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

IN THE MATTER OF	§	
ROBERT B. EVANS, III,	§	**CAUSE NO.** 67842
STATE BAR CARD NO. 24034767	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Robert B. Evans, III (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 and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Robert B. Evans, III, 11459 Huebner Road, Ste. 201, San Antonio, Texas 78230.

3. On or about January 27, 2023, an Order/Per Curiam (Exhibit 1) was entered by the Supreme Court of the State of Louisiana in a matter styled: Supreme Court of Louisiana, No. 2022-B-1439, *In Re: Robert Bartholomew Evans, III,* Attorney Disciplinary Proceeding, which states in pertinent part as follows:

UNDERLYING FACTS

Count I

. . . The ODC alleges that respondent's conduct violated Rules 3.3(a)(1) (a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer), 8.4(a) (violation of the Rules of Professional Conduct). 8.4(c) (engaging in conduct prejudicial to the administration of justice) of the Rule of Professional Conduct. . .

Count II

The ODC alleges that respondent's conduct violated Rule 5.5 (engaging in the unauthorized practice of law) of the Rules of Professional Conduct.

DISCIPLINARY PROCEEDINGS

Based on these facts, the committee determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges. Specifically, as to Count I, the committee concluded that respondent violated Rules 3.3(a)(1), 8.4(a), 8.4(c), and 8.4(d) of the Rules of Professional Conduct by (1) filing the ex parte motion to withdraw disputed funds from the registry of the court under false pretenses upon his representation to the court that the motion was unopposed, (2) falsely certifying that the motion was served on all counsel, (3) continuing to falsely represent to the court in an opposition that his counsel advised him that the plaintiffs did not oppose the withdrawal of the disputed funds; and (4) falsely swearing under oath that the writ application, which sought expedited consideration, was emailed to all counsel on the day that it was filed. As to Count II, the committee concluded that respondent violated Rule 5.5 by engaging in the unauthorized practice of law while on interim suspension.

DECREE

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Robert B. Evans Ill, Louisiana Bar Roll number 23473, be and he hereby is disbarred, retroactive to September 28, 2018, the date of his interim suspension. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal

interest to commence thirty days from the date of finality of this court's judgment until paid.

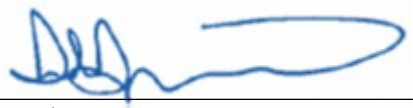
4. A true and correct copy of Petitioner's Exhibit 1 is attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce a certified copy of Exhibit 1 at the time of hearing of this cause.

5. 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, to the extent practicable, with that imposed by the Supreme Court of the State of Louisiana 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
Administrative Attorney
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: amanda.kates@texasbar.com



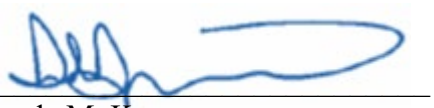
Amanda M. Kates
Bar Card No. 24075987

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 Robert B. Evans, III, by personal service.

Robert B. Evans, III
11459 Huebner Road, Ste. 201
San Antonio, Texas 78230



Amanda M. Kates

SUPREME COURT OF LOUISIANA

NO. 2022-B-1439

JAN 27 2023

IN RE: ROBERT BARTHOLOMEW EVANS III

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Robert B. Evans III, an attorney licensed to practice law in Louisiana, but currently on interim suspension for threat of harm to the public.

UNDERLYING FACTS

Count I

Respondent and Cesar R. Burgos practiced law together in a law firm known as Burgos & Evans, LLC until May 1, 2015, when their partnership terminated. On June 4, 2015, Mr. Burgos filed suit against respondent for breach of contract. *Cesar R. Burgos, et al. v. Robert B. Evans III, et al.*, No. 2015-05337, Div. "N", Civil District Court for the Parish of Orleans. Mr. Burgos was represented in the litigation by attorneys Richard C. Stanley and William M. Ross. Respondent was represented in the litigation by attorneys E. John Litchfield and Carey B. Daste.

SUPREME COURT OF LOUISIANA
A TRUE COPY
Edwin C. Gonzales, Jr.
Deputy Clerk of Court

EXHIBIT
1

SUPREME COURT OF LOUISIANA

NO. 2022-B-1439

JAN 27 2023

IN RE: ROBERT BARTHOLOMEW EVANS III

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Robert B. Evans III, an attorney licensed to practice law in Louisiana, but currently on interim suspension for threat of harm to the public.

UNDERLYING FACTS

Count I

Respondent and Cesar R. Burgos practiced law together in a law firm known as Burgos & Evans, LLC until May 1, 2015, when their partnership terminated. On June 4, 2015, Mr. Burgos filed suit against respondent for breach of contract. *Cesar R. Burgos, et al. v. Robert B. Evans III, et al.*, No. 2015-05337, Div. "N", Civil District Court for the Parish of Orleans. Mr. Burgos was represented in the litigation by attorneys Richard C. Stanley and William M. Ross. Respondent was represented in the litigation by attorneys E. John Litchfield and Carey B. Daste.

On July 8, 2015, the parties entered into a Settlement and Release Agreement which was intended to resolve all disputes between them. In 2016, with the approval of the district court, Mr. Burgos deposited funds into the registry of the court which represented certain sums that were disputed under the Agreement. After hearing competing motions filed by respondent and Mr. Burgos, the court released some of

Crichton, J., concurs in part, dissents in part and assigns Reasons.
McCallum, J., concurs in part and dissents in part for reasons assigned by Crichton, J.

the funds in the registry to Mr. Burgos,[1] leaving a balance of $207,394.48 remaining for administration.

On June 6, 2018, respondent filed an *ex parte* motion to withdraw the balance of the disputed funds from the registry of the court. Respondent filed the motion on his own behalf, despite the fact that he was represented by counsel in the litigation. Respondent's motion represented that "[c]ounsel for the plaintiffs have been contacted and have not expressed any opposition to this Motion." Respondent's motion also included a certificate of service indicating that he had served the pleading upon all counsel of record. Both of these representations by respondent were false – *i.e.*, plaintiffs' counsel were not contacted in advance about the motion and did not receive a service copy of the motion, and Mr. Burgos would have vigorously opposed any such motion and the removal of disputed funds from the registry of the court.

On June 12, 2018, based on respondent's false representations in the motion, Judge Ethel Simms Julien signed an order granting the motion and releasing the disputed funds to respondent. On June 14, 2018, a check in the amount of $207,394.48 was issued to respondent by the clerk of Civil District Court. Respondent immediately deposited the check into his personal bank account and spent the funds.

On June 15, 2018, plaintiffs' counsel learned about the motion for the first time as a result of an online search by their paralegal. After that discovery, Mr. Ross contacted the court's chambers and spoke to Judge Julien's law clerk, who stated that an order releasing the funds had already been signed. Mr. Ross then called Ms.

[1] Respondent sought review of this ruling by filing a writ application with the Fourth Circuit Court of Appeal. The writ was denied. *Burgos v. Evans*, 17-0023 (La. App. 4th Cir. 2/15/17) (unpublished).

Daste to discuss the matter. Ms. Daste advised that she had no prior knowledge of the filing of the motion by her client, respondent.

Later on June 15, 2018, Judge Julien held a telephone conference with Mr. Ross and Ms. Daste. Following the call, Ms. Daste sent a letter to Judge Julien reiterating that neither she nor Mr. Litchfield was aware that respondent "would be filing or had filed" the motion to withdraw funds from the registry of the court, and that they had not received a copy of the motion from respondent. Ms. Daste further advised:

> I spoke with Mr. Evans after our telephone conference to let him know that you advised that his actions would be considered contempt of court, and could potentially subject him to criminal charges. I also asked Mr. Evans whether the check he received from the Clerk of Court yesterday had been negotiated. He told me the check had been negotiated. Apparently the Clerk of Court's registry account is with Chase Bank, and Mr. Evans also has an account with Chase. Mr. Evans said that the funds have already been spent, and that he cannot return the funds.

On June 15 and 18, 2018, plaintiffs' counsel filed multiple motions objecting to respondent's withdrawal of the disputed funds from the registry of the court. In an opposition to one of the motions, respondent represented that Ms. Daste had previously advised him that plaintiffs did not object to his withdrawal of the disputed funds. This representation was false.

On July 5, 2018, Judge Julien issued an order which set the hearing on plaintiffs' motions for August 17, 2018. Following the issuance of the order, respondent filed an application for supervisory writs with the Court of Appeal, Fourth Circuit, seeking reversal of the trial court's ruling and a remand to reset the hearing on the pending motions "for a date no earlier than October 1, 2018." Respondent sought expedited attention and a decision by the court of appeal no later than July 15, 2018. The writ application contained an affidavit in which respondent swore under oath that a copy of the application had been "emailed and mailed to all

counsel of record this 11th day of July." This affidavit was false, as plaintiffs' counsel did not receive a copy of the writ application via e-mail on July 11, 2018. Instead, plaintiffs' counsel only received a mailed copy of the writ application on July 18, 2018, two days *after* the Fourth Circuit had already denied in part and granted in part the writ application.

The hearing on plaintiffs' motions was finally scheduled to take place on April 17, 2019. Just prior to the start of the hearing, respondent agreed to return $207,394.48 to the registry of the court in four installment payments, the last of which would occur on August 15, 2019, and to pay $10,000 in attorney's fees and costs to plaintiffs.[2] On May 8, 2019, Judge Julien signed a judgment to this effect and dismissed plaintiffs' motions as moot.

In 2019, respondent and Mr. Burgos again filed competing motions seeking the release of certain funds from the registry of the court. Following a hearing on the motions, Judge Julien ruled in favor of Mr. Burgos. On January 31, 2020, Judge Julien signed a judgment ordering the clerk of Civil District Court to release the sum of $180,000 from the registry of the court to Mr. Burgos.[3]

The ODC alleges that respondent's conduct violated Rules 3.3(a)(1) (a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct.

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[2] Respondent repaid the funds to the registry of the court as agreed. He also paid the attorney's fees and costs.

[3] Respondent's appeal of this judgment was dismissed based on a finding by the court of appeal that the judgment was not appealable. *Burgos v. Evans*, 20-0326 (La. App. 4th Cir. 12/16/20), 312 So. 3d 1145.

Count II

In August 2018, the ODC filed a petition in this court seeking respondent's immediate interim suspension for threat of harm to the public. At our request, respondent filed a response to the petition for interim suspension. After considering the positions of both parties, we remanded the matter for a hearing. However, prior to the hearing, respondent and the ODC filed a "Joint Consent Petition for Interim Suspension Pursuant to Louisiana Supreme Court Rule XIX, § 19.2," in which respondent stated that he withdrew his opposition to the ODC's petition and consented to the entry of an order of interim suspension. On September 28, 2018, we granted the petition and placed respondent on interim suspension for threat of harm to the public. *In re: Evans*, 18-1433 (La. 9/28/18), 253 So. 3d 133.

Notwithstanding our order of interim suspension, respondent has continued to engage in the practice of law. The ODC alleges that respondent received, disbursed, and otherwise handled client funds through his law firm's trust account; negotiated with opposing counsel in pending client legal matters (the Vaughn, Alexander, and Ogbor matters); corresponded with opposing counsel to advance the prosecution of pending client legal matters (the Faucheaux and Barre matters); and corresponded with opposing counsel to advance discovery in pending client legal matters (the Alexander and Arriaga matters).[4]

The ODC alleges that respondent's conduct violated Rule 5.5 (engaging in the unauthorized practice of law) of the Rules of Professional Conduct.

[4] The ODC also alleged that while respondent was on interim suspension, he maintained a website presence so as to hold himself out as a lawyer authorized to practice law. The hearing committee and the disciplinary board did not find this allegation was proven by clear and convincing evidence, and the ODC has not objected to this finding in its brief filed in this court. Accordingly, this opinion contains no further discussion of respondent's website.

DISCIPLINARY PROCEEDINGS

In March 2019, the ODC filed formal charges against respondent as set forth above. Respondent answered the formal charges and denied any intentional misconduct. He admitted that he filed an *ex parte* motion to withdraw funds from the registry of the court, but stated that he had discussed the motion with his attorneys prior to the filing and believed, based on those conversations, that the motion was unopposed. Respondent attributed his "genuine misunderstanding" in this regard to his mental state at the time.[5] Likewise, respondent indicated that "any misrepresentations" he subsequently made in pleadings or communications with the courts were a result of his mental impairment and misunderstanding. Finally, respondent denied that he practiced law after he was placed on interim suspension.

In light of respondent's answer, the matter proceeded to a formal hearing on the merits.

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the hearing committee made findings of fact, including the following:

1. At 12:22 p.m. on June 6, 2018, respondent emailed Ms. Daste asking her to ask opposing counsel if Mr. Burgos would agree that respondent could withdraw $207,394.48 that remained in the registry of the court. This email establishes that respondent knew that Mr. Burgos had not consented to the withdrawal of the funds since he was asking *his* counsel to seek that agreement.

[5] Respondent suggested that he suffered from generalized anxiety disorder and depressive disorder, in addition to physical health problems (including chronic back problems) that necessitated the use of narcotic pain medicine. Nevertheless, respondent specifically denied that he suffered from a mental disability or chemical dependency during the time frame at issue.

2. Nevertheless, within hours of sending the email, respondent prepared and filed the *ex parte* motion to withdraw the entire $207,394.48 from the registry of the court. Notably, respondent filed the motion on his own behalf even though he was at that time (and had been since the inception of the litigation) represented by counsel.

3. In the *ex parte* motion, respondent affirmatively advised the court that "[c]ounsel for the plaintiffs have been contacted and have not expressed any opposition to this Motion." Respondent admitted during the hearing that this statement was false and that although he assumed it to be true, he did not have personal knowledge that the motion was unopposed. Additionally, the email respondent sent to Ms. Daste earlier that day prior to filing the motion directly contradicts respondent's testimony that he "believed" that Mr. Burgos did not object to his request to withdraw the funds based on his prior communications with his counsel.

4. Respondent also attempted to blame others for his actions. He claimed that the actions and communications by Ms. Daste to him prior to June 6, 2018 led him to believe that Mr. Burgos did not oppose his motion to withdraw the funds. Ms. Daste did not play any role in preparing the *ex parte* motion, was unaware that respondent was going to file the motion, and did not receive a copy of the motion from respondent to review prior to his filing it. Ms. Daste testified that she had not contacted plaintiffs' counsel to obtain their agreement to release the funds and did not tell respondent at any time that counsel for the plaintiffs had been contacted and that they did not oppose the motion.

5. Ms. Daste testified that respondent had been actively involved in his case since its beginning. She had been preparing a motion for partial summary judgment seeking to withdraw funds that Mr. Burgos had deposited, but the

motion would have been filed as contested. She was never able to complete the motion because respondent continually failed to provide original affidavits to be used with the motion. Ms. Daste also testified that her drafting the motion for partial summary judgment was further complicated because respondent on his own had filed two other suits in two separate forums and she was concerned about making sure all the allegations lined up so there would not be any inconsistencies.

6. Based upon her impression of the dispute gained throughout her years of handling the matter, Ms. Daste did not believe that Mr. Burgos would have ever consented to respondent's withdrawal of the funds. Likewise, Mr. Ross found it to be completely implausible that anyone at Mr. Litchfield's office would make that representation because no lawyer who had been involved in the case would believe that Mr. Burgos would consider agreeing to disburse the funds to respondent.

7. By the time Ms. Daste first learned of the *ex parte* motion, it had been filed, the judge had granted the motion, the funds had been disbursed to respondent, and respondent had spent nearly all of the money. Upon learning of the motion, Ms. Daste immediately prepared a memorandum to contemporaneously document what had occurred. This memorandum supports Ms. Daste's testimony.

8. In the memorandum Ms. Daste explains why respondent's June 6, 2018 email to her proves that respondent made intentional misrepresentations to the district court:

> Why would I need to have [Mr. Ross] agree to release the money, if I already supposedly have been told by plaintiffs' counsel that they do not oppose a motion for [respondent] to withdraw the funds? So [respondent] has already contradicted himself and this is clear evidence that he is lying. And if he thinks I need to call [Mr. Ross] at 12:22 p.m. on June 6 in order to have him agree to release

> the funds to [respondent], why would [respondent] then file a motion three hours later claiming that plaintiffs don't oppose the motion.

9. On June 12, 2018, based on respondent's false representations in the *ex parte* motion, the judge granted the motion and signed an order releasing all of the disputed funds to respondent. Two days later, the clerk of Civil District Court issued a check in the amount of $207,394.48 to respondent. Respondent picked up the check that day and immediately deposited it into his bank account. Because the funds were immediately available, he transferred the funds to other accounts and immediately spent the money.

10. Respondent admitted in his pre-hearing memorandum and in his testimony to the committee that he filed the *ex parte* motion because he "needed" money. He also testified in his sworn statement that he had substantial outstanding debts at or around the time of his filing of the motion. Ms. Daste confirmed that respondent had confided in her that he was "officially broke."

11. Upon learning of the filing of the *ex parte* motion, counsel for Mr. Burgos filed a Motion to Vacate Order Releasing Funds and Stop Payment on Check in an effort to prevent the removal of the funds. (At the time this motion was filed, Mr. Burgos' counsel was unaware that the check had already been issued and the funds spent by respondent.) Respondent, on his own and not through his counsel of record, filed an opposition to this motion in which he again represented to the court that the *ex parte* motion was unopposed. He contended in his memorandum that in a conversation that occurred at some point in the months leading up to his filing of the *ex parte* motion, a "Litchfield associate" (referring to Ms. Daste) told him that the plaintiffs had communicated that they did not object to respondent withdrawing the money from the court's registry. This representation to the court was also false.

12. The *ex parte* motion included a certificate of service signed by respondent in which he certified to the court that he had served the motion upon all counsel of record. This certification was also false, which meant that respondent's counsel and opposing counsel were entirely unaware that the motion had been filed until after it was granted and the funds disbursed to and spent by respondent.

13. Respondent blamed one of his assistants, Doris Nasthas, for not serving the motion. He claimed that he had delivered a copy of the filed motion to her with instructions to send out the service, but for "whatever reason" she did not do so. Ms. Nasthas vehemently denied this claim. She testified that contrary to respondent's contention, he did not physically hand her a folder containing a copy of the filed *ex parte* motion for service; he did not leave a folder at her desk with a copy of the motion with a "sticky note" instructing her to file the motion; and he did not otherwise instruct her to serve the motion. Respondent conceded in his sworn statement and during the formal hearing that he alone was responsible for the motion not being served.

14. Ms. Nasthas confirmed respondent's testimony that he had been out of the office since May 2018 due to health issues, and that during that time, to the extent that she communicated with respondent, it was by email or telephone.

15. Contrary to respondent's testimony that he terminated Ms. Nasthas' employment for failing to serve the motion, she testified that she left respondent's firm to take a better paying job with her former employer – not because respondent had terminated her.

16. Mr. Litchfield also confirmed that he did not receive a copy of the *ex parte* motion before it was filed and that he never contacted Mr. Burgos' counsel to seek consent to withdraw the disputed funds from the registry of the court. Mr. Litchfield agreed that ownership of the funds was a heavily contested

issue, and he described the litigation as "contentious." He did not believe that Mr. Burgos would ever agree to respondent's request to withdraw funds.

17. Neither Mr. Ross nor Mr. Stanley received a service copy of the *ex parte* motion when it was filed. Neither one was aware of the motion until June 15, 2018 – nine days after it was filed and after it had been granted and the funds disbursed and spent – when Mr. Ross' paralegal found it on the court's website while looking at the docket. Neither respondent nor his counsel contacted Mr. Ross or Mr. Stanley regarding the motion prior to its filing.

18. On June 18, 2018, after learning that the funds had been disbursed to respondent, counsel for Mr. Burgos filed a Motion for New Trial and a Motion for Contempt, Sanctions, and Judgment Compelling the Restoration of the Funds to Court Registry. The court initially set the hearings on those motions for July 3, 2018, but because of ongoing medical issues, respondent sought to continue the hearings until October 2018. However, the court only continued the hearings until August 17, 2018. Respondent therefore prepared and filed an application seeking supervisory review of the court's decision regarding the continuance. The application sought expedited consideration by July 15, 2018.

19. On July 11, 2018, respondent verified under oath that the writ application had been emailed and mailed to all counsel of record on that day. This representation was untrue. Neither Mr. Ross nor Mr. Stanley received an emailed copy of the writ application at any time, much less in time to oppose the request. Although counsel for Mr. Burgos did ultimately receive a copy of the writ application in the mail, the copy arrived after the appellate court had granted supervisory relief and ordered the trial court to select a new hearing date. Respondent admitted that he failed to adequately instruct his assistant to serve opposing counsel of record.

20. Plaintiffs' motions were ultimately set to be heard in April 2019. In response to the motions, respondent agreed to return the money to the registry of the court over a certain scheduled period of time. He also agreed to contribute $10,000 to the plaintiffs for attorney's fees and expenses, but Mr. Ross testified that this amount was not sufficient to fully reimburse Mr. Burgos for the fees and expenses he incurred as a result of respondent's false representations to the court in the *ex parte* motion. The court reduced respondent's agreement to an order.

21. After respondent returned the funds to the registry of the court, Mr. Burgos obtained a judgment ordering the clerk to release $180,000 of that amount to him.

22. Respondent consented to be placed on interim suspension effective September 28, 2018.

23. Respondent represented Joel Vaughn in her personal injury claim against Walmart. The case settled before respondent's interim suspension, but thereafter respondent engaged in a series of email exchanges with Walmart's counsel that lasted several weeks in an attempt to negotiate the final settlement distribution in a light of a partial waiver by Medicare of its lien. Respondent also threatened Walmart with a motion to enforce the settlement with an allegation of bad faith.

24. Respondent represented Kelly Faucheaux in her personal injury matter arising out of an automobile accident. On October 11, 2018, while under suspension, respondent sent an email to opposing counsel regarding his client's request that the defendant stipulate to liability and, if not, Ms. Faucheaux would file a motion for summary judgment. Respondent and opposing counsel thereafter exchanged emails regarding potential settlement of the matter.

25. Respondent represented Magnolia Alexander in a medical malpractice matter. On October 14, 2018, while under suspension, respondent sent an email to defendant's counsel recapping his interpretation of the facts and evidence that had been adduced in the matter, requesting that the defendant stipulate to liability, and asking counsel to tender his client's limits. A few minutes later, respondent sent another email to opposing counsel apparently answering a question from him and requesting that he amend the defendant's answer to a request for admission. On October 17, 2018, defendant's counsel sent respondent an email questioning whether he should be negotiating matters while he was suspended. Respondent admitted that opposing counsel was correct and that he had been told by his attorney that he should not negotiate.

26. Respondent represented Rosa and Anthony Barre in a personal injury matter arising out of an automobile accident. On October 13, 2018, while under suspension, respondent sent an email to opposing counsel asking what his intentions were after the depositions were completed. The email indicated that it had been sent from another attorney, Nicholas Holton, to whom respondent testified that he was referring cases. Respondent denied it was his intention to represent that Mr. Holton was the sender of the email, but Mr. Holton replied to the defense attorney clarifying that he had directed respondent to "discontinue using my name in his emails" and that "any emails from [respondent] are from [respondent] not me."

27. Respondent represented Nadia Ogbor with respect to an on-the-job accident. On November 1, 2018, while under suspension and well after he was told he should not negotiate matters, respondent received an email from opposing counsel asking if he was interested in trying to resolve the matter expeditiously or if counsel should move forward with discovery. Rather than communicate that he could not negotiate because he was suspended from the

practice of law, respondent engaged in settlement negotiations and agreed to settle the matter for whatever opposing counsel could get in authority. Respondent conceded that these communications "appeared" to be a negotiation.

28. Respondent represented Ivy Arriaga in a personal injury matter arising out of an automobile accident. On November 28, 2018, while under suspension, respondent sent an email to opposing counsel in an effort to obtain copies of discovery documents. He did so despite acknowledging a few weeks earlier that he should not be engaging in communications with opposing counsel regarding pending legal matters.

29. While on interim suspension, respondent received, disbursed, and otherwise handled client funds by way of his trust account. Respondent was the only signatory on his trust account. He admitted to signing numerous checks out of that account to disburse settlement funds to clients and third parties during the period of interim suspension. His trust account records and corresponding checks confirm that respondent handled client funds over the course of multiple months while on interim suspension. The evidence submitted by the ODC shows funds moving in and out of respondent's trust account while he was suspended from the practice of law.

30. Respondent testified that he signed blank trust account checks prior to being placed on interim suspension and gave them to his father, who operated as his office manager and was of counsel with his firm. Respondent testified that his father used the pre-signed checks while he was on interim suspension and that he therefore did not "handle" client funds while suspended.

31. Respondent made this contention for the first time at the hearing. His sworn statement, taken on January 9, 2019, approximately 3½ months after he was placed on interim suspension, tells a different tale. When asked about the trust

account activity in his statement, respondent spoke in the present tense with regard to the check writing. For example, with respect to the matters that settled while he was under suspension, respondent stated under oath:

- "I just write the checks. That's all I do."
- "I'm just signing checks."
- "My father facilitated talking to the client and the distribution and I cut the checks."
- "All I did is sign the check."

In addition, when he was informed by deputy disciplinary counsel during the statement that signing checks from the trust account constitutes the unauthorized practice of law, respondent did not explain or contend that he had simply signed the checks prior to being placed on interim suspension.

Based on these facts, the committee determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges. Specifically, as to Count I, the committee concluded that respondent violated Rules 3.3(a)(1), 8.4(a), 8.4(c), and 8.4(d) of the Rules of Professional Conduct by (1) filing the *ex parte* motion to withdraw disputed funds from the registry of the court under false pretenses upon his representation to the court that the motion was unopposed, (2) falsely certifying that the motion was served on all counsel, (3) continuing to falsely represent to the court in an opposition that his counsel advised him that the plaintiffs did not oppose the withdrawal of the disputed funds; and (4) falsely swearing under oath that the writ application, which sought expedited consideration, was emailed to all counsel on the day that it was filed. As to Count II, the committee concluded that respondent violated Rule 5.5 by engaging in the unauthorized practice of law while on interim suspension.

The committee determined respondent violated duties owed to his clients, the legal system, and the legal profession. He acted intentionally. His misconduct caused both actual and potential harm. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

The committee determined the following aggravating factors are present: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law (admitted 1995). The committee found the only mitigating factor present is the absence of a prior disciplinary record.

Based on these findings, and considering the prior jurisprudence in similar cases, the committee recommended respondent be disbarred.

Both respondent and the ODC filed objections to the hearing committee's report.

Disciplinary Board Recommendation

After review, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous and adopted same. Based on these factual findings, the board determined respondent's conduct violated the Rules of Professional Conduct as charged in the formal charges.

The board determined respondent violated duties owed to his clients, the legal system, and the legal profession. Respondent acted intentionally, and his conduct caused both actual and potential harm. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is disbarment.

The board determined that the following aggravating factors are present: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. The board determined that the following mitigating factors are present: the absence of a prior disciplinary record and personal or emotional problems (health problems during the time of the misconduct).

Turning to the issue of an appropriate sanction, the board found that respondent's overall misconduct warrants permanent disbarment. In Count I,

respondent filed the *ex parte* motion under false pretenses by representing the motion was unopposed. He also falsely certified the motion had been served upon all counsel of record. These misrepresentations facilitated respondent's conversion of $207,394.48 in disputed funds held in the registry of the court. Respondent then continued his pattern of misconduct by making false representations in an opposition memorandum filed with the district court and in a writ application filed with the court of appeal. Respondent's multiple misrepresentations of fact clearly qualify as the intentional corruption of the judicial process, which is a ground for permanent disbarment under Supreme Court Rule XIX, Appendix D, Guideline 2.

In Count II, respondent was suspended by order of this court dated September 28, 2018. He nevertheless continued to practice law after this date. Indeed, respondent's intentional violation of Rule 5.5 began the very next day after he was placed on interim suspension. His misconduct involved at least six client matters and the extensive use of his client trust account. He also impersonated another attorney, Mr. Holton, when communicating with opposing counsel in one of those client matters, and his unauthorized practice of law continued even after his own prior counsel in this disciplinary matter expressly advised him not to negotiate in any cases. Respondent's unauthorized practice of law is a ground for permanent disbarment under Rule XIX, Appendix D, Guideline 8.

The board determined that respondent's conduct shows that he fails to respect the authority of the courts of this state and is so egregious as to demonstrate a convincing lack of fitness to practice law. Furthermore, respondent's misconduct was deliberate, intentional, and repetitive, indicating that there is no reasonable expectation of significant rehabilitation in his character in the future.

Based on these findings, the board recommended respondent be permanently disbarred. The board further recommended that respondent be assessed with the costs and expenses of this matter.

Respondent filed an objection to the board's recommendation. Accordingly, the case was docketed for oral argument pursuant to Supreme Court Rule XIX, § 11(G)(1)(b).

DISCUSSION

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

The record establishes by clear and convincing evidence that respondent made multiple misrepresentations in connection with the filing of an *ex parte* motion to withdraw more than $200,000 in disputed funds from the registry of the court. Specifically, respondent represented to the trial court that his former law partner had no opposition to the withdrawal of the funds, when respondent knew this was not the case. Furthermore, respondent did not serve a copy of the motion on his former law partner or his counsel of record, contrary to his representations to that effect in the certificate of service. Respondent then filed two additional pleadings – an opposition filed in the trial court and a writ application filed in the court of appeal – in which he made additional misrepresentations of fact. Finally, respondent repeatedly engaged in the unauthorized practice of law after he was placed on interim suspension. Under these circumstances, respondent violated the Rules of Professional Conduct as charged in the formal charges.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent acted intentionally, and violated duties owed to his clients, the legal system, and the profession, causing both actual and potential harm. The applicable baseline sanction is disbarment. The aggravating and mitigating factors found by the board are supported by the record.

Respondent's misconduct was undoubtedly egregious. However, we see no compelling reason to deviate from the baseline sanction in this matter. Accordingly, we will impose disbarment, retroactive to September 28, 2018, the date of respondent's interim suspension.

DECREE

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Robert B. Evans III, Louisiana Bar Roll number 23473, be and he hereby is disbarred, retroactive to September 28, 2018, the date of his interim suspension. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule

XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

JAN 2 7 2023

SUPREME COURT OF LOUISIANA

No. 2022-B-01439

IN RE: ROBERT BARTHOLOMEW EVANS III

Attorney Disciplinary Proceeding

SJC **CRICHTON, J., concurs in part and dissents in part and assigns reasons:**

On May 4, 2022, this Court amended the provisions of Supreme Court Rule XIX related to permanent disbarment to state that permanent disbarment shall only be imposed upon "an express finding of the presence of the following factors: (1) the lawyer's misconduct is so egregious as to demonstrate a convincing lack of ethical and moral fitness to practice law; and (2) there is no reasonable expectation of significant rehabilitation in the lawyer's character in the future." Respondent's misconduct in this matter satisfies two of the permanent disbarment guidelines as found in Appendix D of Supreme Court Rule XIX (intentional corruption of the judicial process and, following notice, engaging in the unauthorized practice of law during a period of suspension), and in my view, his behavior also clearly falls within the recently amended aforementioned factors. For the reasons below, while I agree with the majority that the allegations against respondent have been proven, I dissent from the imposition of regular disbarment and would permanently disbar respondent.

As the majority's opinion reflects, respondent prepared an *ex parte* motion to withdraw disputed funds amounting to over $200,000 deposited in the court registry and represented to the court that the motion was unopposed when, in fact, respondent had no personal knowledge that the motion was unopposed. Moreover, respondent included with his motion a certificate of service certifying he had served the motion on all counsel of record. This certification was also patently false. Based upon

his flagrant disregard for this Court's authority by continuing to practice law after being prohibited from doing so demonstrate a clear lack of ethical and moral fitness to practice law. Accordingly, I find the only appropriate sanction under these circumstances is permanent disbarment from the practice of law. I therefore dissent.

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

Contents

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. GENERAL PROVISIONS

Rule 1.01. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 1.02. General Powers

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

Rule 1.03. Additional Rules in Disciplinary Matters

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

Rule 1.04. Appointment of Panels

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

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

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

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

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

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

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

(4) Exceptions.

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

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

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

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

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

(5) Format. An electronically filed document must:

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

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

(iii) not be locked.

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

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

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

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

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

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

Rule 1.06. Service of Petition

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

Rule 1.07. Hearing Setting and Notice

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

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

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

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

Rule 1.08. Time to Answer

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

Rule 1.09. Pretrial Procedure

(a) **Motions.**

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

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

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

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

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

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

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

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

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

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

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

(1) marked;

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

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

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

Rule 1.10. Decisions

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

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

(1) as required by the TRDP; and

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

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

Rule 1.11. Board of Disciplinary Appeals Opinions

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

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

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

Rule 1.12. BODA Work Product and Drafts

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

Rule 1.13. Record Retention

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

Rule 1.14. Costs of Reproduction of Records

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

Rule 1.15. Publication of These Rules

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

II. ETHICAL CONSIDERATIONS

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

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

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

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

Rule 2.02. Confidentiality

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

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

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

Rule 2.03. Disqualification and Recusal of BODA Members

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

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

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

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

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

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

Rule 3.02. Record on Appeal

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

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

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

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

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

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

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

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

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

Rule 4.02. Record on Appeal

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

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

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

(1) Clerk's Record.

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

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

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

(2) Reporter's Record.

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

a) a notice of appeal has been filed;

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

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

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

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

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

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

(ii) start each document on a new page;

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

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

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

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

(vii) certify the clerk's record.

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

(3) The table of contents must:

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

(ii) be double-spaced;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[1] So in original.

Rule 4.03. Time to File Record

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

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

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

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

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

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

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

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

Rule 4.04. Copies of the Record

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

Rule 4.05. Requisites of Briefs

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

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

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

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

(1) a complete list of the names and addresses of all parties to the final decision and their counsel;

(2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;

(3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;

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

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

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

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

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

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

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

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

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

(1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;

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

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

Rule 4.06. Oral Argument

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

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

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

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

Rule 4.07. Decision and Judgment

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

(1) affirm in whole or in part the decision of the evidentiary panel;

(2) modify the panel's findings and affirm the findings as modified;

(3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or

(4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:

(i) the panel that entered the findings; or

(ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

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

Rule 4.08. Appointment of Statewide Grievance Committee

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

Rule 4.09. Involuntary Dismissal

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

(a) for want of jurisdiction;

(b) for want of prosecution; or

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

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

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

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

Rule 5.02. Hearing

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

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

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

Rule 6.02. Interlocutory Suspension

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

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

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

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

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

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

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

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

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

Rule 7.02. Order to Show Cause

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

Rule 7.03. Attorney's Response

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

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

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

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

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

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

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

Rule 8.02. Petition and Answer

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

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

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

Rule 8.03. Discovery

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

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

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

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

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

Rule 8.04. Ability to Compel Attendance

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

Rule 8.05. Respondent's Right to Counsel

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

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

Rule 8.06. Hearing

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

Rule 8.07. Notice of Decision

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

Rule 8.08. Confidentiality

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

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

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

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

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

Rule 9.02. Discovery

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

Rule 9.03. Physical or Mental Examinations

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

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

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

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

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

Rule 9.04. Judgment

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

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

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

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

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