



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

**IN THE MATTER OF
AARON PAUL MOLLERE,
STATE BAR CARD NO. 24098122**

§
§
§

CAUSE NO. 70216

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called “Petitioner”), brings this action against Respondent, Aaron Paul Mollere, (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 Aaron Paul Mollere, 487 Central Avenue, Reserve, Louisiana 70084.

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 in a matter styled Louisiana Disciplinary Board, Docket Number: 23-DB-052, *In Re: Aaron P. Mollere*, (OCD 39334, 39535 and 39794); which includes Formal Charges filed August 18, 2023; Office of Disciplinary Counsel’s Submission on Sanctions filed November 27, 2023, *In Re: Aaron P. Mollere*, Docket No. 23-DB-052; and Report of the Hearing Committee #54 filed January 5, 2024,

4. The Report of the Hearing Committee #54, states in pertinent part as follows:

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Aaron P. Mollere ("Respondent"), Louisiana Bar Roll Number 37232.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.1(a), 1.3, 1.4(a), 1.5(f)(5), 1.15(a) & (d), 1.16(d), 3.2, 8.1(b) & (c), 8.4(a) (b) (c) & (d).²

PROCEDURAL HISTORY

The formal charges were filed on August 18, 2023. By letters dated August 22, 2023, the formal charges were mailed via certified mail to Respondent's primary and preferred registration addresses.³ The mailing to the preferred address was received on or about August 23, 2023. The mailing to the primary registration address was returned. Additionally, Respondent was personally served with the charges on September 1, 2023. Respondent failed to file an answer to the charges. Accordingly, on September 15, 2023, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11 (E)(3).⁴ By order signed September 28, 2023, the factual allegations contained in the formal charges were deemed admitted. On November 27, 2023, ODC filed its submission on sanction.

For the following reasons, the Committee finds that Respondent violated Rules 1.1(a), 1.3, 1.4(a), 1.5(f)(5), 1.15(a) and (d), 1.16(d), 3.2, 8.1(b) and (c), 8.4(a), (b), (c) and (d) and therefore violated duties owed to

1 Respondent was admitted to the practice of law in Louisiana on October 20, 2016. Respondent is currently suspended from the practice of law on an interim basis. *In re Mollere*, 2021-1769 (La. 12/7/2021), 328 So.3d 409.

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

3 487 Central Ave., Reserve, LA 70084 (primary); P.O. Box 247, Reserve, LA 70084 (preferred).

4 This rule states:

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C. Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

the client, the public, the legal system and the legal profession. Accordingly, the Committee recommends the disbarment of Respondent, as well as full restitution to her former client (Mr. Johnson) and/or the Client Assistance Fund, as well as the affected third parties (Respondent's parents, Ms. Becnel's law firm and RPC).

FORMAL CHARGES

The formal charges read, in pertinent part:

NOW INTO THESE PROCEEDINGS, through undersigned Deputy Disciplinary Counsel, comes the Office of Disciplinary Counsel ("ODC") to charge that AARON P. MOLLERE ("Respondent") [FN1] is guilty of professional misconduct warranting the imposition of discipline for the reasons set forth below. [FN1]. During the course of the investigation of the complaints at issue, Respondent began to publicly identify as transgender. Respondent has used the name "Autumn Hope" Mollere since October 2022. To date, Respondent's legal name has not been changed. "She/her" pronouns and adjectives will be used herein to reference Respondent except when citing to specific language in evidence.]

General Background

Respondent is a Louisiana-licensed attorney born in 1987. Respondent was admitted to practice law in Louisiana on October 20, 2016 under Louisiana Bar Roll Number 37232. On December 7, 2021, Respondent was placed on interim suspension from the practice of law by the Louisiana Supreme Court ("Court"). *In re: Mollere*, 2021-1769 (La. 1217/21), 328 So.3d 409. Respondent remains on interim suspension today.

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

Count One (ODC 39334)

On June 24, 2021, the ODC received a complaint from Janet Mollere ("Mrs. Mollere") regarding Respondent. Mrs. Mollere is Respondent's mother. The complaint ("Mollere Complaint") states that Respondent "needs help, most likely mental & to get drug free," and that she had been arrested in Jefferson Parish on June 15, 2021. Two appearance bonds attached to the Mollere Complaint confirm Respondent's arrest on that date.

On July 7, 2021, the ODC sent a letter requesting a written response to the referenced arrest to Respondent via certified mail to her Louisiana

State Bar Association ("LSBA") registered primary/secondary address at 487 Central Avenue, Reserve, Louisiana 70084. Included therewith was a Judges and Lawyers Assistance Program, Inc. ("JLAP") Consent for Release of Confidential and/or Protected Health Information Form ("JLAP Authorization Form") for Respondent to execute and return to the ODC. On July 19, 2021, that correspondence was returned to the ODC for the following reason: "Return to Sender-No Such Number, Unable to Forward."

On July 13, 2021, the ODC sent an email to Respondent to her LSBA registered service/public/private email address of apmollere@gmail.com. Delivery of that email to Respondent was confirmed via Microsoft Outlook on the same day. The email attached a second ODC letter, as well as the ODC's prior July 7, 2021 letter and the JLAP Authorization Form, and requested that Respondent provide a written response to the same by August 2, 2021. On July 13, 2021, the ODC also sent the same correspondence to Respondent to her LSBA-registered preferred address at P.O. Box 247, Reserve, Louisiana 70084. Respondent failed to provide a written response to the Mollere Complaint by that deadline.

On August 5, 2021, the ODC sent a third letter to Respondent to her LSBA-registered preferred address. That letter granted Respondent an additional extension until August 25, 2021 to provide a written response to the Mollere Complaint and to return the executed JLAP Authorization Form. Respondent failed to do either by that extended deadline.

On August 6, 2021, the ODC obtained the arrest record related to Respondent's June 15, 2021 arrest. That record confirmed that Respondent was arrested and charged with violation of La. R.S. 40:967C (possession of schedule II CDS (cocaine)) and La. R.S. 14:95E (possession of a firearm while in possession of a controlled dangerous substance). The factual narrative in the arrest record states, in pertinent part:

Based on the observed transaction and the suspicious behavior, in particular their extreme measures to avoid law enforcement, Detectives Lyvers and Foret conducted an investigatory stop of Renaudin and Mollere as they were walking through an open field towards his residence Upon Detectives approaching Renaudin and Mollere, Detectives observed Mollere with his hand behind his back. Detectives ordered Mollere to show his hands, at which time he revealed a firearm. Mollere was ordered to drop the firearm, to which he complied. Detectives detained Mollere and Renaudin utilizing handcuffs, pending further investigation.

Detective Lyvers advised Mollere of his rights as per Miranda, which he agreed to waive and speak to Detective Lyvers regarding the investigation. Mollere advised Detective Lyvers that he was Renaudin's attorney.... Mollere also advised Detective Lyvers that he consumed crack cocaine throughout the day with Renaudin. Mollere also advised that prior to being stopped by Detectives, he and Renaudin just returned from purchasing crack cocaine in "New Orleans East."

On August 20, 2021, the ODC received Respondent's executed JLAP Authorization Form and emailed the same to JLAP. On August 24, 2021, the ODC received documentation from JLAP regarding Respondent. The cover letter from JLAP stated, in pertinent part:

Mr. Mollere contacted the JLAP office on July 26, 2021. After completing a clinical interview, Mr. Mollere was referred for inpatient treatment at a facility experienced in treating professionals. On July 28, 2021, Mr. Mollere was admitted to Palmetto Addiction Recovery Center (Palmetto). Attached you will find records in the above referenced matter.

According to Palmetto, Mr. Mollere meets DSM-5 diagnostic criteria for the following:

- Alcohol Use Disorder, Severe
- Cocaine Use Disorder, Severe
- Opioid Use Disorder, Severe
- Amphetamine Use Disorder, Severe
- Sedative-hypnotic Use Disorder, Severe
- Generalized Anxiety
- Insomnia
- Hypertension
- Lumbar disc disease

After 22 days of treatment, on August 18, 2021, Mr. Mollere left Palmetto against medical advice stating that his medical condition of lumbar disc disease with severe back pain inhibited his treatment progress.

Mr. Mollere communicated with me that he intended to seek medical treatment with his neurologist the following week and then would return to Palmetto. I reached out to Mr. Mollere requesting an update on his medical treatment and am awaiting a call back.

It is Palmetto's recommendation that Mr. Mollere immediately engage in and complete a JLAP-approved long term inpatient program experienced in treating attorneys and sign a 5-year monitoring contract with JLAP

In light of the above and foregoing and after careful review of his history and records, [JLAP] recommends that Mr. Mollere follow all recommendations including completing a JLAP-approved long term inpatient program experienced in treating professionals and signing a five-year JLAP Recovery Agreement.

On October 4, 2021, having received no written response to the Mollere Complaint, the ODC issued a subpoena to take Respondent's sworn statement.

On November 3, 2021, the ODC agreed to temporarily postpone Respondent's sworn statement. On that day, the ODC emailed Respondent another copy of the Mollere Complaint and granted an additional extension of time until November 15, 2021 to provide a written response to that complaint. On November 15, 2021, the ODC sent Respondent an email reminder that her written response to that complaint was due that day. Respondent failed to provide a written response by that extended deadline.

On November 17, 2021, the Respondent's sworn statement was taken. Respondent admitted that she had failed to cooperate with the ODC's investigation of the Mollere Complaint: "And that is completely my fault, my apologies on that, I should've called." Respondent promised to "definitely provide written responses to each [complaint]" following her sworn statement, but then failed to do so. During her sworn statement, Respondent admitted that she had used cocaine with her client (Jon Renaudin) prior to and on the day of her June 15, 2021 arrest, and that the factual narrative contained in the arrest record was substantially accurate. Respondent also admitted that she had converted between \$30,000.00-\$40,000.00 of her parents' funds in order to fuel her "continuing [drug] use."

Following her premature departure from Palmetto in August 2021, Respondent has not signed the recommended recovery agreement with, or otherwise been monitored by, JLAP. Respondent admits to having no contact with JLAP since July 2021. Respondent's use of illegal drugs continues today.

Respondent's criminal matter arising out of her June 15, 2021 arrest remains pending today.

The ODC respectfully submits that there is clear and convincing evidence that, with regard to Count One (ODC 39334), Respondent has violated Rule 8.1(b) and (c), as well as Rule 8.4(a) and (b), of the Louisiana Rules of Professional Conduct ("Rules").

Count Two (ODC 39535)

On October 14, 2021, the ODC received a complaint from Kyle Johnson (“Mr. Johnson”) regarding Respondent. Mr. Johnson hired Respondent on May 27, 2019 to defend him against a felony criminal charge of sexual battery in the matter of *State of Louisiana v. Kyle Johnson*, No. 19-3646, Division B, 24th Judicial District Comi, Parish of Jefferson (“Johnson Litigation”). Mr. Johnson states, in pertinent part, that Respondent: arrived two hours late to court on July 6, 2021 and failed to present oral argument on a motion to dismiss and/or quash bill of information that she previously had filed on Mr. Johnson's behalf, which motion was denied by the court; represented that she would take an appeal from that negative ruling but failed to do so; failed to attend two scheduled meetings with Mr. Johnson on July 9 and 12, 2021; failed to otherwise reasonably communicate with Mr. Johnson about his legal matter; failed to act with competence and reasonable diligence in representing Mr. Johnson; and failed to return unearned fees paid by Mr. Johnson. As a result of her misconduct, Mr. Johnson terminated Respondent and hired new counsel in the Johnson Litigation.

On October 20, 2021, the ODC sent a copy of that complaint (“Johnson Complaint”) and a request for a response to the same to Respondent via certified mail to her LSBA-registered preferred and primary/secondary addresses, as well as via email to her LSBA-registered service/public/private email address. Delivery of that email to Respondent was confirmed via Microsoft Outlook on the same day. On October 22, 2021, Mrs. Mollere also accepted delivery of that correspondence on Respondent's behalf. Respondent's written response to the Johnson Complaint was due no later than November 5, 2021. Respondent failed to provide a written response by that deadline.

On November 3, 2021, the ODC granted Respondent an extension of time until November 15, 2021 to provide a written response to the Johnson Complaint. Respondent failed to do so by that extended deadline.

On November 17, 2021, following issuance of a subpoena, Respondent's sworn statement was taken. Therein, Respondent admitted that she had failed to cooperate with the ODC's investigation of the Johnson Complaint. Respondent promised to provide a written response to that complaint following her sworn statement, but then failed to do so. During her sworn statement, Respondent described her conduct related to the July 6, 2021 court date in the Johnson Litigation as follows:

Yeah, those are right around the time I was trying to find a way to get myself and my wife at least closer to home and to a place that was not, you know, around Mr. Renaudin's place--

[A]t that point I'd been up, I had not been sleeping after that incident much at all, if two hours a night, that was a lot. I was, I knew I had court that day, I was, I, I guess I had lost track of my days at that point too I was probably delirious. And from my understanding of that day is I, I do remember getting a ride to court because I didn't have any vehicles at that point and I remember that I was extremely tired. And like the motion had been drafted up for several weeks I had a presentation to adequately fit that motion. However, on the day that I was to go they wanted a, the clients had requested a, that the argument be presented that day and I said well I'm not in the, no shape to present it.... And we had a side bar with the, me and opposing counsel had a side bar with the judge. I explained the issues so the client had insisted that they'd go forward and that the only way I could think of doing that is to submit the motion on it, you know - without, without argument

Respondent also admitted that she missed the scheduled July 9, 2021 meeting with Mr. Johnson because she “was exhausted - and was sleeping most of the day, most of the night.” When asked why she missed the additionally-scheduled July 12, 2021 meeting with Mr. Johnson, Respondent stated that she was "on the opposite side away from the office ... attempting to get rest or just relax" and did not hear when Mr. Johnson knocked on the office door. At the conclusion of the November 17, 2021 sworn-statement, Respondent stated that she would confirm whether Mr. Johnson was due any refund after terminating Respondent's services. Respondent failed to do so.

Shortly after that sworn statement, Respondent was placed on interim suspension from the practice of law by the Court.

On February 1, 2023, the ODC granted Respondent an additional extension of time until March 20, 2023 to provide a written response to the Johnson Complaint. On March 20, 2023, the ODC granted Respondent a final extension of time until April 10, 2023 to provide a written response to that complaint. Respondent failed to do so by that final extended deadline.

Respondent has not refunded any unearned fees to Mr. Johnson. On June 6, 2023, Respondent hand-delivered to the ODC certain of her trust account bank statements. Those records confirm that, following Mr. Johnson's July 13, 2021 termination of Respondent as counsel and request for a refund of unearned fees, Respondent failed to deposit into her trust account any amount representing the portion of the fee reasonably in dispute.

The ODC respectfully submits that there is clear and convincing evidence that, with regard to Count Two (ODC 39535), Respondent has violated Rules 1.1(a), 1.3, 1.4(a), 1.5(f)(5), 1.16(d), 3.2, 8.1 (b) and (c), and 8.4(a) and (d).

Count Three (ODC 39794)

On January 31, 2022, following Respondent's placement on interim suspension, the ODC received a complaint from Kathryn Becnel ("Ms. Becnel") and Michele Meyer ("Ms. Meyer") regarding Respondent. That complaint ("Becnel Complaint") states, in pertinent part, that: Respondent represented Lakeshia Holder ("Ms. Holder") in a personal injury matter; Ms. Becnel's law firm paid for certain expenses totaling at least \$2,450.00 on Ms. Holder's behalf prior to transferring the matter to Respondent; Ms. Meyer's employer (River Parishes Chiropractic ("RPC")) performed other services totaling \$6,755.00 on Ms. Holder's behalf in the same matter; in March 2021, Respondent settled Ms. Holder's matter for \$37,000.00 and received funds in that same amount; when Ms. Becnel's law firm learned of the settlement and contacted Respondent, Respondent falsely represented that she still was waiting on receipt of funds to be able to reimburse Ms. Becnel's law firm for expenses paid and to pay RPC for services rendered; nearly two years after Respondent's receipt of settlement funds, Ms. Becnel's firm and RPC still have not been reimbursed and paid by Respondent, respectively; and the settlement funds due to them were instead converted by Respondent to fuel her illegal drug use.

On March 30, 2021, Respondent received the \$37,000.00 settlement check for Ms. Holder's matter. On April 19, 2021, in a letter to Ms. Holder, Respondent confirmed that those funds were deposited into Respondent's trust account:

The following is a breakdown of the settlement funds received by me in reference to your case. The settlement check has been placed in my trust account (IOLTA), and has cleared. I am now disbursing the settlement funds to you, and to all medical providers known by me to have treated you for injuries sustained in the above referenced accident. Monies will be disbursed in accordance with the breakdown below.

Respondent did not thereafter reimburse Ms. Becnel's law firm or pay RPC for services rendered on Ms. Holder's behalf.

On February 23, 2022, the ODC sent a copy of the Becnel Complaint and a request for a response to the same to Respondent via certified mail to her LSBA-registered preferred address. On March 11, 2023, Mrs. Mollere accepted delivery of that correspondence on Respondent's behalf.

Respondent's written response to the Becnel Complaint was due on March 10, 2023. Respondent failed to provide a written response by that deadline. [FN2. On February 23, 2022, the ODC also sent a copy of the Becnel Complaint and a request for a response to the same to Respondent via certified mail to her LSBA-registered primary/secondary address. On March 12, 2022, that correspondence was returned to the ODC for the following reason: "Return to Sender- No Mail Receptacle- Unable to Forward."]

On April 12, 2022, the ODC sent an email to Respondent to her LSBA-registered service/public/private email address. Delivery of that email to Respondent was confirmed via Microsoft Outlook on the same day. The email attached an additional ODC letter and requested that Respondent provide a written response to the Becnel Complaint by April 22, 2022. Respondent failed to do so.

On February 1, 2023, the ODC granted Respondent an additional extension of time until March 20, 2023 to provide a written response to the Becnel Complaint.

On March 20, 2023, the ODC granted Respondent a final extension of time until April 10, 2023 to provide a written response to that complaint. Respondent failed to do so by that final extended deadline.

On May 1, 2023, having received no written response to the Becnel Complaint, the ODC issued a second subpoena to take Respondent's sworn statement again. The subpoena also requested that Respondent produce a copy of Ms. Holder's client file at that sworn statement.

On May 31, 2023, Respondent's sworn statement was taken for a second time. Respondent failed to produce a copy of Ms. Holder's client file at that statement, as required by the ODC's subpoena. Therein, Respondent confirmed receipt of the \$37,000.00 settlement check for Ms. Holder's matter and placement of those funds in her trust account. Respondent also admitted to using illegal drugs at the time of receipt of those funds. When asked whether she had converted a portion of those funds to fuel her illegal drug use, Respondent testified that "[i]t might be possible" and "maybe at the end there may have been some conversion that happened because of just plain not paying attention ... [a]nd just thinking that I'm just definitely trying to find a way to OD[.]"

During Respondent's May 31, 2023 sworn statement, the ODC requested that Respondent produce bank statements for her trust account. The ODC explained that Respondent was presumed to have converted the funds due to Ms. Becnel's firm and to RPC unless she could demonstrate otherwise. On June 6, 2023, Respondent hand-delivered to the ODC certain

bank statements for her trust account, as well as a copy of Ms. Holder's client file. However, Respondent failed to produce requested trust account records for the months of March 2021 through June 2021, as well as August 2021 and September 2021. The records provided did not rebut the presumption that Respondent personally converted the funds due to Ms. Becnel's law firm and to RPC.

On June 19, 2023, the ODC sent an email to Respondent to her LSBA-registered service/public/private email address. Delivery of that email to Respondent was confirmed via Microsoft Outlook on the same day. The email requested that Respondent provide to the ODC a copy of the missing 2021 trust account bank statements. Respondent failed to do so.

The ODC respectfully submits that there is clear and convincing evidence that, with regard to Count Three (ODC 39794), Respondent has violated Rules 1.15(a) and (d), 8.1(b) and (c), and 8.4(a), (b), (c) and (d).

EVIDENCE

The Committee reviewed the exhibits submitted by ODC, which are Exhibits ODC 1-30. Respondent did not submit evidence or argument for the Committee's consideration, nor did he request to be heard in mitigation pursuant to Rule XIX, §11(E)(4).

FINDINGS OF FACT

The Committee adopts the facts set forth in ODC's Submission on Sanctions.

RULES VIOLATED

- Respondent engaged in serious criminal conduct; converted substantial funds from her parents to fuel her drug use and failed to cooperate with the ODC's investigation of the Mollere Complaint thereby violating Rules 8.1(b) and (c), as well as Rule 8.4(a) and (b).
- Respondent failed to provide competent representation to Mr. Johnson, failed to act with reasonable diligence and promptness in representing Mr. Johnson, failed to reasonably communicate with Mr. Johnson, failed to refund Mr. Johnson's unearned fees or otherwise deposit any amount representing the portion of the fee reasonably in dispute into her trust account, failed to take steps reasonable practicable to protect Mr. Johnson's interests after

being terminated as counsel, failed to make reasonable efforts to expedite the Johnson Litigation consistent with the interests of Mr. Johnson, failed to cooperate with the ODC's investigation, and otherwise engaged in conduct prejudicial to the administration of justice thereby violating Rules 1.1(a), 1.3, 1.4(a), 1.5(f)(5), 1.16(d), 3.2, 8.1(b) and (c) and 8.4 (a) and (d).

- Respondent converted funds due to Ms. Becnel's law firm and to RPC from the settlement of Ms. Holder's matter, failed to cooperate with the ODC's investigation of the Becnel Complaint, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, and engaged in conduct prejudicial to the administration of justice thereby violating Rules 1.15(a) and (d), 8.1(b) and (c), and 8.4(a), (b), (c), and (d).

CONCLUSION

Given the deemed-admitted facts set forth in the formal charges, which are corroborated by the evidence in support, the ABA's Standards, the Court's jurisprudence, and the fact that six aggravating factors substantially outweigh the sole mitigating factor present here, the Committee recommends disbarment as the appropriate sanction for all of Respondent's misconduct. In addition, the Committee recommends that Respondent be ordered to make full restitution to her former client (Mr. Johnson), and/or the Client Assistance Fund, as appropriate, as well as to the affected third parties (Respondent's parents, Ms. Becnel's law firm, and RPC). Finally, the Committee recommends that Respondent be assessed with the 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 Alexis P. Joachim, to sign on their behalf.

5. On or about April 9, 2024, an Order Per Curium (Exhibit 2) was entered in a matter styled the Supreme Court of Louisiana, No. 2024-B-00160, *In Re: Aaron P. Mollere*, Attorney Disciplinary Proceeding, which states in pertinent part:

DISCIPLINARY PROCEEDINGS

In August 2023, the ODC filed formal charges against respondent as set forth above. Respondent failed to answer the formal charges. Accordingly, the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence pursuant to Supreme Court Rule XIX, § 1 l(E)(3). No formal hearing was held, but the parties were given an opportunity to file with the hearing committee written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for the committee's consideration.

Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee adopted the deemed admitted facts as its factual findings. Based on these facts, the committee determined respondent violated the Rules of Professional Conduct as follows:

1. In Count I, respondent engaged in serious criminal conduct, converted substantial funds from his parents to fuel his drug use, and failed to cooperate with the ODC's investigation, in violation of Rules 8.1(b), 8.1(c), 8.4(a), and 8.4(b);
2. In Count II, respondent failed to provide competent representation to Mr. Johnson, neglected Mr. Johnson's legal matter, failed to reasonably communicate with Mr. Johnson, failed to refund Mr. Johnson's unearned fees or otherwise deposit into his trust account any amount reasonably in dispute, failed to protect Mr. Johnson's interests after being terminated as his counsel, and failed to cooperate with the ODC's investigation, in violation of Rules 1.1(a), 1.3, 1.4, 1.5(f)(5), 1.16(d), 3.2, 8.1(b), 8.1(c), 8.4(a), and 8.4(d); and
3. In Count III, respondent converted funds due to Ms. Becnel and to RPC from the settlement of Ms. Holder's matter and failed to cooperate with the ODC's investigation, in violation of Rules 1.15(a), 1.15(d), 8.1(b), 8.1(c), 8.4(a), 8.4(b), 8.4(c), and 8.4(d).

The committee then determined that respondent knowingly and intentionally violated duties owed to his clients, the public, the legal system, and the legal profession. The committee further determined that respondent

caused actual harm to his parents by converting their funds to fuel his drug use, to Mr. Johnson by delaying his legal matter and failing to refund the unearned portion of the fee he paid, to Ms. Becnel and RPC by converting to his own use their funds from Ms. Holder's settlement, and to the disciplinary system by failing to cooperate with the ODC in its investigations. Relying on the ABA's Standards for Imposing Lawyer Sanctions, the committee determined the baseline sanction is disbarment.

In aggravation, the committee found the following: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, indifference to making restitution, and illegal conduct, including that involving the use of controlled substances. The sole mitigating factor found by the committee was the absence of a prior disciplinary record.

After further considering the court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be disbarred. The committee also recommended respondent be ordered to make full restitution to Mr. Johnson and/or the Louisiana State Bar Association's Client Assistance Fund, 2 as well as to his parents, Ms. Becnel, and RPC.

Neither respondent nor the ODC filed an objection to the committee's report.

Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Aaron P. Mollere, Louisiana Bar Roll number 37232, be and he hereby is disbarred, retroactive to December 7, 2021, the date of his interim suspension. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. It is further ordered that respondent shall make full restitution to Kyle Johnson and/or the Louisiana State Bar Association's Client Assistance Fund, as well as to his parents, attorney Kathryn Becnel, and River Parishes Chiropractic. 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.

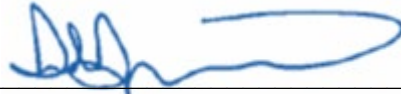
6. Copies of the set of documents in a matter styled Louisiana Disciplinary Board, Docket Number: 23-DB-052, *In Re: Aaron P. Mollere*, (OCD 39334, 39535 and 39794); which includes Formal Charges filed August 18, 2023; Office of Disciplinary Counsel's Submission on Sanctions filed November 27, 2023; Report of the Hearing Committee #54 filed January 5, 2024; and Supreme Court Order dated April 9, 2024; are attached hereto as Petitioner's Exhibits 1 and 2 and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibit 1 and 2 at the time of hearing of this cause.

7. 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

Amanda M. Kates
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
Telephone: 512.427.1350
Telecopier: 512.427.4167
Email: amanda.kates@texasbar.com



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

CERTIFICATE OF SERVICE

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

Aaron Paul Mollere
487 Central Avenue
Reserve, Louisiana 70084



Amanda M. Kates

The Supreme Court of the State of Louisiana

IN RE: AARON P. MOLLERE

No. 2024-B-00160

IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations
(Former Charges);

April 09, 2024

Disciplinary imposed. See per curiam.

SJC
JLW
JDH
JTG
WJC
JBM
PDG

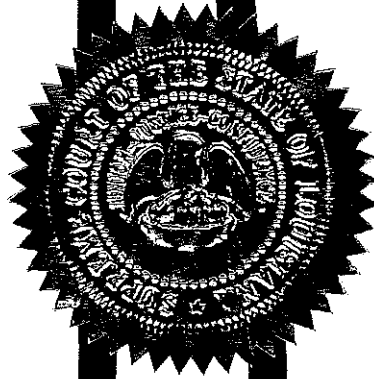


EXHIBIT
2

Supreme Court of Louisiana
April 09, 2024

Edwin C. Gonzalez
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA
A TRUE COPY
Edwin C. Gonzalez
Deputy Clerk of Court

SUPREME COURT OF LOUISIANA

April 9, 2024

NO. 2024-B-0160

IN RE: AARON P. MOLLERE

ATTORNEY DISCIPLINARY PROCEEDING

STC

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Aaron P. Mollere, an attorney licensed to practice law in Louisiana¹ but currently on interim suspension. *In re: Mollere*, 21-1769 (La. 12/7/21), 328 So. 3d 409.

FORMAL CHARGES

Count I

On June 15, 2021, respondent was arrested and charged with possession of cocaine and possession of a firearm while in possession of a controlled dangerous substance. The facts underlying the arrest are as follows:

Based on the observed transaction and the suspicious behavior, in particular their extreme measures to avoid law enforcement, Detectives Lyvers and Foret conducted an investigatory stop of Renaudin and Mollere as they were walking through an open field towards his residence. ... Upon Detectives approaching Renaudin and Mollere, Detectives observed Mollere with his hand behind his back. Detectives ordered Mollere to show his hands, at which time he revealed a firearm. Mollere was ordered to drop the firearm, to which he complied. Detectives detained Mollere and Renaudin utilizing handcuffs, pending further investigation.

Detective Lyvers advised Mollere of his rights as per Miranda, which he agreed to waive and speak to Detective

¹ Respondent is also licensed to practice law in Texas.

Lyvers regarding the investigation. Mollere advised Detective Lyvers that he was Renaudin's attorney... Mollere also advised Detective Lyvers that he consumed crack cocaine throughout the day with Renaudin. Mollere also advised that prior to being stopped by Detectives, he and Renaudin just returned from purchasing crack cocaine in "New Orleans East."

On June 24, 2021, the ODC received a disciplinary complaint from respondent's mother, Janet Mollere, advising of the arrest. Mrs. Mollere also alleged that respondent "needs help, most likely mental & to get drug free." Respondent failed to respond to notice of the complaint.

However, on August 20, 2021, respondent did provide the ODC with a signed authorization to release his records from the Judges and Lawyers Assistance Program ("JLAP"). Respondent's JLAP records revealed that, on July 28, 2021, he entered Palmetto Addiction Recovery Center for inpatient treatment. On August 18, 2021, after only twenty-two days of treatment, respondent left Palmetto against medical advice. Before respondent stopped treatment, Palmetto diagnosed him with the following:

- Alcohol Use Disorder, Severe
- Cocaine Use Disorder, Severe
- Opioid Use Disorder, Severe
- Amphetamine Use Disorder, Severe
- Sedative hypnotic Use Disorder, Severe
- Generalized Anxiety
- Insomnia
- Hypertension
- Lumbar disc disease

Palmetto's recommendation was that respondent immediately complete a long-term inpatient treatment program and then sign a five-year JLAP recovery agreement.

Because respondent failed to respond to the complaint, the ODC issued a subpoena to obtain his sworn statement. During his November 17, 2021 sworn statement, respondent took responsibility for failing to cooperate with the ODC's

investigation and promised to provide a written response to the complaint. However, he never provided the ODC with said response.

Additionally, during his sworn statement, respondent admitted that he had used cocaine with a client prior to and on the day of his June 15, 2021 arrest and that the factual narrative contained in the arrest record was substantially accurate. Respondent also admitted that he converted between \$30,000 and \$40,000 of his parents' money to fuel his "continuing [drug] use."

Following his premature departure from Palmetto in August 2021, respondent did not sign a JLAP recovery agreement and has not been otherwise monitored by JLAP. Respondent admitted to having no contact with JLAP since July 2021, and he continues to use illegal drugs. His criminal matter stemming from his June 15, 2021 arrest is still pending.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 8.1(b) (knowing failure to respond to a lawful demand for information from a disciplinary authority), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer).

Count II

In May 2019, Kyle Johnson hired respondent to represent him in a criminal matter. On October 14, 2021, the ODC received a disciplinary complaint from Mr. Johnson. In the complaint, Mr. Johnson alleged that respondent

arrived two hours late to court on July 6, 2021 and failed to present oral argument on a motion to dismiss and/or quash bill of information that he previously had filed on Mr. Johnson's behalf, which motion was denied by the court; represented that he would take an appeal from that negative ruling but failed to do so; failed to attend two scheduled meetings with Mr. Johnson on July 9 and 12,

2021; failed to otherwise reasonably communicate with Mr. Johnson about his legal matter; failed to act with competence and reasonable diligence in representing Mr. Johnson; and failed to return unearned fees paid by Mr. Johnson.

Mr. Johnson also indicated that, due to respondent's failures, he terminated respondent's services and hired new counsel.

Respondent failed to respond to notice of the complaint, necessitating the issuance of a subpoena to obtain his sworn statement. During his November 17, 2021 sworn statement, respondent acknowledged his conduct during the July 6, 2021 hearing as Mr. Johnson had alleged but indicated that he was in "no shape" to present his argument that day. He also acknowledged missing the two scheduled meetings with Mr. Johnson, stating that he was tired and/or sleeping at the time of each meeting.

Additionally, during the sworn statement, respondent acknowledged his failure to cooperate with the ODC and promised to provide a written response to the complaint. He also promised to determine whether Mr. Johnson was due a refund. Following the sworn statement, he failed to do either. He did, however, provide the ODC with some of his trust account bank statements, which confirmed that he did not place any funds in the account that were reasonably disputed by Mr. Johnson as earned.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1(a) (failure to provide competent representation to a client), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5(f)(5) (failure to refund an unearned fee), 1.16(d) (obligations upon termination of the representation), 3.2 (failure to make reasonable efforts to expedite litigation), 8.1(b), 8.1(c), 8.4(a), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Count III

By way of background, attorney Kathryn Becnel represented Lakeshia Holder in a personal injury matter. During the representation, Ms. Becnel incurred \$2,450 in expenses, and River Parishes Chiropractic (“RPC”) treated Ms. Holder’s injuries, performing services totaling \$6,755. Thereafter, Ms. Becnel transferred Ms. Holder’s matter to respondent.

In March 2021, respondent settled Ms. Holder’s claim for \$37,000. He received the settlement funds on Ms. Holder’s behalf on March 30, 2021 and deposited the check into his client trust account. In a letter dated April 19, 2021, he informed Ms. Holder of the receipt of the funds and provided a breakdown of the disbursement of the funds, including reimbursements to Ms. Becnel and RPC. Nevertheless, respondent did not disburse any funds to Ms. Becnel or RPC. Furthermore, respondent falsely represented to Ms. Becnel and RPC that he was still awaiting receipt of the funds and, thus, could not yet reimburse them.

On January 31, 2022, after respondent was placed on interim suspension, the ODC received a disciplinary complaint from Ms. Becnel. The complaint reiterated the above facts and indicated that neither Ms. Becnel nor RPC had been reimbursed from Ms. Holder’s settlement funds. Respondent failed to cooperate with the ODC’s investigation of the complaint, necessitating the issuance of a subpoena to obtain his sworn statement. The subpoena also requested that respondent provide a copy of Ms. Holder’s file.

Although respondent appeared for his May 31, 2023 sworn statement, he failed to provide a copy of Ms. Holder’s file. During the sworn statement, respondent confirmed that he received \$37,000 on Ms. Holder’s behalf and deposited the funds into his trust account. Respondent also admitted to using illegal drugs at the time. He was unsure if he had used any of Ms. Holder’s funds to purchase illegal drugs, but he indicated “[i]t might be possible” because he was “just

plain not paying attention... and just thinking that I'm just definitely trying to find a way to OD."

The ODC advised respondent that he was presumed to have converted the funds belonging to Ms. Becnel and RPC unless he could provide trust account records to rebut the presumption. Not long after the sworn statement, respondent provided the ODC with a copy of Ms. Holder's file and certain trust account records. However, he failed to provide trust account records for the time period at issue; thus, he was unable to overcome the presumption that he converted the funds.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.15(a) (safekeeping property of clients or third persons), 1.15(d) (failure to timely remit funds to a client or third person) 8.1(b), 8.1(c), 8.4(a), 8.4(b), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d).

DISCIPLINARY PROCEEDINGS

In August 2023, the ODC filed formal charges against respondent as set forth above. Respondent failed to answer the formal charges. Accordingly, the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence pursuant to Supreme Court Rule XIX, § 11(E)(3). No formal hearing was held, but the parties were given an opportunity to file with the hearing committee written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for the committee's consideration.

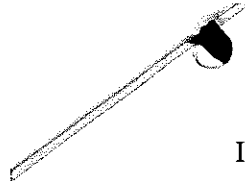
Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee adopted the deemed admitted facts as its factual findings. Based on these

facts, the committee determined respondent violated the Rules of Professional Conduct as follows:

1. In Count I, respondent engaged in serious criminal conduct, converted substantial funds from his parents to fuel his drug use, and failed to cooperate with the ODC's investigation, in violation of Rules 8.1(b), 8.1(c), 8.4(a), and 8.4(b);
2. In Count II, respondent failed to provide competent representation to Mr. Johnson, neglected Mr. Johnson's legal matter, failed to reasonably communicate with Mr. Johnson, failed to refund Mr. Johnson's unearned fees or otherwise deposit into his trust account any amount reasonably in dispute, failed to protect Mr. Johnson's interests after being terminated as his counsel, and failed to cooperate with the ODC's investigation, in violation of Rules 1.1(a), 1.3, 1.4, 1.5(f)(5), 1.16(d), 3.2, 8.1(b), 8.1(c), 8.4(a), and 8.4(d); and
3. In Count III, respondent converted funds due to Ms. Becnel and to RPC from the settlement of Ms. Holder's matter and failed to cooperate with the ODC's investigation, in violation of Rules 1.15(a), 1.15(d), 8.1(b), 8.1(c), 8.4(a), 8.4(b), 8.4(c), and 8.4(d).

The committee then determined that respondent knowingly and intentionally violated duties owed to his clients, the public, the legal system, and the legal profession. The committee further determined that respondent caused actual harm to his parents by converting their funds to fuel his drug use, to Mr. Johnson by delaying his legal matter and failing to refund the unearned portion of the fee he paid, to Ms. Becnel and RPC by converting to his own use their funds from Ms. Holder's settlement, and to the disciplinary system by failing to cooperate with the ODC in its investigations. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.



In aggravation, the committee found the following: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, indifference to making restitution, and illegal conduct, including that involving the use of controlled substances. The sole mitigating factor found by the committee was the absence of a prior disciplinary record.

After further considering the court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be disbarred. The committee also recommended respondent be ordered to make full restitution to Mr. Johnson and/or the Louisiana State Bar Association's Client Assistance Fund,² as well as to his parents, Ms. Becnel, and RPC.

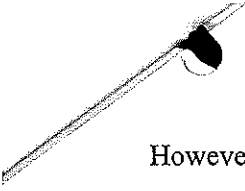
Neither respondent nor the ODC filed an objection to the committee's report. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.

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.

In cases in which the lawyer does not answer the formal charges, the factual allegations of those charges are deemed admitted. Supreme Court Rule XIX, § 11(E)(3). Thus, the ODC bears no additional burden to prove the factual allegations contained in the formal charges after those charges have been deemed admitted.

² Mr. Johnson filed a \$13,500 claim with the Client Assistance Fund in November 2021. The record does not indicate the status of the claim.



However, the language of § 11(E)(3) does not encompass legal conclusions that flow from the factual allegations. If the legal conclusion the ODC seeks to prove (i.e., a violation of a specific rule) is not readily apparent from the deemed admitted facts, additional evidence may need to be submitted in order to prove the legal conclusions that flow from the admitted factual allegations. *In re: Donnan*, 01-3058 (La. 1/10/03), 838 So. 2d 715.

The record in this deemed admitted matter supports a finding that respondent was arrested for possession of cocaine and for possession of a firearm while in possession of a controlled dangerous substance, neglected a legal matter, failed to communicate with a client, failed to refund unearned fees, converted third-party funds, and failed to cooperate with the ODC in its investigations. This conduct amounts to a violation of the Rules of Professional Conduct as charged.

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).

The record further supports a finding that respondent violated duties owed to his clients, the public, the legal system, and the legal profession. He acted both knowingly and intentionally, and his conduct caused actual harm. We agree with the hearing committee that the applicable baseline sanction is disbarment. We also agree with the committee's assessment of aggravating factors as well as its

determination that the only mitigating factor present is the absence of a prior disciplinary record.

Turning to the issue of an appropriate sanction, we take guidance from *In re: Merritt*, 23-0134 (La. 5/31/23), 361 So. 3d 451, and *In re: White*, 22-1701 (La. 2/24/23), 355 So. 3d 1085. In *Merritt*, an attorney neglected a legal matter, failed to communicate with his clients, converted more than \$11,000 of client funds, and failed to cooperate with the ODC in its investigation. For this misconduct, we disbarred the attorney and ordered him to make full restitution. In *White*, an attorney neglected a legal matter and continuously misled the client about the status of the legal matter, engaged in criminal conduct involving illegal drugs, failed to appear for his arraignment and evaded a bench warrant for more than five years, ignored a client's multiple requests for the return of his file, and failed to cooperate with the ODC in three investigations. For this misconduct, we disbarred the attorney. Based upon this case law, the committee's recommended sanction of disbarment is appropriate to address respondent's misconduct.

Accordingly, we will adopt the committee's recommendation and disbar respondent, retroactive to the date of his interim suspension. We will further order respondent to make full restitution to Mr. Johnson and/or the Client Assistance Fund, as well as to his parents, Ms. Becnel, and RPC.

DECREE

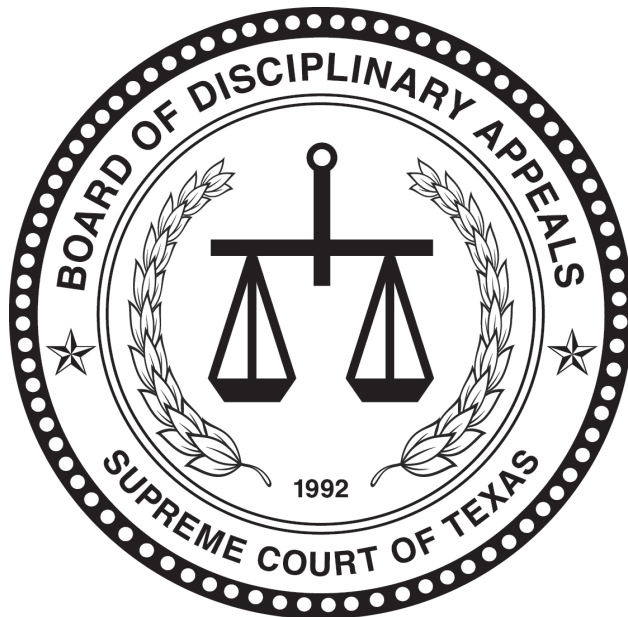
Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Aaron P. Mollere, Louisiana Bar Roll number 37232, be and he hereby is disbarred, retroactive to December 7, 2021, the date of his interim suspension. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. It is further ordered that respondent shall make full restitution to Kyle Johnson and/or the

Louisiana State Bar Association's Client Assistance Fund, as well as to his parents, attorney Kathryn Becnel, and River Parishes Chiropractic. 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.

THE BOARD *of* DISCIPLINARY APPEALS
APPOINTED BY THE SUPREME COURT *of* TEXAS



INTERNAL PROCEDURAL RULES
(EFFECTIVE SEPTEMBER 24, 2024)



Mailing Address:
P.O. Box 12426
Austin TX 78711

1414 Colorado, Suite 610
Austin TX 78701

Tel: 512 427-1578
FAX: 512 427-4130
website: txboda.org

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through September 24, 2024

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INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through September 24, 2024

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.

- (c) BODA may, upon decision of the Chair, conduct any business or proceedings—including any hearing, pretrial conference, or consideration of any matter or motion—remotely.

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 or a complaint 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. If a grievance is classified as a complaint, the CDC must notify both the Complainant and the Respondent of the Respondent's 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. For a grievance classified as a complaint, the CDC must send the Respondent an appeal notice form, approved by BODA, with notice of 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 not consider documents or other submissions that the Complainant or Respondent filed with the CDC or BODA after the CDC's classification. 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.

Rule 3.03. Disposition of Classification Appeal

(a) BODA may decide a classification appeal by doing any of the following:

(1) affirm the CDC's classification of the grievance as an inquiry and the dismissal of the grievance;

(2) reverse the CDC's classification of the grievance as an inquiry, reclassify the grievance as a complaint, and return the matter to the CDC for investigation, just cause determination, and further proceedings in accordance with the TRDP;

(3) affirm the CDC's classification of the grievance as a complaint and return the matter to the CDC to proceed with investigation, just cause determination, and further proceedings in accordance with the TRDP; or

(4) reverse the CDC's classification of the grievance as a complaint, reclassify the grievance as an inquiry, and dismiss the grievance.

(b) When BODA reverses the CDC's inquiry classification and reclassifies a grievance as a complaint, BODA must reference any provisions of the TDRPC under which BODA concludes professional misconduct is alleged. When BODA affirms the CDC's complaint classification, BODA may reference any provisions of the TDRPC under which BODA concludes professional misconduct is alleged. The scope of investigation will be determined by the CDC in accordance with TRDP 2.12.

(c) BODA's decision in a classification appeal is final and conclusive, and such decision is not subject to appeal or reconsideration.

(d) A classification appeal decision under (a)(1) or (4), which results in dismissal, has no bearing on whether the Complainant may amend the grievance and resubmit it to the CDC under TRDP 2.10.

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 [TRDP] 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 petitioner 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.