Respondent that he would be incarcerated unless he purged the contempt. *See* DCX 17 at 7-8. Respondent did not do so. DCX 17 at 8. By the hearing held on December 10, 2012, Respondent still had not paid the sanctions award and the court incarcerated him. DCX 17 at 8.

The court held additional hearings on December 14, December 19, and December 21, 2012, to determine whether Respondent had made any effort to purge the contempt. FF 236, 241, 245. At the hearing on December 14, the court awarded further sanctions to First American and First Washington totaling $123,257.50 (covering the parties' attorneys' fees) to be paid by March 15, 2013. FF 240. After the hearing on December 21, 2012, Respondent was released, with the understanding that he would pay $15,000 towards the first sanctions award and that arrangements would be made to pay the remaining sanctions by January 17, 2013. FF 245. Respondent paid the $15,000 that day as required. FF 245.

By the next status hearing on January 17, 2013, Respondent had paid the remaining balance of the $30,517.35 sanctions award. FF 247. But the court's March 15 deadline came and went without payment of the second sanctions award of $123,257.50. FF 249. The court warned Respondent that the outstanding sanctions needed to be paid by the upcoming April 15, 2013 hearing and warned that it would incarcerate him once again if he failed to do so, or if he failed to come up with an agreement to resolve payment of the outstanding amount. FF 251. At the subsequent hearing, the court determined that Respondent had failed to comply with the court's order and incarcerated him once again until, at a minimum, he demonstrated either a good-faith effort to pay the sanctions or an inability to pay the award. *See* FF 253, 259; DCX 18 at 1, 5, 11.

At the next hearing on April 30, 2013, the court found that Respondent had the ability to pay the sanctions but had not done so and ordered that Respondent remain incarcerated. FF 275-76. By the next hearing – on May 28, 2013 – Respondent had still not complied with the court's order and he remained incarcerated. FF 279-80. On May 29, 2013, Respondent's counsel filed a pleading proposing a plan by which the sanctions could be paid: (i) Respondent's son would sell one property that Respondent owned to pay a portion of the sanctions; and (ii) Respondent and his wife would complete "necessary repairs" to a rental property that Respondent and his wife jointly owned, conduct a refinancing, and use the proceeds from the refinancing of that property to pay the outstanding balance of the sanctions. FF 137, 281-82. Respondent's pleading added that, if the proceeds from

the sale and refinancing were insufficient to cover the total amount of the sanctions, he would pay $2,500 per month until the sanctions were paid in full. *See* FF 284; DCX 27.

Both Respondent and his wife appeared at the next day's hearing. Through counsel, Respondent assured the court that "[t]hrough this payment plan [Respondent] along with his wife will access the equity to pay the fees owed and to purge the contempt." FF 292. The court specifically addressed Respondent's wife at the hearing, advising her that she could obtain independent legal advice concerning the agreement, given that she also had ownership rights in the property to be refinanced and that the court had no jurisdiction over her. FF 295; DCX 44 at 18. Following an off-the-record discussion between the parties (including Respondent's wife), and Respondent's counsel's representation that the first refinancing was scheduled to close on the following day, the court accepted the core of Respondent's proposal – that Respondent would complete both refinancings and use the entire net proceeds of the second refinancing to pay the sanctions. FF 297-99, 301, 307. Respondent also agreed to assign $2,500 of his Civil Service retirement pension to First Washington and First American to initiate payment of the sanctions. FF 300. The court ordered Respondent to pay the sanctions in full no later than December 1, 2013 and released him from custody. FF 302, 307-308.

Respondent and his wife completed the second refinancing as planned but did not use any of the proceeds ($118,000) to pay the sanctions. FF 322-24. By that point, Respondent had paid only $10,000 of the outstanding sanctions using his

pension funds. FF 323. When the refinancing funds became available in September 2013, Respondent's wife promptly transferred $78,000 of the proceeds into a bank account solely in her name, leaving $40,000 in their joint account. FF 325. She specifically removed the funds to keep them from being spent on sanctions but also intended to set aside funds for the future care of her elderly mother. FF 326. She ultimately used the entire remaining $40,000 to pay household expenses. FF 327.

When asked whether Respondent was truthful when he initially agreed to use the refinancing proceeds to pay the sanctions, Respondent's wife assured the Committee that it was Respondent's intent to do so at that time. *See* Tr. 467. But, having followed the court's suggestion that she obtain independent counsel, she came to understand that she was not liable for Respondent's debts and had property rights in the funds as well. Tr. 403. She did not dispute that Respondent could have taken the $40,000 that remained in the account to pay the sanctions before they were used to pay other expenses. Tr. 472. For his part, Respondent explained to the Hearing Committee that he allowed his wife to divert the funds because he did not want to upset her:

> [Y]ou've heard the expression ["]happy wife, happy life?["] So my wife took the lead. I wasn't going to upset her, and I didn't need that kind of – I'd been to jail, you, know. You know, I felt that as a principal [sic] I was doing what was right. Legally, and as far as my wife was concerned, I was trying to do what was right by my family. Those are the first two things that come foremost in my mind, and that's doing what's right by my family, and that's how I felt, and how I feel today.

FF 330 (emphasis omitted). He did not recall discussing with his wife the possibility of using the remaining $40,000 to pay any of the outstanding sanctions. FF 332.

C. Respondent Ignored Court Orders Designed to Enforce the Settlement.

Respondent does not dispute that he knowingly ignored court orders requiring that he (i) pay the full sanctions assessed against him, (ii) sign a promissory note, and (iii) provide an affidavit disclosing all of his assets and liabilities, including those held jointly.

IV. DISCUSSION

A. Respondent's Motion to Dismiss

At the start of the hearing, Respondent orally moved to dismiss this matter on grounds that the Specification of Charges was insufficiently clear or specific to meet the standard set forth in Board Rule 7.1.[4] In recommending that Respondent's motion be denied, the Hearing Committee concluded that: (i) the motion was untimely because it was not filed within 7 days of the time prescribed for filing an answer, in accordance with Board Rule 7.14(a); (ii) Respondent could have filed a motion for a bill of particulars or otherwise asked Disciplinary Counsel to clarify the theory of its case; and (iii) the Specification was sufficient to provide Respondent with notice of the charges against him. HC Rpt. at 141-43. While we note that a respondent may move to dismiss charges against him at any time, we agree that the Specification of Charges provided Respondent sufficient notice of the charges

[4] Board Rule 7.1 requires that the petition be (i) "sufficiently clear and specific to inform respondent of the alleged misconduct and the disciplinary rule or rules alleged to have been violated[,]" and (ii) "based on probable cause to believe that respondent has . . . violated the rules of professional conduct."

against him to comport with the requirements of Board Rule 7.1. If Respondent had in fact been unclear as to any aspect of the charges against him, he had ample opportunity to seek clarification prior to the start of the hearing. Like the Hearing Committee, we find it persuasive that, at no point during the hearing or thereafter, did Respondent claim that he was surprised by the evidence or Disciplinary Counsel's contentions related thereto. HC Rpt. at 143. For these reasons, Respondent's motion to dismiss is denied.

B. Respondent Violated Rule 3.1.[5]

Under Rule 3.1, "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law." An objective test is used to determine whether Respondent's conduct violated Rule 3.1. A filing is frivolous if, after an "objective appraisal of merit," a reasonable attorney would conclude that there was "not even a faint hope of success on the legal merits." *In re Spikes*, 881 A.2d 1118, 1125 (D.C. 2005) (citing *Tupling v. Britton*, 411 A.2d 349, 352 (D.C. 1980) and *Slater v. Biehl*, 793 A.2d 1268, 1278 (D.C. 2002)).

> In determining whether Rule 3.1 has been violated, "consideration should be given to the clarity or ambiguity of the law." *In re Spikes*, 881 A.2d 1118, 1125 (D.C. 2005). The "plausibility of the position

[5] As discussed above, the Hearing Committee found that Disciplinary Counsel did not meet its burden in proving that Respondent's motion for clarification or the motion for reconsideration violated Rule 3.1 or 8.4(d). Because Disciplinary Counsel has not taken exception to these findings, the Board does not address them.

> taken[ ] and the complexity of the issue" are also relevant factors. *Id.* Ultimately, a position is "frivolous when it is wholly lacking in substance and not based upon even a faint hope of success on the legal merits." *Id.*
>
> Attorneys have a continuing responsibility to make an "objective appraisal of the legal merits of a position," asking how a "reasonable attorney" would evaluate "whether a claim is truly meritless or merely weak." *In re Yelverton*, 105 A.3d 413, 425 (D.C. 2014).

In re Pearson, 228 A.3d 417, 423-24 (D.C. 2020); *see also In re Yelverton*, 105 A.3d at 426 (attorney violated Rule 3.1 where he "filed numerous repetitive and unfounded motions in Superior Court and in this court, and . . . twice asked the trial judge to recuse himself from the case when he lacked any objective reason to do so").

1. Respondent's Motion to Vacate the Judgment Violated Rule 3.1 Because He Settled the Matter with Full Knowledge of the Alleged Fraud in the Underlying Matter.

D.C. Superior Court Civil Rule 60(b)(3) "explicitly permits the court to grant a party relief from a final judgment on grounds of fraud, misrepresentation, or other misconduct of an adverse party." *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Science*, 858 A.2d 457, 464 (D.C. 2004).[6] "'[T]he purpose of 60(b)

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[6] The full text of D.C. Super Ct. Civ. R. 60(b) provides:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

is to respect the finality of judgments by providing post-judgment relief only under exceptional circumstances, . . . in unusual and extraordinary situations justifying an exception to the overriding policy of finality, . . . or where the judgment may work an extreme and undue hardship.'" *Id*. (quoting *Clement v. D.C. Dep't of Hum. Servs*., 629 A.2d 1215, 1219 (D.C. 1993)).

Respondent believed that his motion to vacate was proper because Superior Court Civil Rule 60 "permits reconsideration of a judgment procured through fraud," that his motion was timely because "[s]ubsection (b)(3) of the rule required that he file the motion within a year of December 2, 2009, the date the judgment was entered" and that, by filing on March 10, 2010, he complied with that requirement. Resp. Response to ODC's PFFCL at 28. In defending the filing of his motion, Respondent explained to the Hearing Committee that "[f]raud is never frivolous." Tr. 330.

The Hearing Committee found that Respondent's motion to vacate the judgment lacked even a faint hope of success for several reasons, chief among them being Respondent's settlement of the very judgment that he sought to vacate at a time when he had full knowledge of the facts that would have supported his fraud claims. HC Rpt. at 155-56. Relying on *Brown v. Hornstein*, 669 A.2d 139, 142 (D.C. 1996), the Committee determined that when Respondent entered into the settlement

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(4) the judgment is void;
(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
(6) any other reason that justifies relief.

agreement with the parties with full knowledge of all the facts underlying his motion to vacate the judgment, that settlement extinguished all of the claims that he may have had with respect to the underlying lawsuit. *See also* DCX 23 at 2 (Praecipe of Partial Settlement) ("As part of this settlement, First American [Title Insurance Company] and Mr. Crawford agree to dismiss the claims they have against one another with prejudice."). The *Brown* court explained:

> [T]his court stated more than forty years ago, "[t]he general rule is that a compromise and settlement agreement operates as a merger of and bars the right to recovery on any claim included therein." *McGee v. Marbury*, 83 A.2d 157, 159 (D.C.1951). The law favors the settlement of controversies, and a compromise agreement will be enforced just like any other contract. *Goozh v. Capitol Souvenir Co., Inc.*, 462 A.2d 1140, 1142 (D.C.1983).

669 A.2d at 142.

The law on this issue was clear and unambiguous. By entering into the settlement agreement with full knowledge of his fraud claims, Respondent's claims related thereto were extinguished. *See* HC Rpt. at 155-56.[7] He cites no authority in support of his position to the contrary. His argument could not have been based upon even a faint hope of success on the legal merits. Accordingly, he violated Rule 3.1.

[7] The Hearing Committee relied on two other bases for finding that this motion violated the Rule. *See* HC Rpt. at 155-66. Because the Board's review is *de novo* and we find that the settlement vitiated any fraud claims that he may have otherwise retained concerning the underlying judgment, it is not necessary for us to address these additional bases.

2. Respondent's Motion for Rule 11 Sanctions Violated Rule 3.1 Because it Rested on the Same Grounds as the Motion to Vacate the Judgment.

On the very heels of the court denying his motion to vacate the judgment, Respondent filed his Rule 11 sanctions motion asserting the very same claims that he should have understood were barred. An objective appraisal of the merits of his position surely would have led a reasonable attorney to understand that his claim was truly meritless. *See Pearson*, 228 A.3d at 423-26. Respondent failed to undertake such an appraisal and, here too, his claims violated Rule 3.1.

C. Respondent Violated Rule 3.3(a)(1).

Rule 3.3(a)(1) provides that a lawyer shall not knowingly "[m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer, unless correction would require disclosure of information that is prohibited by Rule 1.6." "This is an extremely serious ethical violation." *In re Johnson*, 275 A.3d 268, 277 (D.C. 2022) (quoting *In re Ukwu,* 926 A.2d 1106, 1140-41 (D.C. 2007) (appended Board Report)). The obligation under Rule 3.3 to speak truthfully to the tribunal is one of a lawyer's "fundamental obligations." *In re Ukwu*, 926 A.2d 1106, 1140 (D.C. 2007) (appended Board Report). Unlike Rule 8.4(c), which can be violated based on reckless conduct, Rule 3.3 requires the Respondent to "knowingly" make a false statement. As the Court of Appeals noted in *Ukwu*, it must be determined that (1) Respondent's statements or evidence were false, and (2) Respondent knew that they were false. *Id.* at 1140. The term "knowingly" "denotes actual knowledge of the fact

in question" and this knowledge may be inferred from the circumstances. *See* D.C. Rule 1.0(f); *see also Ukwu*, 926 A.2d at1116 ("[i]ntent must ordinarily be established by circumstantial evidence. . ."); *In re Starnes*, 829 A.2d 488, 500 (D.C. 2003) (appended Board Report) (circumstantial evidence was sufficient to prove respondent's state of mind as "more direct proof of state of mind, such as an outright assertion of an individual's intent, is rarely available").

The Hearing Committee found that Respondent "clearly and unmistakably represented to the court through counsel that, if released, he intended to use the entire net proceeds" of the refinancing of his rental property to pay the outstanding sanctions. HC Rpt. at 181. The Committee also found that it was "equally clear" and undisputed by Respondent that the court relied on that representation in releasing him from custody. *Id*. Yet, Respondent did not make good on his promise. The Committee found that Respondent never intended to do so, including when he made the statement. As the Committee wrote:

> We recognize that a statement of intention is not a guarantee, and that other circumstances could have arisen that might have prevented Respondent from carrying out his stated intention. [] What is remarkable in this case is the complete absence of any such claim by Respondent. He points to no supervening events or circumstances, no "overtaking by events," no unexpected financial reverses, nothing at all that prevented him from devoting the entire net proceeds of the Second Refinancing to the payment of the outstanding sanctions. Respondent remained completely passive and did nothing to prevent his wife from diverting every penny of these proceeds to the payment of other parties (his mother-in-law and their household creditors), all of which alleged obligations were well known to him when he made his representation to the court.

> Other compelling evidence supports our conclusion that Respondent had no such intent. We are not writing on a clean slate here. We might be inclined to give Respondent the benefit of the doubt if he had not, throughout the course of the underlying litigation, done everything he could to delay, obstruct, and avoid paying anything to First Washington and First American Title. As we recite in detail in our findings, Respondent settled a $1.2 million judgment for $10,000 payable over three years. He then asserted an extreme, wholly unsupportable interpretation of the Settlement Agreement and persisted in it, disobeying numerous court orders and generating sanctions awards against him totaling over $240,000 in three separate awards. Despite his ability to do so, he refused to pay any amount of these sanctions until he was incarcerated the first time. The court quite accurately referred to Respondent's "loathsome pattern of non-compliance," and his "demonstrated bad faith throughout the proceedings." [] Taken together, Respondent's years of unlawful avoidance of his obligations and frustration of First Washington's legitimate claims, coupled with his admitted acquiescence in his wife's diversion of the Second Refinancing proceeds, and the absence of any claim of changed circumstances or overtaking by events leave no doubt: Respondent never intended to make good on his representation to the court that he would apply the entire net proceeds of that refinancing to the payment of the sanctions, and his representation to this effect to the court was knowingly false.

HC Rpt. at 188-89.

We acknowledge, however, that there is evidence pointing in the opposite direction as well. First, Respondent's wife's unimpeached testimony was that Respondent indeed intended to use the refinancing funds to pay the sanctions when he made the promise. *See* Tr. 467. It was her consultation with counsel that offered her a more fulsome understanding of her rights to the refinancing funds and, based on that newly acquired insight, she removed the lion's share of those funds from their bank account. We have also considered that Respondent honored his agreement

to pay the $2,500 per month from his pension fund. This too is some evidence that Respondent intended to pay the sanctions award.

"A play cannot be understood on the basis of some of its scenes, but only on its entire performance." *Ukwu*, 926 A.2d at 1116 (quoting *Andrews v. Philadelphia,* 895 F.2d 1469, 1484 (3d Cir. 1990)). As the Court of Appeals instructed in that case, "[i]ntent must ordinarily be established by circumstantial evidence, and in assessing intent, the court must consider the entire context. '[I]t is generally in the interests of justice that the trier of fact "consider the entire mosaic.'" 926 A.2d at 1116 (internal citations omitted).

In assessing the complete mosaic in this case, we find that there is substantial record evidence supporting the Hearing Committee's determination that Respondent never intended to pay the outstanding sanctions with the refinancing proceeds. The sum total of Respondent's conduct in this matter was deeply problematic. Even after being warned on more than one occasion that he would be held in contempt if he failed to pay the sanctions, Respondent persisted in ignoring the court's admonition. During his incarceration, he continued to drag his feet in repaying the sanctions. And, despite the fact that his wife removed the lion's share of the refinancing funds from the bank account, there is no dispute that he could have used the remaining funds to pay the outstanding sanctions. He did not. Nor does he even recall raising the possibility of doing so with his wife. *See* FF 332. Though Respondent's wife may have believed that Respondent intended to pay the sanctions with the proceeds of the refinancing, we assign her testimony little weight because Respondent's own

behavior demonstrates otherwise. For these reasons, we find that Respondent knowingly made a false statement to the court and, in doing so, violated Rule 3.3(a)(1).

D. Respondent Violated Rule 8.4(c).

Rule 8.4(c) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

> [The] court has stated that dishonesty, fraud, deceit, and misrepresentation are four different violations, that may require different quantums of proof. Hence, while an intent to defraud or deceive may be required for a finding of fraud, dishonesty may result from conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness. Thus, what may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty.

In re Romansky, 825 A.2d 311, 315 (*Romansky I*) (D.C. 2003) (internal citations and quotation marks omitted); *see also In re Scanio*, 919 A.2d 1137, 1142-43 (D.C. 2007). Unlike Rule 3.3(a)(1), which requires Disciplinary Counsel to meet the higher burden of proving that Respondent "knowingly" made a false statement, a violation of Rule 8.4(c) can be proven based upon on a recklessly false statement – *i.e.* that the statement was made with a "conscious disregard" of its truth or falsity. *In re Romansky*, 938 A.2d 733, 741-42 (*Romansky II*) (D.C. 2007).

Because Respondent violated Rule 3.3(a)(1) in making a knowingly false statement, he violated Rule 8.4(c) as well.

E. Respondent Violated Rule 3.4(c).

The Hearing Committee also found that Respondent violated Rule 3.4(c). HC Rpt. at 194-215. Rule 3.4(c) provides that a lawyer shall not "[k]nowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." At issue here are Respondent's failures to comply with the court's orders (1) to sign one of the First Washington-provided promissory notes, (2) to pay the sanctions the court had ordered, and (3) to provide an affidavit disclosing all of his assets and liabilities (as required by the parties' Settlement Agreement). Before the Hearing Committee, Respondent did not dispute that he knowingly disobeyed the orders in question. Accordingly, we find that Disciplinary Counsel established that Respondent violated this Rule by clear and convincing evidence as well.[8]

F. Respondent Violated Rule 8.4(a).

It is misconduct under Rule 8.4(a) to "violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another." The Committee concluded that "[b]ecause we have found that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated other Rules of Professional Conduct, we conclude that

[8] Before the Hearing Committee, Respondent argued that he could not be found to have violated this Rule because the orders he disobeyed were void and a nullity. The Hearing Committee found that Respondent failed to establish that any of the orders were void and that, because he did not refuse to comply "based on an assertion that no valid obligation exists" – instead simply attacking the orders as erroneous and unfair, and that he was unable to comply – the Rule's safe harbor provision was not available to him. HC Rpt. at 195-96; *See* Rule 3.4(c). Respondent did not challenge the Committee's determination before the Board and we see no reason to disturb it.

Disciplinary Counsel has also proved by clear and convincing evidence that Respondent violated Rule 8.4(a) as well." HC Rpt. at 217.

We agree with the Hearing Committee's application of the plain language of Rule 8.4(a). However, because this Rule violation is rooted solely in the fact that other Rules were violated, our conclusion that Respondent violated Rule 8.4(a) does not affect our sanction analysis, as discussed below.

G. Respondent Violated Rule 8.4(d).

Finally, the Hearing Committee found that Respondent violated Rule 8.4(d) due to his frivolous motions, misrepresentation to the court, and repeated contemptuous violations of the court's orders. HC Rpt. at 220-24. To establish a violation of Rule 8.4(d), there must be clear and convincing evidence:

> (1) that the attorney acted improperly, in that the attorney either [took] improper action or fail[ed] to take action when . . . he or she should [have] act[ed]; (2) that the conduct involved bear[s] directly upon the judicial process (*i.e.*, "the administration of justice") with respect to an identifiable case or tribunal; and (3) that the conduct taint[ed] the judicial process in more than a *de minimis way*, meaning that it at least potentially impact[ed] upon the process to a serious and adverse degree.

In re White, 11 A.3d 1226, 1230 (D.C. 2011) (appended Board Report) (alterations in original) (internal quotation marks omitted) (quoting *In re Owusu*, 886 A.2d 536, 541 (D.C. 2005) (quoting *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996))).

"Rule 8.4(d) seeks to protect both litigants and the courts from unnecessary 'legal entanglement.'" *Pearson*, 228 A.3d at 426 (respondent's Rule 3.1 frivolous litigation violated Rule 8.4(d) as they "unduly burdened the judicial system").

"Frivolous actions 'waste the time and resources of th[e] court, delay the hearing of cases with merit and cause . . . unwarranted delay and added expense.'" *Id*. at 427 (quoting *In re Spikes,* 881 A.2d 1118, 1127 (D.C. 2005)).

Like *Pearson*, this case presents "a textbook example of unnecessary legal entanglement" and easily meets the requirements of the *Hopkins* test. *See id*. Respondent's frivolous motions burdened the opposing parties, as well as the court. He delayed and prolonged the proceedings, even after the matter had been settled. He refused to comply with the court's orders, including those awarding sanctions to the parties who were forced to incur legal expenses to oppose his repeated frivolous filings. Moreover, his failures to comply with the court's orders are expressly contemplated by the Rule. *See* D.C. Rule of Prof. Conduct 8.4, Comment [2] ("The cases under paragraph (d) include acts by a lawyer such as: [] failure to obey court orders.").

For these reasons, we agree with the Hearing Committee's conclusion that Respondent violated Rule 8.4(d).

V. SANCTION

The Hearing Committee recommended that Respondent receive the sanction of a six-month suspension, with reinstatement conditioned upon (i) his demonstrating his fitness to practice law, (ii) his compliance with any pending court orders, and (iii) his payment of any outstanding sanctions awards. Before the Board, neither party has taken exception to the Hearing Committee's sanction recommendation.

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback* (*Reback II*), 513 A.2d 226, 231 (D.C. 1986) (en banc); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam). The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000).

In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the nature and seriousness of the misconduct; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty or misrepresentation; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122

A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

"[T]he choice of sanction is not an exact science but may depend on the facts and circumstances of each particular proceeding Indeed, each of these decisions emerges from a forest of varying considerations, many of which may be unique to the given case." *In re Edwards*, 870 A.2d 90, 94 (D.C. 2005) (internal quotation marks and citations omitted). Respondent's misconduct falls into three categories, each of which is very serious and strikes at the heart of an attorney's obligations – (1) knowingly false statements to the court; (2) defiance of numerous court orders over a period of three years; and (3) frivolous court filings. Collectively, he violated six disciplinary Rules and has never acknowledged that his conduct was wrongful.[9] As the Hearing Committee aptly stated, "[t]his is a lawyer with an invincible sense of his own rectitude and propriety in everything he did in this case." HC Rpt. at 228. Because Respondent was his own client, no client was harmed by his misconduct. In mitigation, Respondent does not have a disciplinary history.[10]

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[9] As discussed above, because the misconduct underlying the Rule 8.4(a) violation is the same as that giving rise to the other five Rule violations, it does not serve to aggravate the recommended sanction.

[10] In recommending that Respondent receive an aggravated sanction, the Hearing Committee *sua sponte* considered two categories of uncharged misconduct: (1) frivolous appeals that Respondent made to the Court of Appeals and his frivolous filing of a forum-shopping action; and (2) additional false statements to the court that successfully concealed his ownership interest in a property. According to the Committee, there were "references to the uncharged misconduct in opening statements, witness testimony, closing arguments, and post-hearing briefs." HC Rpt. at 233-38.

Critically, in the instant case, the Committee does not identify any point – prior to the issuance of its own report – where the respondent was placed on notice that he needed to defend against the

Under applicable precedent, Respondent's dishonesty and failures to comply with court orders alone could warrant a sanction well exceeding the six-month suspension proposed by Disciplinary Counsel.[11] *See In re Tun*, 195 A.3d 65 (D.C. 2018) (one-year suspension for intentional false statement in a motion); *In re Untulan*, 174 A.3d 259 (D.C. 2017) (respondent suspended for six months with all but 60 days stayed where he knowingly failed to comply with court orders in seven cases but offered extensive evidence in mitigation and took full responsibility for his actions); *In re McClure*, 144 A.3d 570 (D.C. 2016) (respondent disbarred where, among other things, he violated multiple court orders – including one requiring that he pay sanctions for filing "ill-founded motions" in pursuit of his fee claims); *In re Martin*, 67 A.3d 1032, 1053-54 (D.C. 2013) (eighteen-month suspension for pattern of dishonesty in several matters); *In re Ukwu*, 926 A.2d 1106, 1120 (D.C. 2007)

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above-referenced allegation. Disciplinary Counsel's passing references to the conduct during the hearing and in its post-hearing briefing lack the precision required to put Respondent on notice. Neither Disciplinary Counsel's opening brief nor its reply brief cites this conduct as violating a specific disciplinary rule or contends that it should be considered in aggravation. *See In re Schwartz*, 221 A.3d 925, 930 (D.C. 2019) (Disciplinary Counsel's contention that respondent engaged in client neglect could not fairly be considered in aggravation of the sanction where, among other things, Disciplinary Counsel had declined to pursue the charge before the Hearing Committee as a separate violation or as an aggravating circumstance). Because Respondent did not have a fair opportunity to respond to these allegations, we do not adopt the Committee's characterizations of his appeals or the statements made to the court concerning his property interests. And we do not consider this alleged misconduct in determining the appropriate sanction in this case.

[11] Cases involving lawyers who assert frivolous claims in violation of Rules 3.1 and 8.4(d) have resulted in a range of sanctions from a suspension of thirty days to ninety days. *See, e.g.*, *In re Pearson*, 228 A.3d 417, 428-29 (D.C. 2020) (per curiam) (ninety-day suspension for lawyer who litigated frivolous claims against his dry cleaner); *In re Spikes*, 881 A.2d 1118, 1119, 1127-28 (D.C 2005) (thirty-day suspension for filing a frivolous defamation claim based on privileged complaint to Disciplinary Counsel).

(appended Board Report) (two-year suspension for neglecting client matters, dishonesty to client, and false statements to Disciplinary Counsel).

Given the nature of our adversarial disciplinary system, we do not recommend a sanction exceeding that sought by Disciplinary Counsel. *See In re Cleaver-Bascombe*, 892 A.2d 396, 412 n.14 (D.C. 2006) ("Our disciplinary system is adversarial – [Disciplinary Counsel] prosecutes and Respondent's attorney defends – and although the court is not precluded from imposing a more severe sanction than that proposed by the prosecuting authority, that is and surely should be the exception, not the norm, in a jurisdiction, like ours, in which [Disciplinary Counsel] conscientiously and vigorously enforces the Rules of Professional Conduct.").

In addition, we agree with the Hearing Committee that a fitness requirement is appropriate in accordance with the *Roundtree* factors, as discussed below. "[T]o justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *In re Lattimer*, 223 A.3d 437, 453 (D.C. 2020) (per curiam) (quoting *In re Cater*, 887 A.2d 1, 6 (D.C. 2005)). "[I]mposing a proof-of-fitness requirement is 'conceptually different from the reason for suspending a respondent for a period of time.'" *In re Askew*, 225 A.3d 388, 400 (D.C. 2020) (quoting *Cater*, 887 A.2d at 22). A suspension "is 'intended to serve as the commensurate response to the attorney's past ethical misconduct, . . . [an] open-ended fitness requirement is intended to be an appropriate response to serious concerns about whether the

attorney will act ethically and competently in the future, after the period of suspension has run.'" *Id*. (quoting *Cater*, 887 A.2d at 22). The Court of Appeals explained in *Cater* that it is useful to consider the same factors that guide us in determining whether to reinstate attorneys who have been suspended (or disbarred):

> (1) the nature and circumstances of the misconduct for which the attorney was disciplined;
> (2) whether the attorney recognizes the seriousness of the misconduct;
> (3) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;
> (4) the attorney's present character; and
> (5) the attorney's present qualifications and competence to practice law.

Cater, 887 A.2d at 21 (citing *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985)).

Here, as the Committee discussed, (i) Respondent's misconduct was serious, wide-ranging, and pervasive; (ii) he failed to recognize the seriousness of his actions; (iii) he has done nothing to remedy his past wrongs or prevent future ones; and (iv) his present character and competence to practice law are called into question by the very nature of the misconduct in this matter. *See* HC Rpt. at 249-51. The Board agrees that a fitness requirement should be imposed for the reasons identified by the Hearing Committee.

VI. CONCLUSION

For the foregoing reasons, the Board recommends that the Court conclude that that Respondent violated Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(a), 8.4(c), and 8.4(d). We recommend that he should be suspended for six months, with reinstatement conditioned upon (i) his demonstrating his fitness to practice law, (ii) his compliance

with any pending court orders, and (iii) his payment of any outstanding sanctions awards. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Sundeep Hora

Sundeep Hora

All members of the Board concur in this Report and Recommendation except Mary Larkin who is recused from this matter.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 22-BG-0937

IN RE GEORGE W. CRAWFORD, II, RESPONDENT.

A Suspended Member of the Bar
of the District of Columbia Court of Appeals
(Bar Registration No. 311639)

On Report and Recommendation
of the Board on Professional Responsibility

(DDN: 2013-D022)

(Decided March 16, 2023)

Before EASTERLY and ALIKHAN, *Associate Judges*, and STEADMAN, *Senior Judge*.

PER CURIAM: The Board on Professional Responsibility recommends that respondent George W. Crawford, II, be suspended for six months from the practice of law in this jurisdiction with reinstatement conditioned upon a showing of fitness, the payment of any outstanding sanctions, and compliance with any pending court orders. Mr. Crawford was charged with violating numerous Rules of Professional Conduct arising from his failure to pay a judgment entered against him and to satisfy a subsequent settlement agreement, which led to the imposition of sanctions and Mr.

Crawford's incarceration for his failure to purge a finding of civil contempt. Mr. Crawford's misconduct included violations of Rule 3.1 (defending a proceeding, and asserting or controverting an issue therein, although there was no basis in law for doing so that was not frivolous); Rule 3.3(a) (knowingly making false statements of fact to a tribunal or failing to correct false statements of material fact previously made to the tribunal); Rule 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists); Rule 8.4(a) (violating or attempting to violate the Rules, knowingly assisting or inducing another to do so, or doing so through the acts of another); Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(d) (engaging in conduct that seriously interfered with the administration of justice). Mr. Crawford has not filed any exception to the Board's Report and Recommendation, nor has he filed the required D.C. Bar R. XI, § 14(g) affidavit after the court imposed an interim suspension on February 15, 2023.

Under D.C. Bar R. XI, § 9(h)(2), "if no exceptions are filed to the Board's report, the [c]ourt will enter an order imposing the discipline recommended by the Board upon the expiration of the time permitted for filing exceptions." *Id.*; *see In re Viehe*, 762 A.2d 542, 543 (D.C. 2000) ("When . . . there are no exceptions to the Board's report and recommendation, our deferential standard of review becomes

even more deferential."). Because no exceptions have been filed, we accept the Board's recommendation of a six-month suspension with a fitness requirement for Mr. Crawford's misconduct. Thus we predicate Mr. Crawford's reinstatement upon a showing of fitness, the payment of any outstanding sanctions, and compliance with pending court orders.

Accordingly, it is ORDERED that respondent George W. Crawford, II, is hereby suspended for six months from the practice of law in this jurisdiction and, as a condition of reinstatement, he must establish fitness to practice law, and demonstrate that he has paid any outstanding sanction awards and complied with any pending court orders in *First Washington Insurance Co. v. Kelly*, No. 2007 CA 005890 B; *Crawford v. First Washington Insurance Co.*, No. 2010 CA 006309 B; and *In re Crawford*, No. 2012 CCC 022. Mr. Crawford's attention is directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

A true Copy
Test:

Julio Castillo
Clerk of the District of Columbia Court of Appeals

BY: DEPUTY CLERK
Julio Castillo
Clerk of the District of Columbia
Court of Appeals

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

Contents

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. GENERAL PROVISIONS

Rule 1.01. Definitions

(a) "BODA" is the Board of Disciplinary Appeals.

(b) "Chair" is the member elected by BODA to serve as chair or, in the Chair's absence, the member elected by BODA to serve as vice-chair.

(c) "Classification" is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a "complaint" or an "inquiry."

(d) "BODA Clerk" is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.

(e) "CDC" is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.

(f) "Commission" is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.

(g) "Executive Director" is the executive director of BODA.

(h) "Panel" is any three-member grouping of BODA under TRDP 7.05.

(i) "Party" is a Complainant, a Respondent, or the Commission.

(j) "TDRPC" is the Texas Disciplinary Rules of Professional Conduct.

(k) "TRAP" is the Texas Rules of Appellate Procedure.

(l) "TRCP" is the Texas Rules of Civil Procedure.

(m) "TRDP" is the Texas Rules of Disciplinary Procedure.

(n) "TRE" is the Texas Rules of Evidence.

Rule 1.02. General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 [17.01] applies to the enforcement of a judgment of BODA.

Rule 1.03. Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04. Appointment of Panels

(a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

(b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05. Filing of Pleadings, Motions, and Other Papers

(a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

(1) Email Address. The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

(2) Timely Filing. Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

(3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

(4) Exceptions.

(i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

(ii) The following documents must not be filed electronically:

a) documents that are filed under seal or subject to a pending motion to seal; and

b) documents to which access is otherwise restricted by court order.

(iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

(5) Format. An electronically filed document must:

(i) be in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, if possible; and

(iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

(1) an "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06. Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent's signature.

Rule 1.07. Hearing Setting and Notice

(a) **Original Petitions.** In any kind of case initiated by the CDC's filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08. Time to Answer

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.09. Pretrial Procedure

(a) **Motions.**

(1) Generally. To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) For Extension of Time. All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

(i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(ii) if an appeal has been perfected, the date when the appeal was perfected;

(iii) the original deadline for filing the item in question;

(iv) the length of time requested for the extension;

(v) the number of extensions of time that have been granted previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

(1) marked;

(2) indexed with the title or description of the item offered as an exhibit; and

(3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10. Decisions

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

(1) as required by the TRDP; and

(2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11. Board of Disciplinary Appeals Opinions

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

Rule 1.12. BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13. Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14. Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15. Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

II. ETHICAL CONSIDERATIONS

Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02. Confidentiality

(a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction

Rule 2.03. Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse himor herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02. Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21 [2.20].

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21 [2.20].

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24 [2.23], the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02. Record on Appeal

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.

(c) **Responsibility for Filing Record.**

(1) Clerk's Record.

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

a) a notice of appeal has been filed;

b) a party has requested that all or part of the reporter's record be prepared; and

c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) **Preparation of Clerk's Record.**

(1) To prepare the clerk's record, the evidentiary panel clerk must:

(i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

(f) **Preparation of the Reporter's Record.**

(1) The appellant, at or before the time prescribed for

perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise

(6[1]) 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.