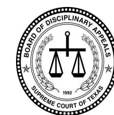
F I L E D
Feb 21 2024
THE BOARD *of* DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

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

IN THE MATTER OF	§	
DANIEL G. GARCIA,	§	**CAUSE NO.** 68986
STATE BAR CARD NO. 07631820	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Daniel G. Garcia, (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 Daniel G. Garcia, 16003 Villa Basilica, San Antonio, Texas 78255-3376.

3. Attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein, is a true and correct copy of a set of documents containing the following: Order of the Adjudicating Official entered October 26, 2023, Motion to Deem Allegations Admitted entered June 7, 2023, and Joint Notice of Intent to Discipline attorney Daniel G. Garcia entered November 21, 2022, filed in a matter styled United States Department of Justice Executive Office for Immigration Review, Immigration Court, *In the Matter of Daniel G. Garcia,*

Respondent, Attorney Disciplinary Proceedings, Disciplinary Cases # D2018-0190, D2019-0052 (Exhibit 1).

4. The Motion to Deem Allegations Admitted filed June 7, 2023, states in pertinent part as follows:

> **Order of the Adjudicating Official on Government's Motion to Deem Allegations Admitted**
>
> On November 21, 2022, the Disciplinary Counsel of the Office of the General Counsel for the Executive Office for Immigration Review (Disciplinary Counsel) and Disciplinary Counsel for U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS) filed with the Board of Immigration Appeals (BIA) a Joint Notice of Intent to Discipline (NID) attorney Daniel Garcia. The NID alleges that Mr. Garcia engaged in professional misconduct under 8 C.F.R. § 1003.102(c), 8 C.F.R. § 1003.102(1), 8 C.F.R. § 1003.102(n), 8 C.F.R. § 1003.102(0), and 8 C.F.R. § 1003.102(q).
>
> On January 11, 2023, Mr. Garcia filed a response.
>
> On February 15, 2023, the BIA referred the matter to the Office of the Chief Immigration Judge (OCIJ) for the appointment of an adjudicating official.
>
> On February 21, 2023, OCIJ appointed Immigration Judge Elizabeth A. Kessler to serve as the adjudicating official (AO) in this matter.
>
> On May 11, 2023, the Government filed a Motion to Deem Allegations Admitted.
>
> It is now June 7, 2023, and the Respondent has filed no reply to the Government's Motion.
>
> **Analysis and Findings**
>
> The following material has been received and reviewed: Exhibit 1, the Join Notice of Intent to Discipline (NID); Exhibit 1A, the Government's Initial Evidentiary Exhibits (A-CC); Exhibit 2, the Respondent's Initial Response (Filed on December 21, 2022); Exhibit 3, the Respondent's Response (Filed on January 11, 2023); and Exhibit 4, the Government's Motion to Deem Allegations

Admitted and Attachment.

The NID sets forth 22 counts of alleged professional misconduct against Mr. Garcia in 22 immigration cases. Exh. 1. Each of those 22 counts contains numbered factual allegations; a total of 252 paragraphs of numbered factual allegations appear in the NID. *Id*. The NID also contains professional misconduct charges numbered 25 3 to 261. *Id*. A substantial, 874-page evidentiary submission was filed in support of the NID. *See* Exh.1A.[1]

The procedure for filing an "answer" to the NID, as well as the requirements for the contents of the answer, appear in 8 C.F.R. § 1003.105(c). The answer "shall contain a statement of facts which constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the Notice of Intent to Discipline." 8 C.F.R. § 1003.105(c)(2). Under 8 C.F.R. § 1003.105(c)(2), "[e]ach allegation in the Notice of Intent to Discipline which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced."

Mr. Garcia did not file any "answer," but did file an initial response on December 21, 2022, which was followed up by a second response on January 11, 2023. The Government now argues that, as neither filing by Mr. Garcia contains denials of any of the factual allegations or disciplinary charges, all allegations and charges should be deemed admitted and proved under the regulations.

The initial and subsequent responses filed by Mr. Garcia contain only brief, vague statements that he provided "what was available" to detainees for their cases, that these actions were "not intended to deceive," and that he did not "deliberately or intentionally avoid appearance at any scheduled hearings." Exh. 2 at 1-2; Exh. 3 at 2-3. Mr. Garcia devotes the majority of his main response to his background and experience, to include his involvement in church-related and other activities. Exh. 3 at 3-18. Neither document filed by Mr. Garcia specifically admits or denies any of the factual allegations or disciplinary charges. Even if his responses are construed as the "answer" to the NID, those documents contain no statements that specifically deny any of the

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1 In brief, alleged misconduct in a series of counts concerns Mr. Garcia's practice of submitting bond redetermination requests presenting his daughter as a "bond sponsor" for disparate individuals without disclosing his relationship to her and while mischaracterizing the relationship between her and the detainees and misrepresenting the addresses at which the detainees would reside if granted bond. Exh. I, Counts 1-12. In other cases, Mr. Garcia allegedly presented various members of the Guallpa family as "bond sponsors," while re-using the same addresses, obfuscating the relationship between the "bond sponsors" and detainees, and making misleading statements. *Id,* Counts 13-19. In yet other cases, Mr. Garcia failed to appear for scheduled hearings without sufficient cause. *Id,* Counts 20-22.

factual allegations or contest the charges of professional misconduct. See 8 C.F .R. § 1003.105(c)(2). Mr. Garcia has even failed to reply to the Government's motion.

As Mr. Garcia has failed to deny any of the allegations in the NID, under 8 C.F.R. § 1003.105(c)(2), "[e]ach allegation ... shall be deemed to be admitted" and will "be considered as proved." Based on this, all factual allegations and professional misconduct charges are deemed admitted and proven.[2] As such, Mr. Garcia is subject to discipline as charged in the NID under 8 C.F.R. § 1003.102(c), 8 C.F.R. § 1003.102(1), 8 C.F.R. § 1003.102(n), 8 C.F.R. § 1003.102(0), and 8 C.F.R. § 1003.102(q).

The sole remaining issue concerns the appropriate sanction(s) to be imposed.

<u>Order</u>

The Government's Motion to Deem Allegations Admitted is granted.

Mr. Garcia is subject to discipline under 8 C.F.R. § 1003.102(c), 8 C.F.R. § 1003.102(1), 8 C.F.R. § 1003.102(n), 8 C.F.R. § 1003.102(0), and 8 C.F.R. § 1003.102(q).

Further proceedings will cover only the appropriate sanction(s) to be imposed.

5. The Order of the Adjudicating Official (redacted) entered October 26, 2023, states in pertinent part as follows:

<u>Order</u>

Mr. Garcia engaged in professional misconduct under 8 C.F.R. § 1003.102(c), 8 C.F.R. § 1003.102(1), 8 C.F.R. § 1003.102(n), 8 C.F.R. § 1003.102(0), and 8 C.F.R. § 1003.102(q). As such, he is subject to attorney discipline and the imposition of sanctions under 8 C.F .R. § 1003.101.

As discipline, Mr. Garcia is suspended from the practice of law before the Immigration Courts, the BIA, and the DHS for a period of two years and four months.

2 The detailed and well-supported factual allegations, deemed admitted and proven, amply support the disciplinary charges. Exh. 1; Exh 4.

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

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

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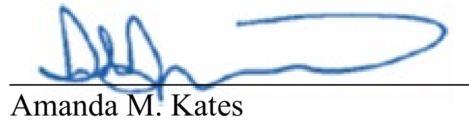
Amanda M. Kates
Bar Card No. 24075987

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Daniel G. Garcia, by Personal Service as follows:

Daniel G. Garcia
16003 Villa Basilica
San Antonio, Texas 78255-3376



Amanda M. Kates

U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

Disciplinary Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

December 14, 2023

Re: **Matter of Daniel G. Garcia**

I, L. Allison Minor, declare as follows:

1. I am employed as a Legal Administrative Specialist at the Executive Office for Immigration Review (EOIR), United States Department of Justice, Falls Church, Virginia.

2. I have reviewed the disciplinary file for the above-mentioned case and the attached Order of the Adjudicating Official entered October 26, 2023, Motion to Deem Allegations Admitted entered June 7, 2023, and Joint Notice of Intent to Discipline attorney Daniel G. Garcia entered November 21, 2022 and they are the true, correct, and complete copies of the originals maintained in the disciplinary records for the above-referenced case. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct. Executed in Falls Church, Virginia, on this date.

DATED: 12/14/23

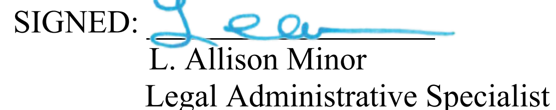
SIGNED: 
L. Allison Minor
Legal Administrative Specialist

EXHIBIT
1

United States Department of Justice
Executive Office for Immigration
Review Immigration Court

In the Matter of	:	**Attorney Discipline Proceedings**
Daniel G. Garcia	:	**Case ## D2018–019, D2019-0052**
Respondent	:	

Charges:	8 C.F.R. §§ 1003.102(c), 1003.102(l), 1003.102(n), 1003.102(o), 1003.102(q)
Proposed Discipline:	Suspension from Practice before the Board of Immigration Appeals (BIA), the Immigration Courts, and the Department of Homeland Security (DHS) for a Period of at Least Two Years
Appearances:	The Respondent appearing *pro se* Paul Rodrigues and Diane Kier, Disciplinary Counsel, on behalf of the Executive Office for Immigration Review Toinette M. Mitchell, Disciplinary Counsel, on behalf of the Department of Homeland Security

Decision and Order of the Adjudicating Official

On November 21, 2022, the Disciplinary Counsels of the Office of the General Counsel for the Executive Office for Immigration Review and the U.S. Citizenship and Immigration Services (USCIS) filed with the Board of Immigration Appeals (BIA) a Joint Notice of Intent to Discipline (NID) attorney Daniel G. Garcia. *See* Exh. 1. The NID contains 252 allegations and alleges that Mr. Garcia engaged in professional misconduct under 8 C.F.R. § 1003.102(c), 8 C.F.R. § 1003.102(l), 8 C.F.R. § 1003.102(n), 8 C.F.R. § 1003.102(o), and 8 C.F.R. § 1003.102(q). Mr. Garcia filed a response on January 11, 2023.

On February 15, 2023, the BIA referred the matter to the Office of the Chief Immigration Judge (OCIJ) for the appointment of an adjudicating official. On February 21, 2023, OCIJ appointed Immigration Judge Elizabeth A. Kessler to serve as the adjudicating official (AO) in this matter.

On May 11, 2023, the Government filed a Motion to Deem Allegations Admitted, to which Mr. Garcia failed to file a reply. On June 7, 2023, and in accordance with governing regulations, the Court deemed the allegations admitted upon the government's motion and given that Mr. Garcia had failed to respond adequately to the NID and did not oppose the Government's motion.[1]

Mr. Garcia has been found to have engaged in the following professional misconduct: (1) knowingly or with reckless disregard making a false statement of material fact or law, or willfully misleading, misinforming, threatening or deceiving any person concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence, in violation of 8 C.F.R. § 1003.102(c); (2) repeatedly failing to appear for scheduled hearings in a timely manner without good cause, in violation of 8 C.F.R. § 1003.102(l); (3) conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process, in violation of 8 C.F.R. § 1003.102(n); (4) failing to provide competent representation to a client, in violation of 8 C.F.R. § 1003.102(o); and (5) failing to act with due diligence and promptness in representing a client, in violation of 8 C.F.R. § 1003.102(q).

At a status conference on June 9, 2023, the parties agreed that the sole remaining issue concerned the appropriate sanctions to be imposed. Mr. Garcia also stated that he was willing to engage in settlement negotiations with the Government regarding sanctions. Disciplinary Counsels indicated that they too were willing to discuss potential settlement on sanctions, and Mr. Garcia confirmed his contact information for Disciplinary Counsels. A status conference was scheduled for August 9, 2023, with the AO noting that should the parties reach agreement before that time a joint motion could be filed to conserve time and resources.

On August 3, 2023, Disciplinary Counsels filed a Motion to Enter Order on Disciplinary Sanctions stating that they had reached out to Mr. Garcia on two separate occasions regarding Mr. Garcia's availability for a settlement conference and that Mr. Garcia had not responded to either request. Disciplinary Counsels requested that the AO proceed to enter sanctions in the form of a suspension of at least two years from practice.

At the status conference on August 9, 2023, Mr. Garcia was given the opportunity to reply and to address his lack of response to Disciplinary Counsels' communications. He indicated that he and his wife were having a hectic summer, as they were watching their 11-year-old grandson and had experienced a death in the family. Mr. Garcia did indicate that he was willing to agree to the proposed discipline of a two-year suspension from practice. At that point, though, Disciplinary Counsels indicated that they would no longer support to a two-year suspension and would seek a suspension of greater than two years given aggravating factors.

[1] The admitted and sustained misconduct in part concerns Mr. Garcia's practice of submitting bond redetermination requests presenting his daughter as a "bond sponsor" for disparate individuals without disclosing his relationship to her and while mischaracterizing the relationship between her and the detainees, as well as misrepresenting the addresses at which the detainees would reside if granted bond. Exh. 1, Counts 1-12. In other cases, Mr. Garcia presented various members of the Guallpa family as bond sponsors while using the same addresses, obfuscating the relationship between the bond sponsors and detainees, and making misleading statements. *Id.*, Counts 13-19. In three other cases, Mr. Garcia failed to appear for four scheduled hearings. *Id.*, Counts 20-22.

The parties agreed to file final briefs on sanctions and for the AO to issue a ruling on sanctions without any additional hearings. Mr. Garcia filed his final brief on September 25, 2023. In that filing, he states in part, "Each individual family and the detainee knew the names of their sponsors . . . and were aware of the risks involved with having a sponsor who may or may not know the detainee." Resp's Statement – Reply at 2. Mr. Garcia does not address or explain the considerable and repeated misrepresentations that he made in numerous bond proceedings before various immigration judges in this regard. Seeming to place blame on the detainees for any subsequent failures to appear, he adds, "As counsel for these individuals, I did my best to attempt to impress upon them the necessity of complying with the Judge's conditions of release." *Id.* at 3. Mr. Garcia does not address in his final brief his misconduct in failing to appear for scheduled immigration hearings,[2] nor does he address the appropriate sanctions for any of the sustained professional misconduct.

On September 28, 2023, Disciplinary Counsels filed a reply. Disciplinary Counsels note that, while the Government initially recommended a suspension of "at least" two years, they now believe a two-year suspension inadequate, in part due to Mr. Garcia's "repeated indifference to these proceedings and failure to take any real accountability for his actions or admit that his actions amounted to professional misconduct." Gov't's Reply to Resp's Statement Brief. Disciplinary Counsels seek Mr. Garcia's suspension from practice for longer than two years, but no longer than three, *see* Exh. 5 at 4, "to protect the public and immigration system from his ethical and moral failings." Gov't's Reply to Resp's Statement at 2.

Record of Disciplinary Proceedings

The following documentary evidence was admitted into the record and considered in these disciplinary proceedings: Exhibit 1, the Joint Notice of Intent to Discipline (NID); Exhibit 1A, the Government's Initial Evidentiary Exhibits (A-CC); Exhibit 2, the Respondent's Initial Response (filed on December 21, 2022); Exhibit 3, the Respondent's Response (filed on January 11, 2023); Exhibit 4, the Government's Motion to Deem Allegations Admitted; and Exhibit 5, the Government's Brief in Support of Disciplinary Sanctions. The AO has also reviewed and considered the final briefs submitted by Mr. Garcia and the Government, as well as statements made at the status hearings and surrounding events.

Analysis and Findings

Under the regulations governing professional conduct for practitioners before EOIR, 8 C.F.R. § 1003, subpart G, an adjudicating official or the BIA may impose sanctions against a practitioner where it is "in the public interest to do so." 8 C.F.R. § 1003.101(a); *see also* INA § 240(b)(6). The regulations specify that it will be in the public interest to do so "when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in § 1003.102." 8 C.F.R. § 1003.101(a).

Mr. Garcia has been found to have engaged in professional misconduct under 8 C.F.R. § 1003.102(c), 8 C.F.R. § 1003.102(l), 8 C.F.R. § 1003.102(n), 8 C.F.R. § 1003.102(o), and 8 C.F.R. § 1003.102(q). As the AO has found that grounds for disciplinary sanctions have been

[2] In his initial reply, he suggested that his failures to appear were due to technical issues or oversights, but all allegations of professional misconduct pertaining to those were deemed admitted and sustained.

established, the AO must determine the proper sanction. 8 C.F.R § 1003.106(b). An adjudicating official may impose sanctions of disbarment, suspension, public or private censure, or "[s]uch other disciplinary sanctions as the adjudicating official or the [BIA] deems appropriate." 8 C.F.R § 1003.101(a).

Disciplinary Counsels cite to the American Bar Association's Standards for Imposing Lawyer Sanctions (ABA Standards) as an appropriate guideline or framework for evaluating sanctions. Exh. 1 at 37. The ABA Standards are not binding here but do provide helpful instruction and guidance. *See Matter of Gupta*, 28 I&N Dec. 653, 657 (BIA 2022) ("While we are not bound by the ABA Standards, we find them persuasive on this issue."). The ABA Standards note, "After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose." ABA Standards, Std. 9.1. The ABA Standards further state that suspension may be appropriate under various circumstances, to include where a lawyer submits false or misleading statements or documents or withholds material information, *id.*, Std 6.12, where a lawyer knowingly violates a court order or rule, *id.*, Std. 6.22, and where a lawyer "knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system," *id.*, Std. 7.2, among other circumstances. Under Standard 2.3, where suspension is imposed, suspension should generally be "for a period of time equal to or greater than six months, but in no event should the time period prior to application for reinstatement be more than three years." *Id.*, Std 2.3.

Aggravating Factors. The ABA Standards list numerous, non-exclusive factors that may justify an increase in the degree of discipline to be imposed. *See* ABA Standards at 9.22 ("Aggravating factors include: (a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; (j) indifference to making restitution; (k) illegal conduct, including that involving the use of controlled substances.") The following aggravating factors mentioned in the ABA Standards appear pertinent in Mr. Garcia's case: (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; and (i) substantial experience in the practice of law.

Mr. Garcia's motive appears to some extent selfish, as he gained financially from representing the individuals, and dishonest, as he sought to deceive immigration courts into granting bond or setting bond at lower amounts than they might otherwise have done. Mr. Garcia has substantial experience practicing law, since 1981. As Disciplinary Counsels correctly observe, Mr. Garcia's "experience should have instilled in him the idea and knowledge that his actions were improper." Gov't's Br. in Support of Disciplinary Sanctions at 10.

In this case, the record includes evidence of extensive professional misconduct by Mr. Garcia over numerous years, to include a pattern of misrepresentations in connection with bond proceedings. Evidence shows that he presented his daughter as a bond sponsor in 12 separate

cases in 2016 and 2017. Exh. 1A at 1-376. In seven additional cases, heard in 2018 and 2019, he presented four members of the Guallpa family as bond sponsors. *Id.* at 377-686. In each of those 19 cases, he misrepresented the relationship between the bond sponsor and detainee in an attempt to secure bond for the clients. *See, e.g.*, *id.* at 9, 36 (signed "Affidavit of Support" by Melissa Raquel Garcia misrepresenting [redacted] as a "friend" even though [redacted] testified at a bond hearing that she did not know anyone by the name Melissa Garcia); *id.* at 54, 73 (signed "Affidavit of Support" by Melissa Raquel Garcia misrepresenting [redacted] as a "friend" even though [redacted] testified at her bond hearing that she had never met her and had spoken to her on the phone only one time); *id.* at 443, 459-60 (signed "Affidavit of Support" by Joel Guallpa misrepresenting [redacted] as a "friend" even though at the bond hearing [redacted] could not provide the name of his sponsor); and *id.* at 552, 569 (signed "Affidavit of Support" by Maria Eliana Guallpa misrepresenting [redacted] as a "friend" even though at the bond hearing [redacted] stated that she had never met her).

The bond-related misconduct by Mr. Garcia extended over an astonishing array of cases across the country. Mr. Garcia presented fraudulent bond sponsor affidavits to immigration courts in San Antonio, Texas; El Paso, Texas; Houston, Texas; Port Isabel, Texas; Oakdale, Louisiana; Tucson, Arizona; Florence, Arizona; Aurora, Colorado; and San Francisco, California. Exh. 1A. Moreover, as Disciplinary Counsels correctly note, the "scope of [Mr. Garcia's] misconduct is unknown due to its deceptive nature, and absent evidence to the contrary, may be ongoing." Gov't's Br. in Support of Disciplinary Sanctions at 4. Mr. Garcia took advantage of immigration judges' presumption of practitioners' good faith and of the high volume and size and extent of the immigration courts, in which his practices could evade detection. *Id.*

Mr. Garcia also engaged in professional misconduct when he failed to appear without sufficient cause for scheduled hearings on November 14, 2017, December 5, 2017, March 5, 2019, and April 22, 2019. The first two hearings were in the same matter. With respect to the November 14 hearing, he had filed a late request for a continuance of a master calendar hearing due to a conflict with an individual hearing in another immigration court but did advise the client to attend the master calendar hearing. The case was reset for December 5, but he was ordered to appear in person and then did not due to a conflict. Scheduling conflicts frequently occur in immigration court, and Mr. Garcia should have timely brought the conflict to the judge's attention or pursued other recourse rather than failing to appear. For the other two hearings, he had been granted permission to appear telephonically, but the judge's calls in those cases were not answered and went to voicemail. While these oversights and shortcomings are far less grave than the misrepresentations in the bond proceedings, they do demonstrate lack of diligence and could have been handled better. *See* Exh. 1 at 31-33 (NID outlining sequence of events in failures to appear); Exh. 3 at 3 (Response stating that Mr. Garcia "did not deliberately or intentionally avoid appearance at any scheduled hearings").

Mr. Garcia takes limited responsibility for his professional misconduct in connection with the bond proceedings and failures to appear. His initial response claims that he "represented the clients with what was available to them for their cases," without taking responsibility for his role in the production and presentation of fraudulent and misleading

sponsor affidavits. Exh. 3 at 2. His closing brief suggests that the detainees and their family members "were aware of the risks" and "knowingly accepted going through with the process," without acknowledging his own role or the extent of his misconduct. Resp's Statement – Brief at 2. With respect to his failures to appear, in his initial response he lays vague blame on technical difficulties or other errors. Exh. 3 at 3. The AO appreciates that, at the close of his initial reply, Mr. Garcia did state, "I render my full and unconditional apology to this institution and all personnel and agencies to which it relates." Exh. 3 at 19. Still, particularly with respect to the presentation of misleading sponsorship affidavits in bond proceedings, he does not take specific responsibility with respect to presenting falsely his daughter and members of the Guallpa family as friends of individuals they did not know or had never met.

Mr. Garcia's conduct took advantage of a vulnerable population. In at least one case, evidence shows that members of the Guallpa family extorted an individual for use of the address. Exh. 1A, Tab W. Several individuals granted bond did not appear for future immigration court hearings and were ordered removed in absentia. Given the misconduct in the handling of their cases, we simply cannot assume that it was in their best interest to fail to appear for their hearings after release on bond; some may have had viable claims of relief or an avenue for work authorization. Given the misrepresentations concerning where they would live, some may not have received notice of their next hearing and may not have known how to find out the date, time, and location of their next hearing.

Mitigating Factors. The ABA Standards provide mitigating factors that may justify a reduction in the degree of discipline. *See* ABA Standards 9.32 ("Mitigating factors include: (a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (g) character or reputation; (h) physical disability; (i) mental disability or chemical dependency including alcoholism or drug abuse when: (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability; (2) the chemical dependency or mental disability caused the misconduct; (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely; (j) delay in disciplinary proceedings; (k) imposition of other penalties or sanctions; (l) remorse; (m) remoteness of prior offenses." In this case, the following mitigating factors appear: (a) absence of a prior disciplinary record; (c) personal or emotional problems; and (g) character or reputation.

Mr. Garcia has no prior disciplinary record. He has been under some personal strain involving family matters, to include in recent years. Exh. 2. Mr. Garcia has engaged in commendable religious and volunteer work over many years and has dealt admirably with significant challenges throughout his life. *See generally* Exh. 3 at 3-18. Mr. Garcia did ultimately agree to accept the findings of professional misconduct and not to contest those allegations, saving the AO and Disciplinary Counsels significant time, which the AO appreciates very much.[3] The AO will take these mitigating factors into account.

[3] The AO wishes that Mr. Garcia had responded to Disciplinary Counsels' efforts to contact him regarding a

Appropriate Sanctions. In the NID, Disciplinary Counsels proposed that pursuant to the relevant ABA Standards, Mr. Garcia should be suspended from the practice of law in front of the BIA, the DHS, and the Immigration Courts for a minimum of two years, but no longer than three years. *See* Exhs. 1 and 5. Disciplinary Counsels now request that the suspension be for "more than two years" given Mr. Garcia's failure to grasp the severity of his misconduct, evidenced within these disciplinary proceedings. Gov't's Reply to Resp's Statement Brief. As noted, at the August 9, 2023, status conference, Mr. Garcia stated that he was willing to accept a two-year suspension from the practice of law before EOIR.

Suspension is warranted given the serious and ongoing nature of misrepresentations before the Immigration Courts, especially in the presentation of fraudulent bond sponsor affidavits in 19 custody hearings before various immigration judges in courts across the country. Suspension aligns with provisions in the ABA Standards stating that suspension may be appropriate where a lawyer submits false or misleading statements or documents or withholds material information, ABA Standards, Std 6.12, and where a lawyer "knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system," *id.*, Std. 7.2. In presenting the false bond sponsor affidavits and failing to disclose in some cases that his daughter was being put forth as a sponsor and "friend" of individuals, Mr. Garcia presented false and misleading documents and withheld material information. His conduct caused injury to the legal system and the public, particularly as judges were deceived and as some individuals were granted bond or a lower bond than they would have received had the system been permitted to function with integrity.

A significant term of suspension is warranted given the aggravating factors outlined above, particularly that the misconduct related to bond proceedings extended over several years and occurred in many cases before immigration courts across the country. That Mr. Garcia wanted to help non-U.S. citizens does not obviate his misconduct or excuse misrepresentations to the immigration courts and related professional misconduct. Still, Mr. Garcia does present evidence of civic and religious volunteer activity over many years, as well as considerable support and service to his family members. The mitigating factors here support a period of suspension below the three-year maximum suggested by the ABA Standards.

After considering the aggravating and mitigating factors, as well as the entire record, the AO concludes that Mr. Garcia should be suspended from the practice of law before the Immigration Courts, the BIA, and the DHS for a period of two years and four months.[4]

Order

Mr. Garcia engaged in professional misconduct under 8 C.F.R. § 1003.102(c), 8 C.F.R. §

potential settlement on sanctions, as that may have saved time devoted to evaluating sanctions. He did express at the last hearing that he would accept a suspension of two years, which the AO accepts as demonstrating some contrition.

[4] Should Mr. Garcia in the future seek to be reinstated to the practice of law before the Immigration Courts, the BIA, and the DHS, he must follow the procedures for reinstatement set out at 8 C.F.R. § 1003.107 at the appropriate time.

1003.102(l), 8 C.F.R. § 1003.102(n), 8 C.F.R. § 1003.102(o), and 8 C.F.R. § 1003.102(q). As such, he is subject to attorney discipline and the imposition of sanctions under 8 C.F.R. § 1003.101.

As discipline, Mr. Garcia is suspended from the practice of law before the Immigration Courts, the BIA, and the DHS for a period of two years and four months.

ELIZABETH KESSLER

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Date: 2023.10.26 15:42:23 -04'00'

Elizabeth A. Kessler
Adjudicating Official / Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT SERVED BY:
MAIL (M) PERSONAL SERVICE (P) **ELECTRONIC MAIL (E)**
TO: (x) RESPONDENT () RESPONDENT'S ATTORNEY (x) DHS (x) EOIR OGC
DATE: 10/26/23 BY COURT STAFF: CRB

United States Department of Justice
Executive Office for Immigration Review
Immigration Court

In the Matter of	:	**Attorney Discipline Proceedings**
Daniel G. Garcia	:	**Disciplinary Cases # D2018 – 0190, D2019-0052**
Respondent	:	

Charges:	8 C.F.R. § 1003.102(c), 8 C.F.R. § 1003.102(l), 8 C.F.R. § 1003.102(n), 8 C.F.R. § 1003.102(o), 8 C.F.R. § 1003.102(q)
Proposed Discipline:	Suspension from Practice before the Board of Immigration Appeals (BIA), the Immigration Courts, and the Department of Homeland Security (DHS) for a Period of Two Years
Issue:	Motion to Deem Allegations Admitted
Appearances:	the Respondent appeared pro se Paul Rodrigues and Diane Kier, Disciplinary Counsel, on behalf of the Executive Office for Immigration Review Toinette M. Mitchell, Disciplinary Counsel, on behalf of the Department of Homeland Security

Order of the Adjudicating Official on Government's Motion to Deem Allegations Admitted

On November 21, 2022, the Disciplinary Counsel of the Office of the General Counsel for the Executive Office for Immigration Review (Disciplinary Counsel) and Disciplinary Counsel for U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS) filed with the Board of Immigration Appeals (BIA) a Joint Notice of Intent to Discipline (NID) attorney Daniel Garcia. The NID alleges that Mr. Garcia engaged in professional misconduct under 8 C.F.R. § 1003.102(c), 8 C.F.R. § 1003.102(l), 8 C.F.R. § 1003.102(n), 8

C.F.R. § 1003.102(o), and 8 C.F.R. § 1003.102(q).

On January 11, 2023, Mr. Garcia filed a response.

On February 15, 2023, the BIA referred the matter to the Office of the Chief Immigration Judge (OCIJ) for the appointment of an adjudicating official.

On February 21, 2023, OCIJ appointed Immigration Judge Elizabeth A. Kessler to serve as the adjudicating official (AO) in this matter.

On May 11, 2023, the Government filed a Motion to Deem Allegations Admitted.

It is now June 7, 2023, and the Respondent has filed no reply to the Government's Motion.

Analysis and Findings

The following material has been received and reviewed: Exhibit 1, the Join Notice of Intent to Discipline (NID); Exhibit 1A, the Government's Initial Evidentiary Exhibits (A-CC); Exhibit 2, the Respondent's Initial Response (Filed on December 21, 2022); Exhibit 3, the Respondent's Response (Filed on January 11, 2023); and Exhibit 4, the Government's Motion to Deem Allegations Admitted and Attachment.

The NID sets forth 22 counts of alleged professional misconduct against Mr. Garcia in 22 immigration cases. Exh 1. Each of those 22 counts contains numbered factual allegations; a total of 252 paragraphs of numbered factual allegations appear in the NID. *Id.* The NID also contains professional misconduct charges numbered 253 to 261. *Id.* A substantial, 874-page evidentiary submission was filed in support of the NID. *See* Exh. 1A.[1]

The procedure for filing an "answer" to the NID, as well as the requirements for the contents of the answer, appear in 8 C.F.R. § 1003.105(c). The answer "shall contain a statement of facts which constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the Notice of Intent to Discipline." 8 C.F.R. § 1003.105(c)(2). Under 8 C.F.R. § 1003.105(c)(2), "[e]ach allegation in the Notice of Intent to Discipline which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced."

Mr. Garcia did not file any "answer," but did file an initial response on December 21, 2022, which was followed up by a second response on January 11, 2023. The Government now argues

[1] In brief, alleged misconduct in a series of counts concerns Mr. Garcia's practice of submitting bond redetermination requests presenting his daughter as a "bond sponsor" for disparate individuals without disclosing his relationship to her and while mischaracterizing the relationship between her and the detainees and misrepresenting the addresses at which the detainees would reside if granted bond. Exh. 1, Counts 1-12. In other cases, Mr. Garcia allegedly presented various members of the Guallpa family as "bond sponsors," while re-using the same addresses, obfuscating the relationship between the "bond sponsors" and detainees, and making misleading statements. *Id.*, Counts 13-19. In yet other cases, Mr. Garcia failed to appear for scheduled hearings without sufficient cause. *Id.*, Counts 20-22.

that, as neither filing by Mr. Garcia contains denials of any of the factual allegations or disciplinary charges, all allegations and charges should be deemed admitted and proved under the regulations.

The initial and subsequent responses filed by Mr. Garcia contain only brief, vague statements that he provided "what was available" to detainees for their cases, that these actions were "not intended to deceive," and that he did not "deliberately or intentionally avoid appearance at any scheduled hearings." Exh. 2 at 1-2; Exh. 3 at 2-3. Mr. Garcia devotes the majority of his main response to his background and experience, to include his involvement in church-related and other activities. Exh. 3 at 3-18. Neither document filed by Mr. Garcia specifically admits or denies any of the factual allegations or disciplinary charges. Even if his responses are construed as the "answer" to the NID, those documents contain no statements that specifically deny any of the factual allegations or contest the charges of professional misconduct. *See* 8 C.F.R. § 1003.105(c)(2). Mr. Garcia has even failed to reply to the Government's motion.

As Mr. Garcia has failed to deny any of the allegations in the NID, under 8 C.F.R. § 1003.105(c)(2), "[e]ach allegation . . . shall be deemed to be admitted" and will "be considered as proved." Based on this, all factual allegations and professional misconduct charges are deemed admitted and proven.[2] As such, Mr. Garcia is subject to discipline as charged in the NID under 8 C.F.R. § 1003.102(c), 8 C.F.R. § 1003.102(l), 8 C.F.R. § 1003.102(n), 8 C.F.R. § 1003.102(o), and 8 C.F.R. § 1003.102(q).

The sole remaining issue concerns the appropriate sanction(s) to be imposed.

Order

The Government's Motion to Deem Allegations Admitted is granted.

Mr. Garcia is subject to discipline under 8 C.F.R. § 1003.102(c), 8 C.F.R. § 1003.102(l), 8 C.F.R. § 1003.102(n), 8 C.F.R. § 1003.102(o), and 8 C.F.R. § 1003.102(q).

Further proceedings will cover only the appropriate sanction(s) to be imposed.

ELIZABETH KESSLER

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Date: 2023.06.07 14:42:43 -04'00'

Elizabeth A. Kessler
Adjudicating Official / Immigration Judge

[2] The detailed and well-supported factual allegations, deemed admitted and proven, amply support the disciplinary charges. Exh. 1; Exh 4.

File No. D2018-0190, D2019-0052

CERTIFICATE OF SERVICE

THIS DOCUMENT SERVED BY:
MAIL (M) PERSONAL SERVICE (P) **ELECTRONIC MAIL (E)**
TO: x( ) RESPONDENT () RESPONDENT'S ATTORNEY (x) DHS (x) EOIR OGC
DATE: ____6/8/2023________ BY COURT STAFF: ___CRB__________________

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of	)		
	)		
DANIEL G. GARCIA,	)	**Disciplinary Case Nos.**	**D2018-0190**
	)		**D2019-0052**
Respondent.	)		
	)		

JOINT NOTICE OF INTENT TO DISCIPLINE

Pursuant to the Rules and Procedures of Professional Conduct for Practitioners (Rules), found at 8 C.F.R. §§ 292.3(e)(1) and 1003.105(a), the Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) and the Department of Homeland Security (DHS) (hereinafter, the Government) jointly initiate disciplinary proceedings against the above-named practitioner. A preliminary inquiry revealed that sufficient evidence exists to warrant charging Respondent with professional misconduct. Because Respondent's conduct falls within the grounds for discipline set forth in 8 C.F.R. § 1003.102, the imposition of discipline on Respondent in the form of a minimum two-year suspension from practice before the Immigration Courts, the Board of Immigration Appeals (Board), and DHS is in the public interest.

Preliminary Inquiry Report

On or about July 31, 2017, the Government received a complaint from Immigration Judge Madeline Garcia that Respondent sought bond and custody redetermination in at least two cases in which he advanced a bond sponsor, Melissa Raquel Garcia, without disclosing that the sponsor was his daughter. In *Matter of* [redacted] (Count 1) and *Matter of* [redacted] (Count 2), Respondent provided sponsor affidavits in support of each bond request indicating that Ms. Garcia was a "friend" without providing any additional information about the alleged relationship. Attached to each bond request was a copy of Ms. Garcia's birth certificate, which listed Respondent's name as her father, but no attached document explicitly stated that Ms. Garcia was his daughter. In both Count 1 and Count 2, testimony disclosed that Ms. Garcia had no relationship with either [redacted] or [redacted]. [redacted] testified that she did not know Ms. Garcia or anyone by that name. [redacted] testified that she had not met Ms. Garcia and had only spoken with her on the phone one time.

On February 28, 2019, under case number D2018-0190, the Government initiated a preliminary inquiry based on the complaint, providing Respondent with a letter outlining the factual allegations and possible violations of the Rules of Professional Conduct. On or about April 30, 2019, Respondent submitted his written response to the allegations. In his response,

Respondent did not deny or challenge any of the factual allegations about his conduct as presented in the preliminary inquiry letter, although he generally claimed that his conduct was not professional misconduct. Respondent explained:

> The concept of having a "Texas Sponsor" for these Ecuadorians originated in the mind of a Pastor in New York, namely the late Pastor Walter Montalvo. Regrettably, since Pastor Walter Montalvo is now deceased the plan he had envisioned was not brought to fruition. Pastor Walter Montalvo being the visionary person that he was had a foresight of what we are experiencing this day with a great number of refugees entering our country. He indicated that something more needed to be done to help them, especially toward the Ecuadorian community. He reflected on the crisis created by the Cuban refugee Marielito experience which occurred in 1980. He reflected how churches in Texas rose to the occasion to provide housing and assistance to a great number of Cubans. He wanted to see some type of similar response to the Ecuadorian influx of refugees. Since Texas is a border State, Pastor Walter Montalvo envisioned establishing some network of sponsors for Ecuadorians' [sic] who entered as refugees and stated that "it has to start somewhere with someone, even if it is only one person." Pastor Walter Montalvo expressed that one failure to the immediate transition of Ecuadorian's [sic] to New York, for example, was that the Ecuadorians were not receiving or being provided contact with individuals outside their own "cultural" group and thus becoming stagnant in their development and well-being after arrival in the United States. He expressed that even a brief period of transition might open the possibilities to experience something different in a diverse environment that might serve as a catalyst to change their perception about themselves and their potential.
>
> Counsel for these Respondent's [sic] met with Pastor Walter Montalvo in New York while attending a matter in New York. It was then when Pastor Montalvo expressed a desire for someone reliable to become an initial sponsor for these Ecuadorians outside the New York area, namely Texas. He indicated that such environment should be safe for their initial introduction to the United States. Counsel in thinking of possibilities of providing such sponsorship suggested and turned to Melissa Raquel Garcia as a potential sponsor since she is a responsible adult with a house big enough to accommodate these recent arrivals during a period of transition. Melissa Raquel Garcia had served in [sic] tour in IRAQ in the Armed Forces and her experiences made her conscientious and willing to lend a hand to those less fortunate. Also, since Counsel had first-hand knowledge that such accommodations were a safe and secure place for these individuals, counsel felt very assured that these individuals would be provided for in the best way possible. The intent and purpose as expressed by Pastor Montalvo was to expose them to a culture that would help facilitate their introduction to the USA in an [sic] safe a [sic] secure environment that would perhaps go to their having a better understanding of the possibilities for advancing and not solely surviving in the

United States. The statement that the sponsor was a "friend" through a church contact was correct. No other relationship was proffered since no claim to being family to the Respondent was being made.

Respondent's response confirmed that he had knowingly and willfully engaged in the practice of submitting bond and custody redetermination requests with his daughter, Ms. Garcia, as the bond sponsor. Respondent's response misleadingly suggested he made a "statement that the sponsor was a 'friend' through a church contact." Respondent's bond and custody redeterminations requests in [REDACTED] and [REDACTED] cases did not disclose to the Court that the bond sponsor was his daughter or provide any specificity as to his daughter's alleged connection with [REDACTED] and [REDACTED]. Ms. Garcia's sponsor affidavit attached to the redetermination requests did not state that she was a friend through a church contact, the name of the church contact, or how the church contact knew [REDACTED] and [REDACTED]. Ms. Garcia's sponsor affidavit only described her as a "friend." Respondent's response also failed to address Ms. [REDACTED] and [REDACTED] testimony regarding their lack of knowledge about their bond sponsor, Ms. Garcia. Respondent's response made clear that he was engaged in a scheme to mislead and deceive the Court into considering false evidence—namely, that these non-citizens had a "friend" to provide them support and housing should they be released from detention—in determining whether [REDACTED] and [REDACTED] were flight risks for purposes of the bond and custody determination.

Based on the preliminary inquiry and Respondent's response, which indicated that the scheme was not isolated to the above cases, the Government conducted a further investigation to determine the scope of Respondent's misconduct. The Government discovered that Respondent advanced Ms. Garcia as the bond sponsor in ten additional cases in a six-month period between December 2016 and May 2017 (Counts 3 - 12). The Government also discovered that Respondent used another name and address repeatedly as the bond sponsor. In seven cases between June 2016 and June 2019 (Counts 13 - 19), Respondent presented a bond sponsor with the last name of Guallpa and one of two addresses: 63 Llewellyn Ave., West Orange, New Jersey 07052; or 57 Llewellyn Ave., West Orange, New Jersey 07052.

As in Counts 1 and 2, Respondent's bond and custody determination requests in these other 17 cases provided no information about the relationship between the sponsor and the non-citizens, other than to indicate on the sponsor affidavit that they are "friend[s]." Fundamentally, even if there was any relationship in fact, the information Respondent provided was inadequate to sufficiently advocate for his clients or to apprise the Court that his clients would not be a flight risk should they be released from custody. *See Matter of R-A-V-P-*, 27 I&N Dec. 803, 806 (BIA 2020) (finding that a bond sponsor statement from the non-citizen's "friend" that does not include any information on how he knows the non-citizen or the nature of their relationship was inadequate to demonstrate that non-citizen was not a flight risk). Respondent did not include any information regarding how the non-citizens knew their bond sponsors or the nature of their relationship. When questioned by various judges and DHS trial attorneys during the hearings about the nature of the relationships, Respondent asserted that the sponsor was a godparent

(Counts 16, 17 and 19), and the non-citizens claimed variously: friend who was met during missionary work in Ecuador in 2015 (Count 12); family friend met when she visited Brazil in 2001 (Count 4); wife's friend for 5 years (Count 6); family friend but had never spoken with her (Count 8); friend who he met in Mexico in 2014 and has had daily contact with since that time (Count 10); godfather (Count 16); met with a friend in Brazil 5 years earlier (Count 14); and brother's friend who she had never met (Count 17). If this information about the non-citizens' relationships to the sponsors was true, Respondent should have included this information in his requests and sponsor affidavits. The added information would have provided more competent advocacy for his clients while also providing the Court with specific and accurate information with which to make decisions regarding flight risk. However, the evidence demonstrates that Respondent did not disclose information about the nature of the relationship between his clients and the bond sponsors because there was no information to disclose. Respondent's clients and the bond sponsors did not have any relationship. Respondent's response to the Government's preliminary inquiry makes clear that he is perpetuating a dishonest scheme to get non-citizens released from custody on the basis of false or misleading evidence pertaining to their flight risk.

In furtherance of that scheme, Respondent has utilized Ms. Garcia, as a bond sponsor (Counts 1-12). He did not disclose to the Court that Ms. Garcia was his daughter, or that she had been offered as a bond sponsor for numerous other non-citizens. Equally telling, with the exception of one case, none of these non-citizens disclosed during questioning any additional connection to Ms. Garcia through Respondent or vice versa. This strongly suggests that Respondent is either not informing his clients of his relationship to Ms. Garcia or he is instructing his clients not to reveal this information.

Upon inquiry in court about the nature of the relationship between the non-citizens and Ms. Garcia, the Respondent and the non-citizens offered vague statements about the sponsor being a family friend (Counts 1, 2, 4, 6), even though they had not met with (Count 2) or spoken to her (Count 8). These vague statements were not included in the bond and custody determination requests or sponsor affidavits because they would have raised issues about the legitimacy of the relationships, as they did when they were offered in court. Respondent kept the information he offered to the Court limited and vague in the hope that bond would be granted without much inquiry. In two cases involving Ms. Garcia as the bond sponsor, he was successful and bond was granted and posted. But, in posting bond, Respondent's deception was revealed because the non-citizens reported a different address upon release, not Ms. Garcia's address (Counts 5 and 12). In addition, in one of these cases the non-citizen was later ordered removed in absentia (Count 5).

Respondent's scheme extended beyond using his daughter, Ms. Garcia, as a bond sponsor; Respondent also used the Guallpa family as bond sponsors (Counts 13-19). In seven cases, Respondent presented a member of the Guallpa family as a bond sponsor with one of two addresses (63 Llewellyn Ave., West Orange, New Jersey 07052 or 57 Llewellyn Ave., West Orange, New Jersey 07052). Respondent knew or should have known based on the repeated use of the Guallpa family name and the same addresses that the non-citizens did not have any meaningful connection to their bond sponsors.

Regardless of the named Guallpa family member or which of the two locations was used as the home address (63 Llewellyn Ave., West Orange, New Jersey 07052 or 57 Llewellyn Ave., West Orange, New Jersey 07052), the telephone number remained the same (973-568-5570). The majority of bond sponsor applications also included Letters of Employment from Jaime Lalvay, the purported owner of JP Construction Landscaping. The business address for JP Construction Landscaping was listed as 57 Llewellyn Ave., West Orange, New Jersey 07052, the same address that members of the Guallpa family reported as their home address (Count 14 and 16). The telephone number for Jaime Lalvay and JP Construction was listed as 973-568-5570, the same telephone number that Guallpa family members listed in a number of cases (Counts 13, 17 and 18).

Upon inquiry in court about the nature of the relationship between the non-citizen and the specified Guallpa family member, Respondent and the non-citizens offered vague statements about the sponsor being either: a godparent (Counts 16, 17, and 19); someone else's friend, though they did not even know the sponsor's name (Count 14); or someone who they had never met (Count 17). Similar to the cases involving Ms. Garcia, these vague statements were not included in the bond and custody determination requests or sponsor affidavits because they would have raised issues about the legitimacy of the relationships, as they did when they were offered in Court. Respondent kept the information he offered to the Court limited in the hope that bond would be granted without much inquiry. In one case, Respondent opted for a higher bond rather than provide any additional information about the relationship between the specified Guallpa family member and Respondent's client (Count 19).

As with the cases involving the Respondent's daughter Ms. Garcia, in some of the cases in which bond was granted and posted, the non-citizens reported different addresses upon their release even though the Guallpa family member swore in their affidavits that the non-citizen's residence would be their address if bond was granted (Counts 16 and 17). In other cases, the non-citizens who were granted and posted bond, reported their addresses as those associated with the Guallpa family. However, regardless of the address reported, the Government has found that in many of these cases where bond was granted and posted, the non-citizen was later ordered removed in absentia (Counts 14, 17, 18, and 19). In one bond case, an Immigration Judge was made aware of the pattern and observed that the validity of the non-citizen's proposed residence address was in question when that same address (63 Llewellyn Ave., West Orange, New Jersey 07052) had been used in several other non-citizens' bond proceedings in recent years and a number of those removal proceedings ended with in absentia orders of removal (Count 13). Additionally, in another case that the Government is aware of and will produce evidence of, a non-citizen asserted in a motion to reopen an in absentia order of removal that an address associated with the Guallpa family was only used for purposes of a mailing address. That non-citizen stated that he had to pay money to the Guallpa family to use that address, and that he did not receive notice of the hearing that resulted in the in absentia order of removal.

Respondent knew or should have known that these non-citizens had no meaningful relationship to either his daughter or the Guallpa family. Respondent kept the information he

offered to the Court limited and vague in the hope that bond would be granted without much inquiry. The Respondent's pattern of conduct in using Ms. Garcia (Counts 1-12) and the Guallpa family (Counts 13-19) demonstrates an intent to deceive and mislead Immigration Judges when assessing flight risk and determining bond. In particular, within certain cases, Respondent offered evidence about the addresses where non-citizens would reside if bond was granted and posted, which was false based on the addresses subsequently reported by the non-citizens upon their release (Count 5, 12, and 16). In other cases, Respondent made false statements to the Court in stating that the bond sponsors were friends or godparents of the non-citizens, when later testimony revealed that the non-citizen had never heard of their bond sponsor (Count 1), that the non-citizen did not know the name of the bond sponsor (Count 14), or that the non-citizen had never met or talked to their bond sponsor (Count 17).

On February 19, 2020, the Government initiated a separate inquiry under case number D2019-0052 based on complaints from Immigration Judges Margaret Burkhart and John Crews that Respondent, *inter alia*, failed to appear for scheduled hearings in *Matter of* [redacted] (Count 20), *Matter of* [redacted] (Count 21), and *Matter of* [redacted] (Count 22). On April 15, 2020, Respondent responded to the inquiry letter.

As to [redacted] (Count 20), Respondent did not dispute that he failed to appear at hearings on November 14, 2017, and December 5, 2017, but explained:

> As to the failure to appear, it was counsel's intent to appear at both proceedings. On November 17, 2020 [sic], undersigned counsel was required to be in El Paso, Texas as a result of a matter which appeared on the docket as a Master Calendar Setting and it turned out to be an Individual Merits hearing. This setting was not anticipated and required counsel's presence in person and not via telephone as anticipated. The explanation of Judge William Abbott was that it was on the docket for Master Calendar due to the necessity of an interpreter who was already scheduled. The hearing went forward and did not allow for counsel to prepare any motions in other cases, including this one requesting a continuance. The client was advised to appear regardless to avoid an in absentia order if he were not present. On December 4, 2017, undersigned counsel was in Nashville, Tennessee but due to my wife's illness after attending a conference flight plans were altered at the last minute it impossible [sic] to return to San Antonio timely as planned. This was to be a turnaround flight in time to attend proceedings. Again, this client was advised to appear in person to avoid any in absentia order or [sic] removal in his absence. Counsel's absence was neither intentional or in disregard of the Court's calendared event.

With regard to [redacted] case (Count 21), Respondent did not dispute that he failed to appear telephonically at the March 5, 2019 hearing. He appeared to blame his failure on another attorney, Pascual Madrigal, whose cases he had taken on:

> Undersigned counsel has always been ready and prepared anticipating calls from the courts since it is the most efficient way to conduct hearings which take less that [sic] a few minutes to dispose of the purpose of the hearing, which in this instance was getting an individual merits hearing set. Again, this matter was a case in which undersigned counsel was assisting Pascual Madrigal in view of his medical condition and issues with his license. It was anticipated Mr. Madrigal would take up the matter and finalize it, but his reinstatement never occurred. These proceedings, which Mr. Madrigal never took up again, sometimes did create conflicts of time which on occasion could not be averted, but at no time was undersigned counsel intentionally avoiding a call from the Court or failed to answer intentionally or in disregard of the Court's time.

Finally, Respondent acknowledged that he failed to appear telephonically for the April 22, 2019 hearing in [redacted] case (Count 22). He explained:

> On April 29, 2019, Counsel was ready anticipating the court's call, but the call never connected or came through as anticipated. It is uncertain as to why the call would have gone voice-mail [sic]. Counsel had specifically prepared for this proceeding in that he had filed Exhibits G-H with the Court on April 25, 2019 for the court's consideration. The missing of the call was in no way intentional, but it may have been due to other matters beyond undersigned counsel's control or a glitch in the telephone system. Counsel attempted a call to the court, regarding the anticipated call but was unable to get through. It is not in undersigned counsel's best interest to miss any calls from this Court especially since the travel time is over 10 hours round trip. Any missing of the call was accidental or for some reason beyond counsel's control and in no way intentional or a disregard of the Court's calendar or proceedings. Counsel respects the Court's time and the value of the telephonic appearances.

Respondent's response showed that he failed to appear for four scheduled hearings and that he did so without good cause. In [redacted] case (Count 20), Respondent failed to appear for the November 14, 2017 hearing at the San Antonio Immigration Court before Judge Burkhart without good cause. While Respondent did appear in another case at the El Paso Immigration Court before Judge Abbott on that date, Respondent had not entered his appearance in that case until about a week before and he had knowledge of the November 14, 2017 hearing in [redacted] case since approximately August 7, 2017. Respondent did not timely move for a continuance, seek to appear telephonically as the hearings were scheduled at non-conflicting times, or otherwise arrange for another practitioner to appear on his behalf for [redacted] November 14, 2017 hearing. Respondent failed to appear for the December 5, 2017 hearing in [redacted] case without good cause. Respondent's travel to Nashville and the illness of his wife do not excuse his absence. Travel issues for any reason (e.g. weather, illness, etc.) were foreseeable, and Respondent should have had arrangements in place for another practitioner to appear on his behalf for the December 5, 2017 hearing in the event of travel issues. Respondent failed to appear telephonically for the March 5, 2019 and April 22,

2019 hearings in [redacted] and [redacted] cases (Counts 21 and 22) without good cause. Telephonic appearances are granted at the discretion of immigration judges, and when granted, it is the obligation of the practitioner to be prepared to receive the Court's telephone call. Without evidence to the contrary, failure to answer the Court's call is the fault of the practitioner. Respondent's repeated failure to appear for these scheduled hearings without good cause demonstrated a lack of competence and diligence. A practitioner is neither competent nor diligent if they cannot perform the basic task of appearing for a scheduled hearing.

Based on the record and Respondent's responses to the preliminary inquiries as detailed above, sufficient prima facie evidence exists to warrant charging Respondent with professional misconduct under 8 C.F.R. § 1003.102. Respondent's bond and custody requests show a pattern and practice of conduct designed to mislead and defraud the immigration system. Moreover, contrary to his assertions, his failure to appear for scheduled hearings without adequate cause shows a clear disregard for the Court and its functioning. In total, Respondent's conduct is unprofessional, wastes valuable EOIR time and resources, and impairs the integrity of immigration proceedings. Respondent's responses make plain that Respondent does not understand that he has engaged in misconduct and that he will continue to engage in the misconduct in the future without discipline being imposed.

Factual Allegations

Count One

[redacted] - A[redacted]-973

1. On or about April 24, 2017, Respondent filed a request for a bond and custody redetermination hearing in [redacted] case.

2. Respondent provided exhibits in support of the request for bond and custody redetermination.

3. Exhibit A was an affidavit from the bond sponsor, Melissa Raquel Garcia. Ms. Garcia's affidavit indicated that [redacted] was a "friend," and that if released from custody, [redacted] would live with Ms. Garcia at 7254 Ruby Palm Pass, San Antonio, Texas 78218.

4. Ms. Garcia's affidavit did not provide any other information about her relationship with [redacted].

5. Exhibit B included a copy of Ms. Garcia's birth certificate, which identified her father as Daniel Garcia Garcia.

6. Respondent did not affirmatively disclose in the bond and custody request or the supporting exhibits that [redacted] sponsor, Ms. Garcia, was Respondent's

daughter.

7. On April 28, 2017, Respondent represented [redacted] at her scheduled bond and custody redetermination hearing.

8. During the hearing, Judge Garcia and the DHS trial attorney raised concerns about the lack of information in the request regarding [redacted] relationship with her sponsor, Ms. Garcia.

9. Respondent stated that Ms. Garcia was a family friend and that [redacted] did not have any other relatives in legal status.

10. Judge Garcia noted that Ms. Garcia's affidavit appeared to be a "form" affidavit and that it referred to [redacted] in the wrong gender. Judge Garcia stated that she was not inclined to grant bond because she did not understand the connection between [redacted] and Ms. Garcia.

11. Respondent withdrew the bond request.

12. Judge Garcia told Respondent that if he re-filed the request, the "sponsor needs to explain…in detail what is the connection between the two" because she had concerns about flight risk and whether [redacted] was being released to "traffickers or smugglers."

13. During the hearing, Respondent did not disclose to the Court that Ms. Garcia was his daughter.

14. [redacted], through new counsel, filed a request for bond and custody redetermination with a different bond sponsor. A custody redetermination hearing was scheduled for June 15, 2017.

15. At the June 15, 2017 hearing, upon inquiry about her prior sponsor, [redacted] testified that she did not know anyone with the name Melissa Garcia.

16. [redacted] stated that she did not authorize anyone to submit documentation for a bond request involving Melissa Garcia.

17. [redacted] indicated that she did not know whether Ms. Garcia was related to Respondent because she did not know anything about Respondent.

18. Judge Garcia noted for the record that based on the birth certificate provided with the Respondent's previous request for bond and custody redetermination, Ms. Garcia may be Respondent's daughter and that "raised all kind of red flags."

Count Two

[redacted] – A[redacted]569

19. On or about July 24, 2017, Respondent filed a request for a bond and custody redetermination hearing in [redacted] case.

20. Respondent provided exhibits in support of the request for bond and custody redetermination.

21. Exhibit A was an affidavit from the bond sponsor, Melissa Raquel Garcia. Ms. Garcia's affidavit indicated that [redacted] was a "friend," and that if released from custody, [redacted] would live with Ms. Garcia at 7254 Ruby Palm Pass, San Antonio, Texas 78218.

22. Ms. Garcia's affidavit did not provide any other information about her relationship with [redacted].

23. Exhibit B included a copy of Ms. Garcia's birth certificate, which identified her father as Daniel Garcia Garcia.

24. Respondent did not affirmatively disclose in the bond and custody request or the supporting exhibits that [redacted] sponsor, Ms. Garcia, was Respondent's daughter.

25. On July 25, 2017, Respondent appeared for the scheduled bond and custody redetermination hearing before Judge Garcia.

26. During the hearing, Judge Garcia questioned [redacted] about her relationship to Ms. Garcia. [redacted] testified that Ms. Garcia was her uncle's friend from church. [redacted] stated that her uncle lived in New York and that Ms. Garcia lived in San Antonio, Texas. She testified that she had not met Ms. Garcia and had only spoken with her one time.

27. [redacted] asserted that Ms. Garcia was unmarried with no children and that she lived in a three-bedroom house with one other person. [redacted] did not know the identity of the other person who lived with Ms. Garcia and was unable to identify Ms. Garcia's occupation.

28. Judge Garcia asked [redacted] if she had any other connection to Ms. Garcia, and [redacted] stated that Ms. Garcia had referred her to Respondent to serve as her attorney.

29. Judge Garcia denied bond, stating:

I'm denying your request for a bond determination. I have no information to show that you've even met the sponsor and I have no confidence whatsoever that you will not be placed in a position to where you will not be able to return to your Court hearing because of your living arrangements or lack thereof. I have no information to show me that your sponsor is gainfully employed other than a tax return. I have no idea what she does for work. What's more is that I have seen that this same sponsor has acted as a sponsor for several other people. That does not make sense that you're telling me that only two people live in her home. And to complicate matters worse, your sponsor is your attorney's daughter. And again, this is the same pattern I've seen in several cases where your attorney has had his daughter acting as a sponsor. All right? And so things just simply do not add up. None of this assures the Court that you will be able to appear at your future hearings. Furthermore, your explanation that the contact that you have with the sponsor is through your uncle also does not make sense. What you've told me is that they know each other through church but he lives in New York and she lives in Texas and that's simply -- and without a further explanation, which I've given you the opportunity to do so, that simply does not make sense. So ultimately, I'm also concerned for your own safety. If you are not in a stable living circumstance then you cannot possibly be concerned about coming to Court.

Count Three

[REDACTED] - A[REDACTED]-845

30. On or about December 28, 2016, Respondent filed a request for a bond and custody redetermination hearing in [REDACTED] case.

31. Respondent provided exhibits in support of the request for bond and custody redetermination.

32. Exhibit A was an affidavit from the bond sponsor, Melissa Raquel Garcia. Ms. Garcia's affidavit indicated that [REDACTED] was a "friend," and that if released from custody, [REDACTED] would live with Ms. Garcia at 7254 Ruby Palm Pass, San Antonio, Texas 78218.

33. Ms. Garcia's affidavit did not provide any other information about her relationship with [REDACTED].

34. Exhibit B included a copy of Ms. Garcia's birth certificate, which identified her father as Daniel Garcia Garcia.

35. Respondent did not affirmatively disclose in the bond and custody request or the supporting exhibits that [redacted] sponsor, Ms. Garcia, was Respondent's daughter.

36. On January 10, 2017, Immigration Judge John Duck denied bond.[1]

Count Four

[redacted] – A[redacted]318

37. On or about January 9, 2017, Respondent filed a request for a bond and custody redetermination hearing in [redacted] case.

38. Respondent provided exhibits in support of the request for bond and custody redetermination.

39. Exhibit A was an affidavit from the bond sponsor, Melissa Raquel Garcia. Ms. Garcia's affidavit indicated that [redacted] was a "friend," and that if released from custody, [redacted] would live with Ms. Garcia at 7254 Ruby Palm Pass, San Antonio, Texas 78218.

40. Ms. Garcia's affidavit did not provide any other information about her relationship with [redacted].

41. Exhibit B included a copy of Ms. Garcia's birth certificate, which identified her father as Daniel Garcia Garcia.

42. Respondent did not affirmatively disclose in the bond and custody request or the supporting exhibits tha[redacted] sponsor, Ms. Garcia, was his daughter.

43. On February 13, 2017, Respondent represented [redacted] at his scheduled bond and custody redetermination hearing before Immigration Judge Dean Tuckman.

44. During the hearing, Judge Tuckman questioned [redacted] about his relationship to Ms. Garcia. [redacted] stated that Ms. Garcia was a family friend that he had met in 2001, when Ms. Garcia vacationed in Brazil.

45. During the hearing, Respondent did not disclose to the Court that Ms. Garcia was his daughter.

46. Judge Tuckman denied bond after weighing all the evidence and determining that

[1] The bond hearing was not recorded.

would be a flight risk.

Count Five

– A 434

47. On or about January 9, 2017, Respondent filed a request for a bond and custody redetermination hearing in case.

48. Respondent provided exhibits in support of the request for bond and custody redetermination.

49. Exhibit A was an affidavit from the bond sponsor, Melissa Raquel Garcia. Ms. Garcia's affidavit indicated that was a "friend," and that if released from custody, would live with Ms. Garcia at 7254 Ruby Palm Pass, San Antonio, Texas 78218.

50. Ms. Garcia's affidavit did not provide any other information about her relationship with .

51. Exhibit B included a copy of Ms. Garcia's birth certificate, which identified her father as Daniel Garcia Garcia.

52. Respondent did not affirmatively disclose in the bond and custody request or the supporting exhibits that sponsor, Ms. Garcia, was his daughter.

53. On January 25, 2017, Immigration Judge William Abbott set bond at $7,500.[2]

54. On January 26, 2017, listed his address upon release from custody as 265 Riverview Avenue, North Arlington, New Jersey 07031-6547.

55. On March 14, 2022, failed to appear for his scheduled individual hearing. Immigration Judge Michael Straus ordered removed in absentia.

Count Six

– A 902

56. On or about February 9, 2017, Respondent filed a request for a bond and custody redetermination hearing in case.

57. Respondent provided exhibits in support of the request for bond custody redetermination.

[2] The bond hearing was not recorded.

58. Exhibit A was an affidavit from the bond sponsor Melissa Raquel Garcia. Ms. Garcia's affidavit indicated that [redacted] was a "friend," and that if released from custody, [redacted] would live with Ms. Garcia at 7254 Ruby Palm Pass, San Antonio, Texas 78218.

59. Ms. Garcia's affidavit did not provide any other information about her relationship with [redacted].

60. Exhibit B included a copy of Ms. Garcia's birth certificate, which identified her father as Daniel Garcia Garcia.

61. Respondent did not affirmatively disclose in the bond and custody request or the supporting exhibits that [redacted] sponsor, Ms. Garcia, was Respondent's daughter.

62. On March 10, 2017, Respondent represented [redacted] at his scheduled bond and custody redetermination hearing before Judge Tuckman.

63. During the hearing, Judge Tuckman questioned [redacted] about his relationship with Ms. Garcia. [redacted] indicated that Ms. Garcia and his wife have been friends for approximately five years. [redacted] testified that he had not had much contact with Ms. Garcia previously and that his wife had recently been in contact with Ms. Garcia often.

64. During the hearing, Respondent did not disclose to the Court that Ms. Garcia was his daughter.

65. Judge Tuckman denied bond after weighing all the evidence and determining that [redacted] would be a flight risk.

Count Seven

[redacted] - A[redacted]527

66. On or about February 27, 2017, Respondent filed a request for a bond and custody redetermination hearing in [redacted] case.

67. Respondent provided exhibits in support of the request for bond and custody redetermination.

68. Exhibit A was an affidavit from the bond sponsor, Melissa Raquel Garcia. Ms. Garcia's affidavit indicated that [redacted] was a "friend," and that if released from custody, [redacted] would live with Ms. Garcia at 7254 Ruby Palm Pass, San Antonio, Texas 78218.

69. Ms. Garcia's affidavit did not provide any other information about her relationship with [REDACTED].

70. Exhibit B included a copy of Ms. Garcia's birth certificate, which identified her father as Daniel Garcia Garcia.

71. Respondent did not affirmatively disclose in the bond and custody request or the supporting exhibits that [REDACTED] sponsor, Ms. Garcia, was Respondent's daughter.

72. On March 7, 2017, Judge Duck set bond at $13,000.[3]

Count Eight

[REDACTED] – A[REDACTED]800

73. On or about February 28, 2017, Respondent filed a request for a bond and custody redetermination hearing in [REDACTED] case.

74. Respondent provided documents in support of the request for bond and custody redetermination.

75. Exhibit A was an affidavit from the bond sponsor, Melissa Raquel Garcia. Ms. Garcia's affidavit indicated that [REDACTED] was a "friend," and that if released from custody, [REDACTED] would live with Ms. Garcia at 7254 Ruby Palm Pass, San Antonio, Texas 78218.

76. Ms. Garcia's affidavit did not provide any other information about her relationship with [REDACTED].

77. Exhibit B included a copy of Ms. Garcia's birth certificate, which identified her father as Daniel Garcia Garcia.

78. Respondent did not affirmatively indicate in the bond and custody request or the supporting exhibits that [REDACTED] sponsor, Ms. Garcia, was his daughter.

79. On April 6, 2017, Attorney Randy Ray appeared for the scheduled bond and custody redetermination hearing before Judge Tuckman on Respondent's behalf.

80. During the hearing, Judge Tuckman questioned [REDACTED] about his relationship with Ms. Garcia. [REDACTED] indicated that she was a family friend that he had known for about a year. He testified that he had not spoken with her.

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[3] The bond hearing was not recorded. After the bond hearing, [REDACTED] did not post bond.

81. Judge Tuckman denied bond after weighing all the evidence and determining that [redacted] would be a flight risk.

Count Nine

[redacted] - A[redacted]-639

82. On or about March 14, 2017, Respondent filed a request for a bond and custody redetermination hearing in [redacted] case.

83. Respondent provided exhibits in support of the request for a bond custody redetermination.

84. Exhibit A was an affidavit from the bond sponsor, Melissa Raquel Garcia. Ms. Garcia's affidavit indicated that [redacted] was a "friend," and that if released from custody, [redacted] would live with Ms. Garcia at 7254 Ruby Palm Pass, San Antonio, Texas 78218.

85. Ms. Garcia's affidavit did not provide any other information about her relationship with [redacted].

86. Exhibit B included a copy of Ms. Garcia's birth certificate, which identified her father as Daniel Garcia Garcia.

87. Respondent did not affirmatively disclose in the bond and custody request or the supporting exhibits that [redacted] sponsor, Ms. Garcia, was his daughter.

88. On March 21, 2017, Immigration Judge Agnelis Reese denied bond, finding [redacted] a flight risk.[4]

Count Ten

[redacted] – A[redacted]-225

89. On or about March 20, 2017, Respondent filed a request for a bond and custody redetermination hearing in [redacted] case.

90. Respondent provided exhibits in support of the request for bond and custody redetermination.

91. Exhibit A was an affidavit from the bond sponsor Melissa Raquel Garcia, who indicated that [redacted] was a "friend," and that if released from custody, [redacted] would live with Ms. Garcia at 7254 Ruby Palm Pass, San

[4] The bond hearing was not recorded.

Antonio, Texas 78218.

92. Ms. Garcia's affidavit did not provide any other information about her relationship with [redacted].

93. Exhibit B included a copy of Ms. Garcia's birth certificate, which identified her father as Daniel Garcia Garcia.

94. Exhibit C was an undated copy of Ms. Garcia's 2016 federal tax return, which indicated that she was "self-employed."

95. Respondent did not affirmatively disclose in the bond and custody request or the supporting exhibits that [redacted] sponsor, Ms. Garcia, was Respondent's daughter.

96. On March 23, 2017, Respondent appeared telephonically for the scheduled bond and custody redetermination hearing before Judge Reese.

97. During the hearing, Judge Reese questioned [redacted] about his relationship with his sponsor, Ms. Garcia. [redacted] testified that Ms. Garcia was a friend he met for the first time in December 2014, in Mexico City, while he was vacationing in Mexico from Guatemala. [redacted] testified that since December 2014, he had communicated with Ms. Garcia daily by phone, Facebook, text, and video chat.

98. Upon inquiry from Judge Reese about Ms. Garcia's occupation, [redacted] stated that she worked at McDonald's. [redacted] did not know how long Ms. Garcia had been working at McDonald's.

99. Judge Reese asked [redacted] if he knew Ms. Garcia's age, and he replied that she was 28-years-old. Judge Reese noted for the record that according to the exhibits provided to the Court, Ms. Garcia was 26-years-old.

100. [redacted] testified that in December 2016, he informed Ms. Garcia that he was coming to the United States and that she offered to have him stay with her. [redacted] claimed that his intent was to live with Ms. Garcia in San Antonio when he entered the United States.

101. Judge Reese noted that during an interview with an asylum officer in March 2017, [redacted] informed the officer that he would be living with an uncle in Chicago, and [redacted] confirmed that he made that statement. Judge Reese then asked whether his uncle was ever intended to be his bond sponsor, and [redacted] confirmed that he was not intended to be his bond sponsor.

102. Judge Reese attempted to call Ms. Garcia during the hearing to corroborate ██████ testimony. Ms. Garcia did not answer the phone.

103. During the hearing, Respondent did not disclose to the Court that Ms. Garcia was his daughter.

104. Judge Reese determined that if ██████ was released from custody, there would be little incentive for him to reappear before the Court, and accordingly denied the request for bond.

Count Eleven

██████ - A██████-222

105. On or about March 20, 2017, Respondent filed a request for a bond and custody redetermination hearing in ██████ case.

106. Respondent provided exhibits in support of the request for bond and custody redetermination.

107. Exhibit A was an affidavit from the bond sponsor, Melissa Raquel Garcia. Ms. Garcia's affidavit indicated that ██████ was a "friend," and that if released from custody, ██████ would live with Ms. Garcia at 7254 Ruby Palm Pass, San Antonio, Texas 78218.

108. Ms. Garcia's affidavit did not provide any other information about her relationship with ██████.

109. Exhibit B included a copy of Ms. Garcia's birth certificate, which identified her father as Daniel Garcia Garcia.

110. Respondent did not affirmatively disclose in the bond and custody request or the supporting exhibits that ██████ sponsor, Ms. Garcia, was his daughter.

111. On March 22, 2017, Judge Reese denied bond, finding ██████ to be a flight risk.[5]

Count Twelve

██████ – A██████-939

112. On or about May 2, 2017, Respondent filed a request for a bond and custody redetermination hearing in ██████ case.

[5] The bond hearing was not recorded.

113. Respondent provided exhibits in support of the request for bond and custody redetermination.

114. Exhibit A was an affidavit from the bond sponsor, Melissa Raquel Garcia. Ms. Garcia's affidavit stated that [redacted] was a "friend," and that if released from custody, [redacted] would live with Ms. Garcia at 7254 Ruby Palm Pass, San Antonio, Texas 78218.

115. Ms. Garcia's affidavit did not provide any other information about her relationship with [redacted].

116. Exhibit B included a copy of Ms. Garcia's birth certificate, which identified her father as Daniel Garcia Garcia.

117. Respondent did not affirmatively disclose in the bond and custody request or the supporting exhibits that [redacted] sponsor, Ms. Garcia, was Respondent's daughter.

118. On May 4, 2017, Attorney Marlene Gonzalez appeared for the scheduled bond and custody redetermination hearing before Judge Jacinto Palomino on Respondent's behalf.

119. Judge Palomino and the DHS trial attorney questioned [redacted] about his relationship to Ms. Garcia. [redacted] testified that Ms. Garcia was a friend he met in 2015, while she was doing missionary work in Ecuador.

120. Judge Palomino set bond at $10,000.

121. On May 9, 2017, [redacted] listed his address upon release from custody as 31 Singer Avenue, Apt. #1, Spring Valley, New York, 10977.

Count Thirteen

[redacted] - A[redacted]-673

122. On or about May 2, 2019, Respondent filed a request for a bond and custody redetermination hearing in [redacted] case.

123. Respondent provided exhibits in support of the request for bond and custody redetermination.

124. Exhibit A was an affidavit from the bond sponsor, Fabian Leonel Guallpa. Mr. Guallpa's affidavit indicated that [redacted] was a "friend," and that if released from custody, [redacted] would live with Mr. Guallpa at 63

Llewellyn Ave., Apt. 2, West Orange, New Jersey 07052. Mr. Guallpa listed his telephone number as 973-568-5570.

125. Mr. Guallpa's affidavit did not provide any other information about his relationship with [redacted].

126. Exhibit B was a copy of Mr. Guallpa's driver's license, social security card, and passport. Mr. Guallpa's driver's license, issued in 2017, listed his address as 63 Llewellyn Ave., Apt. 2, West Orange, New Jersey 07052.

127. Exhibit C was an undated letter from Jaime Lalvay, the owner of JP Construction Landscaping, which did not list a street address for the business, only the city, state, and zip code (West Orange, New Jersey 07052). The telephone number for the business was 973-568-5570. The letter indicated that Mr. Lalvay employed Mr. Guallpa as a construction helper.

128. Exhibit D was a copy of a bank account statement that was addressed to Mr. Guallpa at 63 Llewellyn Ave., Apt. 2, West Orange, New Jersey 07052.

129. On June 10, 2019, Respondent represented [redacted] at his scheduled bond and custody redetermination hearing before Immigration Judge John Davis.

130. At the hearing, the DHS trial attorney submitted evidence regarding Mr. Guallpa's residence (63 Llewellyn Ave., Apartment 2, West Orange, New Jersey 07052), showing that ten former detained non-citizens provided the same address upon release from detention between 2012 and 2018. Respondent represented two of the former detained non-citizens.

131. The evidence showed that in four of the ten cases the non-citizens were later ordered removed in absentia. The DHS trial attorney noted that in one of these four cases where the non-citizen was removed in absentia after release on bond, Respondent represented the non-citizen in bond and custody proceedings in 2016.[6]

132. Judge Davis found that [redacted] was a significant flight risk and that the bond of $73,500 initially set by DHS was appropriate.

133. On July 19, 2019, Judge Davis issued a Memorandum of Decision and Order of the Immigration Court after [redacted] appealed his decision. In his decision, Judge Davis stated that [redacted] "poses a potential flight risk." He found that the evidence in the record was unclear as to [redacted] relationship with Mr. Guallpa, noting there was no evidence that they had met in person or otherwise maintained consistent contact. Additionally, Judge Davis expressed "significant concern" that Mr. Guallpa's residence (63 Llewellyn Ave., Apartment 2, West Orange,

[6] The case referenced is Count 14 of this Notice of Intent to Discipline.

New Jersey 07052), based on DHS's evidence, had been used multiple times by former detained non-citizens who subsequently were ordered removed in absentia order.[7]

Count Fourteen

[redacted] - A[redacted]868

134. On or about June 13, 2016, Respondent filed a request for a bond and custody redetermination hearing in [redacted] case.

135. Respondent provided exhibits in support of the request for bond and custody redetermination.

136. Exhibit A was an affidavit from the bond sponsor, Joel Guallpa. Mr. Guallpa's affidavit indicated that [redacted] was a "friend," and that if released from custody, [redacted] would live with Mr. Guallpa at 63 Llewellyn Ave., Apt. 2, West Orange, New Jersey 07052.

137. Mr. Guallpa's affidavit did not provide any other information about his relationship with [redacted].

138. Exhibit B was a copy of Mr. Guallpa's New Jersey identification card, social security card, and passport. Mr. Guallpa's identification card, issued in 2012 and expired in March 2016, listed his address as 63 Llewellyn Ave., West Orange, New Jersey 07052.

139. Exhibit C was a "Letter of Employment," dated June 16, 2016, from Jaime Lalvay, the owner of JP General Construction, which listed the business address as 57 Llewellyn Ave., West Orange, New Jersey 07052. The letter indicated that Mr. Lalvay employed Mr. Guallpa as a general construction site helper.

140. Exhibit D was a copy of a bank account statement that was addressed to Mr. Guallpa at 63 Llewellyn Ave., West Orange, New Jersey 07052.

141. On July 11, 2016, Respondent represented [redacted] at his scheduled bond and custody redetermination hearing before Immigration Judge Bruce Taylor.

142. During the hearing, the DHS trial attorney asked [redacted] to provide the name of the bond sponsor, and [redacted] stated that the "papers are with the lawyer" and he could not name his bond sponsor. [redacted] testified that he met the bond sponsor in Brazil with a friend about five years earlier.

143. In argument, the DHS trial attorney stated:

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[7] [redacted] did not post bond.

I would note that in both Bond Exhibit 3 and Bond Exhibit 4 in his sworn statement and initial apprehension, he never claimed fear of being persecuted or being returned to the – his home country. And in that sworn statement, Your Honor, he stated that at page 3 of 3, that the purpose for him to come to the United States was to earn money. He wanted to stay for three years. And his true purpose why did he leave the country was to work, as noted in page 4 of Bond Exhibit 3. So with this information that he has applied for a visa and was denied, decided to come to the United States illegally and is going to an address in New Jersey to an individual that he says he met five years ago but has no independent recollection of the name, we do believe he's going to be such a significant flight risk that if you do set bond, you set one appropriately high enough so that the, the respondent will appear at all future hearings.

144. Judge Taylor set bond at $12,000, with the condition that [redacted] live in New Jersey at the address listed in his bond request.

145. On July 25, 2016, [redacted] listed his address upon his release from custody as 63 Llewellyn Ave., Apt 2, West Orange, New Jersey 07502.

146. On November 8, 2018, [redacted] failed to appear for his scheduled master calendar hearing. Immigration Judge Alberto Riefkohl ordered [redacted] removed in absentia.

Count Fifteen

[redacted], A[redacted]729

147. On or about March 19, 2018, Respondent filed a request for a bond and custody redetermination hearing in [redacted] case.

148. Respondent provided exhibits in support of the request for bond and custody redetermination.

149. Exhibit A was an affidavit from the bond sponsor, Maria Elena Guallpa. Ms. Guallpa's affidavit indicated that [redacted] was a "friend," and that if released from custody, would be living with Ms. Guallpa at 63 Llewellyn Ave., Apt. 1, West Orange, New Jersey 07052. Ms. Guallpa listed her telephone number as 973-568-5570.

150. Ms. Guallpa's affidavit referred to [redacted] by the incorrect gender pronoun.

151. Ms. Guallpa's affidavit did not provide any other information about her relationship with [redacted].

152. Exhibit B was a copy of Ms. Guallpa's probationary driver's license and social security card. Ms. Guallpa's probationary driver's license, issued in 2013 and expired in 2017, listed her address as 63 Llewellyn Ave., Apt. 1, West Orange, New Jersey 07052.

153. Exhibit C was Ms. Guallpa's earning statement from Village Super Market of New Jersey.

154. Exhibit D was a State Farm notice of automated payment, addressed to Ms. Guallpa at 63 Llewellyn Ave., Apt. 1, West Orange, New Jersey 07052.

155. On April 4, 2018, Judge Abbott set bond for $7,500.[8]

156. On April 10, 2018, [redacted] listed her address upon release from custody as 63 Llewellyn Ave., Apt. 1, West Orange, New Jersey 07052.[9]

Count Sixteen

[redacted] - A[redacted]613

157. On or about August 13, 2018, Respondent filed a request for a bond and custody redetermination hearing in [redacted] case.

158. Respondent provided exhibits in support of the request for bond and custody redetermination.

159. Exhibit A was an affidavit from the bond sponsor, Juan Antonio Guallpa. Mr. Guallpa's name is spelled incorrectly throughout the document, including on the signature line.

160. The affidavit indicated that [redacted] was a "friend," and that if released from custody, [redacted] would live with Mr. Guallpa at 57 Llewellyn Ave., West Orange, New Jersey 07052. Mr. Guallpa listed his telephone number as 973-568-5570.

161. Mr. Guallpa's affidavit did not provide any other information about his relationship with [redacted].

162. Mr. Guallpa's affidavit concluded by stating, above his signature:

> I, Affiant, Maria Eliana Guallpa, swear that I know the contents of this Affidavit and that the statements made herein are true and correct to the best of my ability.

163. Exhibit B was a copy of Mr. Guallpa's driver's license, social security card, and

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[8] The bond hearing was not recorded.

[9] As of the date of this filing, the case remains pending.

naturalization certificate. Mr. Guallpa's driver's license, issued in 2018, listed his address as 57 Llewellyn Ave., West Orange, New Jersey 07052. Mr. Guallpa's naturalization certificate, issued in 1996, listed his address as 63 Llewellyn Ave., West Orange, N.J.

164. Exhibit C was an undated "Letter of Employment" from Jaime Lalvay, the owner of JP General Construction, which listed the business address as 57 Llewellyn Ave., West Orange, New Jersey 07052. The letter indicated that Mr. Lalvay employed Mr. Guallpa as a general construction site helper.

165. Exhibit D was a copy of an account statement for a Home Depot credit card that was addressed to Mr. Guallpa at 57 Llewellyn Ave., West Orange, New Jersey 07052.

166. On August 15, 2018, Respondent represented [redacted] at her scheduled bond and custody redetermination hearing before Immigration Judge Rene Mateo.

167. During the hearing, [redacted] testified that Mr. Guallpa was her godfather and that she had seen him in February 2018 when he visited Ecuador. [redacted] testified that Mr. Guallpa was her father's cousin.

168. Judge Mateo set bond at $8,000.

169. On August 17, 2018, [redacted] listed her address upon her release from custody as 63 Llewellyn Ave., Apt. 2, West Orange, New Jersey.[10]

Count Seventeen

[redacted] - A[redacted]448

170. On or March 5, 2019, Respondent filed a request for a bond and custody redetermination hearing in [redacted] case.

171. Respondent provided exhibits in support of the request for bond and custody redetermination.

172. Exhibit A was an affidavit from the bond sponsor, Maria Eliana Guallpa. The sponsor affidavit indicated that [redacted] was a "friend," and that if released from custody, [redacted] would live with Ms. Guallpa at 63 Llewellyn Ave., Apt. 1, West Orange, New Jersey 07052. Ms. Guallpa listed her telephone number as 973-568-5570.

173. Ms. Guallpa's affidavit did not provide any other information about her relationship with [redacted].

[10] As of the date of this filing, the case remains pending.

174. Exhibit B was a copy of Ms. Guallpa's driver's license, social security card, and naturalization certificate. Ms. Guallpa's driver's license, issued in 2017, listed her address as 63 Llewellyn Ave., Apt. 1, West Orange, New Jersey 07052.

175. Exhibit C was an undated letter from Jaime Lalvay, the owner of JP Construction Landscaping, which did not list a street address for the business, only the city, state, and zip code (West Orange, New Jersey 07052). The telephone number for the business was 973-568-5570. The letter indicated that Mr. Lalvay employed Ms. Guallpa as a maintenance person.

176. Exhibit D was a notification from the New Jersey E-ZPass Service Center, dated January 25, 2019, addressed to Ms. Guallpa at 63 Llewellyn Ave., Apt. 1, West Orange, New Jersey 07052.

177. On March 13, 2019, Respondent represented [redacted] at her scheduled bond and custody redetermination hearing before Immigration Judge Joseph Park.

178. During the hearing, Judge Park asked Respondent about the relationship between [redacted] and Ms. Guallpa. Respondent stated that he "believe[d]" that Ms. Guallpa was [redacted] "godparent" and that "they have family contact back in Ecuador."

179. Respondent stated that it was his understanding that [redacted] had a U.S. citizen brother living in New Jersey.

180. Judge Park then questioned [redacted] about her relationship with Ms. Guallpa. [redacted] testified that she had never met Ms. Guallpa, and that Ms. Guallpa was her brother's friend.

181. [redacted] stated that her brother lived in New Jersey but could not provide the city. [redacted] stated that she last saw her brother five years prior in Ecuador. [redacted] stated that she did not know why her brother was not her sponsor or how he became a U.S. citizen.

182. After [redacted] testimony, Judge Park told Respondent:

> Mr. Garcia it doesn't appear that she knows anything about this woman that she'd be staying with and there's nothing in your submission about her brother. There's no U.S. naturalization certificate. There's no affidavit.
>
> . . . .

> And it doesn't sound like she's a godparent of hers in the slightest because she doesn't – yeah, it looks like it's a friend of her brothers.

183. Judge Park told Respondent that he could make a ruling on the bond or give Respondent time to get additional information about the brother.

184. Respondent asked Judge Park to take no action, and Judge Park withdrew the bond request so that Respondent could re-file it with additional information.

185. On or about April 3, 2019, Attorney Angela Wynn-Stewart entered her appearance and filed a motion for a bond and custody redetermination hearing. The motion for a bond and custody redetermination hearing stated that [redacted] if released, would reside with her "family friend," Juan Antonio Guallpa, at 57 Llewellyn Ave., West Orange, New Jersey 07052.

186. Attorney Wynn-Stewart provided exhibits in support of the motion for a bond and custody redetermination hearing.

187. Exhibit A1 was an affidavit from the bond sponsor, Juan Antonio Guallpa. Mr. Guallpa's affidavit indicated that [redacted] was a "friend of family," that if released from custody, he would provide moral and economic support to her and he would receive correspondence related to her immigration case at his address at 57 Llewellyn Ave., West Orange, New Jersey 07052. Mr. Guallpa listed his telephone number as 973-568-5570.

188. On April 17, 2019, Attorney Wynn-Stewart represented [redacted] at the scheduled bond and custody redetermination hearing before Judge Park.

189. At the outset of the hearing, Judge Park noted that the sponsor was now Juan Antonio Guallpa, and he asked Attorney Wynn-Stewart if Juan Guallpa was related to the prior sponsor, Maria Eliana Guallpa. Attorney Wynn-Stewart stated that she did not have the Respondent's prior bond submission. Judge Park noted that Mr. Guallpa and Ms. Guallpa lived in West Orange Avenue at different addresses on Llewellyn Avenue.

190. Judge Park asked [redacted] if she knew Mr. Guallpa, and [redacted] stated that she did not know him.

191. Judge Park asked [redacted] if her family knew Mr. Guallpa, and [redacted] stated that he was her brother's friend.

192. Judge Park stated:

> Okay. So last time the Court had concerns and I allowed the prior attorney to withdraw the bond request was because I did not feel good releasing her into custody of someone that she knew nothing about and that

couldn't have a connection to, and here she's again saying that -- it looks like the same family members actually that she -- would be a sponsor from the previous time, but what I asked for was information about her brother.

. . . .

And I don't have any information except for what the [ ] telling me, but none of the -- let's put it this way, none of these sponsors have been articulating exactly the relationship except the generalized family friend statement. So I'm deeply concerned that I do not want this woman to be a victim of trafficking, and I need some confirmation that she -- her brother is here in the United States and this unknown family friend is actually a concrete family friend, so I'll --

193. In response to Judge Park's comments, the DHS trial attorney stated:

Yes, Your Honor. Mr. Gualpa [sic], Juan Gualpa [sic], just like the last sponsor, Maria, are listed on multiple custody redetermination documents across several Immigration cases, and I'm not sure what the relationship between these sponsors and the respondent. She's a young 20-year-old female that recently came to the United States, and she traveled a young [sic] – she doesn't appear to know, so I think there's a lot of issues here.

194. Judge Park stated that he needed evidence about the brother's relationship with the Guallpas, and at Attorney Wynn-Stewart's request, Judge Park reset the case for April 25, 2019.

195. On April 19, 2019, Attorney Wynn-Stewart filed additional exhibits in support of the bond and custody redetermination request.

196. Exhibit A7 was a notarized letter from , brother, in which he stated that he met Mr. Guallpa as a friend and neighbor to his parents in Ecuador and that he has developed a friendship with him since moving to the United States.

197. On April 25, 2019, Attorney Wynn-Stewart represented at the scheduled bond and custody redetermination hearing before Judge Park.

198. Judge Park stated:

So, again, this case was continued in order for the Court to consider flight risk. That was the only issue. The Court was concerned about [ ] being possibly a victim of trafficking as the individual who

> was sponsoring her, it was unclear the relationship she had with the [ ]. I don't believe she knows them, but there was -- and the Court wanted to see information regarding her brother who had been the connective fiber between the sponsor and [ ]: Today submitted a letter from the brother and a birth certificate for both [herself] and the brother indicating that they are related. They are brother and sister.

Judge Park set bond at $5,000.

199. On April 29, 2019, listed her address upon release from custody as 57 Chestnut Street, West Orange, New Jersey 07052.

200. On August 6, 2020, Attorney Wynn-Stewart submitted a motion to withdraw, which Immigration Judge Leo Finston granted.

201. In her motion, Attorney Wynn Stewart stated that she had been unable to get in contact with since she was released from detention. Attorney Wynn-Stewart stated that she had contacted bond sponsor, Juan Antonio Guallpa, and that "he indicated that had moved away, he did not have contact information for her, and he has moved to a new address as well."

202. On February 17, 2022, did not appear for a master calendar hearing. Judge Finston ordered removed in absentia.

Count Eighteen

, A -817

203. On or about April 2, 2019, Respondent filed a request for a bond and custody redetermination hearing in case.

204. Respondent provided exhibits in support of the request for bond and custody redetermination.

205. Exhibit A was an affidavit from the bond sponsor, Fabian Leonel Guallpa. Mr. Guallpa's affidavit indicated that was a "friend," and that if released from custody, would live with Mr. Guallpa at 63 Llewellyn Ave., Apt. 2, West Orange, New Jersey 07052. Mr. Guallpa listed his telephone number as 973-568-5570.

206. Mr. Guallpa's affidavit did not provide any other information about his relationship with .

207. Exhibit B was a copy of Mr. Guallpa's driver's license, social security card, and passport. Mr. Guallpa's driver's license, issued in 2017, listed his address as 63 Llewellyn Ave., Apt. 2, West Orange, New Jersey 07052.

208. Exhibit C was an undated letter from [redacted], the owner of JP Construction Landscaping, which did not list a street address for the business, only the city, state, and zip code (West Orange, New Jersey 07052). The telephone number for the business was 973-578-5570. The letter indicated that [redacted] employed Mr. Guallpa as a construction helper.

209. Exhibit D was a Chase Bank insufficient funds notice, dated December 26, 2018, and addressed to Mr. Guallpa at 63 Llewellyn Ave., Apt. 2, West Orange, New Jersey 07052.

210. On April 29, 2019, Immigration Judge Steven Caley set bond for $5,000.[11]

211. On April 30, 2019, [redacted] listed her address upon release from custody as 63 Llewellyn Ave., Apt. 2, West Orange, New Jersey 07052.

212. On May 1, 2019, the Aurora Immigration Court, mailed a Notice of Hearing to [redacted] at her address listed at 63 Llewellyn Ave., Apt. 2, West Orange, New Jersey 07052.

213. On May 31, 2019, [redacted] failed to appear for her scheduled master calendar hearing. Judge Caley issued an order removing [redacted] in absentia.

Count Nineteen

[redacted] - A[redacted]810

214. On or about May 13, 2019, Respondent filed a request for a bond and custody redetermination hearing in [redacted] case.

215. Respondent provided exhibits in support of the request for bond and custody redetermination.

216. Exhibit A was an affidavit from the bond sponsor, Juan Antonio Guallpa. Mr. Guallpa's affidavit indicated that [redacted] was a "friend," and that if released from custody, [redacted] would live with Mr. Guallpa at 57 Llewellyn Ave., West Orange, New Jersey 07052. Mr. Guallpa listed his telephone number as 973-568-5570.

217. Mr. Guallpa's affidavit did not provide any other information about his relationship with [redacted].

[11] The bond hearing was not recorded.

218. Exhibit B was a copy of Mr. Guallpa's driver's license, social security card, and naturalization certificate. Mr. Guallpa's driver's license, issued in 2018, listed his address as 57 Llewellyn Ave., West Orange, New Jersey 07052. Mr. Guallpa's naturalization certificate, issued in 1996, listed his address as 63 Llewellyn Ave., West Orange, N.J.

219. Exhibit C was a 2018 federal tax return, dated February 14, 2019, which listed Mr. Guallpa's address as 57 Llewellyn Ave., West Orange, New Jersey 07052, and his occupation as "disabled."

220. Exhibit D was a water bill addressed to Mr. Guallpa at 57 Llewellyn Ave., West Orange, New Jersey 07052.

221. On June 18, 2019, Respondent represented [redacted] at his scheduled bond and custody redetermination hearing before Immigration Judge Frank Pimental.

222. During the hearing, Judge Pimental asked Respondent about the nature of the relationship between Juan Antonio Guallpa and [redacted]. Respondent stated that Mr. Guallpa was "like a godparent" to [redacted] and that they know each other from Ecuador.

223. Judge Pimental tried to ask [redacted] about his relationship with Mr. Guallpa, but he was unable to communicate with [redacted] because the appropriate interpreter was not available.

224. After considering the evidence and the DHS arguments, Judge Pimental stated:

> Well, Mr. Garcia, I'll, I'll put the ball in your court here. I – one of two options. As an – as, as things stand now, my bond would be $15,000 and that's because I just don't know, I don't know the relationship here. If that's not palatable, you can withdraw your bond request and try to beef up how they know each other.

225. Respondent accepted the $15,000 bond, and Judge Pimental set bond at $15,000.

226. On June 21, 2019, [redacted] listed his address upon his release from custody as 57 Llewellyn Ave., West Orange, New Jersey, 07052.

227. On July 14, 2022, the Newark Immigration Court, mailed a Notice of Hearing to [redacted] at his listed address at 57 Llewellyn Ave., West Orange, New Jersey 07052, scheduling a master calendar hearing for August 18, 2022.

228. On August 18, 2022, failed to appear for his scheduled master calendar hearing. Judge Finston ordered removed in absentia.

Count Twenty

– A -100

229. On or about May 12, 2017, Respondent filed his Notice of Entry of Appearance in case.

230. Following release from custody, his case was set for a master calendar hearing on August 8, 2017, before Immigration Judge Margaret Burkhart at the San Antonio Immigration Court.

231. On or about July 17, 2017, Respondent moved to continue that hearing due to a scheduling conflict, and on August 4, 2017, Judge Burkhart granted Respondent's motion and reset the matter for a master calendar hearing on November 14, 2017. The order and a notice of hearing was mailed to Respondent.

232. On or about November 9, 2017, Respondent filed a motion for substitution of counsel, together with a Notice of Entry of Appearance in *Matter of* , -860, stating that he had been retained as new counsel. The motion indicated that the next hearing was an individual hearing scheduled for November 14, 2017.

233. On or about November 13, 2017, Respondent filed a motion for continuance, claiming that he had a schedule conflict on November 14, 2017, due to an individual hearing at the El Paso Immigration Court in *Matter of* , A 860.

234. On November 14, 2017, appeared for the scheduled master calendar hearing, but Respondent did not appear.

235. Judge Burkhart asked about Respondent's whereabouts, and stated that Respondent was in El Paso, Texas for another hearing and that was to request a continuance.

236. Judge Burkhart reset the matter to December 5, 2017, and wrote on the notice of hearing that Respondent was required to appear and show cause for his absence.

237. On December 5, 2017, appeared for the scheduled hearing, but Respondent did not appear.

238. Judge Burkhart reset the matter to January 23, 2018, and wrote on the notice of hearing that Respondent was required to appear and show cause for his absence.

239. On January 23, 2018, Respondent appeared for the scheduled hearing with [REDACTED] [REDACTED].

240. When Judge Burkhart questioned Respondent about his failure to appear at the previous hearing, Respondent stated that he had another hearing in El Paso.

Count Twenty-One

[REDACTED] – A[REDACTED]610

241. On or about June 3, 2018, Respondent filed his Notice of Entry of Appearance in [REDACTED] case.

242. On December 10, 2018, Respondent appeared telephonically for [REDACTED] scheduled master calendar hearing.

243. Respondent indicated that [REDACTED] would be seeking cancellation of removal, and the Immigration Judge Delia Gonzalez set the matter for a master calendar hearing on March 5, 2019.

244. Judge Gonzalez informed Respondent that the hearing would be conducted before Immigration Judge John Crews at the Port Isabel Immigration Court if he wished to appear in person, but that Respondent had been granted the privilege to appear telephonically.

245. On March 5, 2019, Respondent did not appear in person for the scheduled master calendar hearing. Judge Crews attempted to contact Respondent by telephone at two numbers, but both calls went to voicemail.

246. Judge Crews left a voicemail indicating that Respondent would no longer be permitted to appear telephonically in the case. Judge Crews reset the case to a later date.

Count Twenty-Two

[REDACTED] – A[REDACTED]889

247. On or about March 31, 2019, Respondent filed his Notice of Appearance in the bond and custody proceedings in [REDACTED] case.

248. On April 5, 2019, Respondent filed a Request to Appear Telephonically at a Custody Redetermination Hearing.

249. On April 8, 2019, the Port Isabel Immigration Court mailed Respondent a Notice of

Custody Redetermination Hearing scheduling a hearing for April 11, 2019

250. On April 11, 2019, Respondent appeared telephonically for the scheduled bond and custody redetermination hearing in [REDACTED] case. Judge Crews informed Respondent that an interpreter was not available. Respondent declined to waive interpretation because [REDACTED] would need to testify in support of his case.

251. On April 11, 2019, the Port Isabel Immigration Court mailed Respondent a Notice of Custody Redetermination Hearing scheduling a hearing for April 22, 2019.

252. On April 22, 2019, Respondent did not appear telephonically for the scheduled bond and custody redetermination hearing. Judge Crews attempted to contact Respondent, but the call went to voicemail.

Disciplinary Charges

253. Based on the conduct alleged in Count 1 above, including but not limited to Respondent's representations to the Court that the bond sponsor was [REDACTED] friend when later testimony revealed that [REDACTED] did not know the bond sponsor, Respondent has engaged in the following misconduct:

   a. knowingly or with reckless disregard making a false statement of material fact or law, or willfully misleading, misinforming, threatening, or deceiving any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence, in violation of 8 C.F.R. § 1003.102(c);

   b. conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process, in violation of 8 C.F.R. § 1003.102(n); and

   c. failing to provide competent representation to [REDACTED] in violation of 8 C.F.R. § 1003.102(o).

254. Based on the conduct alleged in Count 5 above, including but not limited to Respondent's filing of a bond sponsor affidavit that indicated that [REDACTED] would reside with his bond sponsor at a particular address in Texas if bond was granted and posted and [REDACTED] subsequent report of an address in New Jersey upon his release, Respondent has engaged in the following misconduct:

   a. knowingly or with reckless disregard making a false statement of material fact or law, or willfully misleading, misinforming, threatening, or deceiving any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including

knowingly or with reckless disregard offering false evidence, in violation of 8 C.F.R. § 1003.102(c);

b. conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process, in violation of 8 C.F.R. § 1003.102(n); and

c. failing to provide competent representation to [redacted], in violation of 8 C.F.R. § 1003.102(o).

255. Based on the conduct alleged in Count 12 above, including but not limited to Respondent's filing of a bond sponsor affidavit that indicated that [redacted] would reside with his bond sponsor at a particular address in Texas if bond was granted and posted and [redacted] subsequent report of an address in New York upon his release, Respondent has engaged in the following misconduct:

a. knowingly or with reckless disregard making a false statement of material fact or law, or willfully misleading, misinforming, threatening, or deceiving any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence, in violation of 8 C.F.R. § 1003.102(c);

b. conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process, in violation of 8 C.F.R. § 1003.102(n); and

c. failing to provide competent representation to [redacted] in violation of 8 C.F.R. § 1003.102(o).

256. Based on the conduct alleged in Counts 1 through 12 above, including but not limited to Respondent's pattern and practice of advancing Melissa Raquel Garcia as a bond sponsor for detained non-citizens without disclosing to the Court that she was his daughter and had been proffered as a bond sponsor in other cases and when Respondent knew or should have known that the non-citizens did not have any connection to Ms. Garcia for purposes of the Court's determination regarding flight risk, Respondent has engaged in the following misconduct:

a. knowingly or with reckless disregard making a false statement of material fact or law, or willfully misleading, misinforming, threatening, or deceiving any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence, in violation of 8 C.F.R. § 1003.102(c);

b. conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process, in violation of 8 C.F.R. § 1003.102(n); and

c. failing to provide competent representation to the clients referenced in Counts 1 through 12, in violation of 8 C.F.R. § 1003.102(o).

257. Based on the conduct alleged in Count 14 above, including but not limited to Respondent's filing of a bond sponsor affidavit that indicated that the bond sponsor was [REDACTED] friend when later testimony revealed that [REDACTED] could not state the name of the bond sponsor, Respondent has engaged in the following misconduct:

a. knowingly or with reckless disregard making a false statement of material fact or law, or willfully misleading, misinforming, threatening, or deceiving any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence, in violation of 8 C.F.R. § 1003.102(c);

b. conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process, in violation of 8 C.F.R. § 1003.102(n); and

c. failing to provide competent representation to [REDACTED], in violation of 8 C.F.R. § 1003.102(o).

258. Based on the conduct alleged in Count 16 above, including but not limited to, Respondent's filing of a bond sponsor affidavit that indicated that [REDACTED] would reside with her bond sponsor at a particular address in New Jersey if bond was granted and posted and [REDACTED] subsequent report of a different address in New Jersey upon her release, Respondent has engaged in the following misconduct:

a. knowingly or with reckless disregard making a false statement of material fact or law, or willfully misleading, misinforming, threatening, or deceiving any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence, in violation of 8 C.F.R. § 1003.102(c);

b. conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process, in violation of 8 C.F.R. § 1003.102(n); and

c. failing to provide competent representation to [REDACTED], in violation of 8 C.F.R. § 1003.102(o).

259. Based on the conduct alleged in Count 17 above, including but not limited to

Respondent's representations to the Court that the bond sponsor was [redacted] friend and godparent when later testimony revealed that [redacted] had not met or talked to her bond sponsor, Respondent has engaged in the following misconduct:

a. knowingly or with reckless disregard making a false statement of material fact or law, or willfully misleading, misinforming, threatening, or deceiving any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence, in violation of 8 C.F.R. § 1003.102(c);

b. engaging in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process, in violation of 8 C.F.R. § 1003.102(n); and

c. failing to provide competent representation to [redacted], in violation of 8 C.F.R. § 1003.102(o).

260. Based on the conduct alleged in Counts 13 through 19 above, including but not limited to Respondent's pattern and practice of advancing a member of the Guallpa family as a bond sponsor for detained non-citizens with one of two addresses (63 Llewellyn Ave., West Orange, New Jersey 07052 or 57 Llewellyn Ave., West Orange, New Jersey 07052) without disclosing to the Court that these bond sponsors and addresses had been proffered in other cases and when Respondent knew or should have known that these non-citizens did not have any connection to the specified Guallpa family member for purposes of the Court's determination regarding flight risk, Respondent has engaged in the following misconduct:

a. knowingly or with reckless disregard making a false statement of material fact or law, or willfully misleading, misinforming, threatening, or deceiving any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence, in violation of 8 C.F.R. § 1003.102(c);

b. conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process, in violation of 8 C.F.R. § 1003.102(n); and

c. failing to provide competent representation to the clients referenced in Counts 13 through 19, in violation of 8 C.F.R. § 1003.102(o).

261. Based on the conduct alleged in Counts 20, 21, and 22 above, including but not limited to Respondent's failure to appear for scheduled immigration court hearings without good

cause on November 14, 2017, December 5, 2017, March 5, 2019, and April 22, 2019, Respondent has engaged in the following misconduct:

a. repeatedly failing to appear for scheduled hearings in a timely manner without good cause, in violation of 8 C.F.R. § 1003.102(l);

b. failing to provide competent representation to the clients referenced in Count 20 through 22, in violation of 8 C.F.R. § 1003.102(o); and

c. failing to act with reasonable diligence and promptness in representing the clients referenced in Counts 20 through 22, in violation of 8 C.F.R. § 1003.102(q).

Prior Discipline

Respondent has no prior discipline.

Proposed Discipline

The American Bar Association's Standards for Imposing Lawyer Sanctions (ABA Standards) provide nationwide guidelines for the imposition of discipline on attorneys who have been found to have committed professional misconduct. The Board has found that the ABA Standards are an appropriate guideline or framework to consider in imposing disciplinary sanctions. *Matter of Shah*, D2004-121 (BIA Nov. 25, 2008) at 3, available at https://www.justice.gov/eoir/profcond/FinalOrders/ShahAnil_FinalOrder.pdf.

Standards 4.4 (lack of diligence) 4.5, (lack of competence), 4.6 (lack of candor), 5.1 (failure to maintain personal integrity), 6.1 (false statements, fraud, and misrepresentation), and 6.2 (abuse of the legal process) are the most relevant ABA Standards applicable to this matter. Upon consideration of Standards 4.4, 4.5, 4.6, 5.1, and 6.1 and the appropriate aggravating and mitigating factors under Standard 9 (aggravating factors include: dishonest or selfish motive; pattern of misconduct; multiple offenses; refusal to acknowledge wrongful nature of conduct; vulnerability of victim; and substantial experience in the practice of law), the ABA Standards direct that Respondent be suspended from practice of law.

Therefore, the Government proposes that Respondent be suspended from practice before the DHS, the Board of Immigration Appeals (Board), and the Immigration Courts for a minimum of two (2) years.

Procedure for Filing Answer and Requesting Hearing

Answer: The Rules provide that Respondent shall file with the Board a written answer to the Notice of Intent to Discipline within 30 days of the date stated on the Proof of Service attached to this Notice. The instructions for filing pleadings and motions with the Board appear in Chapter 3 of the Board's *Practice Manual*, which can be accessed online at:

https://www.justice.gov/eoir/reference-materials/bia. The telephone number for the Board of Immigration Appeals is (703) 605-1007. The public window hours are 8:00 a.m. to 4:30 p.m.

Whether filing the answer through the U.S. Postal Service (i.e., priority mail, certified mail, registered mail, return receipt requested, but not "Express Mail") or overnight or express delivery (including U.S. Postal Service "Express Mail"), courier, hand delivery, or same day delivery, the answer must be sent to the Board at the following address:

ATTN: Attorney Discipline Coordinator
Board of Immigration Appeals
Clerk's Office
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

The Respondent must also serve a copy of the answer on the Government at the following addresses:

Toinette M. Mitchell
Disciplinary Counsel
U.S. Citizenship and Immigration Services
Department of Homeland Security
401 W Peachtree Street NW – Suite 1001
Atlanta, GA 30308
(470) 322-2526
DisciplinaryCounsel@uscis.dhs.gov

Paul A. Rodrigues
Disciplinary Counsel
U.S. Department of Justice
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
(571) 215-0928
EOIR.Attorney.Discipline@usdoj.gov

Contents of Answer: Respondent's answer shall contain a statement of facts that constitute the grounds of defense, and shall specifically admit or deny each allegation set forth above. Every allegation in the Notice of Intent to Discipline that is not denied in Respondent's answer shall be deemed admitted and may be considered as proved, without additional evidence. Respondent may state affirmatively special matters of defense and may submit supporting documents, including affidavits or statements, along with the answer. 8 C.F.R. § 1003.105(c). To learn more about the procedures in these proceedings, Respondent should review 8 C.F.R. §§ 1003.101-106.

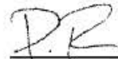
Request for Hearing: Respondent shall state in the answer whether Respondent requests a hearing in the matter. If no such request is made in the answer, the opportunity for a hearing will be deemed waived and the matter may be adjudicated by an Adjudicating Official without a full evidentiary hearing. 8 C.F.R. §§ 1003.105(c)(3), 1003.106(a)(2)(iii).

Right to Counsel: Respondent may be represented by counsel at no expense to the government. Counsel shall file an appropriate Notice of Entry of Appearance form. 8 C.F.R. § 1003.106(a)(2)(iii).

Motion to Extend Time to Answer: Respondent may request an extension of time to answer the Notice of Intent to Discipline for good cause only, upon motion to the Board. The Board must receive any such motion no later than three (3) working days before the time to answer has expired. Respondent shall serve any such motion on the Counsel for the Government at the addresses specified above. 8 C.F.R. § 1003.105(c)(1).

Respectfully submitted,

Dated: 11/21/22



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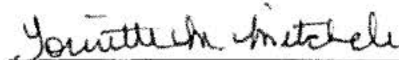

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing Joint Notice of Intent to Discipline, has been sent, on 11/21/22, by email and by certified mail (Article No. 7022 0410 0001 0789 2144) postage pre-paid to:

Daniel G. Garcia
PO Box 691407
San Antonio, Texas 78269-1407
lawdgg@gmail.com

This address is the above-named practitioner's last known address because:

☑ It is the address of record in EOIR's CASE management system for an immigration matter that is currently being adjudicated by EOIR.

☑ It is the address on record with the State Bar of Texas, a jurisdiction that licensed the practitioner to practice law.

Diane Kier
Diane Kier
Associate General Counsel

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INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

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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.