



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

**IN THE MATTER OF** §  
**DINA FAE DOMANGUE** § **CAUSE NO.** 65486  
**STATE BAR CARD NO. 24049570** §

**PETITION FOR RECIPROCAL DISCIPLINE**

**TO THE BOARD OF DISCIPLINARY APPEALS:**

Petitioner, the Commission for Lawyer Discipline (hereinafter called “Petitioner”), brings this action against Respondent, Dina Fae Domangue, (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 member of the State Bar of Texas and is licensed, but 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 Dina Fae Domangue, 306 Buckeye Ridge Loop, Deville, LA 71328.

3. On or about December 28, 2017, a Formal Charges Petition was filed by the State of Louisiana Office of Disciplinary Counsel in a matter styled: *In Re: Dina Fae Domangue, Louisiana Bar Roll Number 26266*, Case No. 17-DB-083, alleging that Domangue violated the following Rules of Professional Conduct: 1.3(lack of diligence); 1.4(a)(3) (communication – failure to keep client reasonably informed about the status of the matter); 1.4(a)(4) (communication – promptly comply with reasonable requests for information); 1.5(a) (reasonable fee); 1.16(d)

(termination of representation; return of papers and property; return of unearned fee); 8.1(c) (failure to cooperate with ODC investigation); and 8.4(a) violate or attempt to violate the Rules of Professional Conduct). (Exhibit 1)

4. The charges of the Office of Disciplinary Counsel state, in pertinent part:

After having filed his divorce petition pro se, Complainant spoke to Respondent on or about February 21, 2017, regarding representation for his divorce/domestic violence matter. Complainant delivered the \$1,500 retainer fee to Respondent prior to his April 5, 2017, scheduled hearing. Complainant appeared for the April 5, 2017, hearing and the charges were dropped due to insufficient evidence. Respondent failed to appear.

Complainant states that his next contact with Respondent occurred on May 30, 2017, via text message when she contacted him regarding scheduling a court date for his divorce matter. The matter was scheduled for June 15, 2017. Complainant states that Respondent requested that he meet her at court on June 13, 2017, for the sole purpose of providing a copy of his tax and financial documents to be submitted to opposing counsel. Complainant states that he arrived as scheduled, however, Respondent failed to appear for their meeting. Thereafter, at Respondent's request, Complainant deliver [sic] the requested documents to her home. Complainant did not meet with Respondent, he left the documents on the seat of her car as she requested. Complainant and opposing counsel appeared for court on June 15, 2017. Respondent failed to appear. The matter was rescheduled.

The next scheduled meeting was June 23, 2017, when Respondent and Complainant were to meet with opposing counsel at his office. Respondent suggested that she and Complainant meet for breakfast prior to meeting with opposing counsel in order to discuss his case. Respondent failed to appear; alleging that opposing counsel contacted her and canceled the meeting. Complainant states that he contacted opposing counsel to confirm Respondent's claim and was informed that it was Respondent who had cancelled the meeting. Thereafter, Complainant terminated Respondent and requested the return of his file and retainer fee.

At Complainant's request, on June 24, 2017, Respondent meet [sic] with Complainant's sister and brother-in-law to return his file and fee. Complainant states that Respondent presented some documents and requested a signature as acknowledgment that all of Complainant's documents were included. Complainant's brother-in-law refused to sign the receipt, arguing that he could not confirm that all of the documents were

included because he had no knowledge of what documents should have been included. They did not execute the exchange.

Complainant has since retained new counsel. He states that his new counsel has requested Complainant's file, to no avail. Respondent has failed to return the file and as well as [sic] the retainer fee.

5. On or about November 14, 2018, a Report and Recommendation of Hearing Committee #3 was issued by the by the Louisiana Attorney Disciplinary Board, in a matter styled: *In Re: Dina Fae Domangue*, Docket No. 17-DB-083, which states in pertinent part as follows:

...After consultation with each other, the committee is of the unanimous opinion that this respondent does not need to be suspended from the practice of law but does need to be apprised of how her actions or inactions affect the public view of the legal community's professionalism or lack thereof. Accordingly, it is the recommendation of this committee that Respondent be given a one year suspension from the practice of law, with time fully deferred and with a public reprimand; further that during the year Respondent is on probation and attends a course on law office practice management and professionalism, that the check she tendered to Complainant clears the bank and that she pays all costs associated with Docket #17-DB-083.

(Exhibit 2)

6. On or about February 6, 2020, a Ruling was entered by the Louisiana Disciplinary Board in a matter styled: *In Re: Dina Fae Domangue Number 17-DB-083*, which states in pertinent part as follows:

... The Board concludes that ODC proved by clear and convincing evidence that Respondent violated Rules 1.3 (diligence) and 1.4(a) communication). Respondent never met in person with the Complainant and her only communications with Complainant were by phone or text message. There was no writing setting forth the amount of her fee or the scope of the services she would perform. Respondent asserts that Respondent chose a payment option of a flat fee of \$2,500.00 to be paid before Respondent would enroll as counsel and that the \$1,500.00 payment by Complainant was only a partial payment. There is no indication that Complainant believed he owed more than the \$1,500.00. Further, the confusion regarding the missed hearing and the canceled meeting and some of the text messages in Ex. ODC I evidence problems in communication and lack of diligence.

The Board further concludes that a violation of Rule 1.16(d) which requires the prompt return of the client's file and any unearned fee is supported by the evidence. While Respondent may have made unsuccessful attempt(s) to return the file and what she believed was an appropriate refund, she did not actually do so until the hearing, well over one year after termination, and she did not begin any effort to resolve the dispute over the remainder of the fee until just before the hearing. Additionally, the return of the file by mail was unsuccessful due to the inadvertent error in addressing the mailing by Respondent or her office.

Respondent has admitted to a violation of Rule 8.1(c) (failure to cooperate with the ODC investigation). While the failure to mail the response to the complaint again may have been due to a mishap in her office, the fact remains that she did not provide any response until after the formal charges were filed and she has admitted her responsibility for this failure.

Violations of Rules 1.3, 1.4(a), 1.16(d), and 8.1(c) establish the derivative violation of Rule 8.4(a) which provides that it is professional misconduct to violate or attempt to violate the Rules of Professional Conduct.

(Exhibit 3)

7. On February 6, 2020, the Board adopted the committee's factual findings and further concluded that Respondent violated Rules 1.3, 1.4(a), 1.16(d), 8.1(c), and 8.4(a), but did not violate Rule 1.5(a). The Board finds that a public reprimand is warranted and that required attendance at additional continuing legal education in the area of office management is also appropriate. A certified copy Petitioner's Exhibits 1, 2, and 3, which consists of the Formal Charges Petition, Report & Recommendation of Hearing Committee, and Ruling of the Louisiana Attorney Disciplinary Board, are attached hereto as and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce a certified copy of Exhibits 1 - 3 at the time of the hearing in this case.

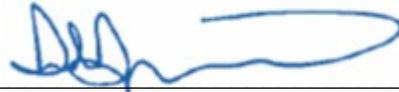
8. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the

notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enter a judgment imposing discipline identical with that imposed by the Louisiana Attorney Disciplinary Board and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

**Seana Willing**  
Chief Disciplinary Counsel

**Amanda M. Kates**  
Assistant Disciplinary Counsel  
Office of the Chief Disciplinary Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711  
Telephone: 512.427.1350  
Telecopier: 512.427.4167  
Email: [akates@texasbar.com](mailto:akates@texasbar.com)



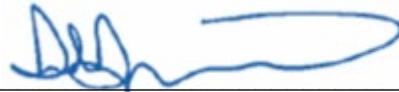
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Amanda M. Kates  
Bar Card No. 24075987  
ATTORNEYS FOR PETITIONER

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 Dina Fae Domangue, by personal service.

Dina Fae Domangue  
306 Buckeye Ridge Loop  
Deville, LA 71328



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Amanda M. Kates

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: DINA FAE DOMANGUE  
(Bar Roll No. 26266)**

**File Number: 36059**

**Docket Number: \_\_\_\_\_**

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**FORMAL CHARGES PETITION**

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**NOW INTO THESE PROCEEDINGS**, comes the **OFFICE OF DISCIPLINARY COUNSEL**, through undersigned Deputy Disciplinary Counsel, stating that, pursuant to the provisions of Louisiana Supreme Court Rule XIX, § 11 (E), you, Dina Fae Domangue, are herein notified that it is alleged that you have engaged in the following misconduct contrary to the Rules of Professional Conduct:

**FACTUAL SUMMARY**

**Investigation File No. 36059**

**Complainant – Brent Morrell Johnson**

After having filed his divorce petition pro se, Complainant spoke to Respondent on or about February 21, 2017, regarding representation for his divorce/domestic violence matter. Complainant delivered the \$1,500 retainer fee to Respondent prior to his April 5, 2017, scheduled hearing. Complainant appeared for the April 5, 2017, hearing and the charges were dropped due to insufficient evidence. Respondent failed to appear.



LOUISIANA ATTORNEY DISCIPLINARY BOARD  
A TRUE COPY

A handwritten signature in black ink, appearing to read "Kim Armato".  
\_\_\_\_\_  
KIM ARMATO  
APPELLATE CLERK

Complainant states that his next contact with Respondent occurred on May 30, 2017, via text message when she contacted him regarding scheduling a court date for his divorce matter. The matter was scheduled for June 15, 2017. Complainant states that Respondent requested that he meet her at court on June 13, 2017, for the sole purpose of providing a copy of his tax and financial documents to be submitted to opposing counsel. Complainant states that he arrived as scheduled, however, Respondent failed to appear for their meeting. Thereafter, at Respondent's request, Complainant deliver the requested documents to her home. Complainant did not meet with Respondent, he left the documents on the seat of her car as she requested. Complainant and opposing counsel appeared for court on June 15, 2017. Respondent failed to appear. The matter was rescheduled.

The next scheduled meeting was June 23, 2017, when Respondent and Complainant were to meet with opposing counsel at his office. Respondent suggested that she and Complainant meet for breakfast prior to meeting with opposing counsel in order to discuss his case. Respondent failed to appear; alleging that opposing counsel contacted her and canceled the meeting. Complainant states that he contacted opposing counsel to confirm Respondent's claim and was informed that it was Respondent who had cancelled the meeting. Thereafter, Complainant terminated Respondent and requested the return of his file and retainer fee.

At Complainant's request, on June 24, 2017, Respondent meet with Complainant's sister and brother-in-law to return his file and fee. Complainant states that Respondent presented some documents and requested a signature as acknowledgment that all of Complainant's documents were included. Complainant's brother-in-law refused to sign the receipt, arguing that he could not

confirm that all of the documents were included because he had no knowledge of what documents should have been included. They did not execute the exchange.

Complainant has since retained new counsel. He states that his new counsel has requested Complainant's file, to no avail. Respondent has failed to return the file and as well as the retainer fee.

Respondent has violated the following Rules of Professional Conduct:

- 1.3 A lawyer shall act with reasonable diligence and promptness in representing a client.
- 1.4(a)(3) A lawyer shall keep the client reasonably informed about the status of the matter.
- 1.4(a)(4) A lawyer shall promptly comply with reasonable requests for information.
- 1.5(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
  - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - (3) the fee customarily charged in the locality for similar legal services;
  - (4) the amount involved and the results obtained;
  - (5) the time limitations imposed by the client or by the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - (8) whether the fee is fixed or contingent.

- 1.16(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.
- 8.1(c) A lawyer in connection with a disciplinary matter shall not fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.
- 8.4(a) It is professional misconduct for a lawyer 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.

**WHEREFORE**, pursuant to Rule XIX, Section 11 B(3), the Office of Disciplinary Counsel states that Deputy Disciplinary Counsel's *Request for Permission to File Formal Charges* was approved, and the above alleged conduct, or any part thereof, if proven, merits the imposition of appropriate sanctions in accordance with Louisiana Supreme Court Rule XIX and the American Bar Association's standards for imposing lawyer sanctions.

**FURTHERMORE**, the Office of Disciplinary Counsel prays that Respondent be served with a copy of this Formal Charges Petition and cited to answer same within the time delays provided by Supreme Court Rule XIX; and that after the lapse of all appropriate delays and due

proceedings there be a finding that respondent has violated the Rules of Professional Conduct by the clear and convincing evidence standard of proof.

Respectfully submitted:

OFFICE OF THE DISCIPLINARY COUNSEL



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YOLANDA CEZAR, Bar No.25364  
Deputy Disciplinary Counsel  
4000 S. Sherwood Forest Blvd.  
Suite 607  
Baton Rouge, LA 70816  
(225) 293-3900

PLEASE SERVE BY CERTIFIED MAIL

**Dina Fae Domangue**  
**210 Woodland Drive**  
**Columbia, Louisiana 71418**

**ORIGINAL**

Louisiana Attorney Disciplinary Board  
FILED by: Donna P. Burgess  
Docket# Filed-On  
17-DB-083 11/14/2018

LOUISIANA ATTORNEY DISCIPLINARY BOARD  
A TRUE COPY

  
KIM ARMATO  
APPELLATE CLERK

LOUISIANA ATTORNEY DISCIPLINARY BOARD  
IN RE: DINA FAE DOMANGUE

DOCKET NO. 17-DB-083

REPORT & RECOMMENDATION OF HEARING COMMITTEE #3

**INTRODUCTION**

This attorney disciplinary matter arises out of formal charges consisting of one count filled by the Office of Disciplinary Counsel (“ODC”) against Dina Fae Domangue (“Respondent”), Louisiana Bar Roll #26266.<sup>1</sup> ODC alleges that respondent violated the following rules of Professional Conduct: 1.3, 1.4(a), 1.5(a), 1.16(d), 8.1c & 8.4(a).

**PROCEDURAL HISTORY**

The formal charges were filed on December 28, 2017. Respondent filed her answer to the charges on April 2, 2018. The hearing of this matter was heard on October 1, 2018. Deputy Disciplinary Counsel Yolanda Cezar appeared for ODC. Respondent appeared *pro se*.

After the hearing was opened and the initial witness sworn, a recess was taken to allow ODC and Respondent to reduce a motion for consent with stipulated facts to writing, but was actually read into the record as follows: Respondent received a \$1500 check from Complainant on April 7, 2017, when she was retained for Complainant’s divorce. The representation lasted until June 23, 2017, when Complainant terminated Respondent’s services. No written retainer agreement was executed between the parties setting forth the terms of the representation. Respondent never enrolled as Counsel for Complainant and never filed anything in the divorce matter. Respondent did have a questionnaire and divorce worksheet prepared, both of which were accepted into evidence as Joint Exhibit A.

Further stipulations are Respondent did not appear for a hearing of the divorce on June 15, 2017, because she had not enrolled so she received no notice. A meeting with opposing counsel was scheduled for June 23, 2017, but was cancelled. Also on June 23, 2017, Complainant sent Respondent a request for return of his file and return of his fee.

<sup>1</sup> Respondent was admitted to practice of law in Louisiana on October 15, 1999. Respondent is currently eligible to practice law.

On June 24, 2017, Respondent met with Elbert Woods, Complainant's brother-in-law in an aborted attempt to return the file. However, Woods would not sign the receipt for the file because he did not know what the file was supposed to contain. This receipt was admitted into evidence as Joint Exhibit B. Also stipulated, Respondent failed to respond to ODC request for information which delayed proceedings. This ended the stipulations.

During the stipulations, Respondent tendered to Complainant his file which Complainant accepted as complete. Also during the proceedings Respondent tendered to Complainant a \$500 check and \$300 cash which Complainant accepted as return of his fee. Respondent also submitted numerous exhibits, either accepted into evidence or proffered, supposedly documenting her time working on complainant's case in telephone calls, research and email messages, all of which would appear redundant since the fee matter was settled and there was no allegation or charge that fee was excessive.

### **CONCLUSIONS AND RECOMMENDATIONS**

ODC has proposed a sanction of suspension of one year and a day with a public reprimand. Rule XIX, §10C, of the Louisiana Supreme Court rules, requires a panel to take into account when considering a sanction for a lawyer guilty of misconduct:

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system or to the profession;
2. whether the lawyer acted intentionally, knowingly, or negligently;
3. the amount of the actual or potential injury cause by the lawyer's misconduct;
4. the existence of any aggravating or mitigating factors.

When the dust settled, the misconduct of this lawyer is distilled to its basic elements, it involves being tardy in returning the client's file, the retainer fee and performing little ostensible work on the divorce in the client's eyes. This was duty owed to the client which came about unintentionally or negligently but not knowingly. The actual or potential injury in this case was a delay in getting the divorce for the client.

As to aggravating factors. Respondent has almost 20 years experience in practicing law

with a clean record as to disciplinary matters. She has been a Town Magistrate in Clarks, Caldwell Parish, Louisiana. She has been an Assistant District Attorney in Terrebonne Parish, and a Narcotics Prosecutor with much jury trial experience. Respondent is no neophyte to the Louisiana legal system.

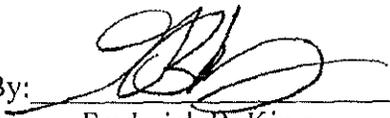
Although Respondent did not claim any mitigating factors, there are two which come from the record. In 2015, Respondent was diagnosed with Hodgkin's lymphoma and was taking radiation treatment after the tumor was removed. She had a relapse in November 2017, and on radiation treatment again from MD Anderson and Glenwood. That plus her office was flooded and she lost of her electronic equipment and many files. These factors would probably have had more effect on how Respondent has interacted with the committee than her client although it may have had some effect there also.

After consultation with each other, the committee is of the unanimous opinion that this respondent does not need to be suspended from the practice of law but does need to be apprised of how her actions or inactions affect the public view of the legal community's professionalism or lack thereof. Accordingly, it is the recommendation of this committee that Respondent be given a one year suspension from the practice of law, with time fully deferred and with a public reprimand; further that during the year Respondent is on probation and attends a course on law office practice management and professionalism, that the check she tendered to Complainant clears the bank and that she pays all costs associated with Docket # 17-DB-083.

Monroe, Louisiana, this 5<sup>th</sup> day of October, 2018.

Louisiana Attorney Disciplinary Board  
Hearing Committee #3

Frederick B King, Chair  
John L. Whitehead, Attorney Member  
John Hardy Dowd, Public Member

By:   
Frederick B. King  
For the Committee

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: DINA FAE DOMANGUE**

**NUMBER: 17-DB-083**

**RULING OF THE LOUISIANA ATTORNEY DISCIPLINARY BOARD**



**INTRODUCTION**

This is an attorney discipline matter based upon the filing of formal charges by the Office of Disciplinary Counsel (“ODC”) against Dina Fae Domangue (“Respondent”), Louisiana Bar Roll Number 26266.<sup>1</sup> ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3 (lack of diligence); 1.4(a)(3) (communication – failure to keep client reasonably informed about the status of the matter); 1.4(a)(4) (communication – promptly comply with reasonable requests for information); 1.5(a) (reasonable fee); 1.16(d) (termination of representation; return of papers and property; return of unearned fee); 8.1(c) (failure to cooperate with ODC investigation); and 8.4(a) (violate or attempt to violate the Rules of Professional Conduct).<sup>2</sup>

At the outset of the hearing before the hearing committee (“committee”), the Respondent was placed under oath. A discussion then ensued regarding the Respondent’s desire to reach a consent relating to the facts of the matter. A recess was taken and when the hearing resumed, stipulations as to numerous facts were stated on the record and the proceeding continued. The committee did not make explicit determinations regarding rule violations, but ultimately recommended that Respondent be suspended for one year, “fully deferred and with a public

<sup>1</sup> Respondent was admitted to the Louisiana Bar on October 15, 1999 and to the Texas Bar on August 12, 2005. Her primary registration address is 210 Woodland Dr., Columbia, LA 71418. Respondent is currently eligible to practice law in Louisiana.

<sup>2</sup> See attached Appendix for full text of the Rules.



LOUISIANA ATTORNEY DISCIPLINARY BOARD  
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*Kim Armato*  
 KIM ARMATO  
 APPELLATE CLERK

reprimand,” and that “during the year Respondent is on probation and attends a course on law office practice management and professionalism, that the check she tendered to Complainant clears the bank and that she pays all costs ...”

For the following reasons, the Board adopts the committee’s factual findings and further concludes that Respondent violated Rules 1.3, 1.4(a), 1.16(d), 8.1(c), and 8.4(a), but did not violate Rule 1.5(a). As to sanction, the Board issues a public reprimand with the condition that Respondent attend additional legal training in the area of law office management. Finally, the Board recommends that Respondent be assessed with the costs and expenses of this matter.

### **PROCEDURAL HISTORY**

The formal charges were filed on December 28, 2017, and served on Respondent on February 22, 2018. The charges state, in pertinent part:

After having filed his divorce petition pro se, Complainant spoke to Respondent on or about February 21, 2017, regarding representation for his divorce/domestic violence matter. Complainant delivered the \$1,500 retainer fee to Respondent prior to his April 5, 2017, scheduled hearing. Complainant appeared for the April 5, 2017, hearing and the charges were dropped due to insufficient evidence. Respondent failed to appear.

Complainant states that his next contact with Respondent occurred on May 30, 2017, via text message when she contacted him regarding scheduling a court date for his divorce matter. The matter was scheduled for June 15, 2017. Complainant states that Respondent requested that he meet her at court on June 13, 2017, for the sole purpose of providing a copy of his tax and financial documents to be submitted to opposing counsel. Complainant states that he arrived as scheduled, however, Respondent failed to appear for their meeting. Thereafter, at Respondent’s request, Complainant deliver [sic] the requested documents to her home. Complainant did not meet with Respondent, he left the documents on the seat of her car as she requested. Complainant and opposing counsel appeared for court on June 15, 2017. Respondent failed to appear. The matter was rescheduled.

The next scheduled meeting was June 23, 2017, when Respondent and Complainant were to meet with opposing counsel at his office. Respondent suggested that she and Complainant meet for breakfast prior to meeting with opposing counsel in order to discuss his case. Respondent failed to appear; alleging that opposing counsel contacted her and canceled the meeting. Complainant states that he contacted opposing counsel to confirm Respondent’s claim and was

informed that it was Respondent who had cancelled the meeting. Thereafter, Complainant terminated Respondent and requested the return of his file and retainer fee.

At Complainant's request, on June 24, 2017, Respondent meet [sic] with Complainant's sister and brother-in-law to return his file and fee. Complainant states that Respondent presented some documents and requested a signature as acknowledgment that all of Complainant's documents were included. Complainant's brother-in-law refused to sign the receipt, arguing that he could not confirm that all of the documents were included because he had no knowledge of what documents should have been included. They did not execute the exchange.

Complainant has since retained new counsel. He states that his new counsel has requested Complainant's file, to no avail. Respondent has failed to return the file and as well as [sic] the retainer fee.

Respondent has violated the following Rules of Professional Conduct: [1.3, 1.4(a)(3), 1.4(a)(4), 1.5(a), 1.16(d), 8.1(c), and 8.4(a)].

On April 2, 2018, Respondent filed a lengthy answer to the formal charges outlining her interactions with and efforts on behalf of the Complainant during the three months between her first contact with him on March 24, 2017, and June 23, 2017, when the Complainant advised he no longer desired Respondent's services and requested a return of his file and the fee he paid. The answer further sets forth an explanation of Respondent's attempts to return to Complainant the file and a portion of the fee which had been paid to her. In her answer, Respondent denied the allegations of rule violations with the exception of the violation of Rule 8.1(c). Respondent asserted that although she prepared a response to the request for information from the ODC, she neglected to personally insure that the response was mailed and/or received by the ODC, having requested that her assistant place the response in the mail, and that she did not learn the reply had not been mailed until she received the formal charges. Therefore, Respondent admitted that she failed to cooperate with the ODC.

The hearing of this matter was originally scheduled for June 25, 2018. On June 12, 2018, Respondent filed an unopposed motion to continue the hearing asserting that based on recent communications between Deputy Disciplinary Counsel and Respondent, with additional time and

production of records/exhibits by Respondent to ODC, stipulations or a resolution of the formal charges could possibly be achieved. The motion was granted and the hearing was rescheduled for August 6, 2018.

On July 31, 2018, ODC filed a motion to continue the hearing on the basis that Respondent had not yet provided the documents referenced in Respondent's June 12 motion to continue and further requested that a deadline of August 3, 2018, be set for Respondent to submit all documents pertaining to the allegations of misconduct. On August 1, 2018, an order was signed granting ODC's motion to continue and setting a deadline of August 3 for Respondent to produce any documents related to the allegations. On August 13, 2018, a notice was issued rescheduling the hearing for October 1, 2018.

The hearing was convened on October 1, 2018, as scheduled, before Hearing Committee No. 3.<sup>3</sup> The hearing began with Respondent being placed under oath. A discussion then ensued regarding the Respondent's desire to reach a consent agreement relating to the facts of the matter. A recess was taken and when the hearing resumed, stipulations as to numerous facts were stated on the record and the proceeding continued.<sup>4</sup> The Complainant's file was returned to him at the hearing. The Complainant was called to testify briefly on the fee dispute. Respondent provided lengthy statements and responded to questions from the committee regarding the work she had performed, her position on the fee dispute, her attempts to return Complainant's file and \$500.00 of the \$1,500.00 fee paid by Complainant, and mitigation issues. An agreement was reached between Complainant and Respondent for the return of \$800 to Complainant. The Respondent paid Complainant a check in the amount of \$500 plus \$300 in cash at the hearing. Joint Exhibits

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<sup>3</sup> Hearing Committee No. 3 was comprised of Frederick B. King (Committee Chair), John L. Whitehead (Lawyer Member), and John Hardy Dowd (Public Member).

<sup>4</sup> The stipulations are summarized in the committee's report quoted later herein.

Joint A and Joint B, ODC's Exhibits ODC 1 through ODC 7, and Respondent's Exhibits R-1, R-2, and R-10 were admitted into evidence without objection. Respondent's Exhibits R-3 through R-9 were proffered. At the end of the hearing, the committee chair stated the committee's plan to recommend a one-year suspension, fully deferred, plus attendance at some type of office management continuing education.

The hearing committee's report was filed on November 14, 2018. Notice was issued on November 26, 2018, scheduling oral argument for January 17, 2019, with briefs due thirty days before the argument date.

Neither party filed an objection to the committee's report or a timely brief. On January 15, 2019, two days before the scheduled argument before the Board, ODC filed a Motion and Order to File Out of Time Memorandum. The motion was granted by Order dated January 17, 2019, and ODC's Pre-Argument Memorandum was filed that date. ODC argued that public reprimand is the baseline sanction for Respondent's misconduct and further suggested that Respondent be required to attend a session of the Louisiana Bar Associations' law office practice program.

Oral argument was held, as scheduled, on January 17, 2019, before Board Panel "A."<sup>5</sup> Deputy Disciplinary Counsel Yolanda Cezar appeared on behalf of ODC. Respondent did not appear.

### **HEARING COMMITTEE REPORT**

The committee filed its report on November 14, 2018. The committee's report consisted of a discussion of the proceedings and the committee's conclusions and recommendations as follows:

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<sup>5</sup> Board Panel "A" was composed of Dominick Scandurro, Jr. (Chair), Linda G. Bizzarro (Lawyer Member), and Charles H. Williamson, Jr. (Public Member).

\* \* \*

### PROCEDURAL HISTORY

The formal charges were filed on December 28, 2017. Respondent filed her answer to the charges on April 2, 2018. The hearing of this matter was heard on October 1, 2018. Deputy Disciplinary Counsel Yolanda Cezar appeared for ODC. Respondent appeared *pro se*.

After the hearing was opened and the initial witness sworn, a recess was taken to allow ODC and Respondent to reduce a motion for consent with stipulated facts to writing, but was actually read into the record as follows: Respondent received a \$1500 check from Complainant on April 7, 2017, when she was retained for Complainant's divorce. The representation lasted until June 23, 2017, when Complainant terminated Respondent's services. No written retainer agreement was executed between the parties setting forth the terms of the representation. Respondent never enrolled as Counsel for Complainant and never filed anything in the divorce matter. Respondent did have a questionnaire and divorce worksheet prepared, both of which were accepted into evidence as Joint Exhibit A.

Further stipulations are Respondent did not appear for a hearing of the divorce on June 15, 2017, because she had not enrolled so she received no notice. A meeting with opposing counsel was scheduled for June 23, 2017, but was cancelled. Also on June 23, 2017, Complainant sent Respondent a request for return of his file and return of his fee.

On June 24, 2017, Respondent met with Elbert Woods, Complainant's brother-in-law in an aborted attempt to return the file. However, Woods would not sign the receipt for the file because he did not know what the file was supposed to contain. This receipt was admitted into evidence as Joint Exhibit B. Also stipulated, Respondent failed to respond to ODC request for information which delayed proceedings. This ended the stipulations.

During the stipulations, Respondent tendered to Complainant his file which Complainant accepted as complete. Also during the proceedings Respondent tendered to Complainant a \$500 check and \$300 cash which Complainant accepted as return of his fee. Respondent also submitted numerous exhibits, either accepted into evidence or proffered, supposedly documenting her time working on Complainant's case in telephone calls, research and email messages, all of which would appear redundant since the fee matter was settled and there was no allegation or charge that fee was excessive.

### CONCLUSIONS AND RECOMMENDATIONS

ODC has proposed a sanction of suspension of one year and a day with a public reprimand.<sup>6</sup> Rule XIX, §10C, of the Louisiana Supreme Court rules, requires a panel to take into account when considering a sanction for a lawyer guilty of misconduct:

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<sup>6</sup> The ODC did not actually propose a sanction of suspension with a public reprimand. In its pre-hearing memorandum, the ODC discussed several cases resulting in sanctions ranging from active suspension of one year and one day (*In re Aucoin*, 2017-0451 (La. 5/26/17), 220 So.3d 710, and *In re Taylor*, 2014-0646 (La. 5/23/14), 139 So.3d 1004) to public reprimand (*In re Clark*, 2014-0518 (La. 4/4/14), 137 So.3d 11) and argued that the baseline sanction for misconduct involving neglect of a legal matter and failure to timely refund an unearned fee is suspension from the practice of law.

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system or to the profession;
2. whether the lawyer acted intentionally, knowingly, or negligently;
3. the amount of the actual or potential injury cause [sic] by the lawyer's misconduct;
4. the existence of any aggravating or mitigating factors.

When the dust settled, the misconduct of this lawyer is distilled to its basic elements, it involves being tardy in returning the client's file, the retainer fee and performing little ostensible work on the divorce in the client's eyes. This was duty owed to the client which came about unintentionally or negligently but not knowingly. The actual or potential injury in this case was a delay in getting the divorce for the client.

As to aggravating factors, Respondent has almost 20 years experience in practicing law with a clean record as to disciplinary matters. She has been a Town Magistrate in Clarks, Caldwell Parish, Louisiana. She has been an Assistant District Attorney in Terrebonne Parish, and a Narcotics Prosecutor with much jury trial experience. Respondent is no neophyte to the Louisiana legal system.

Although Respondent did not claim any mitigating factors, there tare [sic] two which come from the record. In 2015, Respondent was diagnosed with Hodgkin's lymphoma and was taking radiation treatment after the tumor was removed. She had a relapse in November 2017, and on radiation treatment again from MD Anderson and Glenwood. That plus her office was flooded and she lost of [sic] her electronic equipment and many files. These factors would probably have had more effect on how Respondent has interacted with the committee than her client although it may have had some effect there also.

After consultation with each other, the committee is of the unanimous opinion that this respondent does not need to be suspended from the practice of law but does need to be apprised of how her actions or inactions affect the public view of the legal community's professionalism or lack thereof. Accordingly, it is the recommendation of this committee that Respondent be given a one year suspension from the practice of law, with time fully deferred and with a public reprimand; further that during the year Respondent is on probation and attends a course on law office practice management and professionalism, that the check she tendered to Complainant clears the bank and that she pays all costs associated with Docket #17-DB-083.

Committee Report, pp. 1-3.<sup>7</sup>

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<sup>7</sup> The Committee Report does not actually include page numbers, but number references are made as if the pages were numbered in sequential order.

## ANALYSIS OF THE RECORD BEFORE THE BOARD

### I. Standard of Review

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a) states that the Board has the power “(a) [t]o perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ... and petitions for reinstatement, and prepare and forward to the court its own findings, if any, and recommendations ... (b) [t]o administer reprimands; ...” Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of “manifest error.” *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee’s application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

#### A. The Manifest Error Inquiry

Most of the facts stated in the committee’s report were stipulated by Respondent and the ODC. The parties are free to enter into stipulations and effect must be given to them unless they are withdrawn. *In re Webre*, 2017-1861 (La. 1/12/18), \_\_\_ So.3d \_\_\_; *In Re Torry*, 2010-837 (La. 10/19/10), 48 So. 3d 1038. The additional factual findings of the committee do not appear to be manifestly erroneous, are supported by the record, and are adopted by the Board.

#### B. *De Novo* Review

The committee did not state any explicit conclusions regarding rule violations in its report. It is assumed the committee concluded that Respondent violated all rules charged. The report included the general statement that “the misconduct of this lawyer ... involves being tardy in

returning the client's file, the retainer fee and performing little ostensible work on the divorce in the client's eyes." Committee Report, p. 2.

The Board concludes that ODC proved by clear and convincing evidence that Respondent violated Rules 1.3 (diligence) and 1.4(a) (communication). Respondent never met in person with the Complainant and her only communications with Complainant were by phone or text message. There was no writing setting forth the amount of her fee or the scope of the services she would perform. Respondent asserts that Respondent chose a payment option of a flat fee of \$2,500.00 to be paid before Respondent would enroll as counsel and that the \$1,500.00 payment by Complainant was only a partial payment. There is no indication that Complainant believed he owed more than the \$1,500.00. Further, the confusion regarding the missed hearing and the canceled meeting and some of the text messages in Ex. ODC 1 evidence problems in communication and lack of diligence.

The Board finds that a violation of Rule 1.5(a) (unreasonable fee) has not been proven by clear and convincing evidence. Whether Respondent charged an advanced, flat fee of \$1,500.00 or \$2,500.00 to handle the divorce, the fee does not appear unreasonable.

The Board further concludes that a violation of Rule 1.16(d) which requires the prompt return of the client's file and any unearned fee is supported by the evidence. While Respondent may have made unsuccessful attempt(s) to return the file and what she believed was an appropriate refund, she did not actually do so until the hearing, well over one year after termination, and she did not begin any effort to resolve the dispute over the remainder of the fee until just before the hearing. Additionally, the return of the file by mail was unsuccessful due to the inadvertent error in addressing the mailing by Respondent or her office.

Respondent has admitted to a violation of Rule 8.1(c) (failure to cooperate with the ODC investigation). While the failure to mail the response to the complaint again may have been due to a mishap in her office, the fact remains that she did not provide any response until after the formal charges were filed and she has admitted her responsibility for this failure.

Violations of Rules 1.3, 1.4(a), 1.16(d), and 8.1(c) establish the derivative violation of Rule 8.4(a) which provides that it is professional misconduct to violate or attempt to violate the Rules of Professional Conduct.

## **II. The Appropriate Sanction**

### **A. Rule XIX, §10(C) Factors**

Louisiana Supreme Court Rule XIX, §10(C) states that when imposing a sanction after a finding of lawyer misconduct, the Court or Board shall consider the following factors:

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
2. whether the lawyer acted intentionally, knowingly, or negligently;
3. the amount of actual or potential injury caused by the lawyer's misconduct; and
4. the existence of any aggravating or mitigating factors.

Here, Respondent violated duties to the client and the profession. Her misconduct was negligent. Respondent caused possible harm to the client by perhaps causing a brief delay in the divorce proceedings and a delay in the return of a portion of the fee paid and potentially could have caused delay in the disciplinary proceedings.

The only aggravating factor present is substantial experience in the practice of law (eighteen years). The following mitigating factors are supported by the evidence: absence of a prior disciplinary record; absence of a dishonest or selfish motive; and personal or emotional problems.

With respect to Respondent's personal problems, two significant events occurred which should be considered. During the time of her representation of Complainant, Respondent's offices were flooded for the second time in approximately one year. Respondent explained in her answer to the formal charges that because the flooding irreparably damaged equipment, supplies, and furniture and caused structural damage to the building, she had to abandon the office location and began practicing out of her home effective June 1, 2017. The evidence also includes at least one text message from Respondent to Complainant stating that her office was flooded and that she was working from her home. *See* Ex. ODC 1, p. 163. In 2015, Respondent was diagnosed with Hodgkin's lymphoma requiring surgery and chemotherapy and radiation treatment. She experienced a relapse in November of 2017 requiring further treatment. This is the time frame in which she advised the ODC that she would be sending in a response to the complaint and in which she testified she prepared the response, but did not realize that her secretary had inadvertently filed away the response and did not mail it. *See* T.33-34; Ex. ODC 4, Cezar notes of 11-3-17 conversation with Respondent.

#### **B. The ABA Standards and Case Law**

The following *ABA Standards for Imposing Lawyer Sanctions* provide guidance in determining the appropriate sanction to be imposed:

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or . . .
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.<sup>8</sup>

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

The committee recommended that a one-year suspension, fully deferred, and a public reprimand be imposed and that Respondent be required to attend a course on law office practice management. The committee did not provide any analysis of the ABA Standards or the jurisprudence in making the sanction recommendation. The Board finds that public reprimand is the appropriate sanction here.

In the recent matter of *In re Watkins*, 2018-1332 (La. 11/14/18), 256 So.3d 259, the respondent was retained by the complainant to pursue proceedings for expungements of three felony convictions and one misdemeanor conviction. The complainant paid the respondent \$4,500.00 at the time the respondent was retained in August 2015. Within two months of being hired, the respondent filed motions for expungement in one of the felony cases and in the misdemeanor case. Objections were filed to the motions and they were set for hearing. The respondent obtained continuances of both hearings. One of the cases was rescheduled for hearing and then continued again in December 2015 because the respondent failed to appear. The

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<sup>8</sup> The Standards set forth here relating to admonition are listed for perspective only. Louisiana Supreme Court Rule XIX, Section (10)(A)(5), provides that “an admonition cannot be imposed after formal charges have been issued.”

respondent took no further action in the two matters in which the motions had been filed and failed to take any action in the other two matters. The respondent subsequently failed to respond to numerous telephone calls and e-mails from the complainant and his office assistant, including a final e-mail on May 26, 2016, in which the client stated he was “thoroughly fed up with the lack of communication and information” and failed to claim a certified letter sent to him by the client in August 2016, one year after being retained.

In March 2017, the client filed a complaint against Mr. Watkins with the ODC. The respondent initially responded that he would complete the expungement proceedings as soon as possible, but failed to do so and failed to return the fee. In August 2017, formal charges were filed. The respondent admitted that he dropped the ball after the expungements proved more complex than he anticipated and ultimately forgot about them with the passage of time and the press of other work. The court determined that the respondent violated Rules 1.3, 1.4, 1.5, 1.16, and 3.2 (failure to make reasonable efforts to expedite litigation). The court further concluded that the respondent acted negligently and violated duties owed to his client, causing actual harm to the client. Mitigating factors included absence of a prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and remorse. The only aggravating factor was substantial experience in the practice of law (fourteen years at time of misconduct). The court found that the baseline sanction for the respondent’s misconduct was a public reprimand based upon Standard 4.43. Finding guidance from *In re Donald*, 2013-2056 (La. 11/1/13), 127 So.3d 918,<sup>9</sup> and in light of the fact that the

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<sup>9</sup> In *Donald*, the respondent knowingly, and possibly intentionally, neglected a legal matter, failed to communicate with his clients, and failed to refund a \$600 unearned fee. The client filed a disciplinary complaint after making numerous attempts to obtain information from the respondent over a period of two and a half years, to no avail. The respondent still had not refunded the unearned fee at the time sanction was imposed. The Court suspended the respondent for six months, fully deferred, with a one-year probation period, refund of the fee within thirty days, and required attendance at the LSBA Ethics School.

respondent had not yet been able to return the unearned fee, the court further found that an upward deviation from the baseline sanction was warranted and suspended the respondent for three months, fully deferred, subject to one year of probation with conditions including payment of restitution.

In *In re Clark*, 2014-0518 (La. 4/4/14), 137 So.3d 11, the respondent agreed to consent discipline in the form of public reprimand after formal charges were filed against her. The respondent was retained by the complainant to file and prosecute a motion for past due child support and paid the respondent the quoted fee of \$750.00. The following month the respondent fax-filed a motion, but did not later submit the required hard copy for filing or pay the required court costs. Therefore, the motion was not formally accepted for filing and was not set for hearing. Concerned about the delay in the matter, the complainant telephoned the respondent several times during the ensuing months seeking information regarding status of the matter, but her calls were not returned. Fourteen months after hiring the respondent, the complainant filed a complaint with the ODC. The respondent answered acknowledging her failure to complete the matter and agreeing to refund the entire fee. However, the respondent did not refund the fee and the ODC filed formal charges approximately sixteen months thereafter. Four months later, the respondent refunded the fee and subsequently joined in the petition for consent discipline conceding violations of Rules 1.3, 1.4, and 1.5(f)(5) (obligations when fee dispute occurs). Aggravating factors included a prior disciplinary offense (admonition in 2012), vulnerability of the victim (single mother) and substantial experience in the practice of law. Mitigating factors present were personal and emotional problems (single parent of teenaged child; father hospitalized following debilitating stroke); full and free disclosure to the disciplinary board, and remorse.

In *In re Post*, 2008-1678 (La. 11/10/08), the Court found that the Board reached the correct decision in recommending public reprimand for the respondent's conduct in connection with the handling of the defense of a real estate ownership matter. *See also*, Disciplinary Board Ruling, 06-DB-077 (6/18/08). The respondent in *Post* stipulated to violations of Rules 1.3, 1.5(f)(5) (obligations when fee dispute occurs), 1.16(d) and 8.4(a). The Board found the respondent's conduct was knowing. Actual injury occurred in that the clients lost their property, although there was a possibility an action existed to regain the property, and many of them were deprived of unearned fees for over three years. Aggravating factors included vulnerability of victims, substantial experience in the practice of law, and prior discipline (admonition). Mitigating factors included absence of a dishonest or selfish motive, full and free disclosure and cooperative attitude towards the proceedings, remorse, and refund of fee (during the course of the disciplinary proceedings).

Considering the above discussion of the ABA Standards and the jurisprudence, the Board concludes that public reprimand is appropriate based on the circumstances presented in this matter. The charges here resulted from one isolated representation which lasted three months. While Respondent's means of communication may not have been the best and there may have been confusion between Respondent's and Complainant's appreciations of events, the text message and phone records submitted show that Respondent was maintaining contact with the client. Further, Respondent's office was flooded during this time causing damage to equipment and files and causing her to have to abandon the office and work out of her home. Additionally, while she did not actually return the client's file and the unearned portion of the fee until the hearing date, the record supports that she did make prior flawed attempts to do so.

As to Respondent's failure to cooperate with the investigation, the complaint was received by the ODC on August 31, 2017, and served on Respondent on September 25, 2017. *See* Exs. ODC 1 and ODC 3. On November 3, 2017, Respondent spoke with Deputy Disciplinary Counsel Cezar and told her she would submit a response by November 10, 2017, but then failed to do so. Ex. ODC 4. The ODC then proceeded with filing formal charges on December 28, 2017. Respondent's failure to submit a response to the complaint was due to her negligence and miscommunication with her office staff and Respondent has acknowledged and taken responsibility for this failure. Significantly, during this time in November 2017, Respondent experienced a relapse of the Hodgkin's lymphoma for which she had been previously treated in 2015. Finally, Respondent did answer the formal charges, cooperated with the ODC in reaching factual stipulations at the hearing, and returned the client's file and paid the client the agreed refund at the hearing.

### **CONCLUSION**

The Board adopts the committee's factual findings and further concludes that Respondent violated Rules 1.3, 1.4(a), 1.16(d), 8.1(c), and 8.4(a), but did not violate Rule 1.5(a). The Board finds that a public reprimand is warranted and that required attendance at additional continuing legal education in the area of office management is also appropriate.

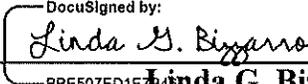
### **RULING**

Considering the foregoing, the Board hereby issues a public reprimand to Dina Fae Domangue, subject to the condition that within one year from this ruling, Dina Fae Domangue attend eight hours of approved continuing legal education training in the area of law office management in addition to the mandatory continuing education hours required under Louisiana Supreme Court Rule XXX, CLE Rule 3. Any failure of the Respondent to comply with this

condition may be grounds for reconsideration of this matter and prosecution of formal charges against the Respondent. Rule XIX, Section 10(B). The Respondent is also assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**Paula H. Clayton  
Susan P. DesOrmeaux  
Laura B. Hennen  
Dominick Scandurro, Jr.  
Danna E. Schwab  
Evans C. Spiceland, Jr.  
Melissa L. Theriot  
Charles H. Williamson, Jr.**

By  **Linda G. Bizarro**  
FOR THE ADJUDICATIVE COMMITTEE

## APPENDIX

### **Rule 1.3 Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

### **Rule 1.4 Communication**

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

...

### **Rule 1.5. Fees**

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

...

### **Rule 1.16 Declining or Terminating Representation**

...

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

**Rule 8.1(c)**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

...

(c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

**Rule 8.4. Misconduct**

It is professional misconduct for a lawyer to:

(a) 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;

...

# INTERNAL PROCEDURAL RULES

## BOARD OF DISCIPLINARY APPEALS

*Current through June 21, 2018*

### Contents

<b>I. GENERAL PROVISIONS</b> .....	<b>1</b>
Rule 1.01. Definitions.....	1
Rule 1.02. General Powers .....	1
Rule 1.03. Additional Rules in Disciplinary Matters.....	1
Rule 1.04. Appointment of Panels .....	1
Rule 1.05. Filing of Pleadings, Motions, and Other Papers.....	1
Rule 1.06. Service of Petition .....	2
Rule 1.07. Hearing Setting and Notice .....	2
Rule 1.08. Time to Answer .....	2
Rule 1.09. Pretrial Procedure .....	2
Rule 1.10. Decisions .....	3
Rule 1.11. Board of Disciplinary Appeals Opinions.....	3
Rule 1.12. BODA Work Product and Drafts .....	3
Rule 1.13. Record Retention.....	3
Rule 1.14. Costs of Reproduction of Records.....	3
Rule 1.15. Publication of These Rules.....	3
<b>II. ETHICAL CONSIDERATIONS</b> .....	<b>3</b>
Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases.....	3
Rule 2.02. Confidentiality.....	4
Rule 2.03. Disqualification and Recusal of BODA Members .....	4
<b>III. CLASSIFICATION APPEALS</b> .....	<b>4</b>
Rule 3.01. Notice of Right to Appeal .....	4
Rule 3.02. Record on Appeal.....	4
<b>IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS</b> .....	<b>4</b>
Rule 4.01. Perfecting Appeal.....	4
Rule 4.02. Record on Appeal.....	5
Rule 4.03. Time to File Record.....	6
Rule 4.04. Copies of the Record .....	6
Rule 4.05. Requisites of Briefs .....	6
Rule 4.06. Oral Argument.....	7
Rule 4.07. Decision and Judgment .....	7
Rule 4.08. Appointment of Statewide Grievance Committee.....	8
Rule 4.09. Involuntary Dismissal.....	8
<b>V. PETITIONS TO REVOKE PROBATION</b> .....	<b>8</b>
Rule 5.01. Initiation and Service.....	8
Rule 5.02. Hearing.....	8

<b>VI. COMPULSORY DISCIPLINE</b> .....	<b>8</b>
Rule 6.01. Initiation of Proceeding.....	8
Rule 6.02. Interlocutory Suspension.....	8
<b>VII. RECIPROCAL DISCIPLINE</b> .....	<b>9</b>
Rule 7.01. Initiation of Proceeding.....	9
Rule 7.02. Order to Show Cause.....	9
Rule 7.03. Attorney’s Response.....	9
<b>VIII. DISTRICT DISABILITY COMMITTEE HEARINGS</b> .....	<b>9</b>
Rule 8.01. Appointment of District Disability Committee.....	9
Rule 8.02. Petition and Answer.....	9
Rule 8.03. Discovery.....	9
Rule 8.04. Ability to Compel Attendance.....	10
Rule 8.05. Respondent’s Right to Counsel.....	10
Rule 8.06. Hearing.....	10
Rule 8.07. Notice of Decision.....	10
Rule 8.08. Confidentiality.....	10
<b>IX. DISABILITY REINSTATEMENTS</b> .....	<b>10</b>
Rule 9.01. Petition for Reinstatement.....	10
Rule 9.02. Discovery.....	10
Rule 9.03. Physical or Mental Examinations.....	10
Rule 9.04. Judgment.....	10
<b>X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS</b> .....	<b>11</b>
Rule 10.01. Appeals to the Supreme Court.....	11

# INTERNAL PROCEDURAL RULES

## Board of Disciplinary Appeals

*Current through June 21, 2018*

### I. GENERAL PROVISIONS

#### Rule 1.01. Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chair or, in the Chair’s absence, the member elected by BODA to serve as vice-chair.
- (c) “Classification” is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “BODA Clerk” is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “CDC” is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.
- (f) “Commission” is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- (g) “Executive Director” is the executive director of BODA.
- (h) “Panel” is any three-member grouping of BODA under TRDP 7.05.
- (i) “Party” is a Complainant, a Respondent, or the Commission.
- (j) “TDRPC” is the Texas Disciplinary Rules of Professional Conduct.
- (k) “TRAP” is the Texas Rules of Appellate Procedure.
- (l) “TRCP” is the Texas Rules of Civil Procedure.
- (m) “TRDP” is the Texas Rules of Disciplinary Procedure.
- (n) “TRE” is the Texas Rules of Evidence.

#### Rule 1.02. General Powers

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

#### Rule 1.03. Additional Rules in Disciplinary Matters

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

#### Rule 1.04. Appointment of Panels

- (a) BODA may consider any matter or motion by panel,

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

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

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

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

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

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

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

- (4) Exceptions.

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

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

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

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

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

- (5) Format. An electronically filed document must:

- (i) be in text-searchable portable document format (PDF);
- (ii) be directly converted to PDF rather than scanned, if possible; and
- (iii) not be locked.

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

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

- (1) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
- (2) an electronic image or scanned image of the signature.

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

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

#### **Rule 1.06. Service of Petition**

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

#### **Rule 1.07. Hearing Setting and Notice**

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

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the

request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

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

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

#### **Rule 1.08. Time to Answer**

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

#### **Rule 1.09. Pretrial Procedure**

##### **(a) Motions.**

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

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

- (i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (ii) if an appeal has been perfected, the date when the appeal was perfected;
- (iii) the original deadline for filing the item in question;
- (iv) the length of time requested for the extension;
- (v) the number of extensions of time that have been granted previously regarding the item in question; and

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

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

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

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

- (1) marked;
- (2) indexed with the title or description of the item offered as an exhibit; and
- (3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

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

#### **Rule 1.10. Decisions**

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

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

- (1) as required by the TRDP; and
- (2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

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

#### **Rule 1.11. Board of Disciplinary Appeals Opinions**

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

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in

the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

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

#### **Rule 1.12. BODA Work Product and Drafts**

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

#### **Rule 1.13. Record Retention**

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

#### **Rule 1.14. Costs of Reproduction of Records**

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

#### **Rule 1.15. Publication of These Rules**

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

## **II. ETHICAL CONSIDERATIONS**

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

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

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

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

## **Rule 2.02. Confidentiality**

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

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

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

## **Rule 2.03. Disqualification and Recusal of BODA Members**

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

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

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

## **III. CLASSIFICATION APPEALS**

### **Rule 3.01. Notice of Right to Appeal**

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

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

### **Rule 3.02. Record on Appeal**

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and

all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

## **IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS**

### **Rule 4.01. Perfecting Appeal**

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

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

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

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

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

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

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

## **Rule 4.02. Record on Appeal**

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

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

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

#### **(1) Clerk's Record.**

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

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

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

#### **(2) Reporter's Record.**

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

- a) a notice of appeal has been filed;
- b) a party has requested that all or part of the reporter's record be prepared; and
- c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

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

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

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

- (i) gather the documents designated by the parties'

written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

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

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

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

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

(vii) certify the clerk's record.

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

(3) The table of contents must:

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

(ii) be double-spaced;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6<sup>1</sup>) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

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

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

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

<sup>1</sup> So in original.

#### **Rule 4.03. Time to File Record**

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless

a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

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

(1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

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

(i) the appellant failed to request a reporter's record; or

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

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

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

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

#### **Rule 4.04. Copies of the Record**

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

#### **Rule 4.05. Requisites of Briefs**

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

(b) **Appellee's Filing Date.** Appellee's brief must be filed

within 30 days after the appellant's brief is filed.

**(c) Contents.** Briefs must contain:

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;
- (3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;
- (4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;
- (5) a statement, without argument, of the basis of BODA's jurisdiction;
- (6) a statement of the issues presented for review or points of error on which the appeal is predicated;
- (7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;
- (8) the argument and authorities;
- (9) conclusion and prayer for relief;
- (10) a certificate of service; and
- (11) an appendix of record excerpts pertinent to the issues presented for review.

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

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

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

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

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's

failure to timely file a brief;

(2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or

(3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

**Rule 4.06. Oral Argument**

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

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

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

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

**Rule 4.07. Decision and Judgment**

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

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

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

#### **Rule 4.08. Appointment of Statewide Grievance Committee**

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27 [2.26]. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

#### **Rule 4.09. Involuntary Dismissal**

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

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

### **V. PETITIONS TO REVOKE PROBATION**

#### **Rule 5.01. Initiation and Service**

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

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

#### **Rule 5.02. Hearing**

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

### **VI. COMPULSORY DISCIPLINE**

#### **Rule 6.01. Initiation of Proceeding**

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

#### **Rule 6.02. Interlocutory Suspension**

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

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

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

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

- (i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or
- (ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

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

## VII. RECIPROCAL DISCIPLINE

### Rule 7.01. Initiation of Proceeding

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

### Rule 7.02. Order to Show Cause

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

### Rule 7.03. Attorney's Response

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

## VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

### Rule 8.01. Appointment of District Disability Committee

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

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

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

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

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

### Rule 8.02. Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06.

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

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

### Rule 8.03. Discovery

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

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

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

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

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

#### **Rule 8.04. Ability to Compel Attendance**

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

#### **Rule 8.05. Respondent's Right to Counsel**

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

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

#### **Rule 8.06. Hearing**

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

#### **Rule 8.07. Notice of Decision**

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

#### **Rule 8.08. Confidentiality**

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

### **IX. DISABILITY REINSTATEMENTS**

#### **Rule 9.01. Petition for Reinstatement**

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

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension

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

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

#### **Rule 9.02. Discovery**

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

#### **Rule 9.03. Physical or Mental Examinations**

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

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

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

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

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

#### **Rule 9.04. Judgment**

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

## **X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS**

### **Rule 10.01. Appeals to the Supreme Court**

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

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

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