



FILED
Sep. 08, 2021

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

IN THE MATTER OF §
GEOFFREY C. MOUSSEAU § CAUSE NO. 65863
STATE BAR CARD NO. 14606300 §

PETITION FOR COMPULSORY DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Geoffrey C. Mousseau (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part VIII of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of this Board's procedures for handling a compulsory discipline matter by attaching a copy of such procedures to this petition.

2. Respondent, Geoffrey C. Mousseau, may be served with a true and correct copy of this Petition for Compulsory Discipline, its attachments, as well as a notice of hearing, at Geoffrey C. Mousseau, 222 S. Figueroa Street, Apt. 1922, Los Angeles, CA 90012.

3. On or about October 26, 2005, Respondent was charged by Indictment (Exhibit 1) in Cause No. 2:04-cr-01697-GAF, styled *United States of America, Plaintiff v. Thomas Edward Rubin, Thomas Patrick Sullivan, and Geoffrey C. Mousseau*, in the United States District Court for the Central District of California; with:

- A. Count Eight – Conspiracy in violation of 18 U.S.C. § 371;
- B. Counts Nine and Ten – Fraudulent Concealment of Property in Bankruptcy; Aiding and Abetting and Causing an Act to be Done in violation of 18 U.S.C. § 152(1); § 2;

Count	Mailing
Nine	\$250,000 wire transferred from Focus' Community Bank account number XXXX1871 to the Law Offices of Geoffrey C. Mousseau, Attorney Client Trust Bank of America account number XXXXX-XX882, on October 26, 2000, and thereafter transferred, via check number 5159, to the law offices of Stutman, Treister & Glatt.
Ten	\$250,000 wire transferred from Focus' Community Bank account number XXXX1871 to the Law Offices of Geoffrey C. Mousseau, Attorney Client Trust Bank of America account number XXXXX-XX882, on October 27, 2000, and thereafter transferred to defendant MOUSSEAU, and other law firms and accounting firms, including the law offices of Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone.

C. Counts Eleven through Twenty-two – Fraudulent Transfer and Concealment of Property in Bankruptcy; Aiding and Abetting and Causing an Act to be Done in violation of 18 U.S.C. § 152(7); § 2;

Count	Mailing
Eleven	\$75,000 transferred from Focus' Community Bank account number XXXX3454 to Rubin via check number 4395, dated October 27, 2000
Twelve	\$50,000 transferred from Focus' Community Bank account number XXXX3454 to Dr. Mark Saginor, M.D., Rubin's physician, via check number 4417, dated October 27, 2000.
Thirteen	\$50,000 transferred from Focus' Community Bank account number XXXX3454 to American Express as a prepayment for a Focus corporate credit card number XXXX-XXXXXX-53008 used by Rubin via check number 4418, dated October 27, 2000.
Fourteen	\$45,968.77 transferred from Focus' Community Bank account number XXXX1871 to Colleen M. Capone via check number 34125, dated October 27, 2000.
Fifteen	\$88,106.72 transferred from Focus' Community Bank account number XXXX1871 to Donna Lucas via check number 34131, dated October 27, 2000.
Sixteen	\$16,724.71 transferred from Focus' Community Bank account number XXXX1871 to Joseph R. Capone via check number 34133, dated October 27, 2000.
Seventeen	\$16,762.60 transferred from Focus' Community Bank account number XXXX1871 to Joseph S. Palazzola via check number 34134, dated October 27, 2000.
Eighteen	\$16,767.26 transferred from Focus' Community Bank account number XXXX1871 to Matthew W. Rubin, via check number 34136, dated October 27, 2000.
Nineteen	\$16,662.50 transferred from Focus' Community Bank account number XXXX1871 to Karissa A. Provost, via check number 34138, dated October 27, 2000.
Twenty	\$16,837.50 transferred from Focus' Community Bank account number XXXX1871 to Stephanie L. Taylor via check number 34139, dated October 27, 2000.
Twenty-one	\$168,552.82 transferred from Focus' Community Bank account number XXXX1871 to Sullivan via check number 34141, dated October 27, 2000.

Twenty-two	\$4,655.40 transferred from Focus' American Express corporate credit card number XXXX-XXXXXX-53008 for the purchase of an Air France plane ticket for travel from New York to Paris, France, on November 20, 2000.
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D. Counts Twenty-three and Twenty-four – False Statements in Bankruptcy; Aiding and Abetting and Causing an Act to be Done in violation of 18 U.S.C. § 152(3); § 2;

Count	Year	False Statement
Twenty-Three	10/27/00	In a declaration filed in support of Focus' opposition to the appointment of an interim trustee, defendant SULLIVAN falsely stated, "Pending the disposition of the pending involuntary bankruptcy proceeding the Company [i.e., Focus] intends to expend monies necessary to preserve and protect the assets of the Company including payroll, insurance, rent and other items as set forth in further detail on the budget attached hereto which I prepared."
Twenty-Four	1/28/02	In a declaration filed in support of MOUSSEAU's opposition to Focus' creditors' motion for relief based on MOUSSEAU's failure to comply with Bankruptcy Code section 329, defendant SULLIVAN falsely stated, "On October 24, 2000, I executed an Indemnification Agreement [sic], an Undertaking and an Accounting due to my involvement in the In re Focus Bankruptcy case and for all Expenses actually and reasonably incurred by me in connection with my preparation to serve and my service as a witness in that Proceeding, and presented them to Focus Media pursuant to the requirements of the [Indemnification] Agreement."

E. Count Twenty-five – False Oath in Bankruptcy; Aiding and Abetting and Causing an Act to be Done in violation of 18 U.S.C. § 152(2); § 2;

Count	Year	False Statement
Twenty-Five	2/28/03	In response to the question "Did you ever communicate to Ted Stolman at any time, in any way, that the \$250,000 of retainer funds that had been paid to Stutman, Treister & Glatt, as their initial retainer in connection with their representation of Focus Media, was in fact your money?", defendant MOUSSEAU falsely responded, "No."

F. Count Twenty-six – Withholding Records in Bankruptcy; Aiding and Abetting and Causing an Act to be Done in violation of 18 U.S.C. § 152(9); § 2;

G. Count Twenty-seven – Transactions in Criminally Derived Property; Causing an Act to be Done in violation of 18 U.S.C. § 1957; § 2;

Count	Year	False Statement
Twenty-Seven	10/31/00	Deposit of check number 6110, drawn on SULLIVAN and his wife's joint Bank of America checking account number XXXXX-XX109, and made payable to Daphne Sullivan in the amount of \$165,000, into SULLIVAN and his wife's First Union Securities brokerage account.

H. Counts Twenty-eight through Twenty-nine – Transactions in Criminally Derived Property; Aiding and Abetting and Causing an Act to be Done in violation of 18 U.S.C. § 1957; § 2.

Count	Year	False Statement
Twenty-Eight	11/22/00	Depositing of check number 010518, drawn on TRA's account at Community Bank, in the TRA's account at Community Bank, in the amount of \$14,403.70, made payable to Citibank Advantage to pay for charges on a credit card in the name of defendant RUBIN.
Twenty-Nine	12/4/00	Depositing of check number 10529, drawn on TRA's account at Community Bank, in the amount of \$10,549, made payable to Colleen Capone.

4. On or about December 13, 2006, a Judgment and Probation/Commitment Order (Exhibit 2) was entered in Cause No. 2:04-cr-01697-GAF, styled *United States of America v. Geoffrey C. Mousseau*, in the United States District Court Central District of California, wherein Respondent was found guilty of Count 8 – Conspiracy to Commit Bankruptcy Fraud in violation of 18 U.S.C. 371; Counts 9 and 10 – Fraudulent Concealment of Property in Bankruptcy in violation of 18 U.S.C. 152(1); Count 24 – False Statement in Bankruptcy in violation of 18 U.S.C. 152(3); Count 25 – False Oath in Bankruptcy in violation of 18 U.S.C. 152(2); and Count 26 – Withholding Records in Bankruptcy in violation of 18 U.S.C. 152(9). Respondent was ordered to be committed to the custody of the Federal Bureau of Prisons for a term of twenty-one (21) months with the term consisting of 21 months on Counts 9, 10, 24, 25, and 26, to be served concurrent to each other, but consecutively to Count 8. Count 8 shall consist of a term of 21 months. Respondent is ordered that upon release from imprisonment, to be on supervised release for a term of 3 years. This term consists of three years on each of Counts 8, 9, 10, 24, 25, and 26, all such terms to run concurrently. Respondent was further ordered to pay a special assessment in the amount of \$600. The Court further ordered that Respondent shall cease to engage in the practice of law, shall notify the California State Bar, the Texas State Bar, and any other licensing body in any place in which he intends[sic] to work, of his conviction herein, and shall not practice law in either California or

Texas or engage in any licensed profession until given permission by the respective licensing authority.

5. On or about February 7, 2007, an Amended Judgment and Probation/Commitment Order (Exhibit 3) was entered in Cause No. 2:04-cr-01697-GAF, styled *United States of America v. Geoffrey C. Mousseau*, in the United States District Court Central District of California, wherein Respondent was found guilty of Count 8 – Conspiracy to Commit Bankruptcy Fraud in violation of 18 U.S.C. 371; Counts 9 and 10 – Fraudulent Concealment of Property in Bankruptcy in violation of 18 U.S.C. 152(1); Count 24 – False Statement in Bankruptcy in violation of 18 U.S.C. 152(3); Count 25 – False Oath in Bankruptcy in violation of 18 U.S.C. 152(2); and Count 26 – Withholding Records in Bankruptcy in violation of 18 U.S.C. 152(9). Respondent was ordered to be committed to the custody of the Federal Bureau of Prisons for a term of twenty-one (21) months with the term consisting of 21 months on Counts 8, 9, 10, 24, 25, and 26, to be served concurrent to each other. Respondent is ordered that upon release from imprisonment, to be on supervised release for a term of 3 years. This term consists of three years on each of Counts 8, 9, 10, 24, 25, and 26, all such terms to run concurrently. Respondent was further ordered to pay a special assessment in the amount of \$600. The Court further ordered that Respondent shall cease to engage in the practice of law, shall notify the California State Bar, the Texas State Bar, and any other licensing body in any place in which he intends[sic] to work, of his conviction herein, and shall not practice law in either California or Texas or engage in any licensed profession until given permission by the respective licensing authority.

6 Attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein, are true and correct copies of the following documents in the Mousseau criminal case: First Superseding Indictment (Exhibit 1), Judgment and

Probation/Commitment Order (Exhibit 2), and an Amended Judgment and Probation/Commitment Order (Exhibit 3). Petitioner expects to introduce certified copies of Exhibits 1 through 3 at the time of hearing of this cause.

7. Respondent, Geoffrey C. Mousseau, whose bar card number is 14606300, is the same person as the Geoffrey C. Mousseau who is the subject of the First Superseding Indictment and Judgment and Probation/Commitment Orders described above, true and correct copies of which are attached hereto as Exhibits 1 through 3.

8. Attached hereto as Exhibit 4 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 an affidavit of Amanda M. Kates, Attorney of Record for Petitioner herein, attesting to the fact that Respondent is the same person as the person who is the subject of the Judgment and Probation/Commitment Orders entered in the Mousseau criminal case. Petitioner expects to introduce the original of said affidavit at the time of hearing of this cause.

9. The offenses for which Respondent was convicted are intentional crimes as defined by Rule 1.06(V), Texas Rules of Disciplinary Procedure. They are as well serious crimes as defined by Rule 1.06(GG), Texas Rules of Disciplinary Procedure.

10. Having been found guilty of an intentional crime, and such judgment being final, Respondent should be disbarred as provided in Rule 8.05, Texas Rules of Disciplinary Procedure.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that Respondent be given notice of these proceedings as provided by law and, upon hearing of this matter, that the Board enter its order disbarring Respondent and for such other and further relief to which Petitioner may be entitled to receive, including costs of court and attorney's fees.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Amanda M. Kates
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
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Amanda M. Kates
State Bar Card No. 24075987

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent for personal service on Geoffrey C. Mousseau, 222 S. Figueroa Street, Apt. 1922, Los Angeles, CA 90012, on this 8th day of September, 2021.



Amanda M. Kates

NOTICE OF REMOTE HEARING

Notice is hereby given that a trial on the merits of the Petition for Compulsory Discipline heretofore sent to be filed with the Board of Disciplinary Appeals on this day will be held on October 29, 2021, at 9:00 a.m. by remote appearance.

<https://txcourts.zoom.us/j/95968888269>

Meeting ID: 959 6888 8269

Topic: BODA En Banc Hearings

Time: October 29, 2021 09:00 AM Central Time (US and Canada)

To join the Zoom trial by Video:

Go to:

<https://txcourts.zoom.us/j/95968888269>

Join the meeting by typing in the Meeting ID:
959 6888 8269


To appear by video on Zoom, you will need to have an electronic device with an internet connection. You may use a smart phone, iPad/tablet, or webcam/built in camera with sound and video. You will also need to install the free Zoom App before the conference begins.

To join the Zoom trial by Phone/Audio only:

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+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 929 205 6099 US (New York)

Meeting ID: 959 6888 8269



Amanda M. Kates

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

February 2005 Grand Jury

UNITED STATES OF AMERICA,) CR No. 04-1697(A)-GHK

Plaintiff,) F I R S T

v.) S U P E R S E D I N G

) I N D I C T M E N T

THOMAS EDWARD RUBIN,)

THOMAS PATRICK SULLIVAN,)

and GEOFFREY C. MOUSSEAU,)

Defendants.)

[18 U.S.C. § 371: Conspiracy;
18 U.S.C. § 1341: Mail Fraud;
18 U.S.C. § 1343: Wire Fraud;
18 U.S.C. §§ 1343, 1346: Wire Fraud
Involving Deprivation of Honest
Services; 18 U.S.C. § 371:
Conspiracy; 18 U.S.C. § 152:
Concealment of Assets, False
Declaration Under Penalty of
Perjury, Fraudulent Transfer and
Concealment of Assets, and
Fraudulent Withholding of Books and
Records in Bankruptcy; 18 U.S.C.
§ 1957: Unlawful Monetary
Transactions; 18 U.S.C. § 2: Aiding
and Abetting and Causing an Act to
be Done]

EXHIBIT

1

OCT 27 2005

1 The Grand Jury charges:

2 COUNT ONE

3 [18 U.S.C. § 371]

4 [CONSPIRACY]

5 A. INTRODUCTION

6 1. At all times relevant to this First Superseding
7 Indictment ("FSI"):

8 a. Defendant THOMAS EDWARD RUBIN ("RUBIN") was a
9 resident of Malibu, California, within the Central District of
10 California.

11 b. Defendant THOMAS PATRICK SULLIVAN ("SULLIVAN") was
12 a resident of Westlake Village, California, within the Central
13 District of California.

14 c. Focus Media, Inc. ("Focus"), was a media placement
15 agency incorporated in California. Its principal business was to
16 buy advertising time on television and radio stations for
17 clients, including, but not limited to, Sears, Roebuck and
18 Company ("Sears"), which was Focus' largest client. Focus' main
19 offices were located in Santa Monica, California, within the
20 Central District of California.

21 d. Defendant RUBIN was the founder, sole shareholder,
22 Chairman, and Chief Executive Officer ("CEO") of Focus. As CEO,
23 defendant RUBIN oversaw all aspects of Focus' operations.

24 e. Defendant SULLIVAN was the Chief Financial Officer
25 ("CFO") of Focus. As CFO, defendant SULLIVAN oversaw the
26 financial aspects of Focus' operations.

1 f. Tom Rubin & Associates ("TRA") was a fictitious
2 business name that defendant RUBIN used to, among other things,
3 open a bank account at Community Bank in Burbank, California.

4 **B. THE OBJECTS OF THE CONSPIRACY**

5 2. Beginning on a date unknown but as early as in or about
6 November 1999, and continuing until a date unknown but at least
7 as late as in or about November 2000, in the Central District of
8 California and elsewhere, defendants RUBIN and SULLIVAN, together
9 with others known and unknown to the Grand Jury, knowingly
10 conspired, confederated, and agreed to commit the following
11 offenses against the United States:

12 a. Mail fraud by causing mail matter to be placed in
13 an authorized depository for mail matter and to be sent and
14 delivered by the United States Postal Service, and to be
15 deposited with and delivered by a commercial interstate carrier,
16 according to the directions thereon for the purpose of executing
17 a scheme to defraud Sears, other Focus clients, and television
18 and radio stations (collectively, "the victims") as to material
19 matters, and to obtain money and property from the victims by
20 means of materially false and fraudulent pretenses,
21 representations, and promises, and the concealment of material
22 facts, in violation of Title 18, United States Code, Section
23 1341;

24 b. Mail fraud involving the deprivation of the right
25 to honest services by causing mail matter to be placed in an
26 authorized depository for mail matter and to be sent and
27 delivered by the United States Postal Service, and to be
28 deposited with and delivered by a commercial interstate carrier,

1 according to the directions thereon for the purpose of executing
2 a scheme to defraud Sears and other Focus clients of their right
3 to the honest services of defendants RUBIN and SULLIVAN and
4 Focus, in violation of Title 18, United States Code, Sections
5 1341 and 1346;

6 c. Wire fraud by transmitting and causing to be
7 transmitted by means of wire communication in interstate
8 commerce, writings, signs, signals, pictures, and sounds for the
9 purpose of executing a scheme to defraud Sears, other Focus
10 clients, and television and radio stations, as to material
11 matters, and to obtain money and property from the victims by
12 means of materially false and fraudulent pretenses,
13 representations, and promises, and the concealment of material
14 facts, in violation of Title 18, United States Code, Section
15 1343;

16 d. Wire fraud involving the deprivation of the right
17 to honest services by transmitting and causing to be transmitted
18 by means of wire communication in interstate commerce, writings,
19 signs, signals, pictures, and sounds for the purpose of executing
20 a scheme to defraud Sears and other Focus clients of their right
21 to the honest services of defendants RUBIN and SULLIVAN and
22 Focus, in violation of Title 18, United States Code, Sections
23 1343 and 1346;

24 e. Promotional money laundering by conducting and
25 causing others to conduct financial transactions affecting
26 interstate commerce, which transactions involved the proceeds of
27 specified unlawful activity, namely mail fraud and wire fraud,
28 and mail fraud and wire fraud involving the deprivation of the

1 right to honest services, knowing that the property involved in
2 the transactions represented the proceeds of some form of
3 unlawful activity, and with the intent to promote the carrying on
4 of such specified unlawful activity, in violation of Title 18,
5 United States Code, Section 1956(a)(1)(A)(i).

6 **C. THE MANNER AND MEANS OF THE CONSPIRACY**

7 3. The conspiracy was carried out, in substance, in the
8 following manner and by the following means:

9 a. As part of the services that Focus provided to its
10 clients, defendants RUBIN and SULLIVAN placed and caused other
11 Focus employees to place advertisements for Focus' clients with
12 television and radio stations (the "media outlets").

13 b. Defendants RUBIN and SULLIVAN received invoices
14 from each of the media outlets from which Focus had purchased
15 advertising time on behalf of its clients. The amounts of the
16 media outlets' invoices (hereinafter, the "advertisement costs")
17 were compiled by defendants RUBIN and SULLIVAN, and by Focus
18 employees acting at their instruction, into master invoices that
19 Focus sent to each client on a monthly basis. Defendants RUBIN
20 and SULLIVAN, and Focus employees acting at their instruction,
21 included an additional charge in the Focus master invoices that
22 represented Focus' fee for the services it had provided in, among
23 other things, arranging for and placing the advertisements
24 (hereinafter, the "agency fee").

25 c. Each Focus master invoice specified the client's
26 advertising costs and the agency fee and billed the clients for
27 both. Pursuant to its agreements with its clients, as well as
28 industry custom and practice: (i) Focus was authorized to retain

1 for its own purposes only the agency fee; and (ii) as the
2 authorized and apparent agent for its clients, Focus had a duty
3 to timely pay to the media outlets the monies the clients
4 remitted for the advertising costs.

5 d. By presenting the master invoices to Focus'
6 clients, defendants RUBIN and SULLIVAN represented and promised
7 those clients, including Sears, that they would pay the
8 advertising costs to the media outlets to whom those sums were
9 due and payable, and would retain for themselves only the agency
10 fees.

11 e. In fact, these representations and promises were
12 false and misleading in that defendants RUBIN and SULLIVAN did
13 not intend to, and did not, pay to the media outlets the
14 advertising costs that they had collected from Focus' clients,
15 and instead intended to, and did, misappropriate, divert, and
16 convert to themselves monies remitted by the clients to pay the
17 advertising costs.

18 f. Defendants RUBIN and SULLIVAN, and Focus employees
19 acting at their instruction, concealed material facts from Sears,
20 other Focus clients, and the media outlets, including, but not
21 limited to, that defendants RUBIN and SULLIVAN had not paid, did
22 not intend to pay, and were not paying the media outlets on a
23 timely basis and that defendants RUBIN and SULLIVAN were using
24 for various unauthorized purposes the money remitted by Sears and
25 other Focus clients to pay the media outlets.

26 4. As part of the conspiracy, between November 1999 and
27 December 1999, defendants RUBIN and SULLIVAN, and other Focus
28 employees working at their direction, caused Sears to remit to

1 Focus approximately \$34.9 million by submitting Focus master
2 invoices to Sears for this amount. The Focus master invoices
3 represented that approximately \$34 million of this amount was to
4 pay for advertising costs, and approximately \$983,000 was to pay
5 Focus' agency fee.

6 5. As further part of the conspiracy, although defendants
7 RUBIN and SULLIVAN had: (a) represented and promised to use the
8 monies remitted by Sears to pay the advertising costs; and (b) as
9 Sears' agents, had a duty to pay such advertising costs,
10 defendants RUBIN and SULLIVAN misappropriated, diverted, and
11 converted to themselves approximately \$23.4 million of the money
12 that Sears had remitted.

13 6. As further part of the conspiracy, defendants RUBIN and
14 SULLIVAN used the \$23.4 million that they misappropriated,
15 diverted, and converted to, among other things, make payments to
16 themselves, to the Internal Revenue Service to settle defendant
17 RUBIN's tax problems, to their personal creditors, and to Focus'
18 creditors, which permitted Focus to remain in business. Payments
19 to defendant RUBIN were made in some instances using checks made
20 payable to TRA that were signed by defendant SULLIVAN in amounts
21 determined by defendant RUBIN.

22 7. As further part of the conspiracy, beginning at least as
23 early as February 2000, defendants RUBIN and SULLIVAN made false
24 and misleading representations and promises to the media outlets
25 for the purpose of lulling the media outlets into believing that
26 payment for all of the advertising costs due and payable to the
27 media outlets on behalf of Focus' clients would be forthcoming,
28 and to prevent the media outlets from commencing and pursuing

1 legal proceedings to collect the amounts due and payable to the
2 media outlets.

3 8. As further part of the conspiracy, beginning at least
4 as early as March 2000, defendants RUBIN and SULLIVAN violated
5 and disobeyed court orders prohibiting defendants RUBIN and
6 SULLIVAN from using monies in Focus' possession that had been
7 remitted by Sears and other Focus clients to pay advertising to
8 instead make payments to themselves, law firms, Focus employees,
9 and to pay for Focus' operating expenses.

1 **D. OVERT ACTS**

2 9. In furtherance of the conspiracy and to accomplish its
3 objects, defendants RUBIN and SULLIVAN, together with other co-
4 conspirators known and unknown to the Grand Jury, committed and
5 caused others to commit the following overt acts, among others,
6 in the Central District of California and elsewhere:

7 **Overt Act No. 1:** On or about November 19, 1999,
8 defendants RUBIN and SULLIVAN caused the November Statement of
9 Account and a computer diskette containing an electronic version
10 of Master Invoice No. 1099, in the amount of \$12,466,535.01, to
11 be mailed from Focus' office in Santa Monica, California, to
12 Sears' accounting department in Hoffman Estates, Illinois.

13 **Overt Act No. 2:** On or about December 20, 1999,
14 defendants RUBIN and SULLIVAN caused the December Statement of
15 Account and a computer diskette containing an electronic version
16 of Master Invoice No. 1199, in the amount of \$20,217,055.21, to
17 be mailed from Focus' office in Santa Monica, California, to
18 Sears' accounting department in Hoffman Estates, Illinois.

19 **Overt Act No. 3:** On or about January 4, 2000,
20 defendant RUBIN caused defendant SULLIVAN to sign and issue check
21 number 138619 drawn on Focus' general account at Community Bank
22 in Burbank, California, in the amount of \$120,000, made payable
23 to TRA.

24 **Overt Act No. 4:** On or about January 4, 2000,
25 defendants RUBIN and SULLIVAN caused check number 138619 drawn on
26 Focus' general account at Community Bank in Burbank, California,
27 in the amount of \$120,000, to be deposited in TRA's bank account
28 at Community Bank in Burbank, California.

1 **Overt Act No. 5:** On or about January 6, 2000,
2 defendant SULLIVAN signed and issued check number 039374 drawn on
3 Focus' operating account at Community Bank, in the amount of
4 \$84,616.63, made payable to Colorado Place Partners LLC, to pay
5 Focus' rent for January 2000.

6 **Overt Act No. 6:** On or about January 31, 2000,
7 defendant RUBIN caused defendant SULLIVAN to sign and issue check
8 number 138687 drawn on Focus' general account at Community Bank,
9 in the amount of \$700,000, made payable to TRA.

10 **Overt Act No. 7:** On or about February 1, 2000,
11 defendants RUBIN and SULLIVAN caused check number 138687 drawn on
12 Focus' general account at Community Bank, in the amount of
13 \$700,000, to be deposited in TRA's bank account at Community Bank
14 in Burbank, California.

15 **Overt Act No. 8:** On or about February 1, 2000,
16 defendant RUBIN caused defendant SULLIVAN to sign and issue check
17 number 138690 drawn on Focus' general account at Community Bank,
18 in the amount of \$280,000, made payable to TRA.

19 **Overt Act No. 9:** On or about February 1, 2000,
20 defendants RUBIN and SULLIVAN caused check number 138690 drawn on
21 Focus' account at Community Bank, in the amount of \$280,000, to
22 be deposited in TRA's bank account at Community Bank.

23 **Overt Act No. 10:** On or about February 1, 2000,
24 defendant RUBIN caused defendant SULLIVAN to sign and issue check
25 number 010100 drawn on TRA's account at Community Bank, in the
26 amount of \$278,501, made payable to the United States Treasury,
27 for payment of federal income taxes, interest, and penalties owed
28 by defendant RUBIN for 1996 and 1997.

1 **Overt Act No. 11:** On or about February 14, 2000,
2 defendant SULLIVAN falsely stated to a representative of one of
3 the media outlets who was demanding payment of outstanding
4 invoices that he needed a few more hours to resolve the
5 situation.

6 **Overt Act No. 12:** On or about February 15, 2000,
7 defendant SULLIVAN signed and issued check number 039571 drawn on
8 Focus' operating account at Community Bank, in the amount of
9 \$84,638.75, made payable to Colorado Place Partners LLC, to pay
10 Focus' rent for February 2000.

11 **Overt Act No. 13:** On or about February 17, 2000,
12 defendant RUBIN caused defendant SULLIVAN to sign and issue check
13 number 138696 drawn on Focus' general account at Community Bank,
14 in the amount of \$950,000, made payable to TRA.

15 **Overt Act No. 14:** On or about February 17, 2000,
16 defendants RUBIN and SULLIVAN caused check number 138696 drawn on
17 Focus' general account at Community Bank, in the amount of
18 \$950,000, to be deposited in TRA's bank account at Community
19 Bank.

20 **Overt Act No. 15:** On or about March 1, 2000, defendant
21 SULLIVAN signed and issued check number 039703 drawn on Focus'
22 operating account at Community Bank, in the amount of \$84,596.04,
23 made payable to Colorado Place Partners LLC, to pay Focus' rent
24 for March 2000.

25 **Overt Act No. 16:** On or about March 6, 2000, defendant
26 RUBIN caused defendant SULLIVAN to sign and issue check number
27 138753 drawn on Focus' general account at Community Bank, in the
28 amount of \$150,000, made payable to TRA.

1 **Overt Act No. 17:** On or about March 7, 2000,
2 defendants RUBIN and SULLIVAN caused check number 138753 drawn on
3 Focus' general account at Community Bank, in the amount of
4 \$150,000, to be deposited in TRA's bank account at Community
5 Bank.

6 **Overt Act No. 18:** On or about May 24, 2000, defendant
7 RUBIN caused defendant SULLIVAN to sign and issue check number
8 010295 drawn on TRA's account at Community Bank, in the amount of
9 \$10,116.41, made payable to Citibank Advantage, which was mailed
10 to Citibank to pay for charges on a credit card in the name of
11 defendant RUBIN.

12 **Overt Act No. 19:** On or about June 19, 2000, defendant
13 RUBIN caused defendant SULLIVAN to sign and issue check number
14 010352 drawn on TRA's account at Community Bank in the amount of
15 \$9,228.02, made payable to Citibank Advantage, which was mailed
16 to Citibank to pay for charges on a credit card in the name of
17 defendant RUBIN.

18 **Overt Act No. 20:** On or about July 20, 2000, defendant
19 RUBIN caused defendant SULLIVAN to sign and issue check number
20 010391 drawn on TRA's account at Community Bank, in the amount of
21 \$9,389.27, made payable to Citibank Advantage, which was mailed
22 to Citibank to pay for charges on a credit card in the name of
23 defendant RUBIN.

24 **Overt Act No. 21:** On or about July 21, 2000,
25 defendants RUBIN and SULLIVAN caused \$3,000,000 to be wire
26 transferred from Focus' general account at Community Bank to a
27 Salomon Smith Barney account at JPMorgan Chase Bank in New York
28 as a purported severance payment for defendant RUBIN.

1 **Overt Act No. 22:** On or about August 17, 2000,
2 defendant RUBIN caused defendant SULLIVAN to sign and issue check
3 number 010429 drawn on TRA's account at Community Bank, in the
4 amount of \$14,385.32, made payable to Citibank Advantage, which
5 was mailed to Citibank to pay for charges on a credit card in the
6 name of defendant RUBIN.

7 **Overt Act No. 23:** On or about September 22, 2000,
8 defendant SULLIVAN issued check number 034072 drawn on Focus'
9 payroll account at Community Bank, in the amount of \$100,000,
10 made payable to defendant SULLIVAN.

11 **Overt Act No. 24:** On or about September 28, 2000,
12 defendant RUBIN caused defendant SULLIVAN to sign and issue check
13 number 010465 drawn on TRA's account at Community Bank, in the
14 amount of \$6,318.03, made payable to Citibank Advantage, which
15 was mailed to Citibank to pay for charges on a credit card in the
16 name of defendant RUBIN.

17 **Overt Act No. 25:** On or about October 27, 2000,
18 defendant SULLIVAN issued check number 034141 drawn on Focus'
19 payroll account at Community Bank, in the amount of \$168,552.82,
20 made payable to defendant SULLIVAN, as a purported severance
21 payment for defendant SULLIVAN.

22 **Overt Act No. 26:** On or about October 27, 2000,
23 defendant RUBIN caused defendant SULLIVAN to sign and issue check
24 number 010497 drawn on TRA's account at Community Bank, in the
25 amount of \$10,645.29, made payable to Citibank Advantage, which
26 was mailed to Citibank to pay for charges on a credit card in the
27 name of defendant RUBIN.

1 Overt Act No. 27: On or about November 17, 2000,
2 defendant RUBIN caused defendant SULLIVAN to sign and issue check
3 number 010518 drawn on TRA's account at Community Bank, in the
4 amount of \$14,403.70, made payable to Citibank Advantage, which
5 was mailed to Citibank to pay for charges on a credit card in the
6 name of defendant RUBIN.

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COUNT TWO

[18 U.S.C. § 1341, 18 U.S.C. § 2]

[MAIL FRAUD; AIDING AND ABETTING AND CAUSING AN ACT TO BE DONE]

10. The Grand Jury hereby repeats and realleges paragraphs 1 and 3 through 9 of this FSI as if fully set forth herein.

A. THE SCHEME TO DEFRAUD

11. Beginning on a date unknown to the Grand Jury but at least as early as November 1999, and continuing to in or about November 2000, in Los Angeles County, within the Central District of California and elsewhere, defendants THOMAS EDWARD RUBIN and THOMAS PATRICK SULLIVAN, aided and abetted by each other and by others known and unknown to the Grand Jury, knowingly and with the intent to defraud, devised, participated in, and executed a scheme to defraud Sears, other Focus clients, and the media outlets as to material matters, and to obtain money and property from these victims by means of material false and fraudulent pretenses, representations, and promises and the concealment of material facts. The scheme to defraud is described in greater detail in paragraphs 3 through 9, above.

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1 **B. MAILING**

2 12. On or about the date set forth below, within the
3 Central District of California and elsewhere, defendants RUBIN
4 and SULLIVAN, aided and abetted by each other and by others known
5 and unknown to the Grand Jury, for the purpose of carrying out
6 the scheme to defraud described above, caused the following items
7 to be deposited with and delivered by a commercial interstate
8 carrier according to the directions thereon:
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COUNT	DATE	MAILING
11 TWO	12/20/99	December Statement of Account and a 12 computer diskette containing an 13 electronic version of Master Invoice 14 No. 1199, in the amount of \$20,217,055.21, from Focus in Santa Monica, California, to Sears in Hoffman Estates, Illinois

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COUNTS THREE THROUGH SIX

[18 U.S.C. § 1343, 18 U.S.C. § 2]

[WIRE FRAUD; AIDING AND ABETTING AND CAUSING AN ACT TO BE DONE]

13. The Grand Jury hereby repeats and realleges paragraphs 1 and 3 through 9 of this FSI as if fully set forth herein.

A. THE SCHEME TO DEFRAUD

14. Beginning on a date unknown to the Grand Jury but at least as early as November 1999, and continuing to in or about November 2000, in Los Angeles County, within the Central District of California and elsewhere, defendants THOMAS EDWARD RUBIN and THOMAS PATRICK SULLIVAN, aided and abetted by each other and by others known and unknown to the Grand Jury, knowingly and with the intent to defraud, devised, participated in, and executed a scheme to defraud Sears, other Focus clients, and the media outlets as to material matters, and to obtain money and property from these victims by means of material false and fraudulent pretenses, representations, and promises and the concealment of material facts. The scheme to defraud is described in greater detail in paragraphs 3 through 9, above.

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1 **B. INTERSTATE WIRINGS**

2 15. On or about the dates set forth below, within the
 3 Central District of California and elsewhere, defendants RUBIN
 4 and SULLIVAN, aided and abetted by each other and by others known
 5 and unknown to the Grand Jury, for the purpose of carrying out
 6 the scheme to defraud described above, caused the following items
 7 to be transmitted by means of wire and radio communication in
 8 interstate commerce:

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COUNT	DATE	WIRING
THREE	12/20/99	Wire transfer of \$12,431,609.73 from Sears' account at Harris Bank in Dallas, Texas, to Focus' general account at Community Bank, in Burbank, California
FOUR	1/19/00	Wire transfer of \$20,230,069.46 from Sears' account at Harris Bank in Dallas, Texas, to Focus' general account at Community Bank, in Burbank, California
FIVE	1/24/00	Wire transfer of \$944,485.78 from Sears' account at Harris Bank in Dallas, Texas, to Focus' general account at Community Bank, in Burbank, California
SIX	1/31/00	Wire transfer of \$1,375,000.00 from Sears' account at Harris Bank in Dallas, Texas, to Focus' general account at Community Bank, in Burbank, California

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COUNT SEVEN

[18 U.S.C. §§ 1343, 1346; 18 U.S.C. § 2]

[WIRE FRAUD; DEPRIVATION OF HONEST SERVICES;

AIDING AND ABETTING AND CAUSING AN ACT TO BE DONE]

16. The Grand Jury hereby repeats and realleges paragraphs 1 and 3 through 9 of this FSI as if fully set forth herein.

A. THE SCHEME TO DEFRAUD

17. Beginning on a date unknown to the Grand Jury but at least as early as November 1999, and continuing to in or about November 2000, in Los Angeles County, within the Central District of California and elsewhere, defendants THOMAS EDWARD RUBIN and THOMAS PATRICK SULLIVAN, aided and abetted by each other and by others known and unknown to the Grand Jury, knowingly and with the intent to defraud, devised, participated in, and executed a scheme to defraud Sears of its right to the honest services of defendants RUBIN and SULLIVAN and Focus. The scheme to defraud is described in greater detail in paragraphs 3 through 9, above.

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B. INTERSTATE WIRINGS

18. On or about the date set forth below, within the Central District of California and elsewhere, defendants RUBIN and SULLIVAN, aided and abetted by each other and by others known and unknown to the Grand Jury, for the purpose of carrying out the scheme to defraud described above, caused the following item to be transmitted by means of wire and radio communication in interstate commerce:

COUNT	DATE	WIRING
SEVEN	7/21/00	Wire transfer of \$3,000,0000 from Focus' general account at Community Bank, in Burbank, California, to a Salomon Smith Barney account at JP Morgan Chase Bank in New York, New York

COUNT EIGHT

[18 U.S.C. § 371]

[CONSPIRACY]

19. The Grand Jury hereby repeats and realleges paragraphs 1 and 3 through 9 of this FSI as if fully set forth herein.

A. INTRODUCTION

20. At all times relevant to counts 8 through 26 of the FSI:

a. Defendant GEOFFREY CHARLES MOUSSEAU ("MOUSSEAU") was a resident of Glendale, California, within the Central District of California.

b. At different times, defendant MOUSSEAU acted as the attorney and agent for defendants RUBIN and SULLIVAN. Defendant MOUSSEAU also provided services as an attorney for Focus, including transferring and concealing funds derived from Focus by moving these funds through his attorney client trust account.

B. THE FOCUS BANKRUPTCY

21. On October 6, 2000, three creditors of Focus -- namely, National Broadcasting Company, Inc.; ABC Inc.; and Paxson Communications, Inc. ("the petitioning creditors") -- commenced an involuntary bankruptcy case, In re: Focus Media, Inc., Case Number LA 00-38197-KM ("the Focus bankruptcy"), against Focus by filing an involuntary petition under Title 11 of the United States Code ("Title 11" or "Bankruptcy Code"). The petitioning creditors requested that Focus be placed into involuntary bankruptcy in order to protect the creditors from any further erosion of Focus' assets. The basis of the petitioning

1 creditors' claim was that Focus had failed to pay for advertising
2 that it had placed through the petitioning creditors.

3 22. An involuntary bankruptcy case is commenced by the
4 creditors' filing of an involuntary petition. The person or
5 corporation against whom the petition is filed is referred to as
6 the "alleged debtor."

7 23. The commencement of an involuntary bankruptcy case
8 triggers what is known as an "automatic stay" against the alleged
9 debtor's creditors, who are immediately forbidden to take any
10 action on claims they may have against the alleged debtor or his
11 property, unless permission of the bankruptcy court is first
12 obtained.

13 24. Aside from the automatic stay, the filing of an
14 involuntary petition in bankruptcy has another immediate effect:
15 it creates, by operation of law, what is known as "the estate" in
16 bankruptcy. The bankruptcy "estate" is comprised of all the
17 alleged debtor's property or interests therein of any kind,
18 whether equitable or legal, wherever located and by whomever
19 held.

20 25. After the filing of an involuntary case, the alleged
21 debtor has the option of contesting the merits of the involuntary
22 petition and asserting that it should not be declared bankrupt.
23 During the period of time between the filing of the involuntary
24 case and the court's adjudication of the question whether the
25 alleged debtor should be declared bankrupt (referred to as the
26 "gap period"), the alleged debtor is permitted to operate its
27 business and to use, acquire and dispose of property of the
28 estate as if the involuntary case had not been filed.

1 26. Notwithstanding that, absent court orders to the
2 contrary, the alleged debtor may continue to operate its business
3 and use and dispose of its property during the gap period, the
4 alleged debtor is not permitted to engage in transactions
5 designed to fraudulently transfer or conceal the assets of the
6 bankruptcy estate following commencement of the involuntary case,
7 or to otherwise place the assets of the bankruptcy estate beyond
8 the reach of creditors in order to defeat the provisions of the
9 Bankruptcy Code.

10 27. If the court determines that the alleged debtor should
11 in fact be adjudged bankrupt, the court enters an order in favor
12 of the petitioner creditors, referred to as an "order for
13 relief."

14 28. At any time after the commencement of an involuntary
15 case but before an order for relief in the case, the court, on
16 request of a party in interest, after notice to the alleged
17 debtor and a hearing, and if necessary to preserve the property
18 of the estate or to prevent loss to the estate, may order the
19 United States Trustee to appoint an interim trustee to take
20 possession of the property of the estate and to operate any
21 business of the alleged debtor while the bankruptcy case is
22 pending. Following appointment of an interim trustee and during
23 his tenure, the alleged debtor is not entitled to remain in
24 possession of any property of the estate, to operate its business
25 or to dispose of its property, unless it obtains permission from
26 the interim trustee.

27 29. Upon entry of an order for relief, the bankruptcy
28 estate, consisting of all of the alleged debtor's interests in

1 property, is immediately subject to administration by a permanent
2 court-appointed bankruptcy trustee. Following appointment of the
3 permanent trustee, the alleged debtor is not entitled to remain
4 in possession of any property of the estate, to operate its
5 business or to dispose of its property, unless it obtains
6 permission from the permanent trustee.

7 30. On October 26, 2000, Sears, as a party in interest,
8 filed a motion for appointment of an interim trustee in the Focus
9 bankruptcy. Counsel for Sears also gave notice of this motion to
10 counsel for Focus on the afternoon and evening of October 26;
11 2000.

12 31. At 4:00 p.m. on October 27, 2000, the court held a
13 hearing on Sears' motion for appointment of an interim trustee.
14 At approximately 5:20 p.m. on October 27, 2000, the court granted
15 Sears' motion and immediately entered an order directing the
16 United States Trustee to appoint an interim trustee to take
17 possession of Focus' bankruptcy estate ("the October 27th
18 order").

19 32. Pursuant to the October 27th order, the United States
20 Trustee appointed John P. Pringle of Los Angeles, California, as
21 the interim trustee of the Focus bankruptcy estate on that same
22 day, October 27, 2000.

23 33. On October 22, 2001, the court granted an order for
24 relief in favor of the petitioning creditors in the Focus
25 bankruptcy, and John P. Pringle was appointed as the permanent
26 trustee of the Focus bankruptcy estate.

1 **C. THE OBJECTS OF THE CONSPIRACY**

2 34. Beginning on a date unknown but as early as on or about
3 October 6, 2000, and continuing until a date unknown but at least
4 as late as in or about June 2003, in the Central District of
5 California and elsewhere, defendants RUBIN, SULLIVAN and
6 MOUSSEAU, together with others known and unknown to the Grand
7 Jury, knowingly conspired, confederated, and agreed to commit the
8 following offenses against the United States:

9 a. To knowingly and fraudulently conceal assets of the
10 bankruptcy estate from Focus' creditors and from the court-
11 appointed trustee in the Focus bankruptcy, in violation of Title
12 18, United States Code, Section 152(1);

13 b. To knowingly and fraudulently make, and cause to be
14 made, false statements under penalty of perjury in connection
15 with the Focus bankruptcy, in violation of Title 18, United
16 States Code, Section 152(3);

17 c. To knowingly and fraudulently transfer and conceal
18 Focus property, namely, funds maintained in Focus' bank accounts
19 ("Focus funds"), while acting in a personal capacity or as agents
20 or officers of Focus, with intent to defeat the provisions of
21 Title 11, in violation of Title 18, United States Code, Section
22 152(7); and

23 d. To knowingly and fraudulently withhold from the
24 court-appointed trustee in the Focus bankruptcy recorded
25 information, including books, documents, records and papers,
26 relating to the property and financial affairs of Focus,
27 following the filing of the Focus bankruptcy, in violation of
28 Title 18, United States Code, Section 152(9).

1 **C. THE MANNER AND MEANS OF THE CONSPIRACY**

2 35. The conspiracy was carried out, in substance, in the
3 following manner and by the following means, among others:

4 **False Statements in Opposing Appointment of Interim Trustee**

5 a. Upon receiving notice of Sears' motion for
6 appointment of an interim trustee on October 26, 2000, defendants
7 SULLIVAN and MOUSSEAU conferred with bankruptcy counsel for
8 Focus, the law firm of Stutman, Treister & Glatt ("ST&G"), in
9 order to prepare an opposition to the motion.

10 b. Defendant SULLIVAN, in consultation with defendant
11 MOUSSEAU, instructed ST&G to prepare and file an opposition to
12 Sears' motion for an interim trustee, based in part upon
13 defendant SULLIVAN's representation that Focus had no plans to
14 dissipate its assets and required continued access to its funds
15 to preserve and protect Focus' assets pending resumption of
16 regular business operations in the future.

17 c. The bankruptcy court held a hearing on Sears'
18 motion on October 27, 2000. At the hearing, in reliance upon
19 information provided by defendants SULLIVAN and MOUSSEAU, ST&G
20 represented to the bankruptcy court that the court should deny
21 Sears' motion on the ground that "there is no basis for
22 concluding that there's any danger that the Debtor will do
23 anything wrong with its assets in the future." ST&G further
24 informed the bankruptcy court that it had submitted a declaration
25 from defendant SULLIVAN with Focus' projected budget of \$227,500
26 for the next 30 days, which showed that Focus was not engaged in
27 hiding or dissipating assets from creditors but merely intended
28 to make expenditures for "ordinary course of operating expenses."

1 d. At the October 27, 2000 hearing, defendant MOUSSEAU
2 made similar representations to the bankruptcy court on behalf of
3 Focus, assuring the court that "the Debtor hasn't dissipated any
4 funds" and that "[t]here's no risk that the Debtor's going to
5 dissipate any funds."

6 e. In fact, as defendant MOUSSEAU well knew, this
7 representation to the bankruptcy court was false and misleading
8 because, shortly before the hearing, on October 26th and 27th,
9 2000, defendant SULLIVAN had wired a total of \$500,000 out of a
10 Focus bank account into defendant MOUSSEAU's attorney client
11 trust account in two separate \$250,000 transfers. Upon receipt
12 of the first \$250,000, defendant MOUSSEAU immediately wrote a
13 check to ST&G on October 26, 2000, to pay the first installment
14 of the retainer fee ST&G required to represent Focus in
15 bankruptcy.

16 f. In support of ST&G's opposition to Sears' motion
17 for appointment of an interim trustee, defendant SULLIVAN also
18 submitted a false declaration to the bankruptcy court under
19 penalty of perjury. In the declaration, defendant SULLIVAN
20 misled the court by falsely stating that "[p]ending the
21 disposition of the pending involuntary bankruptcy proceeding the
22 Company intends to expend monies necessary to preserve and
23 protect the assets of the Company including payroll, insurance,
24 rent and other items as set forth in further detail on the
25 [\$227,500] budget attached hereto which I prepared." As
26 defendant SULLIVAN well knew, this declaration as to Focus'
27 intent was false and misleading for two reasons: (1) one day
28 prior to the hearing, defendant SULLIVAN caused \$250,000 of Focus

1 funds to be wire transferred to defendant MOUSSEAU's attorney
2 client trust account and, on the day of hearing, defendant
3 SULLIVAN caused a second \$250,000 of Focus funds also to be wire
4 transferred to defendant MOUSSEAU's attorney client trust
5 account; and (2) on October 27, 2000, after appointment of the
6 interim trustee, defendant SULLIVAN authorized the diversion of
7 an additional approximately \$700,000 of Focus funds for the
8 personal benefit of a number of Focus insiders and departing
9 employees, including in excess of \$168,000 for himself, \$125,000
10 for defendant RUBIN, \$50,000 for defendant RUBIN's physician, and
11 over \$33,000 for defendant RUBIN's two adult children.

12 g. Defendants SULLIVAN and MOUSSEAU made these
13 deliberately false and misleading statements both to the
14 bankruptcy court and to ST&G in an unsuccessful attempt to
15 dissuade the bankruptcy court from appointing an interim trustee.

16 **Fraudulent Transfers and Concealment of Focus**
17 **Funds on October 26th and 27th**

18 h. Despite assuring the bankruptcy court that an
19 interim trustee should not be appointed because Focus had no
20 intent to dissipate its assets, defendants SULLIVAN and MOUSSEAU,
21 acting in concert with defendant RUBIN, designed and implemented
22 a plan fraudulently to transfer and conceal well over \$1 million
23 in Focus funds from its creditors in bankruptcy before an interim
24 trustee could take actual possession of the bankruptcy estate.

25 **Transfers of Focus Funds Upon Entry**
26 **Of Order For Appointment of Interim Trustee**

27 i. Defendants SULLIVAN and MOUSSEAU, aided and abetted
28 by defendant RUBIN, determined that in the event their efforts to
oppose appointment of an interim trustee failed, they would

1 immediately transfer a substantial portion of Focus funds out of
2 Focus bank accounts before the interim trustee had an opportunity
3 to take possession of these funds.

4 j. Accordingly, upon entry of the October 27, 2000
5 order, defendant SULLIVAN authorized and directed the
6 distribution of checks dated October 27, 2000 on Focus' bank
7 accounts in the approximate amount of \$700,000, which were made
8 payable to: corporate insiders, including himself and defendant
9 RUBIN; defendant RUBIN's children; defendant RUBIN's personal
10 physician; American Express, as a prepayment for a corporate
11 credit card account used by defendant RUBIN for his personal
12 benefit; and several Focus employees, who received lump sum
13 payments ranging from \$16,725 to \$88,106, as purported
14 "severance" payments.

15 Transfer and Concealment of Focus Funds Used
16 To Retain Bankruptcy Counsel

17 k. Following commencement of the Focus bankruptcy,
18 defendants SULLIVAN and MOUSSEAU, acting in consultation with
19 defendant RUBIN, sought to engage the services of outside
20 bankruptcy counsel to assist Focus in contesting the involuntary
21 petition. On or about October 23, 2000, defendants SULLIVAN and
22 MOUSSEAU met with ST&G for this purpose. ST&G informed
23 defendants SULLIVAN and MOUSSEAU that it was prepared to
24 represent Focus, but that ST&G required an initial retainer of
25 \$350,000, which had to be paid from a source other than Focus.
26 ST&G was aware that a court had previously held Focus in contempt
27 for violating previously-entered court orders restraining Focus'
28 use of funds, and that payments of Focus funds during the

1 pendency of the Focus bankruptcy could also be subject to
2 subsequent challenge by a court-appointed trustee.

3 1. In order to enable themselves to pay for ST&G's
4 retainer with Focus funds while hiding the fact that Focus funds
5 were being used for this purpose, defendants SULLIVAN and
6 MOUSSEAU, in consultation with defendant RUBIN, devised a scheme
7 in which Focus would not pay ST&G or other bankruptcy counsel its
8 retainer fees directly, but instead would funnel Focus funds
9 through an attorney client trust account maintained by defendant
10 MOUSSEAU. The purpose of such an arrangement was to create the
11 false and misleading impression that the source of the retainer
12 funds for Focus' bankruptcy counsel was not Focus, but either
13 defendant MOUSSEAU himself or some other client of defendant
14 MOUSSEAU, e.g., defendant RUBIN or SULLIVAN, thereby avoiding a
15 challenge to such payments by Focus' creditors or the bankruptcy
16 trustee.

17 Post-October 27th Withholding of Books and Records and Making
18 of False Statements In Furtherance of Ongoing Concealment

19 m. Following the transfer of in excess of \$1 million
20 out of Focus' bank accounts on October 26-27, 2000, defendants
21 RUBIN, SULLIVAN and MOUSSEAU, aiding and abetting one another,
22 engaged in a course of conduct designed to further their
23 concealment and dissipation of assets of the bankruptcy estate
24 and to hinder and impair the ability of the bankruptcy trustee
25 and Focus creditors to locate and preserve these assets.

26 n. In furtherance of their concealment of Focus'
27 assets, defendants SULLIVAN, MOUSSEAU and RUBIN, aiding and
28 abetting each other, fraudulently withheld from the interim and

1 permanent trustee recorded information, including bank records,
2 accounting records, and books and records relating to the
3 property and financial affairs of Focus, through the following
4 means, among others:

5 i. On October 27, 2000, by causing the removal
6 of computer equipment and books and records of Focus from Focus's
7 business premises after the interim trustee had been appointed
8 and was exclusively entitled to take possession and control of
9 Focus's property, including its office equipment and books and
10 records;

11 ii. On or about October 28, 2000, by causing
12 the deletion and erasure of information and files stored on
13 Focus' computer system relating to Focus' financial affairs;

14 iii. Between on or about October 30, 2000 and on
15 or about November 6, 2000, by failing to respond to the interim
16 trustee's repeated requests for information identifying the
17 location and account numbers for all of Focus' bank accounts, and
18 by providing fragmentary and incomplete bank account information
19 thereafter, thereby effectively preventing the interim trustee
20 from freezing these accounts until after the checks dated October
21 27, 2000 had cleared and Focus funds had been fraudulently
22 transferred to insiders and other third parties; and

23 iv. By failing to provide the interim trustee
24 and the permanent trustee with a complete set of Focus' bank
25 statements, financial statements, general ledgers, tax returns,
26 and other accounting records and information, including the
27 identity of Focus' outside tax accountants.

1 o. In furtherance of their ongoing scheme to conceal
2 Focus' assets, defendants RUBIN, SULLIVAN and MOUSSEAU, aiding
3 and abetting each other, also made, and caused to be made, the
4 following false and misleading statements, and false oaths and
5 declarations, among others, in connection with the Focus
6 bankruptcy:

7 i. On or about January 17, 2001, defendant
8 MOUSSEAU caused an ST&G lawyer to submit a materially misleading
9 statement to the bankruptcy court and to the interim trustee,
10 representing that ST&G had never received any portion of its
11 \$250,000 retainer from Focus, based in part on defendant
12 MOUSSEAU's false statements to ST&G in December 2000 that Focus
13 was not the source of the monies used for ST&G's retainer;

14 ii. On or about January 27, 2002, defendant
15 SULLIVAN falsely stated, in a declaration filed under penalty of
16 perjury in the Focus bankruptcy, that on October 24, 2000, he had
17 executed an indemnification agreement, an undertaking and an
18 accounting ("the indemnification demand") due to his involvement
19 in the Focus Bankruptcy case and for all expenses incurred by him
20 in connection with his preparation to serve as a witness in that
21 proceeding and presented this indemnification demand to Focus,
22 when in truth and in fact he did not execute this purported
23 indemnification demand and present it to Focus on or about
24 October 24, 2000; and

25 iii. On or about February 28, 2003, in
26 deposition testimony provided in relation to the Focus
27 bankruptcy, defendant MOUSSEAU falsely stated under oath that he
28 had never, in any way, communicated to a specifically identified

1 ST&G lawyer that the \$250,000 of the initial retainer paid to
2 ST&G on or about October 27, 2000 was defendant MOUSSEAU's money.

3 **D. OVERT ACTS**

4 36. In furtherance of the conspiracy and to accomplish its
5 objects, defendants RUBIN, SULLIVAN and MOUSSEAU, together with
6 other co-conspirators known and unknown to the Grand Jury,
7 committed and caused others to commit the following overt acts,
8 among others, in the Central District of California and
9 elsewhere:

10 **Overt Act No. 1**

11 On or about October 26, 2000, defendant SULLIVAN directed
12 the wire transfer of \$250,000 of Focus funds from Focus'
13 Community Bank account no. XXXX1871 to the Law Offices of
14 Geoffrey C. Mousseau, Attorney Client Trust account at Bank of
15 America, account no. XXXXX-XX882.

16 **Overt Act No. 2**

17 On or about October 26, 2000, defendant MOUSSEAU wrote a
18 check payable to ST&G in the amount of \$250,000 on his Attorney
19 Client Trust account at Bank of America, account no. XXXXX-XX882,
20 writing "Retainer" on the memo line of the check.

21 **Overt Act No. 3**

22 On or about October 27, 2000, defendant SULLIVAN directed
23 the wire transfer of \$250,000 of Focus funds from Focus'
24 Community Bank account no. XXXX1871 to the Law Offices of
25 Geoffrey C. Mousseau, Attorney Client Trust account at Bank of
26 America, account no. XXXXX-XX882.

1 **Overt Act No. 4**

2 On or about October 27, 2000, defendants RUBIN and SULLIVAN
3 caused the execution of check no. 4395, drawn on Focus' Community
4 Bank account no. XXXX3454, payable to defendant RUBIN in the
5 amount of \$75,000.

6 **Overt Act No. 5**

7 On or about October 27, 2000, defendant SULLIVAN signed
8 check no. 34141, drawn on Focus' Community Bank account no.
9 XXXX1871, payable to defendant SULLIVAN in the amount of
10 \$168,552.

11 **Overt Act No. 6**

12 On or about October 27, 2000, defendants SULLIVAN and RUBIN
13 caused the execution of check no. 4417, drawn on Focus' Community
14 Bank account no. XXXX3454, payable to Dr. Mark Saginor in the
15 amount of \$50,000.

16 **Overt Act No. 7**

17 On or about October 27, 2000, defendants SULLIVAN and RUBIN
18 caused the execution of check no. 4418, drawn on Focus' Community
19 Bank account no. XXXX3454, payable to American Express in the
20 amount of \$50,000 as a prepayment for a Focus corporate credit
21 card bearing number XXXX-XXXXX-53008.

22 **Overt Act No. 8**

23 On or about October 27, 2000, defendant SULLIVAN signed
24 check no. 34125, drawn on Focus' Community Bank account no.
25 XXXX1871, payable to Colleen M. Capone in the amount of
26 \$45,968.77.

1 Overt Act No. 9

2 On or about October 27, 2000, defendant SULLIVAN signed
3 check no. 34133, drawn on Focus' Community Bank account no.
4 XXXX1871, payable to Joseph R. Capone in the amount of
5 \$16,724.71.

6 Overt Act No. 10

7 On or about October 27, 2000, defendant SULLIVAN signed
8 check no. 34131, drawn on Focus' Community Bank account no.
9 XXXX1871, payable to Donna Lucas in the amount of \$88,106.72.

10 Overt Act No. 11

11 On or about October 27, 2000, defendant SULLIVAN signed
12 check no. 34134, drawn on Focus' Community Bank account no.
13 XXXX1871, payable to Joseph S. Palazzola in the amount of
14 \$16,762.60.

15 Overt Act No. 12

16 On or about October 27, 2000, defendants SULLIVAN and RUBIN
17 caused the execution of check no. 34136, drawn on Focus'
18 Community Bank account no. XXXX1871, payable to Matthew W. Rubin
19 in the amount of \$16,767.26.

20 Overt Act No. 13

21 On or about October 27, 2000, defendants SULLIVAN and RUBIN
22 caused the execution of check no. 34138, drawn on Focus'
23 Community Bank account no. XXXX1871, payable to Karissa A.
24 Provost in the amount of \$16,662.50.

25 Overt Act No. 14

26 On or about October 27, 2000, defendant SULLIVAN signed
27 check no. 34139, drawn on Focus' Community Bank account no.
28

1 XXXX1871, payable to Stephanie L. Taylor in the amount of
2 \$16,837.50.

3 Overt Act No. 15

4 On or about October 27, 2000, defendant SULLIVAN submitted a
5 false declaration under penalty of perjury in the Focus
6 bankruptcy by stating that, pending the disposition of Focus'
7 involuntary bankruptcy case, Focus intended to expend monies
8 necessary to preserve and protect the assets of the Company
9 including payroll, insurance, rent and other items, consistent
10 with the 30-day budget, containing \$227,000 in contemplated
11 expenditures, prepared by defendant SULLIVAN.

12 Overt Act No. 16

13 On or about October 27, 2000, following the appointment of
14 the interim trustee, defendant SULLIVAN caused employees of Focus
15 to pack up computers and accounting records, place them in a van
16 registered to Focus, and remove them from that location before
17 the interim trustee had an opportunity to take possession of
18 Focus' premises.

19 Overt Act No. 17

20 On or about October 28, 2000, defendants SULLIVAN and RUBIN
21 caused an employee of Focus to erase and delete accounting
22 records and other files containing financial information relating
23 to Focus' business, which were maintained on Focus' computer
24 system.

25 Overt Act No. 18

26 Between on or about October 27 and November 6, 2000,
27 defendants RUBIN and MOUSSEAU caused Focus not to respond to the
28

1 interim trustee's repeated inquiries concerning the identity and
2 location of all of Focus' bank accounts.

3 **Overt Act No. 19**

4 On or about November 7, 2000, when the interim trustee first
5 took possession of Focus' premises, defendant MOUSSEAU informed
6 the interim trustee that he represented the interests of
7 defendant RUBIN.

8 **Overt Act No. 20**

9 On or about November 20, 2000, defendant RUBIN caused
10 \$4,655.40 to be charged to Focus American Express corporate
11 credit card number XXXX-XXXX-53008, for the purchase of an Air
12 France plane ticket for travel from New York to Paris, France.

13 **Overt Act No. 21**

14 On or about December 8, 2000, defendant MOUSSEAU sent a fax
15 to Ted Stolman of ST&G falsely assuring Mr. Stolman that the
16 money used to pay ST&G's retainer was defendant MOUSSEAU's money.

17 **Overt Act No. 22**

18 On or about January 17, 2001, defendant SULLIVAN falsely
19 informed a forensic accountant hired to assist the interim
20 trustee in determining the disposition of Focus' assets that
21 Focus' tax returns were prepared internally, not by an outside
22 accounting firm.

23 **Overt Act No. 23**

24 On or about February 4, 2001, defendant MOUSSEAU wrote check
25 no. 5167, drawn on his Attorney Client Trust Account at Bank of
26 America, account no. XXXXX-XX882, payable to the law firm of
27 Berger, Kahn in the amount of \$25,000, as payment for Berger,
28 Kahn's representation of Focus in the Focus bankruptcy.

1 **Overt Act No. 24**

2 On or about February 22, 2001, defendant MOUSSEAU sent a fax
3 to Craig Simon, Esq. at the law firm of Berger, Kahn, et al.,
4 falsely informing him that the source of the \$25,000 in funds he
5 sent to Berger, Kahn as partial payment of its retainer was not
6 assets of Focus or the proceeds of such assets.

7 **Overt Act No. 25**

8 On or about January 28, 2002, in a declaration filed under
9 penalty of perjury in the Focus bankruptcy, defendant SULLIVAN
10 falsely stated that, on October 24, 2000, he executed a demand
11 for indemnification on Focus to pay his attorneys' fees in
12 accordance with the terms of his indemnification agreement with
13 Focus, when in truth and in fact he did not execute this
14 purported indemnification demand and present it to Focus on or
15 about October 24, 2000.

16 **Overt Act No. 26**

17 On February 28, 2003, in deposition testimony provided in
18 relation to the Focus bankruptcy, defendant MOUSSEAU falsely
19 stated under oath that he had never, in any way, communicated to
20 Ted Stolman of ST&G that the \$250,000 of the initial retainer
21 paid to ST&G on or about October 27, 2000, was his (i.e.,
22 defendant MOUSSEAU'S) money.

23 **Overt Act No. 27**

24 On or about May 30, 2003, defendant MOUSSEAU submitted a
25 declaration under penalty of perjury in connection with the Focus
26 bankruptcy in which he falsely stated that the funds from Focus
27 deposited with the attorney client trust account he maintained
28 were payments made pursuant to demands made by defendant SULLIVAN

1 on Focus in accordance with the alleged terms of defendant
2 SULLIVAN's indemnification agreement with Focus.

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COUNTS NINE AND TEN

[18 U.S.C. § 152(1); § 2]

[FRAUDULENT CONCEALMENT OF PROPERTY IN BANKRUPTCY;

AIDING AND ABETTING AND CAUSING AN ACT TO BE DONE]

37. The Grand Jury hereby repeats and realleges paragraphs 1, 3 through 9, 20 through 33, and 35 through 36 of this FSI as if fully set forth herein.

38. Beginning on a date unknown but at least as early as October 26, 2000, and continuing to at least in or about June 2003, within the Central District of California, and elsewhere, defendants RUBIN, SULLIVAN and MOUSSEAU, aiding and abetting one another, knowingly and fraudulently concealed and caused to be concealed from the bankruptcy trustee, creditors of Focus, and the United States Trustee property belonging to the bankruptcy estate in "In re Focus Media, Inc., Debtor," case no. LA 00-38197-KM, namely funds totaling \$500,000, as set forth below:

COUNT	CONCEALED PROPERTY
NINE	\$250,000 wire transferred from Focus' Community Bank account number XXXX1871 to the Law Offices of Geoffrey C. Mousseau, Attorney Client Trust Bank of America account number XXXXX-XX882, on October 26, 2000, and thereafter transferred, via check number 5159, to the law offices of Stutman, Treister & Glatt.
TEN	\$250,000 wire transferred from Focus' Community Bank account number XXXX1871 to the Law Offices of Geoffrey C. Mousseau, Attorney Client Trust Bank of America account number XXXXX-XX882, on October 27, 2000, and thereafter transferred to defendant MOUSSEAU, and other law firms and accounting firms, including the law offices of Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone.

1 39. In furtherance of the ongoing concealment of the assets
2 listed above, defendants RUBIN, SULLIVAN and MOUSSEAU, among
3 other acts, disguised the fact that the funds were property of
4 the Focus bankruptcy estate by transferring the funds through
5 MOUSSEAU's attorney client trust account and then to other law
6 firms and an accounting firm as retainers instead of directly to
7 the intended recipients of the funds.

8 40. Also in furtherance of the concealment of these funds,
9 defendants RUBIN, SULLIVAN and MOUSSEAU made and caused to be
10 made false representations and statements to the bankruptcy
11 court, the interim and permanent trustee, and Focus' creditors
12 about the source of the funds including, among others, that: the
13 funds came from a source other than Focus; the funds belonged to
14 MOUSSEAU; and the funds had been transferred to MOUSSEAU's
15 attorney client trust account pursuant to an indemnification
16 agreement between SULLIVAN and Focus.

17 41. Also in furtherance of the concealment of these funds,
18 defendants RUBIN, SULLIVAN and MOUSSEAU submitted and caused to
19 be submitted to the bankruptcy court, the interim and permanent
20 trustee and Focus' creditors false and fraudulent documents
21 including, among others, false and fraudulent billing records
22 purporting to establish that MOUSSEAU provided legal services
23 only to SULLIVAN, which were filed with the bankruptcy court in
24 or about February 2002; and a false and fraudulent
25 Indemnification Statement, Undertaking, and Accounting Statement
26 purporting to establish that \$550,000 was transferred on or about
27 October 27, 2000 from Focus to bank accounts maintained by
28 defendant MOUSSEAU at the Bank of America pursuant to a demand

1 for indemnification signed by SULLIVAN on or about October 23,
2 2000.

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COUNTS ELEVEN THROUGH TWENTY-TWO

[18 U.S.C. § 152(7); § 2]

[FRAUDULENT TRANSFER AND CONCEALMENT OF PROPERTY IN BANKRUPTCY;
AIDING AND ABETTING AND CAUSING AN ACT TO BE DONE]

42. The Grand Jury hereby repeats and realleges paragraphs 1, 3 through 9, 20 through 33, and 35 through 36 of this FSI as if fully set forth herein.

43. Beginning on or about October 27, 2000, and continuing to at least February 2001, within the Central District of California, and elsewhere, defendants RUBIN, SULLIVAN and MOUSSEAU, aiding and abetting one another, and each acting in a personal capacity and as agents and officers of Focus, and others known and unknown to the Grand Jury, knowingly and fraudulently transferred and concealed and caused to be transferred and concealed property of Focus, as identified in counts eleven through twenty-two below, with intent to defeat the provisions of Title 11:

COUNT	TRANSFERRED AND CONCEALED PROPERTY
ELEVEN	\$75,000 transferred from Focus' Community Bank account number XXXX3454 to Rubin via check number 4395, dated October 27, 2000.
TWELVE	\$50,000 transferred from Focus' Community Bank account number XXXX3454 to Dr. Mark Saginor, M.D., Rubin's physician, via check number 4417, dated October 27, 2000.
THIRTEEN	\$50,000 transferred from Focus' Community Bank account number XXXX3454 to American Express as a prepayment for a Focus corporate credit card number XXXX-XXXXXX-53008 used by Rubin via check number 4418, dated October 27, 2000.
FOURTEEN	\$45,968.77 transferred from Focus' Community Bank account number XXXX1871 to Colleen M. Capone via check number 34125, dated October 27, 2000.

COUNT	TRANSFERRED AND CONCEALED PROPERTY
FIFTEEN	\$88,106.72 transferred from Focus' Community Bank account number XXXX1871 to Donna Lucas via check number 34131, dated October 27, 2000.
SIXTEEN	\$16,724.71 transferred from Focus' Community Bank account number XXXX1871 to Joseph R. Capone via check number 34133, dated October 27, 2000.
SEVENTEEN	\$16,762.60 transferred from Focus' Community Bank account number XXXX1871 to Joseph S. Palazzola via check number 34134, dated October 27, 2000.
EIGHTEEN	\$16,767.26 transferred from Focus' Community Bank account number XXXX1871 to Matthew W. Rubin, via check number 34136, dated October 27, 2000.
NINETEEN	\$16,662.50 transferred from Focus' Community Bank account number XXXX1871 to Karissa A. Provost, via check number 34138, dated October 27, 2000.
TWENTY	\$16,837.50 transferred from Focus' Community Bank account number XXXX1871 to Stephanie L. Taylor via check number 34139, dated October 27, 2000.
TWENTY-ONE	\$168,552.82 transferred from Focus' Community Bank account number XXXX1871 to Sullivan via check number 34141, dated October 27, 2000.
TWENTY-TWO	\$4,655.40 charged to Focus American Express corporate credit card number XXXX-XXXXXX-53008 for the purchase of an Air France plane ticket for travel from New York to Paris, France, on November 20, 2000.

44. In furtherance of the transfers and concealments of the property described above, defendants RUBIN, SULLIVAN and MOUSSEAU, among other acts, wrote and caused to be written checks drawing funds from Focus bank accounts to transfer the property; withheld and caused to be withheld information about Focus bank accounts and American Express credit card accounts from the interim and permanent bankruptcy trustee; and made and caused to

1 be made false statements to the interim and permanent bankruptcy
2 trustee, the court, and to Focus' creditors concerning the
3 disposition of the property.

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COUNTS TWENTY-THREE AND TWENTY-FOUR

[18 U.S.C. § 152(3); § 2]

[FALSE STATEMENTS IN BANKRUPTCY;

ADING AND ABETTING AND CAUSING AN ACT TO BE DONE]

45. The Grand Jury hereby repeats and realleges paragraphs 1, 3 through 9, 20 through 33, and 35 through 36 of this FSI as if fully set forth herein.

46. On or about the following dates, within the Central District of California, and elsewhere, defendants RUBIN, SULLIVAN and MOUSSEAU, aiding and abetting each other, knowingly made and caused to be made the following false declarations and statements as to a material matter under penalty of perjury, as defined under section 1746 of Title 28, United States Code, in and in relation to a case under Title 11, namely the proceeding entitled "In re: Focus Media, Inc., Debtor," Case Number LA 00-38197-KM, by submitting declarations in which defendants SULLIVAN and MOUSSEAU made the following false statements:

COUNT	DATE	FALSE STATEMENT
TWENTY-THREE	10/27/00	In a declaration filed in support of Focus' opposition to the appointment of an interim trustee, defendant SULLIVAN falsely stated, "Pending the disposition of the pending involuntary bankruptcy proceeding the Company [i.e., Focus] intends to expend monies necessary to preserve and protect the assets of the Company including payroll, insurance, rent and other items as set forth in further detail on the budget attached hereto which I prepared."

COUNT	DATE	FALSE STATEMENT
TWENTY- FOUR	1/28/02	In a declaration filed in support of MOUSSEAU's opposition to Focus' creditors' motion for relief based on MOUSSEAU's failure to comply with Bankruptcy Code section 329, defendant SULLIVAN falsely stated, "On October 24, 2000, I executed an Indemnification Agreement [sic], an Undertaking and an Accounting due to my involvement in the In re Focus Bankruptcy case and for all Expenses actually and reasonably incurred by me in connection with my preparation to serve and my service as a witness in that Proceeding, and presented them to Focus Media pursuant to the requirements of the [Indemnification] Agreement."

COUNT TWENTY-FIVE**[18 U.S.C. § 152(2); § 2]****[FALSE OATH IN BANKRUPTCY;****AIDING AND ABETTING AND CAUSING AN ACT TO BE DONE]**

47. The Grand Jury hereby repeats and realleges paragraphs 1, 3 through 9, 20 through 33, and 35 through 36 of this FSI as if fully set forth herein.

48. On or about the following date, within the Central District of California, and elsewhere, defendant MOUSSEAU knowingly made the following false oath and account, in and in relation to a case under Title 11, namely the proceeding entitled "In re: Focus Media, Inc., Debtor," Case Number LA 00-38197-KM, by stating orally under oath, the following:

COUNT	DATE	FALSE OATH AND ACCOUNT
TWENTY-FIVE	2/28/03	In response to the question "Did you ever communicate to Ted Stolman at any time, in any way, that the \$250,000 of retainer funds that had been paid to Stutman, Treister & Glatt, as their initial retainer in connection with their representation of Focus Media, was in fact your money?", defendant MOUSSEAU falsely responded, "No."

COUNT TWENTY-SIX

[18 U.S.C. § 152(9); § 2]

[WITHHOLDING RECORDS IN BANKRUPTCY;

AIDING AND ABETTING AND CAUSING AN ACT TO BE DONE]

49. The Grand Jury hereby repeats and realleges paragraphs 1, 3 through 9, 20 through 33, and 35 through 36 of this FSI as if fully set forth herein.

50. Beginning on a date unknown but at least as early as on about October 27, 2000, and continuing to at least in or about April 2001, in Los Angeles County, within the Central District of California, after the filing of a case under Title 11, namely the proceeding entitled In re: Focus Media, Inc., Debtor, Case Number LA 00-38197-KM, defendants SULLIVAN, RUBIN and MOUSSEAU, aiding and abetting each other, knowingly and fraudulently withheld from a custodian, trustee, other officer of the court and the United States Trustee entitled to its possession, recorded information (including books, records, documents, and papers) relating to the property and financial affairs of Focus Media, a debtor, in that, defendants SULLIVAN and MOUSSEAU, among other acts, willfully failed to provide complete information about the identity and location of Focus' bank and other financial accounts; provided false information about who prepared Focus' tax returns; caused documents to be removed from Focus' premises and be unavailable to the trustee; and refused to provide passwords for Focus' computers.

COUNT TWENTY-SEVEN**[18 U.S.C. § 1957; § 2]****[TRANSACTIONS IN CRIMINALLY DERIVED PROPERTY;****CAUSING AN ACT TO BE DONE]**

51. The Grand Jury hereby repeats and realleges paragraphs 1, 3 through 9, 20 through 33, and 35 through 36 of this FSI as if fully set forth herein.

52. On or about the dates set forth below, within the Central District of California and elsewhere, defendant SULLIVAN, knowing that the funds involved represented the proceeds of some form of unlawful activity, conducted and attempted to conduct, and caused others to conduct and attempt to conduct, the following monetary transaction in criminally derived property of a value greater than \$10,000, which property was derived from specified unlawful activity, namely mail fraud, wire fraud, and bankruptcy fraud, activity fully described in paragraphs 10-12, 14-15, 17-18, 37-41, 43-44, 46, 48 and 50, above:

COUNT	DATE	MONETARY TRANSACTION
TWENTY-SEVEN	10/31/00	Deposit of check number 6110, drawn on SULLIVAN and his wife's joint Bank of America checking account number XXXXX-XX109, and made payable to Daphne Sullivan in the amount of \$165,000, into SULLIVAN and his wife's First Union Securities brokerage account.

COUNTS TWENTY-EIGHT THROUGH TWENTY-NINE

[18 U.S.C. § 1957; § 2]

[TRANSACTIONS IN CRIMINALLY DERIVED PROPERTY;

AIDING AND ABETTING AND CAUSING AN ACT TO BE DONE]

53. The Grand Jury hereby repeats and realleges paragraphs 1, 3 through 9, 20, through 33, and 35 through 36 of this FSI as if fully set forth herein.

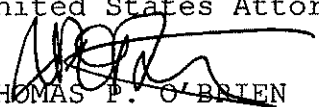
54. On or about the dates set forth below, within the Central District of California and elsewhere, defendants RUBIN and SULLIVAN, aiding and abetting each other, knowing that the funds involved represented the proceeds of some form of unlawful activity, conducted and attempted to conduct, and caused others to conduct and attempt to conduct, the following monetary transactions in criminally derived property of a value greater than \$10,000, which property was derived from specified unlawful activity, namely mail fraud, wire fraud, and bankruptcy fraud, activity more fully described in paragraphs 10-12, 14-15, 17-18, 37-41, 43-44, 46, 48 and 50, above:

COUNT	DATE	MONETARY TRANSACTION
TWENTY-EIGHT	11/22/00	Depositing of check number 010518, drawn on TRA's account at Community Bank, in the amount of \$14,403.70, made payable to Citibank Advantage to pay for charges on a credit card in the name of defendant RUBIN.
TWENTY-NINE	12/4/00	Depositing of check number 10529, drawn on TRA's account at Community Bank, in the amount of \$10,549, made payable to Colleen Capone.

A TRUE BILL

15
Foreperson

DEBRA WONG YANG
United States Attorney


THOMAS P. O'BRIEN
Assistant United States Attorney
Chief, Criminal Division

CHRISTINE EWELL
Assistant United States Attorney
Chief, Major Frauds

ALKA SAGAR
Assistant United States Attorney
Deputy Chief, Major Frauds

RANEE A. KATZENSTEIN
PAUL G. STERN
Assistant United States Attorneys
Major Frauds Section

EXHIBIT**2**

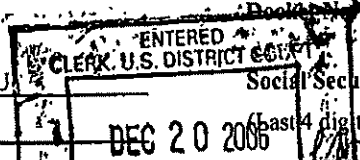
**United States District Court
Central District of California**

UNITED STATES OF AMERICA vs.

CR04-1697(A)-GAF

Defendant GEOFFREY C. MOUSSEAUSocial Security No. 7 7 4 3

akas: _____



SCANNED

JUDGMENT AND PROBATION/COMMITMENT ORDER

MONTH	DAY	YEAR
DEC.	6	2006

In the presence of the attorney for the government, the defendant appeared in person on this date.

COUNSEL☒ **WITH COUNSEL**Mark Werksman

(Name of Counsel)

PLEA☐**GUILTY**, and the court being satisfied that there is a factual basis for the plea.☐**NOLO
CONTENDERE**☐**NOT
GUILTY****FINDING**There being a finding/verdict of ☒ **GUILTY**, defendant has been convicted as charged of the offense(s) of:

Count 8; Conspiracy to Commit Bankruptcy Fraud (18 USC 371); Counts 9 and 10: Fraudulent Concealment of Property in Bankruptcy (18 USC 152(1)); Count 24: False Statement in Bankruptcy (18 USC 152(3)); Count 25: False Oath in Bankruptcy (18 USC 152(2)); Count 26: Withholding Records in Bankruptcy (18 USC 152(9))

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed on the First Superseding Indictment to the custody of the Bureau of Prisons to be imprisoned for a term of 21 months. This term consists of 21 months on Counts 9, 10, 24, 25, and 26, to be served concurrent to each other, but consecutively to Count 8. Count 8 shall consist of a term of 21 months.

It is ordered that the defendant shall pay to the United States a special assessment of \$600, which is due immediately to the Clerk of the Court.

Restitution will be ordered and the amount will be determined at a hearing to be held on January 29, 2007, at 9:30 am. Upon completion of said hearing an amended judgment and commitment order will be prepared and filed with the Court.

The defendant shall comply with General Order No. 01-05.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years. This term consists of three years on each of Counts 8, 9, 10, 24, 25, and 26, all such terms to run concurrently and under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the U. S. Probation Office and General Order 318;
2. During the period of community supervision the defendant shall pay the special assessment and the fine in accordance with this judgment's orders pertaining to such payment;
3. The defendant shall not be employed in any capacity wherein he has custody, control or management or is otherwise entrusted with funds of another, including, but not limited to Attorney-Client Trust Funds, without prior approval of the Probation Officer;
4. The defendant shall cease to engage in the practice of law, shall notify the California State Bar, the Texas State Bar, and any other licensing body in any place in which he intends to work, of his conviction herein, and shall not practice law in either California or Texas or engage in any licensed profession until given permission by the respective licensing authority.
5. The defendant shall not be employed in any position that requires licensing and/or certification by any local, state or federal agency without prior approval of the Probation Officer;
6. The defendant shall cooperate in the collection of a DNA sample from the defendant.
7. As directed by the Probation Officer, the defendant shall apply monies received from income tax refunds, lottery winnings, inheritance,

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USA vs. Geoffrey C. MousseauDocket No.: CR04-1697(A)-GAF

judgements and any anticipated or unexpected financial gains to the outstanding court-ordered financial obligation.

The drug testing condition mandated by statute is suspended based on the Court's determination that the defendant poses a low risk of future substance abuse.

The Court recommends that defendant be housed in local confinement. Defendant is advised of his appellate rights.

Restitution in this matter is being ordered and will be determined at a hearing to be held Monday, January 29, 2007, at 9:30 am. Upon completion of said hearing an amended judgment and commitment ordered will be prepared and filed with the Court.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

12/13/06
Date

GARY ALLEN FEES, United States District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Sherri R. Carter, Clerk

12/13/06
Filed Date

By

Ce
Deputy Clerk

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant shall not commit another Federal, state or local crime;
2. the defendant shall not leave the judicial district without the written permission of the court or probation officer;
3. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5. the defendant shall support his or her dependents and meet other family responsibilities;
6. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
7. the defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
8. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
9. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
10. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
11. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
12. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
13. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
14. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to conform the defendant's compliance with such notification requirement;
15. the defendant shall, upon release from any period of custody, report to the probation officer within 72 hours;
16. and, for felony cases only: not possess a firearm, destructive device, or any other dangerous weapon.

☐ The defendant will also comply with the following special conditions pursuant to General Order 01-05 (set forth below).

USA vs. Geoffrey C. Mousseau

Docket No.: CR04-1697(A)-GAF

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant shall pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment pursuant to 18 U.S.C. §3612(f)(1). Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed prior to April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant shall pay the balance as directed by the United States Attorney's Office. 18 U.S.C. §3613.

The defendant shall notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. §3612(b)(1)(F).

The defendant shall notify the Court through the Probation Office, and notify the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. §3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution pursuant to 18 U.S.C. §3664(k). See also 18 U.S.C. §3572(d)(3) and for probation 18 U.S.C. §3563(a)(7).

Payments shall be applied in the following order:

1. Special assessments pursuant to 18 U.S.C. §3013;
2. Restitution, in this sequence:
 - Private victims (individual and corporate),
 - Providers of compensation to private victims,
 - The United States as victim;
3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663©); and
5. Other penalties and costs.

SPECIAL CONDITIONS FOR PROBATION AND SUPERVISED RELEASE

As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant shall not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant shall maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds shall be deposited into this account, which shall be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, shall be disclosed to the Probation Officer upon request.

The defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

USA vs. Geoffrey C. Mousseau Docket No.: CR04-1697(A)-GAF

RETURN

STAINED

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____
 Defendant noted on appeal on _____
 Defendant released on _____
 Mandate issued on _____
 Defendant's appeal determined on _____
 Defendant delivered on _____ to _____
 at _____

the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____
 Date Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____
 Filed Date Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
 Defendant Date

 U. S. Probation Officer/Designated Witness Date

NOTICE PARTY SERVICE LIST

Case No. CROH-1697Case Title USA v. MousseauTitle of Document gfc, mo

<input type="checkbox"/>	Atty Stlmnt Officer
<input type="checkbox"/>	BAP (Bankruptcy Appellate Panel)
<input type="checkbox"/>	Beck, Michael J (Clerk, MDL Panel)
<input type="checkbox"/>	BOP (Bureau of Prisons)
<input type="checkbox"/>	CA St Pub Defender (Calif. State PD)
<input type="checkbox"/>	CAAG (California Attorney General's Office - Keith H. Borjon, L.A. Death Penalty Coordinator)
<input type="checkbox"/>	Case Asgmt Admin (Case Assignment Administrator)
<input type="checkbox"/>	Catterson, Cathy (9 th Circuit Court of Appeal)
<input type="checkbox"/>	Chief Deputy Admin
<input type="checkbox"/>	Chief Deputy Ops
<input type="checkbox"/>	Clerk of Court
<input type="checkbox"/>	Death Penalty H/C (Law Clerks)
<input type="checkbox"/>	Dep In Chg E Div
<input type="checkbox"/>	Dep In Chg So Div
<input checked="" type="checkbox"/>	Fiscal Section
<input type="checkbox"/>	Intake Section, Criminal LA
<input type="checkbox"/>	Intake Section, Criminal SA
<input type="checkbox"/>	Intake Supervisor, Civil
<input type="checkbox"/>	Interpreter Section
<input type="checkbox"/>	PIA Clerk - Los Angeles (PIALA)
<input type="checkbox"/>	PIA Clerk - Riverside (PIAED)
<input type="checkbox"/>	PIA Clerk - Santa Ana (PIASA)
<input checked="" type="checkbox"/>	PSA - Los Angeles (PSALA)
<input type="checkbox"/>	PSA - Riverside (PSAED)
<input type="checkbox"/>	PSA - Santa Ana (PSASA)
<input type="checkbox"/>	Schnack, Randall (CJA Supervising Attorney)
<input type="checkbox"/>	Statistics Clerk

<input type="checkbox"/>	Stratton, Maria - Federal Public Defender
<input type="checkbox"/>	US Attorneys Office - Civil Division -L.A.
<input type="checkbox"/>	US Attorneys Office - Civil Division - S.A.
<input type="checkbox"/>	US Attorneys Office - Criminal Division -L.A.
<input type="checkbox"/>	US Attorneys Office - Criminal Division -S.A.
<input type="checkbox"/>	US Bankruptcy Court
<input checked="" type="checkbox"/>	US Marshal Service - Los Angeles (USMLA)
<input type="checkbox"/>	US Marshal Service - Riverside (USMED)
<input type="checkbox"/>	US Marshal Service -Santa Ana (USMSA)
<input checked="" type="checkbox"/>	US Probation Office (USPO)
<input type="checkbox"/>	US Trustee's Office
<input type="checkbox"/>	Warden, San Quentin State Prison, CA

ADD NEW NOTICE PARTY

(if sending by fax, mailing address must also be provided)

Name:

Firm:

Address (include suite or floor):

*E-mail:

*Fax No.:

* For CIVIL cases only

JUDGE / MAGISTRATE JUDGE (list below):

Initials of Deputy Clerk _____

AMENDED

**United States District Court
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No. CR04-1697(A)-GAFDefendant GEOFFREY C. MOUSSEAUSocial Security No. 7 7 4 3

akas: _____

(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
DEC.	6	2006

COUNSEL

☒ WITH COUNSEL

Mark Werksman

(Name of Counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea. ☐NOLO
CONTENDERE☐ NOT
GUILTY

FINDING

There being a finding/verdict of ☒ GUILTY, defendant has been convicted as charged of the offense(s) of:

Count 8; Conspiracy to Commit Bankruptcy Fraud (18 USC 371); Counts 9 and 10: Fraudulent Concealment of Property in Bankruptcy (18 USC 152(1)); Count 24: False Statement in Bankruptcy (18 USC 152(3)); Count 25: False Oath in Bankruptcy (18 USC 152(2)); Count 26: Withholding Records in Bankruptcy (18 USC 152(9))

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed on the First Superseding Indictment to the custody of the Bureau of Prisons to be imprisoned for a term of 21 months. This term consists of 21 months on Counts 8, 9, 10, 24, 25, and 26, to be served concurrent to each other.

It is ordered that the defendant shall pay to the United States a special assessment of \$600, which is due immediately to the Clerk of the Court.

Restitution will be ordered and the amount will be determined at a hearing to be held on January 29, 2007, at 9:30 am. Upon completion of said hearing an amended judgment and commitment order will be prepared and filed with the Court.

The defendant shall comply with General Order No. 01-05.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years. This term consists of three years on each of Counts 8, 9, 10, 24, 25, and 26, all such terms to run concurrently and under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the U. S. Probation Office and General Order 318;
2. During the period of community supervision the defendant shall pay the special assessment and the fine in accordance with this judgment's orders pertaining to such payment;
3. The defendant shall not be employed in any capacity wherein he has custody, control or management or is otherwise entrusted with funds of another, including, but not limited to Attorney-Client Trust Funds, without prior approval of the Probation Officer;
4. The defendant shall cease to engage in the practice of law, shall notify the California State Bar, the Texas State Bar, and any other licensing body in any place in which he intends to work, of his conviction herein, and shall not practice law in either California or Texas or engage in any licensed profession until given permission by the respective licensing authority.
5. The defendant shall not be employed in any position that requires licensing and/or certification by any local, state or federal agency without prior approval of the Probation Officer;
6. The defendant shall cooperate in the collection of a DNA sample from the defendant.

7. As directed by the Probation Officer, the defendant shall apply monies received from income tax refunds, lottery winnings, inheritance, judgements and any anticipated or unexpected financial gains to the outstanding court-ordered financial obligation.

EXHIBIT
3

USA vs. Geoffrey C. Mousseau

Docket No.: CR04-1697(A)-GAF

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant shall pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment pursuant to 18 U.S.C. §3612(f)(1). Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed prior to April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant shall pay the balance as directed by the United States Attorney's Office. 18 U.S.C. §3613.

The defendant shall notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. §3612(b)(1)(F).

The defendant shall notify the Court through the Probation Office, and notify the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. §3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution-pursuant to 18 U.S.C. §3664(k). See also 18 U.S.C. §3572(d)(3) and for probation 18 U.S.C. §3563(a)(7).

Payments shall be applied in the following order:

1. Special assessments pursuant to 18 U.S.C. §3013;
2. Restitution, in this sequence:
 - Private victims (individual and corporate),
 - Providers of compensation to private victims,
 - The United States as victim;
3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663©); and
5. Other penalties and costs.

SPECIAL CONDITIONS FOR PROBATION AND SUPERVISED RELEASE

As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant shall not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant shall maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds shall be deposited into this account, which shall be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, shall be disclosed to the Probation Officer upon request.

The defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

RETURN

I have executed the within Judgment and Commitment as follows:

USA vs. Geoffrey C. Mousseau Docket No.: CR04-1697(A)-GAF

Defendant delivered on _____ to _____
Defendant noted on appeal on _____
Defendant released on _____
Mandate issued on _____
Defendant's appeal determined on _____
Defendant delivered on _____ to _____
at _____
the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____
Date Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____
Filed Date Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
Defendant Date

U. S. Probation Officer/Designated Witness Date

AFFIDAVIT


THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Amanda M. Kates, Petitioner's attorney of record, who, being by me duly sworn, deposed as follows:

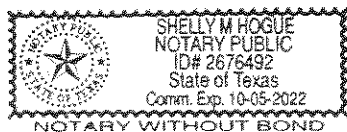
"My name is Amanda M. Kates. I am over the age of 18 years, of sound mind, capable of making this affidavit, and state the following:

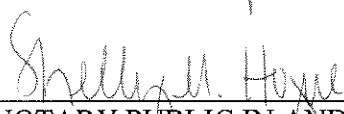
Based upon information and belief, Geoffrey C. Mousseau, whose Texas Bar Card Number is 14606300, is licensed as an attorney and counselor at law in the State of Texas. Based upon information and belief, Geoffrey C. Mousseau, named as Respondent in the Petition for Compulsory Discipline filed with the Board of Disciplinary Appeals is one and the same person as the Geoffrey C. Mousseau who is the subject of the Judgment and Probation/Commitment Orders entered in Cause No. 2:04-cr-01697-GAF, styled *United States of America v. Geoffrey C. Mousseau*, in the United States District Court for the Central District of California, wherein Respondent was found guilty Count 8 – Conspiracy to Commit Bankruptcy Fraud in violation of 18 U.S.C. 371; Counts 9 and 10 – Fraudulent Concealment of Property in Bankruptcy in violation of 18 U.S.C. 152(1); Count 24 – False Statement in Bankruptcy in violation of 18 U.S.C. 152(3); Count 25 – False Oath in Bankruptcy in violation of 18 U.S.C. 152(2); and Count 26 – Withholding Records in Bankruptcy in violation of 18 U.S.C. 152(9), and was committed to the custody of the Federal Bureau of Prisons for a term of 21 months and further ordered that upon release from imprisonment, to be on supervised release for a term of 3 years."

FURTHER Affiant saith not.


Amanda M. Kates

SWORN AND SUBSCRIBED before me on the 8 day of September 2021.




NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS



INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

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INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. GENERAL PROVISIONS

Rule 1.01. Definitions

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

Rule 1.02. General Powers

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

Rule 1.03. Additional Rules in Disciplinary Matters

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

Rule 1.04. Appointment of Panels

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

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

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

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

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

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

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

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

- (4) Exceptions.

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

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

- a) documents that are filed under seal or subject to a pending motion to seal; and
- b) documents to which access is otherwise restricted by court order.

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

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

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

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

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

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

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

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

Rule 1.06. Service of Petition

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

Rule 1.07. Hearing Setting and Notice

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

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

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

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

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

Rule 1.08. Time to Answer

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

Rule 1.09. Pretrial Procedure

(a) Motions.

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

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

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

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

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

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

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

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

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

Rule 1.10. Decisions

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

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

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

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

Rule 1.11. Board of Disciplinary Appeals Opinions

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

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

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

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

Rule 1.12. BODA Work Product and Drafts

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

Rule 1.13. Record Retention

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

Rule 1.14. Costs of Reproduction of Records

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

Rule 1.15. Publication of These Rules

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

II. ETHICAL CONSIDERATIONS

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

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

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

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

Rule 2.02. Confidentiality

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

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

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

Rule 2.03. Disqualification and Recusal of BODA Members

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

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

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

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

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

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

Rule 3.02. Record on Appeal

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

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

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

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

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

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

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

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

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

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

Rule 4.02. Record on Appeal

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

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

(c) Responsibility for Filing Record.

(1) Clerk's Record.

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

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

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

(2) Reporter's Record.

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

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

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

(d) Preparation of Clerk's Record.

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

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

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

(ii) start each document on a new page;

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

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

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

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

(vii) certify the clerk's record.

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

(3) The table of contents must:

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

(ii) be double-spaced;

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

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

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

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

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

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

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

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

(f) Preparation of the Reporter's Record.

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

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

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

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

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

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

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

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

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

¹ So in original.

Rule 4.03. Time to File Record

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

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

(b) If No Record Filed.

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

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

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

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

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

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

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

Rule 4.04. Copies of the Record

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

Rule 4.05. Requisites of Briefs

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

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

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

(c) Contents. Briefs must contain:

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

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

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

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

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

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

failure to timely file a brief;

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

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

Rule 4.06. Oral Argument

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

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

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

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

Rule 4.07. Decision and Judgment

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

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

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

Rule 4.08. Appointment of Statewide Grievance Committee

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

Rule 4.09. Involuntary Dismissal

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

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

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

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

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

Rule 5.02. Hearing

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

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

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

Rule 6.02. Interlocutory Suspension

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

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

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

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

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

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

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

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

Rule 7.02. Order to Show Cause

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

Rule 7.03. Attorney's Response

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

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

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

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

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

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

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

Rule 8.02. Petition and Answer

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

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

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

Rule 8.03. Discovery

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

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

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

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

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

Rule 8.04. Ability to Compel Attendance

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

Rule 8.05. Respondent's Right to Counsel

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

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

Rule 8.06. Hearing

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

Rule 8.07. Notice of Decision

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

Rule 8.08. Confidentiality

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

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

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

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

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

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

Rule 9.02. Discovery

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

Rule 9.03. Physical or Mental Examinations

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

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

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

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

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

Rule 9.04. Judgment

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

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

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

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

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