



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

IN THE MATTER OF §
BOBBY RAY MANNING, § **CAUSE NO. 68196**
STATE BAR CARD NO. 24063266 §

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Bobby Ray Manning, (hereinafter called "Respondent"), showing as follows:

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

2. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Bobby Ray Manning, 320 Pine Street, Monroe, Louisiana 71201.

3. On or about June 21, 2023, an Order Per Curium (Exhibit 1) was entered by the Supreme Court of Louisiana styled Supreme Court of Louisiana, No. 2023-B-00616, *In Re: Bobby R. Manning*, Attorney Disciplinary Proceeding, which states in pertinent part:

The Office of Disciplinary Counsel ("ODC") commenced an investigation into allegations that respondent mismanaged his client trust account, which resulted in the negligent commingling and conversion of funds. Prior to the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that Bobby R. Manning, Louisiana Bar Roll number 25452, be suspended from the practice of law for a period of six months. This suspension shall be deferred in its entirety, subject to a one-year period of supervised probation governed by the conditions set forth in the petition for consent discipline. The probationary period shall commence from the date respondent, the probation monitor, and the ODC execute a formal probation plan. Any failure of respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred suspension executory, or imposing additional discipline, as appropriate.

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

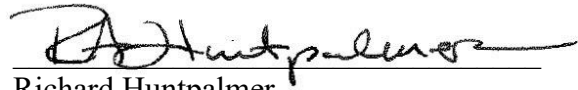
5. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enter a judgment imposing discipline identical 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
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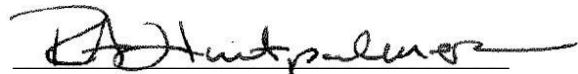
Richard Huntpalmer
Bar Card No. 24097857

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 Bobby Ray Manning, by Email.

Bobby Ray Manning
320 Pine Street
Monroe, Louisiana 71201
Via Email to Bobby@bobbymanning.com



Richard Huntpalmer

The Supreme Court of the State of Louisiana

RE: BOBBY R. MANNING

No. 2023-B-00616

Office of Disciplinary Counsel - Applicant Other; Bobby R. Manning -
Applicant Other; Joint Petition for Consent Discipline;

June 21, 2023

Joint petition for consent discipline accepted. See per curiam.

JLW

JDH

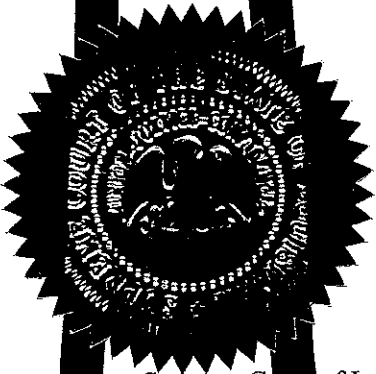
JTG

PDG

Crichton, J., dissents and assigns reasons.

Crain, J., concurs and assigns reasons.

McCallum, J., dissents for reasons assigned by Justice Crichton.



Supreme Court of Louisiana

June 21, 2023

Kato M. Manovic

Chief Deputy Clerk of Court

For the Court

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

EXHIBIT
1


SUPREME COURT OF LOUISIANA

NO. 2023-B-0616

June 21, 2023

IN RE: BOBBY R. MANNING

ATTORNEY DISCIPLINARY PROCEEDING


PER CURIAM

The Office of Disciplinary Counsel (“ODC”) commenced an investigation into allegations that respondent mismanaged his client trust account, which resulted in the negligent commingling and conversion of funds. Prior to the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that Bobby R. Manning, Louisiana Bar Roll number 25452, be suspended from the practice of law for a period of six months. This suspension shall be deferred in its entirety, subject to a one-year period of supervised probation governed by the conditions set forth in the petition for consent discipline. The probationary period shall commence from the date respondent, the probation monitor, and the ODC execute a formal probation plan. Any failure of respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred suspension executory, or imposing additional discipline, as appropriate.

IT IS FURTHER ORDERED that 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.

SUPREME COURT OF LOUISIANA

No. 2023-B-00616

June 21, 2023

IN RE: BOBBY R. MANNING

Attorney Disciplinary Proceeding



CRAIN, J., concurs and assigns reasons:

I agree with Justice Crichton and Justice McCallum that these charges standing alone warrant lesser discipline. I diverge from their opinions only because of respondent's prior disciplinary record. Thus, I concur.

SUPREME COURT OF LOUISIANA

No. 2023-B-00616

June 21, 2023

IN RE: BOBBY R. MANNING

Attorney Disciplinary Proceeding

CRICHTON, J., dissents, would reject the joint petition for consent discipline, and assigns reasons:

SJC

The Louisiana Constitution vests this Court with original jurisdiction in all “disciplinary proceedings against a member of the bar.” La. Const. art. V, § 5(B). Notwithstanding the fact that petitioner and the Office of Disciplinary Counsel have submitted this matter as a joint petition, I would reject this petition for consent discipline as too severe under the unique and peculiar circumstances of this case. *See, e.g., In re: Orgeron*, 23-B-0545 (La. 5/31/23), --- So. 3d --- (Crichton, J., would reject the petition for consent discipline as “too severe”); *In re Whiddon*, 2020-0428 (La. 5/14/20), 296 So. 3d 604, 605 (Crichton, J., would reject the petition for consent discipline as “too harsh”); *In re Hessler*, 2022-00791 (La. 6/22/22), 339 So. 3d 622, 623 (Crichton, J., dissents from consent discipline petition as “unduly harsh”); *In re: Wells*, 20-0063 (La. 7/2/20), 297 So. 3d 741, 742 (same); *In re: Hardee*, 18-1555 (La. 11/14/18), 259 So. 3d 329 (same).

SUPREME COURT OF LOUISIANA

IN RE: CONFIDENTIAL PARTY

DOCKET NO. _____

(ODC 39596)

JOINT MOTION FOR CONSENT DISCIPLINE
PURSUANT TO LOUISIANA SUPREME COURT RULE XIX, § 20

NOW INTO THIS PROCEEDING come the Office of the Disciplinary Counsel ("ODC"), through undersigned Deputy Disciplinary Counsel, and Respondent, **BOBBY R. MANNING**, personally and through undersigned counsel, who jointly move this Court for consent discipline in the above matter on the following grounds:

I.

Respondent was born in 1971.

II.

Respondent was admitted to the Louisiana State Bar on April 9, 1998 and assigned Louisiana Bar Roll Number 25452. Respondent currently is eligible to practice law in Louisiana.

III.

On January 23, 2023, the ODC received permission to file formal charges against Respondent regarding its investigation in ODC 39596.

IV.

On April 3, 2023, Respondent's counsel provided written confirmation to undersigned Deputy Disciplinary Counsel that Respondent agreed to resolve this matter through consent discipline.

V.

Respondent conditionally admits that he negligently violated Rule 1.15(a), (b), (d) and (f) of the Louisiana Rules of Professional Conduct ("Rules"), and that he should have known that he was mismanaging his trust account. The relevant facts regarding these violations are set forth with particularity in the ODC and Respondent's Joint Stipulation of Facts and in their Joint Memorandum in Support of Joint Motion for Consent Discipline, simultaneously filed with the Court and incorporated herein by reference.

VI.

Respondent consents to the imposition of discipline freely and voluntarily. He has not been the subject of coercion or duress, and he is fully aware of the implications of submitting to consent discipline.

VII.

Respondent conditionally consents because he knows that if formal charges were filed and prosecuted, Respondent could not successfully defend against those charges.

VIII.


Pursuant to Louisiana Supreme Court Rule XIX, § 20, the ODC and Respondent jointly submit that the following sanction is appropriate discipline for the conditionally-admitted Rule violations in this matter:

Suspension from the practice of law for six months, fully deferred, subject to a one-year period of supervised probation with the following conditions: (1) Regular audits of Respondent's Trust Account shall be performed by an accountant of Respondent's choosing, to be submitted twice a year to the ODC in a form and manner approved by the ODC; and (2) Respondent shall pay all costs and expenses of this proceeding.

WHEREFORE, the ODC and Respondent jointly pray that this Court approve this Joint Motion for Consent Discipline and render a finding that Respondent has violated Rule 1.15(a), (b), (d) and (f) and that the discipline appropriate to address this matter is set forth in Paragraph VIII *supra*.

Respectfully Submitted,

OFFICE OF DISCIPLINARY COUNSEL




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and

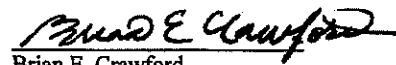
April 28, 2023

RESPONDENT

April 26, 2023


Bobby R. Manning
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320 Pine Street
Monroe, LA 71201
Telephone: (318) 324-1411
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April 26, 2023


Brian E. Crawford
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brian@bcrawfordlaw.com
Counsel for Respondent

SUPREME COURT OF LOUISIANA

IN RE: CONFIDENTIAL PARTY

DOCKET NO. _____

(ODC 39596)

JOINT MEMORANDUM IN SUPPORT OF JOINT
MOTION FOR CONSENT DISCIPLINE

Pursuant to Louisiana Supreme Court Rule XIX, § 20B, the Office of Disciplinary Counsel (“ODC”), through undersigned Deputy Disciplinary Counsel, and Respondent, **BOBBY R. MANNING**, personally and through undersigned counsel, respectfully submit this Joint Memorandum in Support of their Joint Motion for Consent Discipline.

RESPONDENT AND PROCEDURAL HISTORY

Respondent was born in 1971. Respondent was admitted to the Louisiana State Bar on April 9, 1998 and assigned Louisiana Bar Roll Number 25452. Respondent currently is eligible to practice law in Louisiana. On January 23, 2023, the ODC received permission to file formal charges against Respondent regarding its investigation in ODC 39596. On April 3, 2023, Respondent’s counsel provided written confirmation to undersigned Deputy Disciplinary Counsel that Respondent agreed to resolve this matter through consent discipline.

STATEMENT OF MATERIAL FACTS

On September 20, 2021, Capital One, N.A. sent an overdraft notice to the ODC regarding Respondent’s IOLTA Trust Account Number XXXXXX6198 (“Trust Account”). The notice stated that an overdraft had occurred in the Trust Account on September 7, 2021. On October 27, 2021, the ODC received Respondent’s response to that notice. On November 30, 2021, the ODC requested that Respondent provide supplemental documentation and information regarding the Trust Account. On January 20, 2022, the ODC received Respondent’s response to that request. On April 22, 2022, the ODC requested that Respondent provide additional documentation and information regarding the Trust Account. On July 14, 2022, the ODC received Respondent’s response to that request.

On August 6, 2022, the ODC's forensic auditor issued the Audit Report for the March 1, 2021 through September 30, 2021 audit period of the Trust Account. The "Conclusion and Opinion" section of the Audit Report found, in pertinent part:

... Respondent has failed to maintain proper records that identifies and supports all trust account activity. Furthermore, Respondent failed to conduct reconciliations of the trust account on at least a quarterly basis until his subsequent hiring of CPA Rosie D. Harper...

In addition, Respondent has commingled and converted client funds. Clients and third-parties were underpaid on multiple occasions, and Respondent failed to support the payment of all underlying costs/expenses withheld from net client proceed calculations. At the end of the audit period, the trust account balance is not sufficient to honor the sum of all underpaid and/or unpaid balances due to clients and/or third-parties. [] Respondent's lack of records maintained and/or provided to the ODC precludes an exact quantification of harm

On September 29, 2022, the ODC took Respondent's sworn statement. Therein, Respondent admitted that he: (1) had one overdraft in the Trust Account; (2) failed to quarterly reconcile the Trust Account; (3) transferred \$30,000.00 in personal funds into the Trust Account, far in excess of the amount necessary to pay any bank service charges; (4) caused technical conversion of funds in the Trust Account; (5) disbursed funds from the Trust Account to clients prior to related settlement deposits being made therein; and (6) failed to maintain adequate records related to Trust Account activity.

During the relevant periods of time giving rise to the ODC's inquiry and investigation, Respondent experienced procedural and clerical banking errors with the institution handling his law firm's Trust Account at that time, particularly with respect to the accuracy of current deposits and balances. Respondent relied upon those incorrect apparent balances on the account, which compounded the Trust Account errors in question.

On October 18, 2022, Respondent provided proof to the ODC that all clients and third parties owed monies have now been paid. On January 11, 2023, Respondent successfully attended the LSBA's Trust Accounting School.

RULE VIOLATIONS

Respondent conditionally admits to having mismanaged his trust account, in violation of Rule 1.15(a), (b), (d) and (f) of the Louisiana Rules of Professional Conduct ("Rules").

SANCTION ANALYSIS

Louisiana Supreme Court Rule XIX, § 10C sets forth four factors which the Court considers when imposing discipline: "(1) whether the lawyer has violated a duty owed to a client,

Page 2 of 6

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." See also Standard 3.0 of the ABA's *Standards for Imposing Lawyer Sanctions* ("ABA's Standards").

I. Duty Violated

The undersigned conditionally agree that, in violating Rule 1.15, Respondent violated duties owed to the client.

II. Respondent's Mental State

The ABA's Standards define "negligence" as "the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." The undersigned conditionally agree that Respondent negligently violated Rule 1.15(a), (b), (d) and (f), and that he should have known that he was mismanaging his Trust Account.

III. Potential or Actual Injury Caused by Respondent

The undersigned conditionally agree that Respondent's misconduct caused no actual harm to his clients or third parties. However, the potential for harm existed.

IV. Aggravating or Mitigating Facts

The undersigned conditionally agree that the following aggravating and mitigating facts, as set forth in Standards 9.22 and 9.32 of the ABA's Standards, respectively, exist in this matter:

Aggravating:

- Pattern of misconduct;
- Substantial experience in the practice of law (admitted 1998); and
- Prior disciplinary record (2008 and 2022 private admonitions, both unrelated to trust account activity).

Mitigating:

- Absence of a dishonest or selfish motive;
- Timely good-faith effort to rectify consequences of misconduct;
- Full and free disclosure and cooperative attitude toward proceedings;
- Remorse; and
- Remoteness of prior disciplinary offense (the 2008 private admonition).

V. Analysis of Factors

"In determining a sanction, [the Court is] 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." *In re: Abdalla*, 2017-0453, p. 12 (La. 10/18/17), 236 So.3d 1223, 1230. "The discipline to be imposed depends upon the facts of each case and the

seriousness of the offenses involved in light of any aggravating and mitigating circumstances.”

Id.

With regard to Respondent’s negligent violation of Rule 1.15, Standard 4.12 of the ABA’s Standards states: “Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.” *See also Louisiana State Bar Ass’n v. Hinrichs*, 486 So.2d 116, 123-24 (La. 1986) (suspension is appropriate for negligent mismanagement of trust account). The baseline sanction here is suspension. The Court’s recent decisions indicate that a six-month suspension, fully deferred and subject to a period of supervised probation with conditions, would be appropriate discipline here.

In *In re: Blanchard-Airey*, 2022-1592 (La. 12/20/22), 351 So.3d 701 (consent discipline), the respondent was suspended for six months, fully deferred and subject to a two-year period of supervised probation with conditions, for mishandling her client trust account in violation of Rule 1.15(a), (b) and (f). In *In re: Green*, 2022-1469 (La. 11/16/22), 349 So.3d 986 (consent discipline), the respondent was suspended for six months, fully deferred and subject to a one-year period of supervised probation with conditions, for mishandling her client trust account in violation of Rule 1.15(a) and (b). In *In re: Trieu*, 2019-1680 (La. 3/9/20), 290 So.3d 658, the respondent was suspended for six months, fully deferred and subject to the condition to attend Trust Accounting School, for mishandling her client trust account in violation of Rule 1.15(a), (b) and (d). In *In re: Garrett*, 2017-1460 (La. 11/17/17), 228 So.3d 1212, the respondent was suspended for six months, fully deferred and subject to a one-year period of supervised probation with conditions, for mishandling his client trust account in violation of Rule 1.15(a), (b) and (d).

In the instant matter, Respondent negligently mismanaged his Trust Account in a variety of ways during the audit period. After Respondent was notified of these issues, he hired a CPA to assist him with Trust Account management moving forward; provided proof that all clients and third parties owed monies have now been paid; and successfully attended the LSBA’s Trust Accounting School. There is no evidence of actual harm, and the ODC has not received any complaints from Respondent’s clients or third parties. No additional overdrafts have occurred after the audit period.

In light of the Court's decisions *supra*, and given the aggravating and mitigating facts present here and the fact that there is no evidence that Respondent's misconduct caused actual harm to clients or third parties, the undersigned respectfully submit that a suspension for six months, fully deferred, is appropriate. In addition, such suspension should be subject to a one-year period of supervised probation with the following conditions: (1) Regular audits of Respondent's Trust Account shall be performed by an accountant of Respondent's choosing, to be submitted to twice a year to the ODC in a form and manner approved by the ODC; and (2) Respondent shall pay all costs and expenses of this proceeding.


PROPOSED SANCTION

For Respondent's conditionally-admitted violation of Rule 1.15(a), (b), (d) and (f), the ODC and Respondent seek the imposition of the following sanction:

Suspension from the practice of law for six months, fully deferred, subject to a one-year period of supervised probation with the following conditions: (1) Regular audits of Respondent's Trust Account shall be performed by an accountant of Respondent's choosing, to be submitted twice a year to the ODC in a form and manner approved by the ODC; and (2) Respondent shall pay all costs and expenses of this proceeding.

Respectfully Submitted,


OFFICE OF DISCIPLINARY COUNSEL



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Deputy Disciplinary Counsel
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and

RESPONDENT



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Telephone: (318) 324-1411
bobby@bobbymanning.com

April 28, 2023

April 26, 2023

April 26, 2023



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brian@bcrawfordlaw.com
Counsel for Respondent

SUPREME COURT OF LOUISIANA

IN RE: CONFIDENTIAL PARTY

DOCKET NO. _____

(ODC 39596)

JOINT STIPULATION OF FACTS

NOW INTO THIS PROCEEDING come the Office of Disciplinary Counsel (“ODC”), through undersigned Deputy Disciplinary Counsel, and Respondent, **BOBBY R. MANNING**, personally and through undersigned counsel, who stipulate to the following facts in conjunction with their Joint Motion for Consent Discipline submitted in this matter.

I.

Respondent was born in 1971.

II.

Respondent was admitted to the Louisiana State Bar on April 9, 1998 and assigned Louisiana Bar Roll Number 25452. Respondent currently is eligible to practice law in Louisiana.

III.

On January 23, 2023, the ODC received permission to file formal charges against Respondent regarding its investigation in ODC 39596.

IV.

On April 3, 2023, Respondent’s counsel provided written confirmation to undersigned Deputy Disciplinary Counsel that Respondent agreed to resolve this matter through consent discipline.

V.

On September 20, 2021, Capital One, N.A. sent an overdraft notice to the ODC regarding Respondent’s IOLTA Trust Account Number XXXXXX6198 (“Trust Account”). The notice stated that an overdraft had occurred in the Trust Account on September 7, 2021. On October 27, 2021, the ODC received Respondent’s response to that notice. On November 30, 2021, the ODC requested that Respondent provide supplemental documentation and information regarding the Trust Account. On January 20, 2022, the ODC received Respondent’s response to that request. On April 22, 2022, the ODC requested that Respondent provide additional

documentation and information regarding the Trust Account. On July 14, 2022, the ODC received Respondent's response to that request.

VI.

On August 6, 2022, the ODC's forensic auditor issued the Audit Report for the March 1, 2021 through September 30, 2021 audit period of the Trust Account. The "Conclusion and Opinion" section of the Audit Report found, in pertinent part:

... Respondent has failed to maintain proper records that identifies and supports all trust account activity. Furthermore, Respondent failed to conduct reconciliations of the trust account on at least a quarterly basis until his subsequent hiring of CPA Rosie D. Harper....

In addition, Respondent has commingled and converted client funds. Clients and third-parties were underpaid on multiple occasions, and Respondent failed to support the payment of all underlying costs/expenses withheld from net client proceed calculations. At the end of the audit period, the trust account balance is not sufficient to honor the sum of all underpaid and/or unpaid balances due to clients and/or third-parties. Respondent's lack of records maintained and/or provided to the ODC precludes an exact quantification of harm

VII.

On September 29, 2022, the ODC took Respondent's sworn statement. Therein, Respondent admitted that he: (1) had one overdraft in the Trust Account; (2) failed to quarterly reconcile the Trust Account; (3) transferred \$30,000.00 in personal funds into the Trust Account, far in excess of the amount necessary to pay any bank service charges; (4) caused technical conversion of funds in the Trust Account; (5) disbursed funds from the Trust Account to clients prior to related settlement deposits being made therein; and (6) failed to maintain adequate records related to Trust Account activity.

VIII.

During the relevant periods of time giving rise to the ODC's inquiry and investigation, Respondent experienced procedural and clerical banking errors with the institution handling his law firm's Trust Account at that time, particularly with respect to the accuracy of current deposits and balances. Respondent relied upon those incorrect apparent balances on the account, which compounded the Trust Account errors in question.

IX.

On October 18, 2022, Respondent provided proof to the ODC that all clients and third parties owed monies have now been paid. On January 11, 2023, Respondent successfully attended the LSBA's Trust Accounting School.

X.

In exchange for the proposed discipline being imposed, Respondent conditionally admits to having mismanaged his Trust Account, in violation of Rule 1.15(a), (b), (d) and (f) of the Louisiana Rules of Professional Conduct ("Rules"). Respondent also conditionally admits that he was negligent in, and should have known of, the mismanagement of his Trust Account.

XI.

In an effort to resolve this disciplinary matter prior to filing formal charges, the ODC and Respondent submit their accompanying Joint Motion for Consent Discipline and seek imposition of the following as appropriate discipline for this Rule violation:

Suspension from the practice of law for six months, fully deferred, subject to a one-year period of supervised probation with the following conditions: (1) Regular audits of Respondent's Trust Account shall be performed by an accountant of Respondent's choosing, to be submitted twice a year to the ODC in a form and manner approved by the ODC; and (2) Respondent shall pay all costs and expenses of this proceeding.

XII.

Respondent's consent is freely and voluntarily rendered, without coercion or duress. Respondent is fully aware of the implications of submitting the Joint Motion for Consent Discipline.

XIII.

Respondent conditionally consents because he knows that if formal charges were filed and prosecuted, Respondent could not successfully defend against those charges.

XIV.

The ODC and Respondent conditionally agree that the following aggravating and mitigating facts, as set forth in Standards 9.22 and 9.32 of the ABA's *Standards for Imposing Lawyer Sanctions*, respectively, exist in this matter:

Aggravating:

- Pattern of misconduct;
- Substantial experience in the practice of law (admitted 1998); and
- Prior disciplinary record (2008 and 2022 private admonitions, both unrelated to trust account activity).

Mitigating:

- Absence of a dishonest or selfish motive;
- Timely good-faith effort to rectify consequences of misconduct;
- Full and free disclosure and cooperative attitude toward proceedings;
- Remorse; and
- Remoteness of prior disciplinary offense (the 2008 private admonition).


XV.

The signatories to this Joint Stipulation of Facts have fully and completely read each of the above-numbered paragraphs in detail and stipulate that they are accurate and truthful in all respects.

Respectfully Submitted,

OFFICE OF DISCIPLINARY COUNSEL

April 28, 2023




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and

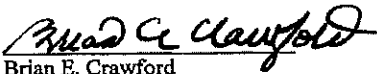
RESPONDENT

April 26, 2023



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April 26, 2023



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Counsel for Respondent

SUPREME COURT OF LOUISIANA

IN RE: CONFIDENTIAL PARTY

DOCKET NO. _____

(ODC 39596)

WAIVER OF OPPORTUNITY TO WITHDRAW

NOW INTO THIS PROCEEDING comes Respondent, **BOBBY R. MANNING**, who has joined in the submission of a Joint Motion for Consent Discipline to this Court in the above matter. As a material consideration for the agreement and concurrence of the Office of Disciplinary Counsel to consent discipline, Respondent specifically and irrevocably waives any opportunity to withdraw consent prior to final disposition of this proceeding.

April 26, 2023

Respectfully Submitted:

RESPONDENT



Bobby R. Manning
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320 Pine Street
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Telephone: (318) 324-1411
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INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

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INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. GENERAL PROVISIONS

Rule 1.01. Definitions

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

Rule 1.02. General Powers

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

Rule 1.03. Additional Rules in Disciplinary Matters

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

Rule 1.04. Appointment of Panels

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

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

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

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

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

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

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

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

- (4) Exceptions.

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

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

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

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

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

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

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

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

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

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

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

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

Rule 1.06. Service of Petition

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

Rule 1.07. Hearing Setting and Notice

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

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

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

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

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

Rule 1.08. Time to Answer

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

Rule 1.09. Pretrial Procedure

(a) Motions.

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

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

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

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

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

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

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

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

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

Rule 1.10. Decisions

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

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

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

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

Rule 1.11. Board of Disciplinary Appeals Opinions

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

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

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

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

Rule 1.12. BODA Work Product and Drafts

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

Rule 1.13. Record Retention

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

Rule 1.14. Costs of Reproduction of Records

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

Rule 1.15. Publication of These Rules

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

II. ETHICAL CONSIDERATIONS

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

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

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

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

Rule 2.02. Confidentiality

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

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

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

Rule 2.03. Disqualification and Recusal of BODA Members

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

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

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