



FILED

May 17 2024

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

THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

**IN THE MATTER OF
JIMMY S. HALL,
STATE BAR CARD NO. 24057583**

§
§
§

CAUSE NO. 69471

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Jimmy S. Hall (hereinafter called "Respondent"), showing as follows:

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

2. Respondent is a member of the State Bar of Texas and is licensed but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Jimmy S. Hall, 800 N. Causeway Blvd., Ste. 100, Metairie, Louisiana 70001-5363.

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 filed with the Louisiana Attorney Disciplinary Board in Docket Number 22-DB-033 styled, *In re: Jim S. Hall*, consisting of: Formal Charges filed on July 15, 2022; Response to Formal Charges filed August 26, 2022; and Report of the Hearing Committee # 37 filed June 15, 2023 (Exhibit 1).

4. On or about July 15, 2022, a Report of Hearing Committee # 37 was filed with the Louisiana Attorney Disciplinary Board in a matter styled, *In re: Jim Hall*, Docket No. 22-DB-033, which states in pertinent part:

CONCLUSION

Based on the testimony presented and documentary evidence admitted, the Committee finds the Respondent's actions violated Rules 3.3(a)(1) and 3.3(a)(3) (candor toward the tribunal), Rules 8.4(c), and 8.4(d) (misconduct); and Rules 7.2(a)(2) and 7.2(c)(1)(I) (communications concerning a lawyer's services) and 7.7(c) (evaluation of advertisements) and recommends that Jim Hall be suspended for four months fully deferred.

The Committee also recommends that the Respondent be assessed with costs and expenses of the proceeding pursuant to Rule XIX, §10.1.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Mark Latham, to sign on their behalf.

5. On or about December 5, 2023, an Order Per Curium (Exhibit 2) was entered by the Supreme Court of Louisiana styled Supreme Court of Louisiana, No. 2023-B-0935, *In Re: Jim S. Hall*, Attorney Disciplinary Proceeding, which states in pertinent part:

DECREE

Upon review of the findings and recommendations of the hearing committee, and considering the record, it is ordered that Jim S. Hall, Louisiana Bar Roll number 21644, be and he hereby is suspended from the practice of law for a period of four months. This suspension shall be deferred in its entirety, with the condition that any misconduct during the deferral period may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

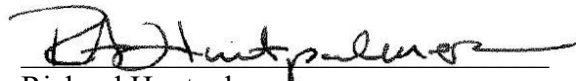
6. A copy of the set of documents filed with the Louisiana Attorney Disciplinary Board in Docket Number 22-DB-033 styled, *In re: Jim S. Hall*, consisting of: Formal Charges filed on July 15, 2022; Response to Formal Charges filed August 26, 2022; Report of the Hearing Committee # 37 filed June 15, 2023; and the Order/Per Curium are attached hereto as Petitioner's Exhibit 1 and Exhibit 2 and made a part hereof for all intents and purposes as if the same was copied verbatim herein. Petitioner expects to introduce a certified copy of Exhibit 1 and Exhibit 2 at the time of hearing of this cause.

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

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

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

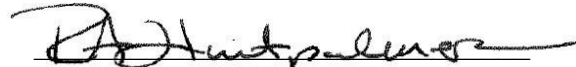

Richard Huntpalmer
Bar Card No. 24097857

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Jimmy S. Hall by personal service.

Jimmy S. Hall
800 N. Causeway Blvd., Ste. 100
Metairie, Louisiana 70001-5363


Richard Huntpalmer

**Duplicate
Original**

23 B

935

SUPREME COURT OF THE STATE OF LOUISIANA

FINDINGS AND RECOMMENDATIONS
OF THE
LOUISIANA ATTORNEY DISCIPLINARY BOARD

**IN RE: JIM S. HALL
(FORMAL CHARGES)**

CERTIFICATION

I certify that the record contained herein
is a complete copy of the Louisiana
Attorney Disciplinary Board vs.

JIM S. HALL

DOCKET NO.: 22-DB-033

This 7th day of **July, 2023.**

EXHIBIT

1

Amy D. Panepinto

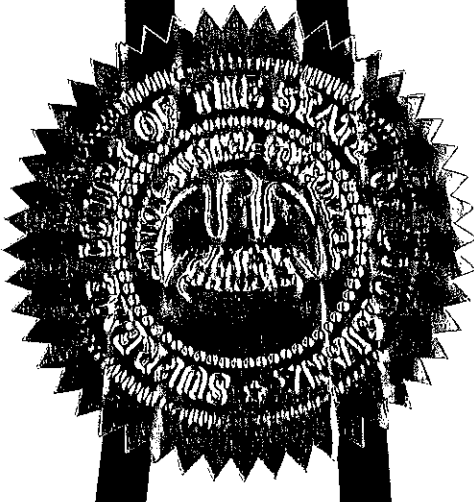
Amy D. Panepinto

Records Clerk

Louisiana Attorney Disciplinary Board

SUPREME COURT OF LOUISIANA
A TRUE COPY

Edwin C. Gonzales, Jr.
Edwin C. Gonzales, Jr.
Deputy Clerk of Court



SUPREME COURT
OF LOUISIANA

2023 JUL -7 AM 11:26

CLERK OF COURT

ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

LA. ATTORNEY DISCIPLINARY BOARD
JUL 15 2022 04:13:30

DOCKET NUMBER:

22-DB-033

IN RE: JIM S. HALL

(ODC 38752 and 38829)

LA. Attorney Disciplinary Board
E-Filed:

Date: 7/15/2022

Docket Clerk Int: [Signature]

FORMAL CHARGES

NOW INTO THIS PROCEEDING, through undersigned counsel, comes the Office of Disciplinary Counsel ("ODC") to charge that JIM S. HALL ("Respondent") is guilty of professional misconduct warranting the imposition of discipline for the reasons set forth below.

General Background

1.

Respondent is a Louisiana-licensed attorney born in 1952. Respondent was admitted to practice law in Louisiana on October 16, 1992 under Louisiana Bar Roll number 21644. Respondent currently is eligible to practice law in Louisiana.

2.

In compliance with Louisiana Supreme Court Rule XIX, Sections 3E(1) and 11B(3), the ODC obtained permission to file these formal charges ("Formal Charges"), thus establishing probable cause to believe that a violation or attempted violation of the Louisiana Rules of Professional Conduct ("Rules") has occurred or that there are grounds for lawyer discipline pursuant to Louisiana Supreme Court Rule XIX, Section 9.

Count One (ODC 38752)

3.

On August 28, 2020, the ODC received a complaint ("Complaint") from Blair Touchard ("Mr. Touchard") regarding Respondent. The Complaint was opened for investigation as ODC 0038752.

4.

In August 2019, Respondent hired Mr. Touchard and/or his company, TFX Web Net, LLC ("TFX"), to design and create an advertising campaign for Respondent's law firm.

5.

On September 12, 2019, Respondent authorized his law firm staff to send a letter under his signature which stated, in pertinent part: "This letter serves as notification that Jim S. Hall & Associates, LLC authorizes Blair Touchard of TFX web/net dba BLARE of Metairie, LA to plan and place media on our behalf. Jim S. Hall & Associates, LLC will be responsible for the payment of any approved programs that may be contracted on our behalf by Blair Touchard of TFX web/net dba BLARE."

6.

On October 2, 2019, Respondent's law firm issued a \$3,360.00 check to TFX as payment for services rendered.

7.

Starting in late October 2019, TFX sought payment from Respondent's law firm on an invoice for additional services rendered. When Respondent refused to pay that invoice, TFX filed suit against Respondent and his law firm in the matter of *TFX Web Net LLC v. Jim S. Hall &*

Associates, LLC and Jim Hall, No. 2020-11298, Div. "C", 22nd Judicial District Court, Parish of St. Tammany ("Litigation").

8.

On May 19, 2020, Respondent filed a Memorandum in Support of Exception of Improper Venue in the Litigation ("Memorandum") which represented, in pertinent part: "As further indicated by the affidavit, defendants were completely unaware of any involvement by plaintiff TFX Web Net LLC as their only dealings in this matter were with Blair Touchard D/B/A Blare." In the referenced May 14, 2020 affidavit ("Affidavit"), attached thereto as Exhibit A, Respondent further represented, in pertinent part: "Defendants were entirely unaware of the existence of plaintiff, TFX Web, LLC [sic]." Those representations by Respondent in the Litigation were false.

9.

On June 3, 2021, the ODC took Respondent's sworn statement. Therein, Respondent admitted that, at the time he signed and filed the Memorandum and the Affidavit (and contrary to the above-cited representations), he knew that his law firm (one of the sued defendants in the Litigation) previously had dealings with, and was aware of the existence of, TFX.

10.

At the conclusion of his sworn statement, the ODC urged Respondent to immediately correct the false statements contained in the Memorandum and the Affidavit. Respondent testified therein that he would do so. On June 10, 2021, Respondent sent the ODC a letter which further represented that he would "be filing into the court record shortly" those corrections. Respondent failed to do so. On April 8, 2022, more than ten (10) months later and only after additional inquiry by the ODC, Respondent belatedly did so.

11.

The ODC respectfully submits that there is clear and convincing evidence that, with regard to Count One (ODC 38752), Respondent has violated Rules 3.3(a)(1) and (3), as well as 8.4(c) and (d).

Count Two (ODC 38829)

12.

On October 12, 2020, Richard Lemmler ("Mr. Lemmler"), Ethics Counsel with the Louisiana State Bar Association ("LSBA"), provided the ODC with a video file for a television advertisement by Respondent. According to a check of the records kept by the LSBA, that advertisement was not filed with the LSBA prior to or concurrent with Respondent's first dissemination of the advertisement, as required by Rule 7.7(c), and had not been filed with the LSBA as a "late filing."

13.

A review of the advertisement confirms that it does not identify the city or town of a bona fide office location, as required by Rule 7.2(a)(2). The advertisement also includes a portrayal of clients and includes a scene depicting an accident, neither of which contains the required disclaimers. Finally, the advertisement utilizes a spokesperson without the appropriate disclaimer concerning it being a paid endorsement.

14.

Respondent confirmed that he did not pre-file the advertisement with the LSBA nor pay the LSBA the required filing fee, violating Rule 7.7(c). After receiving notice from the ODC, Respondent pulled the advertisement.

15.


The ODC respectfully submits that there is clear and convincing evidence that, with regard to Count Two (ODC 38829), Respondent has violated Rules 7.2(a)(2), 7.2(c)(1)(H), 7.2(c)(1)(I) and 7.7(c).

WHEREFORE, the ODC prays that Respondent, JIM S. HALL, Louisiana Bar Roll number 21644, be served with a copy of these Formal Charges and be cited to answer the same within the legal delays provided by Louisiana Supreme Court Rule XIX, Section 11E(3) and, after the lapse of all appropriate delays and due proceedings had, that there be a finding of professional misconduct as outlined above and that appropriate discipline be imposed with Respondent cast for all costs associated with this proceeding.

Respectfully submitted:

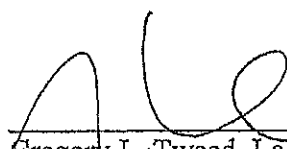
OFFICE OF DISCIPLINARY COUNSEL

July 15, 2022



Christopher D. Kiesel, La. Bar No. 26360
Deputy Disciplinary Counsel
4000 S. Sherwood Forest Blvd., Suite 607
Baton Rouge, LA 70816
Phone: (225) 293-3900
ckiesel@ladb.org

July 15, 2022



Gregory L. Tweed, La. Bar No. 23960
First Assistant Disciplinary Counsel
4000 S. Sherwood Forest Blvd., Suite 607
Baton Rouge, LA 70816
Phone: (225) 293-3900
gregoryt@ladb.org

Please serve Respondent at his
LSBA-registered primary/preferred
and secondary addresses, as well as
his LSBA-registered public/private
email address:

800 N. Causeway Blvd., Suite 100
Metairie, LA 70001

1139 Bonnabel Blvd.
Metairie, LA 70005

jodi@jimshall.com

APPENDIX OF ALLEGED RULE VIOLATIONS

Rule 3.3 Candor Toward the Tribunal

- (a) A lawyer shall not knowingly:
- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; [or]
* * * *
 - (3) offer evidence that the lawyer knows to be false. If a lawyer ... has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal....

Rule 7.2 Communications Concerning a Lawyer's Services

The following shall apply to any communication conveying information about a lawyer, a lawyer's services or a law firm's services:

- (a) Required Content of Advertisements and Unsolicited Written Communications
* * * *
- (2) *Location of Practice.* All advertisements and unsolicited written communications provided under these Rules shall disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised....
- (c) Prohibitions and General Rules Governing Content of Advertisements and Unsolicited Written Communications
- (1) *Statements About Legal Services.* A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services or the law firm's services. A communication violates this Rule if it:
* * * *
 - (H) contains a paid testimonial or endorsement, unless the fact of payment is disclosed; [or]
 - (I) includes (i) a portrayal of a client by a non-client without disclaimer of such, as required by Rule 7.2(c)(10); [or] (ii) the depiction of any events or scenes, other than still pictures, photographs or other static images, that are not actual or authentic without disclaimer of such, as required by Rule 7.2(c)(10)[.]

Rule 7.7 Evaluation of Advertisements

- (c) Regular Filings. Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) shall file a copy of each such advertisement or unsolicited written communication with the Committee for evaluation of compliance with these Rules. The copy shall be filed either prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication and shall be accompanied by the information and fee specified in subdivision (d) of this Rule....

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

* * * *

- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or]
- (d) Engage in conduct that is prejudicial to the administration of justice[.]

Original

SUPREME COURT OF LOUISIANA

Filed

Date: 08/26/2022

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By: Amy D. Panepinto

IN RE JIM. S. HALL

DOCKET NO. 22-DB-033

RESPONSE TO FORMAL CHARGES

Respondent Jim. S. Hall ("Mr. Hall") hereby responds as follows to the Formal Charges filed by the Office of Disciplinary Counsel ("ODC") on July 15, 2022 ("Formal Charges").

Count I

1. The Formal Charges allege that Mr. Hall violated Louisiana Rules of Professional Conduct 3.3(a)(1), 3.3(a)(3), 8.4(c), and 8.4(d) during the litigation involving Blair Touchard.

2. Respondent denies the charges as alleged by the Office of Disciplinary Counsel.

Count II

3. The formal charges allege that Mr. Hall violated Louisiana Rules of Professional Conduct 7.2(a)(2), 7.2(c)(1)(H), 7.2(c)(1)(I), and 7.7(c).

4. Respondent admits he violated the Louisiana Rules of Professional Conduct Rules 7.2(a)(2), Rule 7.2(c)(1)(I), and Rule 7.7(c). However, Respondent denies that he violated Rule 7.2(c)(1)(H).

5. Respondent denies all other allegations to the extent that he did not admit them above.

WHEREFORE, the respondent, Jim Hall, prays that this answer be deemed good and sufficient.

Respectfully submitted,



Dane S. Ciolino, La. Bar No. 19311
Clare S. Roubion, La. Bar. No. 36042
LOUISIANA LEGAL ETHICS, LLC
18 Farnham Place
Metairie, LA 70005
(504) 975-3263
dane@daneciolino.com
clareroubion@lalegaethics.com

Counsel for Respondent Jim Hall

CERTIFICATE OF SERVICE

I, Dane S. Ciolino or Clare S. Roubion, by signing above do certify that on Friday, August 26, 2022, I served a copy of the foregoing Response to Formal Charges by email on:

Christopher D. Kiesel
Deputy Disciplinary Counsel
Office of the Disciplinary Counsel
4000 S. Sherwood Forest Blvd., Ste. 607
Baton Rouge, LA 70816

ORIGINAL

FILED by: <i>Donna R. Burgess</i>
Docket#
22-DB-033
Filed-On
6/15/2023

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: JIM HALL

DOCKET NO. 22-DB-033

REPORT OF HEARING COMMITTEE # 37

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Jim S. Hall ("Respondent"), Louisiana Bar Roll Number 21644.¹ In Count One, the ODC alleges the Respondent violated Rules 3.3(a)(1), 3.3(a)(3), 8.4(c), and 8.4(d) of the Louisiana Rules of Professional Conduct ("Rules"). In Count Two, the ODC alleges the Respondent violated Rules 7.2(a)(2), 7.2(c)(1)(H), 7.2(c)(1)(I), and 7.7(c).²

PROCEDURAL HISTORY

The ODC filed formal charges on July 15, 2022. The Respondent filed an answer to the charges on August 16, 2022. At the January 23, 2023, hearing of this matter Deputy Disciplinary Counsel Christopher D. Kiesel and Gregory L. Tweed appeared on behalf of ODC. Respondent appeared with counsel, Dane S. Ciolino.

For the following reasons, the Committee finds that the Respondent violated Rules 3.3(a)(1) and 3.3(a)(3) (candor toward the tribunal), Rules 8.4(c), and 8.4(d) (misconduct); and Rules 7.2(a)(2) and 7.2(c)(1)(I) (communications concerning a lawyer's services) and 7.7(c) (evaluation of advertisements). The Committee finds that the Respondent did not violate Rule 7.2(c)(1)(H). As a

¹ - The Respondent was admitted to the practice of law in Louisiana on October 16, 1992, and is currently eligible to practice law.

² See the attached Appendix for the text of these Rules.

sanction, the Committee recommends that the Respondent be suspended for four months fully deferred.

FORMAL CHARGES

The formal charges are set forth below:

Count One (ODC 38752)

On August 28, 2020, the ODC received a complaint ("Complaint") from Blair Touchard ("Mr. Touchard") regarding Respondent. The Complaint was opened for investigation as ODC 0038752.

In August 2019, Respondent hired Mr. Touchard and/or his company, TFX Web Net, LLC ("TFX"), to design and create an advertising campaign for Respondent's law firm.

On September 12, 2019, Respondent authorized his law firm staff to send a letter under his signature which stated, in pertinent part: "This letter serves as notification that Jim S. Hall & Associates, LLC authorizes Blair Touchard of TFX web/net dba BLARE of Metairie, LA to plan and place media on our behalf. Jim S. Hall & Associates, LLC will be responsible for the payment of any approved programs that may be contracted on our behalf by Blair Touchard of TFX web/net dba BLARE."

On October 2, 2019, Respondent's law firm issued a \$3,360.00 check to TFX as payment for services rendered.

Starting in late October 2019, TFX sought payment from Respondent's law firm on an invoice for additional services rendered. When Respondent refused to pay that invoice, TFX filed suit against Respondent and his law firm in the matter of *TFX Web Net LLC v. Jim S. Hall & Associates, LLC and Jim Hall*, No. 2020-11298, Div. "C", 22nd Judicial District Court, Parish of St. Tammany ("Litigation").

On May 19, 2020, Respondent filed a Memorandum in Support of Exception of Improper Venue in the Litigation ("Memorandum") which represented, in pertinent part: "As further indicated by the affidavit, defendants were completely unaware of any involvement by plaintiff TFX Web Net LLC as their only dealings in this matter were with Blair Touchard D/B/A Blare." In the referenced May 14, 2020 affidavit ("Affidavit"), attached thereto as Exhibit A, Respondent further represented, in pertinent part: "Defendants were entirely unaware of the existence of plaintiff, TFX Web, LLC [sic]." Those representations by Respondent in the Litigation were false.

On June 3, 2021, the ODC took Respondent's sworn statement. Therein, Respondent admitted that, at the time he signed and filed the Memorandum and the Affidavit (and contrary to the above-cited representations), he knew that his law firm (one of the sued defendants in the Litigation) previously had dealings with, and was aware of the existence of, TFX.

At the conclusion of his sworn statement, the ODC urged Respondent to immediately correct the false statements contained in the Memorandum and the Affidavit. Respondent testified therein that he would do so. On June 10, 2021, Respondent sent the ODC a letter which further represented that he would "be filing into the court record shortly" those corrections. Respondent failed to do so. On April 8, 2022, more than ten (10) months later and only after additional inquiry by the ODC, Respondent belatedly did so.

The ODC respectfully submits that there is clear and convincing evidence that, with regard to Count One (ODC 38752), Respondent has violated Rules 3.3(a)(1) and (3), as well as 8.4(c) and (d).

Count Two (ODC 38829)

On October 12, 2020, Richard Lemmler ("Mr. Lemmler"), Ethics Counsel with the Louisiana State Bar Association ("LSBA"), provided the ODC with a video file for a television advertisement by Respondent. According to a check of the records kept by the LSBA, that advertisement was not filed with the LSBA prior to or concurrent with Respondent's first dissemination of the advertisement, as required by Rule 7.7(c), and had not been filed with the LSBA as a "late filing."

A review of the advertisement confirms that it does not identify the city or town of a bona fide office location, as required by Rule 7.2(a)(2). The advertisement also includes a portrayal of clients and includes a scene depicting an accident, neither of which contains the required disclaimers. Finally, the advertisement utilizes a spokesperson without the appropriate disclaimer concerning it being a paid endorsement.

Respondent confirmed that he did not pre-file the advertisement with the LSBA nor pay the LSBA the required filing fee, violating Rule 7.7(c). After receiving notice from the ODC, Respondent pulled the advertisement.

The ODC respectfully submits that there is clear and convincing evidence that, with regard to Count Two (ODC 38829), Respondent has violated Rules 7.2(a)(2), 7.2(c)(1)(H), 7.2(c)(1)(I) and 7.7(c).

ADMITTED EXHIBITS

The following exhibits were admitted at the January 22, 2023, hearing:

ODC-1 Respondent's current registration information with the LSBA

ODC-2	Count One Complaint, received on August 28, 2020
ODC-3	Respondent's faxed response, received on September 21, 2020
ODC-4	November 9, 2020, letter from ODC to Respondent with attachment
ODC-5	November 12, 2020, faxed letter from Respondent to ODC
ODC-6	Transcript of Respondent's June 3, 2021, sworn statement with exhibits
ODC-7	May 19, 2020, Memorandum in Support of Exception of Improper Venue
ODC-8	June 10, 2021, letter from Respondent to ODC with attachment
ODC-9	Docket report in the TFX Web Net LLC litigation
ODC-10	April 7, 2022, email exchange between ODC and Mr. Touchard with attachment
ODC-11	April 6 and 7, 2022, emails from ODC to Respondent
ODC-12	October 12, 2020, email from Richard P. Lemmler, Jr. to ODC
ODC-13	Television advertisement by Respondent, referenced as attached via Dropbox link in ODC-12
ODC-14	October 14, 2020, letter from ODC to Respondent
ODC-15	Respondent's faxed response, received on November 2, 2020
ODC-16	August 22, 2000, Order regarding Respondent's prior admonition
RES-01	Chantel Dakin Email String
RES-02	Wanda Capdeville Email String
RES-03	Email String from Complainant Counsel
RES-04	Letter template from Complainant

TESTIMONY

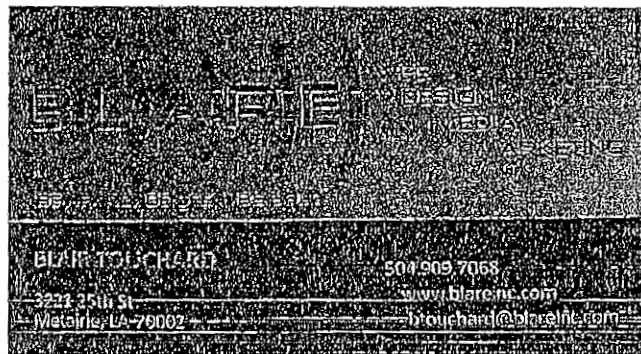
The following persons provided testimony during the formal hearing:

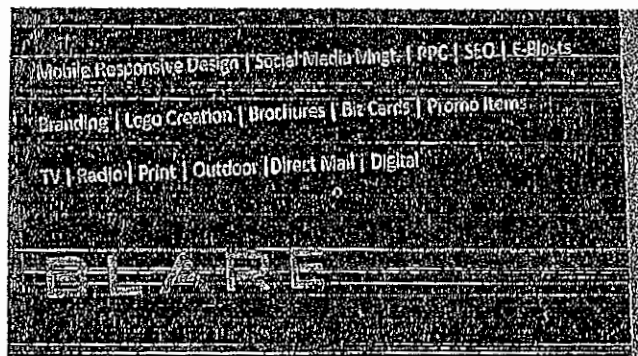
1. Jim S. Hall – Respondent
2. Patrick Blair Touchard – Complainant
3. Edward Rantz – Respondent's Character Witness
4. Hon. Daniel Knowles – Respondent's Character Witness
5. William Hall – Respondent's Character Witness

Jim S. Hall - Respondent

The facts that give rise to Count 1 surround certain representations the Respondent made in a memorandum in support of a venue exception and an affidavit executed by the Respondent to support those representations. The exception was filed in a civil suit brought by "TFX WEB/NET LLC" against the Respondent and his law firm, Jim S. Hall and Associates, LLC.

The Respondent has practiced as a single member LLC since 1992 handling primarily personal injury matters. In August 2019, he met with Blair Touchard, Complainant, who was recommended by a business acquaintance. The Respondent testified he ultimately hired Touchard to plan and place radio, TV, and billboard advertisements for his practice. This meeting occurred in Jefferson Parish. Both the Respondent and Touchard agree that there was no written contract that governed their agreement. At that initial meeting, Touchard provided the Respondent with his business card:





After being retained Touchard contacted the Respondent's office on September 12, 2019, and spoke with the Respondent's assistant staff because he needed a "To Whom it May Concern" letter from the Respondent authorizing him to place the advertisements. Touchard provided the template³ for the letter. The pertinent part of the template letter states:

This letter serves as notification that Jim S. Hall & Associates, LLC authorizes Blair Touchard of TFX web/net dba BLARE of Metairie, LA to plan and place media on our behalf.

The Respondent testified that his assistant simply cut and pasted the language from the template letter on his letterhead, signed his name for him with his permission as he was out of town, and sent the letter to Touchard. The Respondent did not see the template or the letter before it went out. He also pointed out that the template *provided by Touchard* does not contain the entity name "TFX Web/Net, LLC," the entity that sued the Respondent, but instead references "TFX web/net d/b/a Blare of Metairie." Touchard failed to identify that "TFX web/net" is a legal entity.

On October 2, 2019, the Respondent's bookkeeper received an invoice dated September 30, 2019, from Touchard on the letterhead depicted below:

³ RES. 4.

TFX web/net LLC
107 West Ruels Dr.
Mandeville, LA 70471
(504) 909-7068
btouchard@blareinc.com
www.blareinc.com



BILL TO
Jim Hall & Associates
800 N. Causeway Blvd.
Metairie, LA 70001

INVOICE # 26924
DATE 09/30/2019
DUE DATE 09/30/2019
TERMS Due on receipt

The bookkeeper called the Respondent, who was out of town and told him, "Blare sent an invoice. Do you want me to pay it?" The Respondent told her to pay it, but he did not review the invoice because he trusted Touchard. The Respondent admitted that on October 2, 2019, at Touchard's request, his bookkeeper paid the invoice by issuing a firm check to "TFX web/net, LLC."

As discussed in his sworn statement to the ODC,⁴ toward the end of October 2019, the Respondent discovered that Touchard was billing him for work that the Respondent believed was beyond the scope of work for which he had hired him. He believed that Touchard had overcharged him in the September 30, 2019, invoice and notified Touchard of this error, but he eventually told Touchard that the relationship was not working out and fired him on October 28, 2019. At that point Touchard sent the Respondent another invoice for work that the Respondent had not authorized him to perform.

As noted above, Touchard's LLC, "TFX WEB/NET LLC," sued the Respondent and his firm to recover money he believes the Respondent owes under their arrangement. The suit was filed in St. Tammany parish, the domicile of "TFX WEB/NET LLC." In response, the Respondent asserted a declinatory exception of improper venue -asserting that defendants must be served in

⁴ ODC -3.

the parish of their domicile, in this instance Jefferson or Orleans, and stating that "defendants were completely unaware of any involvement by plaintiff, TFX Web Net LLC, as their only dealings in this matter were with Blair Touchard D/B/A 'Blare.'" ⁵ The Respondent admitted that he became aware of the existence of TFX Web Net LLC in late October/early November 2019.

With respect to the affidavit and memorandum in support of the venue exception, the Respondent testified that he was trying to convey that he was unaware of the existence of TFX Web Net LLC during the time that Touchard was still engaged to perform work for the Respondent. He also asserts that the venue exception was based on La. Code Civ. P. Art. 42, which are the general rules of venue. The court denied the Respondent's venue exception.

During his sworn statement provided to the ODC, the Respondent agreed to file a corrected affidavit and memorandum in support of the venue exception. A week after he provided his statement, he sent ODC's counsel courtesy copies of the proposed revised affidavit and memorandum and suggesting to the ODC that the proposed documents "covers what [they] discussed" and asked the ODC to notify him if they did not, which is a customary practice between attorneys. The letter also noted that he would be filing the memorandum and revised affidavit "into the court record shortly." The ODC did not respond to the Respondent's letter for 10 months when it inquired if the documents had been filed. The Respondent testified he was waiting to hear back from the ODC whether the revised memorandum and affidavit were sufficient to satisfy the ODC, but he did not hear back right away. Once he learned that the ODC approved the revisions, he promptly filed them.

With respect to Count 2, the Respondent admitted that the subject advertisement did not contain the city of a bona fide office location, which violated Rule 7.2(a)2. He also admitted that

⁵ ODC-3.

the advertisement violated Rules 7.2(c)(1)(I) because it aired without the disclaimers that the couple sitting at the table were portrayals of clients and the accident scene was a depiction. Finally, he admitted that he did not submit the advertisement for review by the Louisiana State Bar Association in violation of Rule 7.7(c). The Respondent suggested that the appropriate sanction for these admitted violations is a public reprimand.

However, with respect to the alleged violation of Rule 7.2(c)(1)(H), the Respondent denied that the voiceover stating "Call Hall" in the advertisement required a disclaimer because the voiceover is not an endorsement. He explained that was an individual who just does voiceovers as opposed to a famous person whose voice would be recognize such that the voiceover would constitute an endorsement. He noted that no one who hears the voice over knows who the person is who is doing the voiceover. By way of example, the Respondent explained that if the voiceover is done by a celebrity with a recognizable voice (as determined by "common public knowledge"), such as Drew Brees, then the voiceover would be a "paid testimonial or endorsement" such that the disclaimer would be necessary.

The Respondent also testified that he had been using the same voiceover of "Call Hall" in ads since 2008 and had previously sent these ads to the LSBA and had never been advised that he needed the disclaimer.

Patrick Blair Touchard – Complainant

Touchard owns a full-service advertising digital media agency. His agency buys media for clients, creates work product for clients, develops websites and brands for clients. Touchard testified that the Respondent hired the agency to research the past agency that he had hired to do all his media buying, put together a marketing plan, create a budget, do creative, write scripts, and place advertisement for his firm. "TFX web/net LLC" is a Louisiana limited liability company that

he created in 1999 to use for banking and tax purposes. He is the sole member, manager, and agent of that company. Touchard testified that he uses the domain name "blareinc" even though there is no corporation known as Blare, Inc.

After a dispute developed between the Respondent and TFX web/net LLC, the latter sued the Respondent and his firm for unpaid invoices. The suit was filed in St. Tammany Parish in March 2020. Touchard's complaints arise from a memorandum in support of a venue exception and an affidavit in support of the exception filed by the Respondent on behalf of himself and his firm. Touchard alleged that the Respondent knowingly misrepresented facts in the affidavit and in the memorandum when he argued that venue was improper in St. Tammany Parish because "defendants were completely unaware of any involvement by plaintiff TFX Web/Net, LLC, as their only dealings in this matter were with Blair Touchard d/b/a Blare" and that all such dealings took place in Orleans or Jefferson Parishes.

Touchard believes the Respondent misrepresented facts based upon two earlier communications he had with the firm. First, confirmed in September 2019, Touchard asked the Respondent through his staff to prepare a letter of representation to Touchard authorizing TFX web/net to "plan and place" media on behalf of the firm. Touchard proposed the exact language for the letter and the firm staff member simply copied and pasted that language in the letter. Second, Touchard submitted his initial invoice for approximately two weeks of our initial work, and asked for and received a check from the firm made payable to TFX Web/Net.

Regarding the Respondent's affidavit, he submitted to the Court, Touchard explained why it formed the basis of his Complaint:

I mean, like I previously stated, I had to have a letter to submit to all of my media partners. It clearly stated all three: my personal name, my main company name, and my trade name in that. And I was just like, I can't -- plus I got paid to TFX

Web/Net, so how was this even happening? How can you make that statement?
It made no sense to me.

Touchard filed an opposition to the Respondent's Exception of Improper Venue that he personally took time out of his schedule to prepare since he was proceeding pro se at that point.⁶ He also incurred costs in filing the opposition. The ODC did not present any evidence as to how much time Touchard spent preparing the opposition or what it cost him to file the opposition. Additionally, the ODC did not introduce a copy of the opposition memorandum to the Committee for review.

Upon cross-examination, Touchard admitted that the Court denied his request that the Respondent be sanctioned in the lawsuit. He also conceded that he when is out doing business, he does it as B-L-A-R-E, that he does not use TFX on his main social media page, that his business card does not use the TFX name, and that his email signature line does not mention TFX because he wants to appear to the world to do business as "Blare."

Touchard denied that he filed the disciplinary complaint to help get the lawsuit resolved. But he filed the complaint because he "thought it was the right thing to do." But he then noted that he "could not believe this was happening, that someone would say that never was my business, and I was trying to get paid." He also testified that he was unaware that his lawyer sent a copy of the complaint to the Respondent with the message that the complaint "confirms [the Respondent] owes [his client] money" urging him to re-consider Touchard's settlement offer. But when confronted with the fact that he was copied on the email, Touchard simply said "I don't know."

Edward Rantz – Respondent's Character Witness

Mr. Rantz is a retired attorney. After serving 27 years in the New Orleans Police Department, he went to law school and practiced for the last 24 years. He has known the

⁶ In late 2022, Touchard retained counsel for his suit against the Respondent and his firm.

Respondent since they both joined the police department, went to the police academy together, and served as partners on the force. Mr. Rantz testified that he has never known the Respondent to make false statements to a court and has never heard rumors of the Respondent being untruthful in court.

On cross-examination he agreed that it is important that an attorney's representations to a court be truthful and accurate. He also agreed that if an attorney tells you and represents to you that he is going to do something, that he would expect that attorney to do that thing.

Hon. Daniel Knowles – Respondent's Character Witness

Judge Knowles is a former practicing attorney and federal magistrate judge. He currently serves as a mediator. He and the Respondent taught trial advocacy together at LSU. He did not have any cases with the Respondent when they were both in private practice. After he took the bench, the Respondent had several matters before Judge Knowles. Since he became a mediator, he has mediated several mediations with the Respondent. Judge Knowles testified that he has not known the Respondent to make false statements to courts and that he has never heard any lawyer say anything bad about the Respondent in that regard.

On cross-examination, Judge Knowles agreed that it is important that attorney's representations to a court be truthful and accurate and that if an attorney had made a misrepresentation in his court, he would you have expected that attorney to timely correct that misrepresentation.

William Hall – Respondent's Character Witness

Mr. Hall⁷ has been an attorney since 1973, first as an Assistant District Attorney in Jefferson Parish and later in private practice. He also served on the Attorney Disciplinary Board

⁷ Mr. Hall is not related to the Respondent.

for approximately four years and on the Judiciary Commission for four years. Mr. Hall met the Respondent when the Respondent was a police officer on a legal matter and later would run into him when they were both in private practice. He has never known the Respondent to make false statements to a court and has never heard any reputation about him lying to judges.

On cross-examination, Mr. Hall agreed that it is important that if an attorney represented to him that they are going to take a specific action in a litigation matter, he would expect that attorney to follow through with that representation.

FINDINGS OF FACT

The Committee makes the following Findings of Fact:

1. The above discussion of the testimony and exhibits establishes that the Respondent and Touchard reached an oral agreement whereby Touchard was going to provide services to the Respondent's law firm.
2. The above discussion of the testimony and exhibits establishes that Touchard requested a member of the Respondent's law firm's staff to issue a letter stating that the law firm was authorizing "Blair Touchard of TFX web/net dba BLARE of Metairie, LA" to plan and place media on behalf of the law firm. The law firm staff member issued the letter under the Respondent's signature, but the Respondent did not review the letter.
3. The above discussion of the testimony and exhibits establishes that Touchard requested a member of the Respondent's law firm's staff to issue a check for payment of Touchard's first invoice to TFX web/net LLC and the law firm issued the check to TFX web/net LLC.
4. The above discussion of the testimony and exhibits establishes that the Respondent admitted that he became aware of the existence of TFX Web Net LLC in late October/early November 2019.

5. The above discussion of the testimony and exhibits establishes that the ODC proved by clear and convincing evidence that the Respondent knowingly submitted an affidavit and memorandum in support of the exception of improper venue that contained facts that the Respondent knew were false.
6. The above discussion of the testimony and exhibits establishes that the Respondent agreed to correct the false facts with the Court and timely submitted a corrected pleading to the ODC for review prior to filing it. The ODC did not prove by clear and convincing evidence that the Respondent violated any rules of professional conduct by waiting to hear back from the ODC regarding the revised memorandum and affidavit.
7. The above discussion of the testimony and exhibits establishes that the Respondent disseminated a television advertisement that was not pre-filed with the LSBA and did not pay the LSBA the required filing fee, did not contain the location of his practice, and did not include proper disclosures related to the portrayal of clients and scenes depicting an accident.
8. The above discussion of the testimony and exhibits establishes that the ODC did not prove by clear and convincing evidence that the voice-over by the announcer in the Respondent's television advertisement shouting "Call Hall" was a paid testimonial or a paid endorsement.

RULES VIOLATED

The Committee concludes that the Respondent violated the following:

Count One -- Rules 3.3(a)(1), 3.3(a)(3); 8.4(c) and 8.4(d)

Count Two -- Rules 7.2(a)(2), 7.2(c)(1)(I), and 7.7(c)

SANCTION

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

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

The Respondent violated duties owed to the legal system and the legal profession. His filing of the exception of improper venue and supporting the exception with the false affidavit caused some degree of hardship to Touchard who had to oppose the exception. His failure to provide the advertisement to the LSBA potentially caused harm to the extent it misled the public since it did not disclose the location of his practice and did not include proper disclosures related to the portrayal of clients and scenes depicting an accident.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension is the baseline sanction for the Respondent's misconduct. ABA Standard 6.12 provides: "Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding."

The Committee concludes that the following aggravating factors, as set forth in Standard 9.22 of the *ABA Standards*, are present as to the Respondent:

1. prior disciplinary offense;⁸
2. dishonest or selfish motive;
3. multiple offenses; and
4. substantial experience in the practice of law (admitted 1992).

The Committee concludes that following mitigating factors, as set forth in Standard 9.32 of the *ABA Standards*, are present as to the Respondent:

1. timely good faith effort to rectify consequences of misconduct;
2. good character and reputation;
3. remorse;
4. remoteness of prior offense.

In the past, the Board and Court have imposed sanctions ranging from suspension with partial deferment to full suspensions. Considering the cases cited by the ODC and the Respondent, the Committee concludes that the appropriate sanction in this instance is a suspension of four months fully deferred.

CONCLUSION

Based on the testimony presented and documentary evidence admitted, the Committee finds the Respondent's actions violated Rules 3.3(a)(1) and 3.3(a)(3) (candor toward the tribunal), Rules 8.4(c), and 8.4(d) (misconduct); and Rules 7.2(a)(2) and 7.2(c)(1)(I) (communications concerning a lawyer's services) and 7.7(c) (evaluation of advertisements) and recommends that Jim Hall be suspended for four months fully deferred.

The Committee also recommends that the Respondent be assessed with costs and expenses of the proceeding pursuant to Rule XIX, §10.1.

⁸ The Respondent received an admonition in 2000.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Mark Latham, to sign on their behalf.

New Orleans, Louisiana, this 14th day of June 2023.

Louisiana Attorney Disciplinary Board
Hearing Committee # 37

Mark D. Latham, Committee Chair
Jennifer O'Neil, Lawyer Member
Robert P. Ventura, Public Member

BY: Mark D. Latham
Mark D. Latham, Committee Chair
For the Committee

APPENDIX

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

Rule 7.2 Communications Concerning a Lawyer's Services

The following shall apply to any communication conveying information about a lawyer, a lawyer's services or a law firm's services:

(a) Required Content of Advertisements and Unsolicited Written Communications.

(2) *Location of Practice.* All advertisements and unsolicited written communications provided for under these Rules shall disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised. If the office location is outside a city or town, the parish where the office is located must be disclosed. For the purposes of this Rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis, and which physical location shall have at least one lawyer who is regularly and routinely present in that physical location. In the absence of a bona fide office, the lawyer shall disclose the city or town of the primary registration statement address as it appears on the lawyer's annual registration statement. If an advertisement or unsolicited written communication lists a telephone number in connection with a specified geographic area other than an area containing a bona fide office or the lawyer's primary registration statement address, appropriate qualifying language must appear in the advertisement.

(c) Prohibitions and General Rules Governing Content of Advertisements and Unsolicited Written Communications.

(1) Statements About Legal Services. A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services or the law firm's services. A communication violates this Rule if it:

(H) contains a paid testimonial or endorsement, unless the fact of payment is disclosed;

(I) includes (i) a portrayal of a client by a non-client without disclaimer of such, as required by Rule 7.2(c)(10); (ii) the depiction of any events or scenes, other than still pictures, photographs or other static images, that are not actual or authentic without disclaimer of such, as required by Rule 7.2(c)(10); or (iii) a still picture, photograph or other static image that, due to alteration or the context of its use, is false, misleading or deceptive;

Rule 7.7. Evaluation of Advertisements

(c) Regular Filing. Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) shall file a copy of each such advertisement or unsolicited written communication with the Committee for evaluation of compliance with these Rules. The copy shall be filed either prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication and shall be accompanied by the information and fee specified in subdivision (d) of this Rule. A filing number, as detailed in Rule 7.2(a)(3), shall be assigned and provided to the lawyer by the Louisiana State Bar Association at the time of filing. If the lawyer has opted to submit an advertisement or unsolicited written communication in advance of dissemination, in compliance with subdivision (b) of this Rule, and the advertisement or unsolicited written communication is then found to be in compliance with the Rules, that voluntary advance submission shall be deemed to satisfy the regular filing requirement set forth above.

Rule 8.4. Misconduct It is professional misconduct for a lawyer to:

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

THE LOUISIANA ATTORNEY DISCIPLINARY BOARD

2800 Veterans Memorial Blvd. Suite 310
Metairie, Louisiana 70002

COST STATEMENT ORIGINAL

Name: Jim S Hall
800 N Causeway Blvd Ste 100

Metairie, LA 70001-

Statement Date: 06/15/23

Case / Complaint	Date	Description	Charge
0038752	04/14/21	Investigation Staff Investigator travel expense to serve subpoena to respondent 800 N. Causeway Boulevard Suite 100 Metairie Louisiana 70001 4/13/21	\$24.31
0038752	06/28/21	Deposition Deposition cost PO 21260 6/3/21 V#:21731 VEN:Associated Reporters, Inc. Ck#:5052 CkD:6/29/2021	\$207.00
22-DB-033	07/15/22	Formal Charges Filed FORMAL CHARGES	\$10.00
22-DB-033	10/31/22	Other - (See Memo) Conference call 10/05/2022 V#:23634 VEN:LoopUp Ck#:6312 CkD:12/15/2022 DOC#:351003	\$0.55
22-DB-033	01/23/23	Witness Fee Witness fee for Blair Touchard 1/23/2023 V#:23929 VEN:Blair Touchard Ck#:6479 CkD:2/15/2023	\$88.19
22-DB-033	01/23/23	Other - (See Memo) Staff attorney expenses to attend hearing 1/23/2023 V#:23839 VEN:Christopher Kiesel Ck#:6425 CkD:2/1/2023	\$107.10
22-DB-033	01/23/23	Other - (See Memo) Staff attorney expense to attend hearing 1/23/2023 V#:23855 VEN:Gregory L. Tweed Ck#:6445 CkD:2/1/2023	\$25.57
22-DB-033	01/31/23	Other - (See Memo) Conference call 01/18/2023 V#:23914 VEN:LoopUp Ck#:6468 CkD:2/15/2023 DOC#:379324	\$2.00
22-DB-033	03/10/23	Hearing Transcript Fee Hearing transcript 1/23/2023 V#:24056 VEN:Associated Reporters, Inc. Ck#:6559 CkD:3/31/2023	\$689.50
22-DB-033	06/15/23	Suspension Pending final judgment Pursuant to Rule XIX, Section 10.1(c)	\$1,500.00
Thank You.		Balance:	\$2,654.22

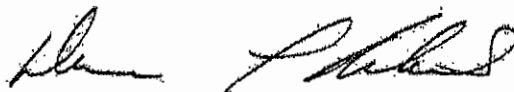
CERTIFICATE OF MAILING

IN RE: JIM S. HALL
DOCKET NO. 22-DB-033

I, Donna L. Roberts, the undersigned Administrator for the Louisiana Attorney Disciplinary Board, certify that a copy of the foregoing Hearing Committee Report and Initial Cost Statement has been mailed to the Respondent or his/her Attorney of Record, by E-mail and/or United States Mail and E-Filed to the Office of Disciplinary Counsel, this 15th day June, 2023 at the following address:

Mr. Dane S. Ciolino
Clare S. Roubion
Louisiana Legal Ethics, LLC
18 Farnham Place
Metairie, LA 70005

Mr. Christopher Kiesel
Deputy Disciplinary Counsel
4000 S. Sherwood Forest Blvd
Suite 607
Baton Rouge, LA 70816



Donna L. Roberts
Board Administrator

LOUISIANA ATTORNEY DISCIPLINARY BOARD



2800 Veterans Memorial Boulevard, Suite 310
Metairie, Louisiana 70002
Phone: (504) 834-1488 • Fax: (504) 834-1449 • 1-800-489-8411

July 7, 2023

Ms. Veronica Koclanes
Clerk of Court
Louisiana Supreme Court
400 Royal Street
Suite 4200
New Orleans, LA 70130-8102

23 B

935

Veronica Koclanes
CLERK OF COURT

2023 JUL - 7 AM 11:34

RECEIVED
CLERK OF COURT
OF LOUISIANA

In Re: JIM S. HALL
DOCKET NO(S): 22-DB-033
(FORMAL CHARGES)

Dear Veronica O. Koclanes:

We are transmitting herewith the records in the above referenced case pursuant to Supreme Court Rule XIX. Enclosed please find the following:

1. One (1) Original of Record -1Vol.
2. One (1) Duplicate Original of Record -1Vol.
3. Nine (9) Copies of Formal Charges, Answer to Formal Charges, Hearing Committee Report
4. One (1) Original Exhibits

Very truly yours,
Amy O. Panepinto

Amy Panepinto
Records Clerk

/adp
Enclosures

The Supreme Court of the State of Louisiana

IN RE JIM S. HALL

No. 2023-B-00935

IN RE Office of Disciplinary Counsel - Applicant Other; Findings and
Recommendations (Formal Charges);

December 05, 2023

Suspensions imposed. See per curiam.

WJC

JLW

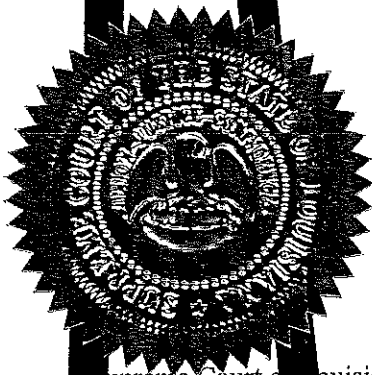
JDH

SJC

JTG

JBM

PDG



Supreme Court of Louisiana
December 05, 2023

Katie Marie Bouic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA
A TRUE COPY

Edwin C. Gonzales, Jr.
Edwin C. Gonzales, Jr.
Deputy Clerk of Court

EXHIBIT

2

SUPREME COURT OF LOUISIANA

NO. 2023-B-0935

December 5, 2023

IN RE: JIM S. HALL

ATTORNEY DISCIPLINARY PROCEEDING

 PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Jim S. Hall, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

Count I

In August 2019, respondent hired TFX Web Net, LLC (“TFX”) to design and create an advertising campaign for his law firm. TFX is owned by Blair Touchard. On September 12, 2019, respondent authorized his law firm staff to send a letter under his signature which stated, in pertinent part, “This letter serves as notification that Jim S. Hall & Associates, LLC authorizes Blair Touchard of TFX web/net dba BLARE of Metairie, LA to plan and place media on our behalf. Jim S. Hall & Associates, LLC will be responsible for the payment of any approved programs that may be contracted on our behalf by Blair Touchard of TFX web/net dba BLARE.”

On October 2, 2019, respondent’s law firm issued a \$3,360 check to TFX as payment for services rendered. Later in October, TFX sought payment from the law firm for additional services rendered, but respondent refused to pay the invoice and terminated his firm’s relationship with TFX. As a result, TFX filed suit against respondent and his law firm in the 22nd Judicial District Court for the Parish of St. Tammany.

In May 2020, respondent filed an exception of improper venue in the litigation. In the accompanying memorandum in support of the exception, respondent stated that he and his law firm "were completely unaware of any involvement by plaintiff TFX Web Net LLC as their only dealings in this matter were with Blair Touchard D/B/A 'Blare.'" Likewise, respondent submitted an affidavit in which he attested that he and his law firm "were entirely unaware of the existence of plaintiff, TFX Web, LLC [sic]." These representations by respondent were false. In August 2020, Mr. Touchard filed a complaint against respondent with the ODC.

On June 3, 2021, the ODC took respondent's sworn statement. During his statement, respondent admitted that, contrary to his representations in the memorandum and the affidavit, he knew at the time he signed and filed these pleadings that his law firm previously had dealings with, and was aware of the existence of, TFX. At the conclusion of the sworn statement, the ODC asked respondent whether he intended to correct the false representations in the memorandum and the affidavit. Respondent agreed that he would do so and provide a copy of the revised pleadings to the ODC. On June 10, 2021, respondent sent the following correspondence to the ODC:

Enclosed please find a Second Supplemental and Amended Memorandum in Support of Exception of Improper Venue along with an attached revised Affidavit of Support of the Memorandum that I will be filing into the court record shortly. I believe the Second Supplemental Memorandum covers what we discussed, however if it does not, please let me know.

On April 7, 2022, the ODC inquired whether respondent had filed the corrected pleadings into the court record. On April 8, 2022, ten months after his sworn statement, respondent made the filing.

The ODC alleges that respondent's conduct in Count I violated the following provisions of the Rules of Professional Conduct: Rules 3.3(a)(1) (a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer), 3.3(a)(3) (a lawyer shall not knowingly offer evidence that the lawyer knows to be false), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Count II

In October 2020, Richard Lemmler, the Louisiana State Bar Association's ("LSBA") Ethics Counsel, provided the ODC with a video file for a television advertisement by respondent. Respondent did not submit the advertisement for review by the LSBA prior to or concurrently with the publication of the advertisement, and it was not filed with the LSBA as a "late filing." Furthermore, the advertisement does not identify the city or town of respondent's principal office location, and it includes a portrayal of clients and includes a scene depicting an accident, neither of which contains the required disclaimers. Finally, the advertisement includes a voiceover by an announcer shouting "Call Hall," but does not include a disclaimer that the speaker or announcer has been paid. After receiving notice of the ODC's inquiry, respondent pulled the advertisement in question.

The ODC alleges that respondent's conduct in Count II violated the following provisions of the Rules of Professional Conduct: Rules 7.2(a)(2) (all advertisements shall disclose, by city or town, one or more bona fide office location(s) of the lawyer(s) who will actually perform the services advertised), 7.2(c)(1)(H) (an advertisement shall not contain a paid testimonial or endorsement, unless the fact of payment is disclosed), 7.2(c)(1)(I) (an advertisement shall not include a portrayal of

a client by a non-client without disclaimer of such, or the depiction of any events or scenes, other than still pictures, photographs or other static images, that are not actual or authentic without disclaimer of such), and 7.7(c) (evaluation of advertisements by the LSBA Rules of Professional Conduct Committee required prior to or concurrently with the lawyer's first dissemination of the advertisement).

DISCIPLINARY PROCEEDINGS

In July 2022, the ODC filed formal charges against respondent as set forth above. In his answer, respondent denied any misconduct in Count I. As to Count II, respondent admitted that he violated Rules 7.2(a)(2), Rule 7.2(c)(1)(I), and Rule 7.7(c) of the Rules of Professional Conduct, but he denied that he violated Rule 7.2(c)(1)(H).

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

Formal Hearing

The hearing committee conducted the hearing on January 23, 2023. The ODC called Mr. Touchard to testify before the committee. Respondent testified on his own behalf and on cross-examination by the ODC. He also called three character witnesses.

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the hearing committee made the following factual findings:

Count I: Respondent and Mr. Touchard reached an oral agreement whereby Mr. Touchard would provide services to respondent's law firm. Mr. Touchard requested that a member of respondent's staff issue a letter stating that the law firm

was authorizing "Blair Touchard of TFX web/net dba BLARE of Metairie, LA" to plan and place media on behalf of the law firm. The law firm staff member issued the letter under respondent's signature, but respondent did not review the letter. The law firm also issued a check to TFX for the payment of Mr. Touchard's first invoice.

Respondent admitted that he became aware of the existence of TFX in late October/early November 2019. Nevertheless, he knowingly submitted an affidavit and memorandum in support of an exception of improper venue which contained facts he knew were false. Respondent agreed to correct the false facts with the court and timely submitted a corrected pleading to the ODC for review prior to filing it. The ODC did not prove by clear and convincing evidence that respondent violated the Rules of Professional Conduct by waiting to hear back from the ODC regarding the revised memorandum and affidavit.¹

Count II: Respondent disseminated a television advertisement that was not pre-filed with the LSBA. He did not pay the LSBA the required filing fee. The advertisement did not contain the location of respondent's practice and did not include proper disclosures related to the portrayal of clients and scenes depicting an accident. The ODC did not prove by clear and convincing evidence that the voiceover by the announcer in the advertisement shouting "Call Hall" was a paid testimonial or a paid endorsement.

Based on these factual findings, the committee determined respondent violated the following provisions of the Rules of Professional Conduct: Rules 3.3(a)(1), 3.3(a)(3), 8.4(c), and 8.4(d) in Count I, and Rules 7.2(a)(2), 7.2(c)(1)(I), and 7.7(c) in Count II.

¹ This finding by the committee is in error. During his sworn statement, respondent was asked whether he intended to file a corrected affidavit and memorandum with the district court, and if so, to provide a copy of same to the ODC. There was no discussion or requirement that the ODC would need to approve the pleadings before respondent submitted them to the court. Moreover, during the hearing, respondent acknowledged that the ODC was not responsible in any way for his failure to timely correct his prior misrepresentations.

The committee determined that respondent violated duties owed to the legal system and the legal profession. The filing of the exception of improper venue and the false affidavit in support caused some degree of hardship to Mr. Touchard, who had to oppose the exception. The failure to provide the advertisement to the LSBA potentially caused harm to the extent it misled the public by not disclosing the location of respondent's practice and not including the proper disclosures related to the portrayal of clients and scenes depicting an accident. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined that the baseline sanction is suspension.

In aggravation, the committee found the following factors: a prior disciplinary record (2000 admonition for lack of diligence), a dishonest or selfish motive, multiple offenses, and substantial experience in the practice of law (admitted 1992). In mitigation, the committee found the following factors: timely good faith effort to rectify the consequences of the misconduct, good character and reputation, remorse, and remoteness of prior disciplinary offense.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for four months, fully deferred. The committee also recommended that respondent be assessed with the costs and expenses of this proceeding.

Neither respondent nor the ODC filed an objection to the hearing committee's report and recommendation. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.²

² As amended effective May 15, 2019, Supreme Court Rule XIX, § 11(G) provides that "[i]f the parties do not file objections to the hearing committee report, the board shall promptly submit the hearing committee's report to the court."

DISCUSSION

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

The record of this matter supports a finding that respondent made false statements to a tribunal, failed to submit an advertisement for review by the LSBA, and engaged in other violations of the lawyer advertising rules. This misconduct amounts to a violation of the Rules of Professional Conduct as found by the hearing committee.

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

Respondent knowingly violated duties owed to the legal system and the legal profession, causing both actual and potential harm. The baseline sanction for this

type of misconduct is suspension. The record supports the aggravating and mitigating factors found by the hearing committee.

Considering these factors, as well as the absence of any objection by the ODC to the hearing committee's report, we will accept the committee's recommendation and suspend respondent from the practice of law for four months, fully deferred, subject to the condition that any misconduct by respondent during the deferral period may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate.

DECREE

Upon review of the findings and recommendations of the hearing committee, and considering the record, it is ordered that Jim S. Hall, Louisiana Bar Roll number 21644, be and he hereby is suspended from the practice of law for a period of four months. This suspension shall be deferred in its entirety, with the condition that any misconduct during the deferral period may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

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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 him or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

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

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

Rule 3.02. Record on Appeal

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

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

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

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

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

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

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

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

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

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

Rule 4.02. Record on Appeal

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

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

(c) Responsibility for Filing Record.

(1) Clerk's Record.

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

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

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

(2) Reporter's Record.

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

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

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

(d) Preparation of Clerk's Record.

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

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

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

(ii) start each document on a new page;

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

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

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

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

(vii) certify the clerk's record.

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

(3) The table of contents must:

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

(ii) be double-spaced;

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

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

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

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

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

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

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

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

(f) Preparation of the Reporter's Record.

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

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

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

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

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

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

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

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

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

¹ So in original.

Rule 4.03. Time to File Record

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

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

(b) If No Record Filed.

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

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

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

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

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

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

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

Rule 4.04. Copies of the Record

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

Rule 4.05. Requisites of Briefs

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

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

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

(c) Contents. Briefs must contain:

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

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

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

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

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

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

failure to timely file a brief;

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

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

Rule 4.06. Oral Argument

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

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

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

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

Rule 4.07. Decision and Judgment

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

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

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

Rule 4.08. Appointment of Statewide Grievance Committee

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

Rule 4.09. Involuntary Dismissal

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

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

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

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

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

Rule 5.02. Hearing

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

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

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

Rule 6.02. Interlocutory Suspension

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

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

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

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

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

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

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

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

Rule 7.02. Order to Show Cause

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

Rule 7.03. Attorney's Response

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

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

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

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

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

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

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

Rule 8.02. Petition and Answer

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

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

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

Rule 8.03. Discovery

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

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

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

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

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

Rule 8.04. Ability to Compel Attendance

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

Rule 8.05. Respondent's Right to Counsel

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

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

Rule 8.06. Hearing

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

Rule 8.07. Notice of Decision

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

Rule 8.08. Confidentiality

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

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

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

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

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

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

Rule 9.02. Discovery

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

Rule 9.03. Physical or Mental Examinations

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

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

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

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

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

Rule 9.04. Judgment

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

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

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

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

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