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

No. 69845

**Before the Board of Disciplinary Appeals
Appointed by
The Supreme Court of Texas**

VY THUAN NGUYEN,
STATE BAR OF TEXAS CARD No. 24060334,
APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

*On Appeal from an Evidentiary Panel
For the State Bar of Texas District 4
Nos. 202205608 [Parrish]; 202206116 [Lau]; 202207092 [Kraesig]; 202301900
[Martin]; & 202302230 [Nasra]*

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BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits this brief in response to the brief filed by Appellant, Vy Thuan Nguyen. For clarity, this brief refers to Appellant as “Nguyen”; Appellee as “the Commission”; and the Board of Disciplinary Appeals as “BODA” or the “Board.” References to the record are labeled CR (clerk’s record); RR (reporter’s record of the evidentiary hearing held on May 8, 2024); RR Pet. Ex. __ (Petitioner’s exhibits admitted at the evidentiary

hearing – as to professional misconduct); RR Pet. Ex. S - __ (Petitioner’s exhibits admitted at the evidentiary hearing – as to sanction); RR Resp. Ex. __ (Respondent’s exhibits admitted at the evidentiary hearing); and App. (appendix to this brief). References to Appellant’s Brief are labeled Apt. Br., with the relevant page(s) and/or appendix item(s). References to rules refer to the Texas Disciplinary Rules of Professional Conduct¹ (the “TDRPCs”) or the Texas Rules of Disciplinary Procedure (the “TRDPs”), as appropriate.²

¹ *Reprinted in* TEX. GOV’T CODE ANN., tit. 2, subtit. G. app. A (West 2024).

² *Reprinted in* TEX. GOV’T CODE ANN., tit. 2, subtit. G. app. A-1 (West 2024). The version of the TRDPs that is relevant to Nguyen’s attorney disciplinary proceeding is the former version in effect after the disciplinary proceeding against her commenced, which included amendments effective as of August 27, 2021. [App 1].

STATEMENT OF THE CASE

Type of Proceeding: Attorney Discipline

Petitioner/Appellee: The Commission for Lawyer Discipline

Respondent/Appellant: Vy Thuan Nguyen

Evidentiary Panel: 4-6

Judgment: Judgment of Disbarment
[App 2] [CR 232-38]

*Violations found (Texas
Disciplinary Rules of
Professional Conduct):*

Rule 1.01(b)(1): In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer. *[Parrish]*.

Rule 1.01(b)(2): In representing a client, a lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client or clients. *[Parrish]*.

Rule 1.03(a): A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. *[Parrish]; [Lau]; [Kraesig]*.

Rule 8.04(a)(8): A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so. *[Lau]; [Martin]; [Nasra]*.

STATEMENT OF JURISDICTION

The Board of Disciplinary Appeals has jurisdiction over this appeal from the decision of an Evidentiary Panel of the State Bar of Texas District 4 Grievance Committee pursuant to Rules 2.23 and 7.08(D) of the Texas Rules of Disciplinary Procedure.

STATEMENT AS TO ORAL ARGUMENT

Appellant has requested oral argument. Pursuant to Rule 4.06(b) of the Board's Internal Procedural Rules, Appellee believes oral argument is unnecessary in this case as the facts and legal arguments are adequately presented in the briefs and the record and the Board's decisional process would not be significantly aided by oral argument. However, should the Board grant oral argument to Appellant, Appellee requests the opportunity to respond.

STATEMENT OF THE ISSUES

1. Nguyen's evidentiary hearing being conducted by video and tele-conference was expressly authorized and did not constitute error; further, Nguyen waived any such issue because she did not object to same before the panel.
2. Nguyen waived any issues as to the evidentiary panel's time limitation for her evidentiary hearing; but even if she had not waived such issues, the record does not support her argument that the panel abused its discretion by holding a full-day evidentiary hearing.
3. Nguyen waived any issue as to the nature of the disciplinary charges implicated in her evidentiary hearing; but even if she had not waived such issues, the record does not support her argument that the panel abused its discretion in this respect.
4. This case does not implicate the cumulative-error doctrine.
5. The evidentiary panel acted within its discretion in imposing disbarment as sanction for Nguyen's Professional Misconduct.

STATEMENT OF FACTS

I. The Commission files its disciplinary proceeding against Nguyen.

On August 31, 2023, the Commission for Lawyer Discipline (the “Commission”) filed its Original Evidentiary Petition against Nguyen (the “Commission’s Petition”). [CR 125-33] [App 3]. The Commission’s Petition encompassed five separate complaints against Nguyen, each alleging that she violated one or more provisions of the TDRPCs through her conduct in each such underlying matter and/or her failure to timely respond to the relevant disciplinary inquiry. [Id.]. The Commission’s Petition was personally served on Nguyen on September 23, 2023. [CR 135].

Nguyen appears to have attempted to file answers to each of the five complaints that were encompassed by the Commission’s Petition.³ [CR 137-50]. On January 10, 2024, the Commission’s counsel served Nguyen with its Notice of Evidentiary Hearing – identifying the setting date for her evidentiary hearing as Wednesday, May 8, 2024, at 9:00 a.m., and explaining that the hearing would be conducted by a video and tele-conference connection and that a certified shorthand reporter would be recording the hearing. [CR 152-56].

³ The referenced items in the Clerk’s Record seem to consist of four (essentially) general denials, none of which identify any particular underlying complainant or case number for the relevant evidentiary proceeding. [Id.]. Nevertheless, the parties appear to have proceeded as if Nguyen filed (at least) a general denial as to the instant evidentiary proceeding. [CR, *passim*]; [RR, *passim*].

On May 6, 2024, Nguyen filed a motion for continuance of her evidentiary hearing setting. [CR 188-93]. That same day, the panel Chair inquired into the stated reasons for Nguyen’s request for a continuance, and the Commission’s counsel stated its opposition to her request. [CR 195-97]. Nguyen responded to the panel Chair’s inquiries, and also on May 6th the Chair denied her request for a continuance. [CR 199-205]. At that time, the Chair also emphasized that Nguyen’s evidentiary hearing would go forward as scheduled, on May 8th, via Zoom. [Id.].

On May 7, 2024, Nguyen filed her Motion for Mandatory Alternative Dispute Resolution, requesting that the panel refer the matter for “resolution by mediation” pursuant to TRDP 2.17(K) and/or TEX. CIV. PRAC. & REM. CODE CH. 54. [CR 207-12]. The Commission opposed that motion as well. [CR 214-15]. The evidentiary hearing proceeded as scheduled on May 8, 2024. [RR, *passim*].

II. The disciplinary charges against Nguyen.

At the evidentiary hearing, the Commission presented evidence regarding each of the five complaints that were the subject of its evidentiary petition. [RR, *passim*] [RR Pet. Exs. 1-41].

A. The Parrish Complaint

In or around early 2020, Tammy and Billy Joe Parrish (“Tammy” and “Billy,” respectively, or the “Parrishes,” collectively) encountered immigration issues that were affecting Billy’s ability to renew his Texas Commercial Driver License (the

“CDL”). [RR 125-27]. Billy was employed as a truck driver, but his CDL had expired and the Parrishes learned for the first time that he was not a U.S. citizen, and that he would need confirmation of citizenship or a green card in order to get his CDL back.⁴ [Id.].

The Parrishes contacted a couple of attorneys for assistance, including Nguyen. [Id.]. Nguyen advised the Parrishes that their best option was to apply for citizenship for Billy, that the process would take only a couple of months, and that it would be “a piece of cake.” [RR 127-29]. With that, the Parrishes hired Nguyen in February of 2020, paying her \$1,750.00 to work on Billy’s immigration matter.⁵ [RR 127-29 & 144-45]; [CR 7].

For over two and a half years after the Parrishes first hired Nguyen, from February 2020 through late Summer 2022, they continually attempted to communicate with her (by text message, e-mail, and telephone calls) for updates or information on Billy’s immigration matter, to find out whether Nguyen needed additional information or assistance from them, to determine what work (if any) Nguyen had actually done, or (on more than one occasion) to request a refund of the money they had paid her. [RR 129-36]; [RR Pet. Exs. 20-25]. And, after having to

⁴ Billy was born in Germany and adopted by a U.S. serviceman-father but apparently never officially became a U.S. citizen. [RR 227-29].

⁵ Initially, the Parrishes had to borrow the money to pay Nguyen from Billy’s employer, which they paid back. [RR 129].

contact *another* lawyer in an effort to better understand the immigration system and what she needed to be looking for, Tammy learned that Nguyen should have received “receipt numbers” from U.S. Citizenship and Immigration Services (the “USCIS”) for any paperwork Nguyen submitted to USCIS on Billy’s behalf. [RR 131]. Tammy then repeatedly sought such information from Nguyen, in an attempt to gain some insight into where they stood with respect to Billy’s immigration issues. [Id.]; [RR Pet. Ex. 20, pp. 3, 5, 14 & 24]; [RR Pet. Ex. 21].

But on the rare occasion that Nguyen would actually respond to Tammy’s communication(s), it was typically just to tell her that she would get back with them or that she needed to “look into something.” [RR 132-34]; [RR Pet. Ex. 20-22]. Nguyen never provided any USCIS receipts for any of the work she told the Parrishes she was doing. [RR 131-32]; [RR Pet. Ex. 25]. In fact, Nguyen never gave the Parrishes **anything** demonstrating she had ever done any work on Billy’s case at all. [Id.].

While the Parrishes waited for Nguyen to assist them with Billy’s immigration issue, Billy’s employer kept him on doing “mechanic work” for a little over a year before he finally had to let him go. [RR 136-37]. From that point forward, while waiting for a solution to Billy’s problem, the Parrishes lived off Tammy’s disability (she had not worked since 2011) and with assistance from their sons. [Id.]. During

that time, both Tammy and Billy's health deteriorated, they lost their house, Billy lost his truck, and they relied on their sons for support. [RR 139-41].

Beginning late Summer 2022, the Parrishes began contacting the State Bar regarding Nguyen's work, or lack thereof, on Billy's behalf. [RR 134-36]; [RR Pet. Ex. 20, pp. 19-21 & 27]; [RR Pet. Exs. 24 & 25]. Even then, after receiving assurance from Nguyen that she would take care of Billy's issues, the Parrishes continued to put their trust in her to do just that – to no avail. [RR 134-36 & 140-42]. Eventually, the Parrishes hired another attorney who helped Billy obtain a green card within about six weeks. [RR 137-39]. And as of the date of the Evidentiary Hearing in Nguyen's instant disciplinary case, over four years after the Parrishes had first hired Nguyen, Billy was finally back on track to renew his CDL. [Id.]. Further, Nguyen never provided the Parrishes a client file, never returned any of the immigration documents Tammy had collected and given to her, and never provided the Parrishes a refund of any kind. [RR 141].

The Commission's Petition had alleged that Nguyen's above-described conduct in the Parrishes case constituted violations of TDRPCs 1.01(a), 1.01(b)(1), 1.01(b)(2) & 1.03(a). [App 3].

B. The Lau Complaint

In September 2021, Trang Lau ("Trang") hired Nguyen to assist her in her child support modification case, paying her \$1,500.00 for that representation. [RR

59-60 & 72]. Nguyen currently represents Trang in a related, parental rights termination case (i.e., involving the termination of the parental rights of the *father* of Trang’s minor daughter). [Id.].

While trying to navigate her child support modification case with Nguyen, Trang experienced what she characterized as “horrible” communication with Nguyen for at least a year. [RR 60]. From September 2021 through September 2022, Trang continually attempted to communicate with Nguyen (by telephone calls, text message, and e-mail) to schedule mediation in her case. [RR 60-61]; [RR Pet. Exs. 9-15].

On the occasions that Nguyen actually responded to Trang’s communication(s), it was typically just to say that she would “call back,” but Nguyen would never call Trang back. [Id.]. Trang viewed Nguyen’s failures to communicate with her as “so bad” that in the Spring of 2022, she sent Nguyen multiple e-mails and even a certified mail, seeking to fire Nguyen as her attorney and/or obtain a refund of the money she had paid her – Nguyen never directly responded to Trang’s communications in that respect. [RR 60-65]; [RR Pet. Exs. 12, 13 & 16].

Eventually, Trang filed a grievance with the State Bar; and it was not until after she had filed that grievance that Nguyen’s communication with her began to improve. [RR 64-65]. However, notwithstanding any improvement in Nguyen’s

representation of Trang at that point, Nguyen also failed to respond to the Bar's inquiries regarding Trang's grievance. [RR 186-88]; [RR Pet. Exs. 37-39].

In the end, Trang decided to continue on with Nguyen for the parental rights termination case to "avoid the hassle" of potentially switching attorneys. [RR 65-66]. And Nguyen has not sought additional payment from Trang for her work on the termination case. [RR 72].

The Commission's Petition had alleged that Nguyen's above-described conduct in Trang's case constituted violations of TDRPCs 1.03(a) & 8.04(a)(8). [App 3].

C. The Kraesig Complaint

In the Fall of 2021, Kyle Kraesig ("Kyle") was entering the initial stages of a divorce from his wife, Clarita Kraesig ("Clarita"). [RR 77]. Through a referral service provided by his then-employer, Wells Fargo, Kyle sought legal counsel to assist him with the divorce process. [Id.]. One of the first attorneys to respond to his inquiries was Nguyen, who he hired in the "early Fall of 2021" to "assist with the divorce filing, possible mediation and essentially everything through the end of [the] divorce." [RR 77-78].

Kyle and Clarita participated in mediation in or around January 2022 and reached a mediated settlement agreement. [RR 78-80]; [RR Pet. Ex. 6]. However, Kyle's issues communicating with Nguyen started well before that. [RR 80-81]. That

is, from the time he initially hired Nguyen up to the mediation, Kyle continually attempted to communicate with Nguyen (by e-mails, telephone calls to both her office and her cell phone, and occasional text messages) to discuss his case. [RR 80-81]. But Kyle would receive a response to only about one out of every ten e-mails he sent Nguyen, and though her office would tell him Nguyen would return his telephone calls, “that never happened.” [Id.].

During the mediation itself (which took place via Zoom), while someone from Nguyen’s office was there, Nguyen herself was not. [RR 78-80]. And following the mediation, Kyle continued having issues getting information about the status of his case and/or guidance from Nguyen. [RR 82-83 & 91].

In March of 2022, Kyle received an e-mail from Nguyen, ostensibly sending him a draft of a final divorce decree and asking for his signature, but all that he *actually* received was the request for his signature, not the actual decree. [RR 82-83]. Following that March 2022 communication, Kyle continued seeking additional information from Nguyen to no avail: (1) Kyle sought guidance regarding removing things from the couples’ home – he never received a response; and (2) he requested information regarding funds that were to be distributed to him by his soon-to-be ex-wife – he never received a response. [RR 83-84]; [RR Pet. Ex. 17].

Apparently, Clarita’s counsel submitted an Agreed Final Decree of Divorce for a judge’s signature in May of 2022 – the decree was signed by Clarita and her

counsel, and Nguyen, but not by Kyle. [RR 84-85]; [RR Pet. Ex. 7]. Kyle had not yet seen the proposed decree. [Id.]. Further, Nguyen did not tell Kyle that she had signed the final decree and it had been submitted to the court or that the court had then executed the decree. [Id.].

It was not until months later, after Kyle sought separate counsel, that he learned his divorce had been finalized. [RR 86-90]. Moreover, despite requests for his client file, Nguyen never provided Kyle with that either. [RR 88-90 & 217-26]; [RR Pet. Exs. 18 & 19]. Nguyen's responses to Kyle's requests for his file seem to indicate she believed that her attorney-client relationship with Kyle ended at or before the May 2022 entry of the divorce decree (about which she had not informed Kyle). [RR Pet. Exs. 18 & 19].

The Commission's Petition had alleged that Nguyen's above-described conduct in Kyle's case constituted violations of TDRPCs 1.03(a) & 1.03(b). [App 3].

D. The Martin and Nasra Complaints

Finally, two other complaints were at issue in Nguyen's instant disciplinary case. Those complaints arose from grievances filed by Cody Martin, an attorney who was opposing counsel against Nguyen in a divorce case, and by Jason Nasra, a client who Nguyen represented in a suit affecting the parent-child relationship. [RR 29-34]; [RR Pet. Ex. 26]. Ultimately, none of the Commission's charges arising from

Nguyen's underlying conduct concerned in either Martin's complaint or Nasra's complaint resulted in a finding of violation(s) of the TDRPCs. [App 2]. However, as to *both* of those complaints, like the Lau complaint, Nguyen failed to respond to the Bar's inquiries regarding *either* complaint. [RR 188-90]; [RR Pet. Exs. 40-41].

The Commission's Petition had alleged that Nguyen's above-described conduct in both the Martin and Nasra cases constituted violations of TDRPC 8.04(a)(8). [App 3].

E. The Commission's additional sanctions evidence

In addition to the above-described evidence regarding Nguyen's professional misconduct with regard to the five referenced complaints, the Commission also offered additional documentary evidence for the evidentiary panel's consideration as to the appropriate sanction(s) for such conduct, if any:

- 1) A prior Agreed Judgment of Private Reprimand entered against Nguyen on December 7, 2022. That sanction regarded Nguyen's violation of TDRPC 1.03(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation). [RR 262-63]; [RR Pet. Ex. S-1].
- 2) A prior Agreed Judgment of Private Reprimand entered against Nguyen on August 22, 2021. That sanction regarded Nguyen's violation of former-TDRPC 1.15(d) (failure to refund advance payments that had not been earned).⁶ [RR 262-63]; [RR Pet. Ex. S-2].
- 3) Documents demonstrating the attorney's fees and expenses incurred by the Commission with respect to Nguyen's instant disciplinary case. [RR 262-63]; [RR Pet. Ex. S-3].

⁶ That obligation is now reflected in TDRPC **1.16(d)**.

III. The evidentiary panel's Judgment and this appeal.

After hearing the evidence presented and argument from both the Commission's counsel and Nguyen, the evidentiary panel found that Nguyen's above-described conduct constituted the following violations:

- With respect to the **Parrish** Complaint, in representing a client, neglecting a legal matter entrusted to the lawyer, in violation of TDRPC 1.01(b)(1);
- With respect to the **Parrish** Complaint, in representing a client, frequently failing to carry out completely the obligations that the lawyer owes to a client or clients, in violation of TDRPC 1.01(b)(2);
- With respect to the **Parrish, Lau & Kraesig** Complaints, failing to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information, in violation of TDRPC 1.03(a); and,
- With respect to the **Lau, Martin & Nasra** Complaints, failing to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the TRDPs, without, in good faith, timely asserting a privilege or other legal ground for her failure to do so, in violation of TDRPC 8.04(a)(8).

-- [RR 276-82]; [CR 217-21].

The evidentiary panel imposed disbarment, along with \$4,312.50 in attorney's fees and \$175.00 in direct expenses against Nguyen as sanction for the above-described professional misconduct. [Id.]. On May 10, 2024, the Chair of the evidentiary panel signed the panel's Judgment of Disbarment against Nguyen (the "Judgment"), in accordance with the panel's decision. [App 2].

On May 30, 2024, Nguyen filed a Request for Findings of Fact & Conclusions of Law with the evidentiary panel. [CR 240-41]. And on June 3, 2024, Nguyen filed

a Motion for New Evidentiary Hearing on the Merits or, Alternatively, Motion for New Sanctions Hearing. [CR 243-45]. Also on June 3rd, the panel Chair issued a Notice of Hearing by Written Submission, regarding Nguyen’s motion for a new evidentiary hearing. [CR 258-59].

On June 12, 2024, the evidentiary panel issued its Findings of Fact and Conclusions of Law.⁷ [CR 267-71] [App 4]. The panel’s findings of fact as to Nguyen’s professional misconduct mirrored the findings set forth in the Judgment. [Id.]; [App 2]. The panel made clear that its sanction was found with respect to each of Nguyen’s violations of particular rules of professional conduct. [App 4]. Further, the panel explained that a significant factor in its decision in such respects was its view of the relative credibility of the witnesses offered by the Commission as weighed against Nguyen’s credibility. [Id.]. The panel also specifically addressed the factors it considered in imposing the sanction, including aggravating factors – the panel noted that it did not find any mitigating factors. [Id.].

On June 12th, the panel also entered its order denying Nguyen’s motion for a new evidentiary hearing and/or a new sanctions hearing. [CR 283]. On August 2, 2024, Nguyen filed her Notice of Appeal. [CR 288-90]. This appeal followed.

⁷ That same day, the evidentiary file clerk also sent out Amended Findings of Fact and Conclusions of Law that are file-stamped but appear to be unsigned. [CR 273-79]. At any rate, the only difference between the two seems to be the statement in the 1st Paragraph of the amended findings that “No audiovisual record of the proceedings was recorded over Zoom.”

SUMMARY OF THE ARGUMENT

The Board should affirm the final Judgment of Disbarment against Nguyen. Nguyen failed to properly preserve any alleged error as to her first three issues, regarding the nature of the evidentiary hearing before the panel and the nature of the disciplinary charges against her, by failing to timely raise such issues before the panel and/or request a ruling as to such issues. But even if she had not waived one or more of those issues through such failures, the record provides no support for any of her arguments as to any such issues. Likewise, her fourth issue, attempting to apply the cumulative-error doctrine to her initial three issues, also fails because none of her proposed, accumulating errors were actually error.

In her fifth and final issue, Nguyen argues the sanction imposed by the panel was excessive. The record in this matter does not support her argument. The facts established in the case, in light of the sanctioning guidelines set forth in Part XV of the TRDPs, support the panel's sanction and the panel's Judgment of Disbarment should be affirmed.

ARGUMENT

I. The attorney disciplinary system, generally.

The Texas Supreme Court has the inherent power to regulate the practice of law for the benefit and protection of the justice system and the people of Texas. TEX. CONST. ART. II, SEC. 1 & ART. V, SEC. 1 & 3; *see also Eichelberger v. Eichelberger*, 582 S.W.2d 395, 397-399 (Tex. 1979); *In re Nolo Press/Folk Law, Inc.*, 991 S.W.2d 768, 769-770 (Tex. 1999). The Texas Supreme Court has also recognized that this inherent power is assisted by the State Bar Act which the Texas Legislature passed in aid of the Court's exercise of its inherent power to regulate the practice of law. *In re Nolo Press*, 991 S.W.2d at 770; *see also* TEX. GOV'T CODE §81.011(b) ("This chapter is in aid of the judicial department's powers under the constitution to regulate the practice of law, and not to the exclusion of those powers").

For its part, amongst other things, the Texas Supreme Court has promulgated both the substantive rules governing the professional conduct of Texas attorneys, and the procedural rules which govern the attorney disciplinary process (i.e., the TDRPCs and TRDPs, respectively). Moreover, the Court's "Promulgated rules have the same force and effect as statutes" and are interpreted using the same rules of construction. *Comm'n for Lawyer Discipline v. Hanna*, 513 S.W.3d 175, 178 (Tex.App. – Houston [14th Dist.] 2016, no pet.) (citing *Love v. State Bar of Tex.*, 982 S.W.2d 939, 942 (Tex.App. – Houston [1st Dist.] 1998, no pet.); *O'Quinn v. State*

Bar of Tex., 763 S.W.2d 397, 399 (Tex. 1988). The Houston First Court of Appeals further held in *Love*, “The primary goal of interpretation is to determine what the enacting body intended,” interpreting the relevant rule(s) and to, “[i]n the process, harmonize and give effect to the entire set of disciplinary rules.” *Love*, 982 S.W.2d at 942; *see also*, *Knight v. Intern. Harvester Credit Corp.*, 627 S.W.2d 382, 385 (Tex. 1982); *Martin v. Sheppard*, 102 S.W.2d 1036, 1039 (Tex. 1937)). Questions of law regarding the correct interpretation and/or application of the TRDPs are reviewed de novo. *Comm’n for Lawyer Discipline v. Schaefer*, 364 S.W.3d 831, 835 (Tex. 2012); *In re Caballero*, 272 S.W.3d 595, 599 (Tex. 2008).

II. *Response to Nguyen’s 1st Issue: The evidentiary hearing conducted by video and tele-conference was expressly authorized and does not constitute error.*

In her first issue, Nguyen argues that the evidentiary panel was not authorized to conduct her evidentiary hearing remotely and that doing so constituted “structural error” that could be raised for the first time on appeal. [Apt. Br. 18-24]. She is wrong on both counts.

A. *Remote evidentiary hearings are expressly authorized under the State Bar Act and the TRDPs.*

Contrary to Nguyen’s assertion that neither the TRDPs nor the Board’s Internal Procedural Rules (the “IPRs”) permit remote proceedings for evidentiary

hearings, both expressly do permit remote proceedings.⁸ First, Nguyen attempts to support her argument by reference to a rule of statutory construction. That is, Nguyen suggests that because TRDP 2.12(F), regarding investigatory hearings, expressly permits such hearings to be conducted by “teleconference,” the fact that TRDP 2.17, regarding evidentiary hearings, does not mention remote hearings means that it was purposely excluded and “evidentiary hearings may not be conducted remotely.” [Apt. Br. 19]. But Nguyen’s argument trades out the “primary goal” of statutory interpretation to “determine what the enacting body intended,” and “[i]n the process, harmonize and give effect to the entire set of disciplinary rules,” in favor of a canon of statutory construction that is unnecessary in this case. *See Love*, 982 S.W.2d at 942 (emphasis added); *see also City of Houston v. Bates*, 406 S.W.3d 539, 543-44 (Tex. 2013) (citing *Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011)); *Tex. Lottery Comm’n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010)).

Indeed, in making this argument, Nguyen simply ignores and/or fails to reckon with *other* language in Part II of the TRDPs, which governs all proceedings before the District Grievance Committees and their panels, that expressly addresses her issue. The Comment to TRDP Part II provides:

Consistent with section 81.086 of the Texas Government Code, these rules permit the Office of the Chief Disciplinary Counsel to allow or require anyone involved in an investigatory hearing, a summary

⁸ Though Nguyen’s reference to the Board’s IPRs in this context is inapposite given that the Board does not promulgate the rules that govern evidentiary hearings.

disposition setting, **or an evidentiary hearing** – including but not limited to a party, attorney, witness, court reporter, or grievance panel member – **to participate remotely, such as by teleconferencing, videoconferencing, or other means.** A panel may consider as evidence sworn statements or sworn testimony given remotely. The term “teleconference” in these rules includes videoconference or other remote means.

-- TEX. RULES DISCIPLINARY P.R. Part II, Comment (emphasis added). [App 1].

TEX. GOV'T CODE §81.086, referenced by the Texas Supreme Court in its above-described Comment, provides, “The chief disciplinary counsel may hold investigatory and disciplinary hearings by teleconference.” In fact, a similar Comment is found in TRDP Part VII, regarding proceedings before the Board:

These rules permit the Board of Disciplinary Appeals, upon decision of its chair, to allow **or require anyone involved in a matter before the Board** – including but not limited to a party, attorney, witness, court reporter, or Board member – **to participate remotely, such as by teleconferencing, videoconferencing, or other means.** The Board may consider as evidence sworn statements or sworn testimony given remotely.

-- TEX. RULES DISCIPLINARY P.R. Part VII, Comment (emphasis added). [App 1].

Moreover, while Nguyen’s reference to the Board’s IPRs is, again, inapposite in this context, the IPRs *also* provide for remote proceedings before the Board:

BODA may, upon decision of the Chair, conduct **any business or proceedings** – including **any hearing**, pretrial conference, or consideration of any matter or motion – **remotely.**

-- TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 1.04(c) (emphasis added).

Second, Nguyen turns to Texas Rule of Civil Procedure (“TRCP”) 21d, regarding appearances at “court proceedings” in the county and district courts, for additional support. But the provisions of TRCP 21d do not govern administrative, evidentiary hearings in attorney discipline matters, TRDP Part II does. None of the requirements described in TRCP 21d regarding remote appearances apply in administrative, evidentiary hearings. Nguyen’s arguments in these respects are without merit.

B. Nguyen waived any issue as to the remote evidentiary hearing because she did not object to same before the panel.

Generally, to preserve a complaint for appellate review, a party must first present its request, objection, or motion for a ruling to the trial court, and obtain a ruling or have the trial court refuse to make a ruling. TEX. R. APP. P. 33.1(a); *see also Padilla v. Comm’n for Lawyer Discipline*, 87 S.W.3d 624, 626-27 (Tex.App. – San Antonio 2002, pet. denied). On January 10, 2024, Nguyen was given notice that her evidentiary hearing was scheduled to take place on May 8, 2024, by video and teleconference. [Statement of Facts, Sec. I, *supra*]. That is, Nguyen had approximately **five months**’ notice of the setting and the manner of the hearing. But the record does not show, nor does she argue in her brief, that she made any objection to her evidentiary hearing being held remotely.

On May 6, 2024, Nguyen *did* move for a continuance of the May 8th evidentiary hearing. [Id.]. However, she did not include amongst the stated grounds

in support of her continuance request an objection to, or request regarding, the manner of her evidentiary hearing. [Id.]. The panel chair denied Nguyen's continuance request and made clear that her evidentiary hearing would go forward as noticed. [Id.].

In an attempt to skirt her failure to raise any objection to the manner of the evidentiary hearing before the panel, Nguyen argues that “[t]he Panel’s decision to conduct the hearing remotely was not authorized,” and thus, was “fundamental” error that could be raised for the first time on appeal. [Apt. Br. 23-24]. However, as is noted at length above, there is both statutory and rule-based authority permitting evidentiary hearings in attorney disciplinary proceedings to be conducted remotely.

Further, the Texas Supreme Court has cautioned that since its adoption of the Texas Rules of Civil Procedure in 1941, “Although we have not hesitated to apply the doctrine when the error is **jurisdictional** or adversely affects **the public’s (as opposed to the current parties’) interests**, we have repeatedly refused to apply the fundamental-error doctrine to other types of errors and have consistently restricted appellate review to properly preserved errors.” *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 512 (Tex. 2018) (emphasis added) (internal citations omitted). The evidentiary panel’s holding Nguyen’s evidentiary hearing remotely is neither jurisdictional nor does it affect the public’s interests.

Perhaps recognizing this additional shortcoming in her argument, Nguyen then tries to make the case that her Texas attorney disciplinary proceeding is “quasi-criminal” in nature – referring to a U.S. Supreme Court opinion as well as an opinion from the Houston 14th Court of Appeals. [Apt. Br. 23 (citing *In re Ruffalo*, 390 U.S. 544, 551-52 (1968), and *Gaia Env’tl, Inc. v. Galbraith*, 451 S.W.3d 398, 409 (Tex.App. – Houston [14th Dist.] 2014, pet. denied))]. Indeed, the Texas Supreme Court has also previously applied the fundamental-error doctrine “to review certain types of error in juvenile delinquency cases,” because of the “‘quasi-criminal’ nature of juvenile delinquency cases.” *In re B.L.D.*, 113 S.W.3d 340, 350-51 (Tex. 2003). But Nguyen’s attempt to shoehorn her way into application of the fundamental-error doctrine is also unavailing.

In *State Bar of Texas v. Evans*, the Texas Supreme Court granted an application for writ of error and reversed a judgment of the El Paso Court of Appeals, thus affirming a trial court’s disbarment of a Texas attorney. *State Bar of Texas v. Evans*, 774 S.W.2d 656 (1989). In relevant part, the Court stated:

At several points in its opinion the court of appeals states that disciplinary actions are “quasi-criminal in nature.” **Clear Texas authority is that disciplinary proceedings are civil in nature.** *E.g.*, *Hankamer v. Templin*, 143 Tex. 572, 575, 187 S.W.2d 549, 550 (Tex. 1945); *State Bar v. Sutherland*, 766 S.W.2d 340, 343 (Tex.App. – El Paso 1989, writ denied) (opinion by same court of appeals handed down two weeks prior stating that disciplinary actions are civil in nature); *see also Polk v. State Bar*, 480 F.2d 998, 1001-02 (5th Cir. 1973) (applying Texas law); Supreme Court of Texas, Rules Governing the State Bar of

Texas art. X, § 16 (1988) (“Disciplinary actions are civil in nature.”)
Thus, we disapprove these statements by the court of appeals.

-- *Evans*, 774 S.W.2d at 657 n. 1 (emphasis added).

Since *Evans*, the Texas Supreme Court, as well as the intermediate courts of appeals, have continued to characterize Texas’ attorney disciplinary proceedings as civil in nature and not quasi-criminal.⁹

And insofar as Nguyen attempts to characterize this issue as one implicating due process, Texas courts have held that due process claims in attorney disciplinary proceedings **can also be waived**, if not first raised in the trial court. *See State Bar of Texas v. Leighton*, 956 S.W.2d 667, 671 (Tex.App. – San Antonio 1997, pet. denied); *Belt v. Comm’n for Lawyer Discipline*, 970 S.W.2d 571, 574 (Tex.App. – Dallas 1997, no pet.); *Kaufman v. Comm’n for Lawyer Discipline*, 197 S.W.3d 867, 875 (Tex.App. – Corpus Christi 2006, pet. denied). Moreover, Nguyen does not challenge the validity of the statutory or rule-based authority permitting remote evidentiary hearings in attorney disciplinary proceedings noted above.

In short, even if Nguyen’s 1st issue had substantive merit (which, as explained at length above, it does not), she waived it by not raising same before the evidentiary

⁹ *E.g.*, *Comm’n for Lawyer Discipline v. Benton*, 980 S.W.2d 425, 438 (Tex. 1998), *cert denied*, 119 S.Ct. 2021 (1999); *Hawkins v. Comm’n for Lawyer Discipline*, 988 S.W.2d 927, 935 n. 14 (Tex.App. – El Paso 1999, pet. denied), *cert. denied*, 529 U.S. 1022, 120 S.Ct. 1426, 147 L.Ed.2d 317 (2000); *Favaloro v. Comm’n for Lawyer Discipline*, 994 S.W.2d 815, 822 (Tex.App. – Dallas 1999, pet. struck); *Acevedo v. Comm’n for Lawyer Discipline*, 131 S.W.3d 99, 104 (Tex.App. – San Antonio 2004, pet. denied); *Neely v. Comm’n for Lawyer Discipline*, 302 S.W.3d 331, 343-44 (Tex.App. – Houston [14th Dist.] 2009, pet. denied).

panel. As such, the Board should overrule Nguyen’s 1st issue and affirm the evidentiary panel’s Judgment in all respects.

III. *Response to Nguyen’s 2nd Issue: Nguyen waived any issue as to the evidentiary panel’s time limitation for her evidentiary hearing; but even if she had not waived such issue, the record does not support her argument that the panel abused its discretion by holding a full-day evidentiary hearing.*

In her second issue, Nguyen argues that the evidentiary panel abused its discretion by holding a full-day evidentiary hearing. [Apt. Br. 25-27]. However, Nguyen waived any such issue by failing to raise it before the panel. But even if she had not waived the issue, the record does not support her arguments.

A. *Nguyen waived her 2nd issue as she did not raise it before the panel.*

“The discretion vested in the trial court over the conduct of a trial is great,” and includes the trial court’s authority to “intervene to maintain control in the courtroom, to expedite the trial, and to prevent what it considers to be a waste of time.” *Dow Chemical Co. v. Francis*, 46 S.W.3d 237, 240-41 (Tex. 2001) (quoting *Schroeder v. Brandon*, 172 S.W.2d 488, 491 (Tex. 1943)) and (citing *Hoggett v. Brown*, 971 S.W.2d 472, 495 (Tex.App. – Houston [14th Dist.] 1997, no pet.); *Great Global Assurance Co. v. Keltex Props., Inc.*, 904 S.W.2d 771, 777 (Tex.App. – Corpus Christi 1995, no writ)). And again, to preserve a complaint for appellate review, a party must timely make its objection(s) known to the trial court. TEX. R. APP. P. 33.1(a). This requirement applies to objections regarding time limitations at

trial and compels any such objections be made “when the trial court imposed the time limit.” *Rhone v. City of Texas City*, 657 S.W.3d 857, 865-66 (Tex.App. – Houston [14th Dist.] 2022, no pet.) (citing *State v. Reina*, 218 S.W.3d 247, 254 (Tex.App. – Houston [14th Dist.] 2007, pet. denied); *Schwartz v. Forest Pharms., Inc.*, 127 S.W.3d 118, 126-27 (Tex.App. – Houston [1st Dist.] 2003, pet. denied)).

That is: (1) if Nguyen felt that **a full day** for her evidentiary hearing was arbitrary or unreasonable, she was required to object to such limitation when it was imposed; (2) if she felt the events during the hearing made **a full day** for her evidentiary hearing arbitrary or unreasonable, she was required to object when such events allegedly had that effect; and (3) if she felt the panel administered **the full day** for her evidentiary hearing in an arbitrary or unreasonable manner, she was required to object when the panel allegedly did so. *Rhone*, 657 S.W.3d at 865-66 (internal citations omitted). Nguyen does not point to any part of the record that demonstrates she ever raised an objection to the panel that **a full day** for her evidentiary hearing was arbitrary or unreasonable.

Further, to the extent Nguyen argues that any such time limitation prevented her from presenting all of her evidence (or any of it), she must also have made “an offer of proof of the evidence that she was prevented from presenting in order to preserve error for appeal.” *Kinney v. Batten*, No. 01-21-00394-CV, 2023 WL 2316354, at *8 (Tex.App. – Houston [1st Dist.] Mar. 2, 2023, pet. denied) (mem.

op.); *see also*, *In re A.E.A.*, 406 S.W.3d 404, 420 (Tex.App. – Fort Worth 2013, no pet.). But again, Nguyen does not point to any part of the record that demonstrates she ever complained about not having an opportunity to present any specific evidence or made any offer of proof regarding any such evidence. In fact, Nguyen cross-examined *each* of the Commission’s six appearing witnesses and also testified on her own behalf.¹⁰ In this respect, Nguyen offers only her own vague and conclusory allegations regarding the manner in which “each witness would be examined,” or unspecified “impeachment evidence” that could have been offered, unsupported by any citations to the record. [Apt. Br. 26-27]. Thus, leaving the Board with nothing to review. *See* TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.05(c)(7), (8); TEX. R. APP. P. 38.1(g), (i); *Izen v. Comm’n for Lawyer Discipline*, 322 S.W.3d 308, 321-22 & 25-26 (Tex.App.-Houston [1st Dist.] 2010, pet. denied).

Nguyen failed to properly preserve error as to her 2nd issue and it should be overruled. Moreover, as is set forth more fully in *Section (B), below*, to the extent Nguyen raised any complaints before the panel regarding time limitations, any such

¹⁰ Nguyen’s cross-examination of one of the Commission’s witnesses, Trang Lau, also essentially served as her direct examination of **the only witness other than herself that she had identified for her case**. And when the Chair asked her what her anticipation was for the afternoon, Nguyen said about her cross-examination of Lau, “I think, Mr. Rothenburg, I would at least listen to a lot of the questions and answers that was – that I got so I don’t think there’s – I think once he rests I think I should be okay to rest as well. That’s what I’m thinking because I already did – my witness was Ms. Lau and I was able to get my testimony from her.” [RR 178].

issues were measured in hours, not days – and any such limitation was neither arbitrary nor unreasonable.

B. The panel’s full-day evidentiary hearing for Nguyen’s case was neither arbitrary nor unreasonable.

The clerk’s record does not show that Nguyen filed any pre-trial or trial pleading requesting any particular amount of time for her evidentiary hearing.

Further, the reporter’s record of the evidentiary hearing demonstrates that:

- The panel Chair called the hearing and asked both parties how many witnesses they expected to call. The Commission’s counsel stated he had up to seven and Nguyen indicated she had two. The Chair also asked each party if they were ready to proceed, and both responded that they were. [RR 9-10 & 21].
- The Chair later asked for time announcements, noting that both the Commission’s counsel and Nguyen were “seasoned trial lawyers.” [RR 20].
- The Commission’s counsel responded that he believed three hours would be sufficient for the Commission’s case. [RR 21].
- The Chair then turned to Nguyen for her time request, noting again that the Commission had the burden of proof, and also noting Nguyen had no burden and had not alleged any affirmative defenses. [Id.].
- Nguyen responded that “three or four hours” would be sufficient for her case. [Id.].
- The Chair then clarified, “[I] am not going to be inclined to allow this hearing to go on for seven hours and I’m not going to allow – we are going to do this in a reasonable, efficient matter within the bounds of due process.” [RR 22].

The Chair and Nguyen then had the following exchange:

Nguyen: I’m sorry Mr. Rothenburg. So four hours – just four hours with both our cases-in-chief?

Chair: You’re saying four hours total or four hours for you alone?

Nguyen: No, four hours total. I’m sorry, I guess –

Chair: I understood that you were asking for four hours for your case in addition to his three hours.

Nguyen: Okay. I'm sorry, I should have asked that better. So I would say my case-in-chief, of course, I have one witness, but I imagine because he has seven witnesses – so within the time allotted, Mr. Rothenburg, you gave us four hours, would that be split into two so we have equal time?

Chair: Well, they have the burden of proof so why don't we see how your cross goes. I am not going to be unreasonable about the time. I don't want this to drag on for days, there is no need to give a brief review of the exhibits and the matters that are in issue. So, if four hours seems reasonable for the entirety of the matter, let's try to keep things going efficiently and get through this, as I said with concerns of due process properly considered. With that, I think we are ready for opening statements –

-- [RR 22-23].

That is, Nguyen responded to the Chair's guidance regarding any time limitation only by stating that if the hearing would last four hours *total*, she would want equal time.

Later in the hearing, the above-referenced exchange between Nguyen and the Chair does appear to have potentially caused some confusion between the two of them as to any applicable time limitation. Specifically, with respect to whether, out of a potential total of four hours, the time would be split evenly or split 3 hours for the Commission and 1 for Nguyen. [RR 49-51]. Whatever the case, the record reflects that ultimately, Nguyen's evidentiary hearing (including admission of the Commission's sanctions exhibits) went from 9:11 a.m. to 6:15 p.m., with

approximately one hour spent on pre-trial matters, half an hour for lunch, and some time for the panel's deliberations.¹¹ [RR 8, 182, 262-63 & 276-82].

So, at the end of the day (literally), the substantive portion of Nguyen's evidentiary hearing lasted approximately seven hours (as Nguyen first suggested she believed was necessary), though Nguyen had not even objected to a potentially more restrictive time limitation of as little as four hours total anyway. That is, Nguyen was afforded **all** of the hours she represented to the panel that she needed to make her case, if not more. Holding Nguyen to her own request as to the time she needed was the *least* stringent standard the panel might have applied and was neither arbitrary nor unreasonable. For all of the foregoing reasons, the Board should also overrule Nguyen's 2nd issue.

IV. *Response to Nguyen's 3rd Issue: Nguyen waived any issue as to the nature of the disciplinary charges implicated in her evidentiary hearing; but even if she had not waived such issue, the record does not support her argument that the panel abused its discretion in this respect.*

In her third issue, Nguyen argues that the evidentiary panel abused its discretion by "permitting joinder of five unrelated complainants and complaints for trial." [Apt. Br. 27-33]. As with her two preceding issues, Nguyen failed to properly preserve any alleged error(s) in this respect by failing to timely raise it before the

¹¹ It is unclear from the reporter's record how much time the panel spent on deliberations, though it appears they did not start deliberating until well after they had returned from lunch, at approximately 2:30 p.m.

panel and/or to obtain a ruling from the panel as to such issue. But even if Nguyen had not waived *this* issue, she is wrong as to the applicable rules of procedure and the record does not support her arguments.

A. *Nguyen waived her 3rd issue as she did not timely raise it before the panel and/or obtain a ruling from the panel.*

In support of her assertion that she properly informed the panel “of the asserted error,” Nguyen first points to an e-mail she sent to the panel on May 7, 2024, less than a day before the evidentiary hearing. [Apt. Br. 32 (citing RR Resp. Ex. 1)]. But that e-mail was not expressly seeking a “ruling” of any kind, as there was no pending objection or request for relief – in Nguyen’s words, she was “seeking clarification” regarding the fact that her upcoming evidentiary hearing involved allegations set forth in multiple disciplinary Complaints (as set forth above). [RR Resp. Ex. 1]. There was no express assertion from Nguyen that she believed the Panel would be in error if it proceeded, merely an inquiry as to the grounds for same.

In this respect, it is difficult to discern how the *one* citation to authority Nguyen provides, ostensibly in support of her assertion that she did preserve error as to this issue, is actually helpful to her. [Apt. Br. 32 fn. 5 (citing *Hyundai Motor Co. v. Vasquez*, 189 S.W.3d 743, 749-50 (Tex. 2006))]. In relevant part, *Hyundai* dealt with a dispute regarding the propriety of certain lines of jury voir dire questioning. And the Texas Supreme Court determined that though the trial court judge had shut down one particular line of questioning as too confusing, that did not

necessarily mean that other, similar lines of questioning might be approved that could draw forth the desired information. *Hyundai*, 189 S.W.3d at 759. In that situation the Court noted that “the breadth of the trial court’s ruling is untested” and that it was incumbent on the party now raising the potential error to have requested “alternative approaches to avoid the problems the trial court was addressing by its ruling.” *Id.* And the Court held that on that point “the record does not provide a sufficient basis for review.” *Id.*, at 760.

Here, Nguyen did not even seek a ruling, only “clarification,” and it was incumbent on her to seek such a ruling and/or offer an alternative approach that would alert the panel to her potential issue – which she did not do. She then turns to statements she made during the evidentiary hearing itself, but again, no actual objection or request for a ruling was made. [Apt. Br. 32 fn. 5 (citing RR 26-27)]. Eventually, one of the panel members had a discussion with Nguyen about the issue, asking whether she has ever raised it as an objection, to which she responded by pointing to the above-referenced e-mail. [RR 256-59]. In sum, Nguyen simply failed to preserve this issue by raising a specific objection or request for ruling and/or obtaining a ruling as to same, so she has also waived her 3rd issue.

B. Addressing one or more counts of Professional Misconduct against Nguyen in her evidentiary hearing was not an abuse of discretion.

To start, assuming *arguendo* that TRCP 40 (regarding joinder of **parties**) would apply to her evidentiary hearing as she asserts, Nguyen still seems to have a

fatal misconception as to the nature of attorney disciplinary proceedings. The complainants who bring grievances that may ultimately form the basis of disciplinary litigation (after a Just Cause determination and subsequent election by the respondent attorney, per TRDPs 2.14 & 2.15) are not parties to the disciplinary litigation, nor does the Commission (which is the party-plaintiff in such litigation) file same on such complainants' behalf. *See Acevedo*, 131 S.W.3d at 104; *Deaguero v. Comm'n for Lawyer Discipline*, No. 05-22-01102-CV, 2024 WL 1326486, at *4 (Tex.App. – Dallas Mar. 28, 2024, no pet.) (mem. op.); *see also* TEX. R. DISCIPLINARY P.R. 2.14.

So, whether there are professional misconduct allegations that arise from multiple complainants' grievances in the Commission's disciplinary suit against a particular respondent attorney would be immaterial to any joinder analysis under TRCP 40. As with any disciplinary suit, the issues in Nguyen's case are, "the appropriate interpretation of the Rules of Conduct and a factual determination of whether [the respondent attorney's] conduct met or violated the rules," wherever the allegations of misconduct arise from. *See Acevedo*, 131 S.W.3d at 107 (citing *Hawkins*, 988 S.W.2d at 936).

Moreover, Nguyen offers no authority that TRCP 40 applies in attorney disciplinary proceedings under Part II of the TRDPs at all, much less that it

specifically applies to vary the express provisions of TRDP 2.17(A)(4) & (5). TRDP 2.17(A)(4) & (5) provide in relevant part:

The [Commission's] Evidentiary Petition shall be served upon the Respondent in accordance with Rule 2.09 and **must contain...**A description of the **acts and conduct** that gave rise to the alleged Professional Misconduct in detail sufficient to give fair notice to the Respondent of the claims made, which factual allegations may be grouped in one or more counts based upon one or more **Complaints**...A listing of the specific rules of the Texas Disciplinary Rules of Professional Conduct allegedly violated **by the acts or conduct**, or other grounds for seeking sanctions...

-- TEX. RULES DISCIPLINARY P.R. 2.17(A)(4), (5) (emphasis added).

And the TRDPs in effect at the commencement of the disciplinary proceeding against Nguyen defined a "Complaint" as, "[t]hose written matters received by the Office of the Chief Disciplinary Counsel that, either on the face thereof or upon screening or preliminary investigation, allege Professional Misconduct or attorney Disability, or both, cognizable under these rules or the Texas Disciplinary Rules of Professional Conduct."¹² [App 1, (TEX. RULES DISCIPLINARY P.R. 1.06(G))].

Further, Part II of the TRDPs expressly incorporates the TRCPs into its *disciplinary* proceedings only with respect to:

- 1) Notice to Parties. TEX. RULES DISCIPLINARY P.R. 2.09(A), (B).
- 2) Service of Subpoenas. TEX. RULES DISCIPLINARY P.R. 2.12(C) (during Just Cause investigations); TEX. RULES DISCIPLINARY P.R. 2.17(H) (for purposes of Evidentiary Hearings).

¹² The TRDP's definition of "Complaint" has since changed, though not in any way that seems to change the analysis under TRDP 2.17(A)(4), allowing the Commission to pursue Professional Misconduct charges arising from "one or more Complaints."

- 3) Discovery Disputes in Evidentiary Hearings, conditionally. TEX. RULES DISCIPLINARY P.R. 2.17(G).
- 4) Certain post-judgment motions. TEX. RULES DISCIPLINARY P.R. 2.21.
- 5) Service of motions to revoke probation. TEX. RULES DISCIPLINARY P.R. 2.22.

Reference to rules of statutory construction is unnecessary in this instance as the plain meaning (and intent) of TRDP 2.17(A)(4) is clear and unambiguous. *City of Houston*, 406 S.W.3d at 543-44 (Tex. 2013) (citing *Molinet*, 356 S.W.3d at 411; *Tex. Lottery Comm'n*, 325 S.W.3d at 635). Nevertheless, the Texas Supreme Court's decision not to incorporate the TRCPs into any other aspects of disciplinary procedure under TRDP Part II also speaks to the flaws in Nguyen's argument. *See City of Houston*, 406 S.W.3d at 546.¹³

Nguyen's reference to BODA's IPR 1.03 is also unavailing. That rule only serves to apply the TRCPs, the Texas Rules of Appellate Procedure, and the Texas Rules of Evidence to "disciplinary matters before BODA," not to panel proceedings governed by the TRDPs. TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 1.03. And Nguyen's instant case is an *appellate* disciplinary matter before BODA, so the TRCPs would be of limited (if not non-existent) application in the instant proceeding at any rate.

¹³ There is no change between the referenced TRDPs in effect with regards to Nguyen's disciplinary proceeding and the most current version of the TRDPs in this respect. There is no general incorporation of the TRCPs in the disciplinary procedures set forth in TRDP Part II.

Finally, even in *Disciplinary Actions*, which consist of disciplinary litigation in which the respondent attorney has elected to proceed via a district court proceeding, rather than via an evidentiary panel, there would be no improper joinder of multiple disciplinary charges against a respondent attorney in the manner Nguyen urges, even though TRDP Part III governing such actions *does* expressly incorporate the TRCPs where they do not vary the applicable disciplinary rules. See TEX. RULES DISCIPLINARY P.R. 2.15, 3.01, 3.08(B); *WorldPeace v. Comm'n for Lawyer Discipline*, 183 S.W.3d 451, 455-56 (Tex.App. – Houston [14th Dist.] 2005, pet. denied). In fact, “[i]t is [not] unusual for complaints by multiple complainants to be brought in a single [disciplinary] action...” *Id.*, at 456 n. 3 (citing e.g., *Bellino v. Comm'n for Lawyer Discipline*, 124 S.W.3d 380 (Tex.App. – Dallas 2003, pet. denied) and *Wade v. Comm'n for Lawyer Discipline*, 961 S.W.2d 366 (Tex.App. – Houston [1st Dist.] 1997, no writ)).

Nguyen’s 3rd issue is misplaced because TRCP 40 does not apply in a TRDP Part II disciplinary proceeding, certainly not in any way Nguyen argues. Nothing in the language of the TRDPs, the TRCPs, or BODA’s IPRs indicates otherwise. The governing rule, TRDP 2.17(A)(4) plainly permits the Commission to bring charges of Professional Misconduct that arise from multiple Complaints (and potentially, multiple complainants) in one evidentiary petition. TEX. RULES DISCIPLINARY P.R. 2.17(A)(4). Nguyen’s 3rd issue is also without merit and should be overruled.

V. Response to Nguyen’s 4th Issue: This case does not implicate the cumulative-error doctrine.

In her fourth issue, Nguyen asserts that the cumulative error doctrine should apply in her case so that, even if her preceding three issues “independently did not constitute reversible error,” the cumulation of such errors “entitles Nguyen to reversal.” [Apt. Br. 34-35]. Of course, by association, Nguyen’s 4th issue suffers from the same deficiencies as her previous three issues.

The cumulative-error doctrine allows a reviewing court to reverse a judgment when the record shows a number of errors, “no one instance being sufficient to call for a reversal, yet all the instances taken together may do so.” *University of Tex. at Austin v. Hinton*, 822 S.W.2d 197, 205 (Tex.App.—Austin 1991, no writ) (quoting *Sproles Motor Freight Lines, Inc. v. Long*, 168 S.W.2d 642, 645 (Tex. 1943)). To show cumulative error, the complaining party must show that the “errors collectively were calculated to cause and probably did cause the rendition of an improper judgment.” *Cantu v. Comm’n for Lawyer Discipline*, No. 13-16-00332-CV, 2020 WL 7064806, at *43 (Tex.App. – Corpus Christi Dec. 3, 2020, no pet.) (mem. op.).

Here, Nguyen identifies the three alleged errors addressed above that, she argues, require reversal when considered together. [Apt. Br. 34]. She then argues, in broadly conclusory fashion, that there is a particular need for the cumulative-error doctrine in her case because of the “inherent interrelation” of her only receiving **a full day** for her evidentiary hearing and the panel’s hearing all of the Commission’s

disciplinary charges arising from one or more Complaints in that one hearing – and the “substantial and probable” resultant “error and likelihood of harm.”¹⁴ [Apt. Br. 35].

Contrary to Nguyen’s argument, a claim of cumulative error cannot rest on the three issues she identifies because, as discussed in this brief, the panel did not err in **any** of those three respects. And as also discussed in this brief, all of these alleged errors were waived by Nguyen’s failure to take proper steps to preserve them before the panel. Where there are no errors to accumulate, there is nothing to support Nguyen’s cumulative-error argument. *Cantu*, 2020 WL 7064806, at *43 (citing *In re BCH Dev., LLC*, 525 S.W.3d 920, 930 (Tex.App. – Dallas 2017, orig. proceeding); *In re E.R.C.*, 496 S.W.3d 270, 281 (Tex.App. – Texarkana 2016, pet. denied)).

VI. Response to Nguyen’s 5th Issue: The evidentiary panel acted within its discretion in imposing disbarment as sanction for Nguyen’s Professional Misconduct.

In her final issue, Nguyen complains that the panel abused its discretion in imposing disbarment as its disciplinary sanction for her professional misconduct. [Apt. Br. 36-41]. Nguyen provides little to no substantive argument or authority in support of this point of error, eschewing any analysis of her professional misconduct

¹⁴ Apparently, Nguyen does not consider the allegedly erroneous *remote nature* of the evidentiary hearing part of this “inherent interrelation” demonstrating a need for the application of the cumulative-error doctrine, as she did not mention it in this connection.

in light of the Part XV sanctioning guidelines in favor of: (1) providing cherry-picked examples of cases in which she believes a lawyer's misconduct that led to disbarment was "truly egregious" or cases in which she believes a lawyer's misconduct was worse than hers, but led to a lower sanction; (2) conclusory assertions regarding the panel's findings; and (3) her complaint that the panel "made no finding that a lesser sanction such as suspension or probated suspension would not have been adequate." [Id.]. Construing Nguyen's arguments liberally, she has still failed to demonstrate the panel abused its discretion.

Evidentiary panels have broad discretion to impose discipline; nevertheless, disciplinary sanctions may be reviewed for an abuse of discretion, and a sanction may be so light or heavy as to constitute such an abuse. *Molina v. Comm'n for Lawyer Discipline of The State Bar of Texas*, BODA No. 35426, 2006 WL 6242393, at *4 (March 31, 2006) (citing *State Bar of Texas v. Kilpatrick*, 874 S.W.2d 656, 659 (Tex. 1994)); see also, *McIntyre v. Comm'n for Lawyer Discipline*, 169 S.W.3d 803, 807 (Tex.App. – Dallas 2005, no pet.). And, when acting as a factfinder in determining the appropriate sanction for instances of professional misconduct, the evidentiary panel is the sole judge of the credibility of witnesses and the weight to be given their testimony. *Allison v. Comm'n for Lawyer Discipline*, 374 S.W.3d 520, 525 (Tex.App. – Houston [14th Dist.] 2012, no pet.).

A court abuses its discretion only when it acts in an unreasonable and arbitrary manner, or without reference to any guiding principles. *McIntyre*, 169 S.W.3d at 807. A court does not abuse its discretion when some evidence supports its decision. *Davis v. Huey*, 571 S.W.2d 859, 863 (Tex. 1978). Further, the fact that an appellate court might impose a sanction different from that imposed by the trial court does not show an abuse of discretion. *Love*, 982 S.W.2d at 944.

The TRDPs do not mandate consideration by an evidentiary panel of *any* particular factor described in TRDP Part XV when determining an appropriate disciplinary sanction. TEX. RULES DISCIPLINARY P. R. 15.02. Further, the TRDPs do not require an evidentiary panel to explain in detail or specifically state any (or all) of the factors it considered, or the weight it gave any such factors, in imposing a disciplinary sanction. TEX. RULES DISCIPLINARY P. R. 2.17(P), 2.18, 2.19.

A. *Guidelines for imposing sanctions in attorney discipline proceedings.*

For attorney discipline cases involving grievances filed after June 1, 2018 (such as the present case), the Court replaced the mandatory factors set forth in former Rule 2.18 with TRDP Part XV, *Guidelines for Imposing Sanctions* (“Part XV”). See also, *Ponce v. Comm’n for Lawyer Discipline*, No. 04-20-00267-CV, 2022 WL 1652147, at *7 n. 3 (Tex.App. – San Antonio May 25, 2022, no pet.) (mem.

op.); TEX. GOV'T CODE §81.083.¹⁵ Part XV embodies the broad discretion granted to evidentiary panels (and trial courts) to fashion sanctions in attorney disciplinary proceedings. The Court explained that the purpose of the guidelines was to:

“[s]et forth a comprehensive system for determining sanctions, permitting flexibility and creativity in assigning Sanctions in particular cases of lawyer misconduct. They are designed to promote: (1) consideration of all factors relevant to imposing the appropriate level of Sanction in an individual case; (2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; and (3) consistency in the imposition of disciplinary Sanctions for the same or similar rule violations among the various district grievance committees and district courts that consider these matters.”

-- TEX. RULES DISCIPLINARY P. R. 15.01(B).

Part XV outlines four “general” factors that should be considered by a disciplinary tribunal: (1) the duty violated; (2) the Respondent’s level of culpability; (3) the potential or actual injury created by the misconduct; and (4) the existence of aggravating or mitigating factors. TEX. RULES DISCIPLINARY P. R. 15.02.

Next, Part XV sets forth the spectra of “sanctions [that] are generally appropriate” for various categories of professional misconduct roughly corresponding to the TDRPCs relevant to: (1) violations of duties owed to clients; (2) violations of duties owed to the legal system; (3) violations of duties owed to the public; (4) violations of other duties as a professional; and (5) violations of prior discipline orders. TEX. RULES DISCIPLINARY P. R. 15.04, 15.05, 15.06, 15.07 &

¹⁵ Likewise, the analogous factors in former TRDP 3.10 were also eliminated for disciplinary cases tried before a district court, again, in favor of the Part XV sanctioning guidelines.

15.08, respectively. Each of those sanctioning ranges suggests the level of sanction that is “generally appropriate” for particular types of professional misconduct based on the application of the “general” factors outlined in TRDP 15.02, prior to the consideration of any aggravating or mitigating factors. While Part XV provides the above-described guidelines to consider in determining appropriate sanctions for professional misconduct, those guidelines, “[d]o not limit the authority of a district grievance committee...to make a finding or issue a decision.” TEX. RULES DISCIPLINARY P. R. 15.01(B).

Available sanctions are, in descending order of severity: disbarment, suspension (which can be active, probated, or partially probated), public reprimand, and private reprimand. TEX. RULES DISCIPLINARY P. R. 1.06(FF). Sanctions can also include restitution and/or payment of attorney’s fees and costs as ancillary requirement(s). *Id.*

Finally, Part XV provides evidentiary panels the discretion to consider aggravating and mitigating circumstances “in deciding what sanction to impose.” TEX. RULES DISCIPLINARY P. R. 15.09. “Aggravation” or “aggravating circumstances” being “considerations or factors that may justify an increase in the degree of discipline to be imposed;” and “Mitigation” or “mitigating circumstances” being “considerations or factors that may justify a reduction in the degree of discipline to be imposed.” [Id.].

More specifically, TRDP 15.04(A) sets forth guidelines for determining appropriate sanctions in circumstances involving an attorney's failure to provide competent and diligent representation and/or to communicate appropriately, which run from private reprimand to disbarment (as to Nguyen's violations in the Parrish, Lau, and Kraesig matters). TEX. RULES DISCIPLINARY P. R. 15.04(A)(1-4).¹⁶ And TRDP 15.07 sets forth guidelines for determining appropriate sanctions in circumstances involving an attorney's violation of her duties as a professional, including the duty to respond to a disciplinary agency, which also run from private reprimand to disbarment (as to Nguyen's violations in the Lau, Martin, and Nasra matters). TEX. RULES DISCIPLINARY P.R. 15.07(1-4). Additionally, Rule 15.09 provides aggravating and mitigating factors a panel may consider in deciding an appropriate sanction once professional misconduct is established. TEX. RULES DISCIPLINARY P. R. 15.09(A-C).

B. The record supports the panel's sanction against Nguyen as to each of her violations of TDRPCs 1.01(b)(1), 1.01(b)(2), 1.03(a), and 8.04(a)(8).

Both the evidentiary panel's Judgment and its Findings of Fact and Conclusions of Law set forth findings that support its sanction as to each violation of the TDRPCs it found.

¹⁶ Appendix A to the Rules provides guidance as to which sanctioning guidelines subsection(s) apply to violations of the TDRPCs. [App 5].

- As to the violation of TDRPC 1.01(b)(1) related to the Parrish Complaint, the panel: (1) found that Nguyen had neglected the legal matter entrusted to her; and (2) considered the potential or actual injury caused by her neglect along with the pattern of neglect in such conduct, along with several other aggravating factors. [App 2]; [App 4].
- As to the violation of TDRPC 1.01(b)(2) related to the Parrish Complaint, the panel: (1) found that Nguyen frequently failed to carry out completely the obligations she owed to Billy; and (2) again considered the potential or actual injury caused by her neglect along with the pattern of neglect in such conduct, along with several other aggravating factors. [App 2]; [App 4].
- As to the violations of TDRPC 1.03(a) related to the Parrish, Lau, and Kraesig Complaints, the panel: (1) found that Nguyen failed to keep each of those clients reasonably informed about the status of their matter and to promptly comply with reasonable requests for information; and (2) again considered the potential or actual injury caused by her neglect along with the pattern of neglect in such conduct, along with several other aggravating factors. [App 2]; [App 4].
- As to the violations of TDRPC 8.04(a)(8) related to the Lau, Martin, and Nasra Complaints, the panel: (1) found that Nguyen failed to keep each of those clients reasonably informed about the status of their matter and to promptly comply with reasonable requests for information; and (2) again considered the potential or actual injury caused by her neglect along with the pattern of neglect in such conduct, along with several other aggravating factors. [App 2]; [App 4].

As set forth at length above, the panel's above-referenced findings are supported by substantial evidence demonstrating Nguyen's repeated failures to diligently carry out her responsibilities to her clients, as well as her repeated failures to comply with obligations to respond to the disciplinary grievances filed against her. [See Statement of Facts, Sec. II, *supra*.] The panel acted within its discretion in imposing disbarment as a sanction for those violations, and the Board should affirm the panel's Judgment in all respects.

CONCLUSION AND PRAYER

For the foregoing reasons, the Commission prays that the Board affirm the judgment of the District 4-6 Evidentiary Panel of the State Bar of Texas in this matter, in all respects.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COMPLIANCE

Pursuant to the Board of Disciplinary Appeals Internal Procedural Rules, the foregoing brief on the merits contains approximately 10,390 words (total for all sections of brief that are required to be counted), which is less than the total words permitted by the Board's Internal Procedural Rules. Counsel relies on the word count of the computer program used to prepare this petition.



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CERTIFICATE OF SERVICE

This is to certify that the above and foregoing brief of Appellee, the Commission for Lawyer Discipline has been served on Appellant, Vy Thuan Nguyen, by and through her attorney of record, Mr. Billy Shepherd, 770 South Post Oak Lane, Suite 420, Houston, Texas 77056, by email to bshepherd@spcounsel.com on the 4th day of November, 2024.



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Before the Board of Disciplinary Appeals
Appointed by
The Supreme Court of Texas

VY THUAN NGUYEN,
STATE BAR OF TEXAS CARD NO. 24060334,
APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE

*Nos. 202205608 [Parrish]; 202206116 [Lau]; 202207092 [Kraesig]; 202301900
[Martin]; & 202302230 [Nasra]*

APPENDIX TO BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

- APP 1:** TEXAS RULES OF DISCIPLINARY PROCEDURE (former – including amendments effective August 27, 2021)
- APP 2:** Judgment of Disbarment [CR 232-38]
- APP 3:** CFLD’s Original Evidentiary Petition [CR 125-33]
- APP 4:** Findings of Fact and Conclusions of Law [CR 267-71]
- App 5:** TEXAS RULES OF DISCIPLINARY PROCEDURE, APPENDIX A

App 1

TEXAS RULES OF DISCIPLINARY PROCEDURE

(Including Amendments Effective June 15, July 1, and August 27, 2021)

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TEXAS RULES OF DISCIPLINARY PROCEDURE

Preamble

The Supreme Court of Texas has the constitutional and statutory responsibility within the State for the lawyer discipline and disability system, and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of lawyer discipline and disability in a manner that does not discriminate by race, creed, color, sex, or national origin. To carry out this responsibility, the Court promulgates the following rules for lawyer discipline and disability proceedings. Subject to the inherent power of the Supreme Court of Texas, the responsibility for administering and supervising lawyer discipline and disability is delegated to the Board of Directors of the State Bar of Texas. Authority to adopt rules of procedure and administration not inconsistent with these rules is vested in the Board. This delegation is specifically limited to the rights, powers, and authority herein expressly delegated.

PART I. GENERAL RULES

1.01. Citation: These rules are to be called the Texas Rules of Disciplinary Procedure and shall be cited as such.

1.02. Objective of the Rules: These rules establish the procedures to be used in the professional disciplinary and disability system for attorneys in the State of Texas.

1.03. Construction of the Rules: These rules are to be broadly construed to ensure the operation, effectiveness, integrity, and continuation of the professional disciplinary and disability system. The following rules apply in the construction of these rules:

A. If any portion of these rules is held unconstitutional by any court, that determination does not affect the validity of the remaining rules.

B. The use of the singular includes the plural, and vice versa.

C. In computing any period of time prescribed or allowed by these rules, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

1.04. Integration and Concurrent Application of the Rules: These rules apply prospectively to all attorney professional disciplinary and disability proceedings commenced on and after the effective date as set forth in the Supreme Court's Order of promulgation. All disciplinary and disability proceedings commenced prior to the effective date of these rules as amended are governed by the Texas Rules of Disciplinary Procedure in effect as of the date of commencement of said disciplinary and disability proceedings.

1.05. **Texas Disciplinary Rules of Professional Conduct:** Nothing in these rules is to be construed, explicitly or implicitly, to amend or repeal in any way the Texas Disciplinary Rules of Professional Conduct.

1.06. **Definitions:**

- A. “Address” means the registered mailing address or preferred email address provided to the State Bar by the Respondent pursuant to Article III of the State Bar Rules.
- B. “Board” means the Board of Directors of the State Bar of Texas.
- C. “Chief Disciplinary Counsel” means the person serving as Chief Disciplinary Counsel and any and all of his or her assistants.
- D. “Commission” means the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- E. “Committee” means any of the grievance committees within a single District.
- F. “Complainant” means the person, firm, corporation, or other entity, including the Chief Disciplinary Counsel, initiating a Complaint or Inquiry.
- G. “Complaint” means those written matters received by the Office of the Chief Disciplinary Counsel that, either on the face thereof or upon screening or preliminary investigation, allege Professional Misconduct or attorney Disability, or both, cognizable under these rules or the Texas Disciplinary Rules of Professional Conduct.
- H. “Director” means a member of the Board of Directors of the State Bar of Texas.
- I. “Disability” means any physical, mental, or emotional condition that, with or without a substantive rule violation, results in the attorney's inability to practice law, provide client services, complete contracts of employment, or otherwise carry out his or her professional responsibilities to clients, courts, the profession, or the public.
- J. “Disciplinary Action” means a proceeding brought by or against an attorney in a district court or any judicial proceeding covered by these rules other than an Evidentiary Hearing.
- K. “Disciplinary Petition” means a pleading that satisfies the requirements of Rule 3.01.
- L. “Disciplinary Proceedings” includes the processing of a Grievance, the investigation and processing of an Inquiry or Complaint, the proceeding before an Investigatory Panel, presentation of a Complaint before a Summary Disposition Panel,

and the proceeding before an Evidentiary Panel.

M. “Discretionary Referral” means a Grievance received by the Office of Chief Disciplinary Counsel that has been determined upon initial classification to involve minor misconduct and is appropriate for referral to the State Bar’s Client Attorney Assistance Program.

N. “District” means disciplinary district.

O. “Evidentiary Hearing” means an adjudicatory proceeding before a panel of a grievance committee.

P. “Evidentiary Panel” means a panel of the District Grievance Committee performing an adjudicatory function other than that of a Summary Disposition Panel or an Investigatory Panel with regard to a Disciplinary Proceeding pending before the District Grievance Committee of which the Evidentiary Panel is a subcommittee.

Q. “Evidentiary Petition” means a pleading that satisfies the requirements of Rule 2.17.

R. “Grievance” means a written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyer, or lawyer Disability, or both, received by the Office of the Chief Disciplinary Counsel.

S. “Injury” in Part XV of these Rules is harm to a client, the public, the legal system, or the profession which results from a Respondent’s misconduct. The level of injury can range from “serious” injury to “little or no” injury; a reference to “injury” alone indicates any level of injury greater than “little or no” injury.

T. “Inquiry” means any written matter concerning attorney conduct received by the Office of the Chief Disciplinary Counsel that, even if true, does not allege Professional Misconduct or Disability.

U. “Intent” in Part XV of these Rules is the conscious objective or purpose to accomplish a particular result. A person’s intent may be inferred from circumstances.

V. “Intentional Crime” means (1) any Serious Crime that requires proof of knowledge or intent as an essential element or (2) any crime involving misapplication of money or other property held as a fiduciary.

W. “Investigatory Panel” means a panel of the Committee that conducts a nonadversarial proceeding during the investigation of the Complaint by the Chief Disciplinary Counsel.

X. “Knowledge” in Part XV of these Rules is the conscious awareness of the nature of attendant circumstances of the conduct but without the conscious objective or purpose

to accomplish a particular result. A person's knowledge may be inferred from circumstances.

Y. "Negligence" in Part XV of these Rules, is the failure to exercise the care that a reasonably prudent and competent lawyer would exercise in like circumstances.

Z. "Just Cause" means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed, or suffers from a Disability that requires either suspension as an attorney licensed to practice law in the State of Texas or probation.

AA. "Penal Institution" has the meaning assigned by Article 62.001, Code of Criminal Procedure.

BB. "Potential injury" in Part XV of these Rules is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the Respondent's misconduct, and which, but for some intervening factor or event, would probably have resulted from the Respondent's misconduct.

CC. "Professional Misconduct" includes:

1. Acts or omissions by an attorney, individually or in concert with another person or persons, that violate one or more of the Texas Disciplinary Rules of Professional Conduct.
2. Attorney conduct that occurs in another jurisdiction, including before any federal court or federal agency, and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.
3. Violation of any disciplinary or disability order or judgment.
4. Engaging in conduct that constitutes barratry as defined by the law of this state.
5. Failure to comply with Rule 13.01 of these rules relating to notification of an attorney's cessation of practice.
6. Engaging in the practice of law either during a period of suspension or when on inactive status.
7. Conviction of a Serious Crime, or being placed on probation for a Serious Crime with or without an adjudication of guilt.
8. Conviction of an Intentional Crime, or being placed on probation for an

Intentional Crime with or without an adjudication of guilt.

DD. “Reasonable Attorneys’ Fees,” for purposes of these rules only, means a reasonable fee for a competent private attorney, under the circumstances. Relevant factors that may be considered in determining the reasonableness of a fee include but are not limited to the following:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. The fee customarily charged in the locality for similar legal services;
3. The amount involved and the results obtained;
4. The time limitations imposed by the circumstances; and
5. The experience, reputation, and ability of the lawyer or lawyers performing the services.

EE. “Respondent” means any attorney who is the subject of a Grievance, Complaint, Disciplinary Proceeding, or Disciplinary Action.

FF. “Sanction” means any of the following:

1. Disbarment.
2. Resignation in lieu of discipline.
3. Indefinite Disability suspension.
4. Suspension for a term certain.
5. Probation of suspension, which probation may be concurrent with the period of suspension, upon such reasonable terms as are appropriate under the circumstances.
6. Interim suspension.
7. Public reprimand.
8. Private reprimand.

The term “Sanction” may include the following additional ancillary requirements.

- a. Restitution (which may include repayment to the Client Security Fund of the State Bar of any payments made by reason of Respondent’s Professional

Misconduct); and

b. Payment of Reasonable Attorneys' Fees and all direct expenses associated with the proceedings.

GG. "Serious Crime" means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

HH. "State Bar" means the State Bar of Texas.

II. "Summary Disposition Panel" means a panel of the Committee that determines whether a Complaint should proceed or should be dismissed based upon the absence of evidence to support a finding of Just Cause after a reasonable investigation by the Chief Disciplinary Counsel of the allegations in the Grievance.

JJ. "Wrongfully Imprisoned Person" has the meaning assigned by Section 501.101, Government Code.

PART II. THE DISTRICT GRIEVANCE COMMITTEES

2.01. Disciplinary Districts and Grievance Committee Subdistricts: The State of Texas is geographically divided into disciplinary districts that are coextensive with the districts of elected Directors of the State Bar. One or more Committee subdistricts shall be delineated by the Board within each such District. From time to time, if the Commission deems it useful for the efficient operation of the disciplinary system, it shall recommend to the Board that a redelineation be made of one or more subdistricts within a District. All Committees within a single disciplinary district have concurrent authority within the District but once a matter has been assigned to a Committee, that Committee has dominant jurisdiction, absent a transfer.

2.02. Composition of Members: Each elected Director of the State Bar shall nominate, and the President of the State Bar shall appoint, the members of the Committees within the District that coincides with the Director's district, according to rules and policies adopted from time to time by the Board. Each Committee must consist of no fewer than nine members, two-thirds of whom must be attorneys licensed to practice law in the State of Texas and in good standing, and one-third of whom must be public members. All Committee panels must be composed of two-thirds attorneys and one-third public members. Each member of the Committee shall reside within or maintain his or her principal place of employment or practice within the District for which appointed. Public members may not have, other than as consumers, any financial interest, direct or indirect, in the practice of law. There may be no ex officio members of any Committee.

2.03. Time for Appointment and Terms: All persons serving on a Committee at the time these rules become effective shall continue to serve for their then unexpired terms, subject to resignation or removal as herein provided. Nominations to Committees shall be made annually at the spring meeting of the Board; all appointments shall be made by the President no later than

June 1 of each year, provided, however, that if a vacancy on a Committee arises after June 1, the Director(s) shall nominate and the President shall appoint an eligible person to serve for the remaining period of the unexpired term. If any Director fails or refuses to make nominations in a timely manner, or the President fails or refuses to make appointments in a timely manner, the existing members of the Committees shall continue to hold office until the nominations and appointments are made and the successor member is qualified. One-third of each new Committee will be appointed for initial terms of one year, one-third for an initial term of two years, and one-third for an initial term of three years. Thereafter, all terms will be for a period of three years, except for appointments to fill unexpired terms, which will be for the remaining period of the unexpired term. Any member of a Committee who has served two consecutive terms, whether full or partial terms, is not eligible for reappointment until at least three years have passed since his or her last prior service. No member may serve as chair for more than two consecutive terms of one year each. All members are eligible for election to the position of chair.

2.04. Organizational Meeting of Grievance Committees: The last duly elected chair of a Committee shall call an organizational meeting of the Committee no later than July 15 of each year; shall administer the oath of office to each new member; and shall preside until the Committee has elected, by a majority vote, its new chair. Members may vote for themselves for the position of chair.

2.05. Oath of Committee Members: As soon as possible after appointment, each newly appointed member of a Committee shall take the following oath to be administered by any person authorized by law to administer oaths:

“I do solemnly swear (or affirm) that I will faithfully execute my duties as a member of the District grievance committee, as required by the Texas Rules of Disciplinary Procedure, and will, to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of the State of Texas. I further solemnly swear (or affirm) that I will keep secret all such matters and things as shall come to my knowledge as a member of the grievance committee arising from or in connection with each Disciplinary Action and Disciplinary Proceeding, unless permitted to disclose the same in accordance with the Rules of Disciplinary Procedure, or unless ordered to do so in the course of a judicial proceeding or a proceeding before the Board of Disciplinary Appeals. I further solemnly swear (or affirm) that I have neither directly nor indirectly paid, offered, or promised to pay, contributed any money or valuable thing, or promised any public or private office to secure my appointment. So help me God.”

2.06. Assignment of Committee Members: Each member of a Committee shall act through panels assigned by the chair of the Committee for investigatory hearings, summary disposition dockets, and evidentiary hearings. Promptly after assignment, notice must be provided to the Respondent of the names and addresses of the panel members assigned to each Complaint. A member is disqualified or is subject to recusal as a panel member for an evidentiary hearing if a district judge would, under similar circumstances, be disqualified or recused. If a member is disqualified or recused, another member shall be appointed by the Committee chair. No peremptory challenges of a Committee member are allowed. Any alleged grounds for

disqualification or recusal of a panel member are conclusively waived if not brought to the attention of the panel within ten days after receipt of notification of the names and addresses of members of the panel; however, grounds for disqualification or recusal not reasonably discoverable within the ten day period may be asserted within ten days after they were discovered or in the exercise of reasonable diligence should have been discovered.

2.07. Duties of Committees: Committees shall act through panels, as assigned by the Committee chairs, to conduct investigatory hearings, summary disposition dockets, and evidentiary hearings. No panel may consist of more than one-half of all members of the Committee or fewer than three members. If a member of a panel is disqualified, recused or otherwise unable to serve, the chair shall appoint a replacement. Panels must be composed of two attorney members for each public member. A quorum must include at least one public member for every two attorney members present and consists of a majority of the membership of the panel, and business shall be conducted upon majority vote of those members present, a quorum being had. In matters in which evidence is taken, no member may vote unless that member has heard or reviewed all the evidence. It shall be conclusively presumed, however, not subject to discovery or challenge in any subsequent proceeding, that every member casting a vote has heard or reviewed all the evidence. No member, attorney or public, may be appointed by the chair to an Evidentiary Panel pertaining to the same disciplinary matter that the member considered at either an investigatory hearing or summary disposition docket. Any tie vote is a vote in favor of the position of the Respondent.

2.08. Expenses: Members of Committees serve without compensation but are entitled to reimbursement by the State Bar for their reasonable, actual, and necessary expenses.

2.09. Notice to Parties:

- A. Every notice required by this Part to be served upon the Respondent may be served by U. S. certified mail, return receipt requested, or by any other means of service permitted by the Texas Rules of Civil Procedure to the Respondent at the Respondent's Address or to the Respondent's counsel.
- B. Every notice required by this Part to be served upon the Commission may be served by U. S. certified mail, return receipt requested, or by any other means of service permitted by the Texas Rules of Civil Procedure, to the address of the Commission's counsel of record or, if none, to the address designated by the Commission.
- C. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail or telephonic document transfer, three days shall be added to the prescribed period.

2.10. Classification of Grievances: The Chief Disciplinary Counsel shall within thirty days examine each Grievance received to determine whether it constitutes an Inquiry, a Complaint, or a Discretionary Referral.

- A. If the Grievance is determined to constitute an Inquiry, the Chief Disciplinary Counsel shall notify the Complainant and Respondent of the dismissal. The Complainant may, within thirty days from notification of the dismissal, appeal the determination to the Board of Disciplinary Appeals. If the Board of Disciplinary Appeals affirms the classification as an Inquiry, the Complainant will be so notified and may within twenty days amend the Grievance one time only by providing new or additional evidence. The Complainant may appeal a decision by the Chief Disciplinary Counsel to dismiss the amended Complaint as an Inquiry to the Board of Disciplinary Appeals. No further amendments or appeals will be accepted.
- B. If the Grievance is determined to constitute a Complaint, the Respondent shall be provided a copy of the Complaint with notice to respond, in writing, to the allegations of the Complaint. The notice shall advise the Respondent that the Chief Disciplinary Counsel may provide appropriate information, including the Respondent's response, to law enforcement agencies as permitted by Rule 6.08. The Respondent shall deliver the response to both the Office of the Chief Disciplinary Counsel and the Complainant within thirty days after receipt of the notice.
- C. If the Grievance is determined to be a Discretionary Referral, the Chief Disciplinary Counsel will notify the Complainant and the Respondent of the referral to the State Bar's Client Attorney Assistance Program (CAAP). No later than sixty days after the Grievance is referred, CAAP will notify the Chief Disciplinary Counsel of the outcome of the referral. The Chief Disciplinary Counsel must, within fifteen days of notification from CAAP, determine whether the Grievance should be dismissed as an Inquiry or proceed as a Complaint. The Chief Disciplinary Counsel and CAAP may share confidential information for all Grievances classified as Discretionary Referrals.

2.11. Venue: Venue of District Grievance Committee proceedings shall be in accordance with the following:

- A. **Investigatory Panel Proceedings.** Proceedings of an Investigatory Panel shall be conducted by a Panel for the county where the alleged Professional Misconduct occurred, in whole or in part. If the acts or omissions complained of occurred wholly outside the State of Texas, proceedings shall be conducted by a Panel for the county of Respondent's residence and, if Respondent has no residence in Texas, by a Panel for Travis County, Texas.
- B. **Summary Disposition Panel Proceedings.** Proceedings of a Summary Disposition Panel shall be conducted by a Panel for the county where the alleged Professional Misconduct occurred, in whole or in part. If the acts or omissions complained of occurred wholly outside the State of Texas, proceedings shall be conducted by a Panel for the county of Respondent's residence and, if Respondent has no

residence in Texas, by a Panel for Travis County, Texas.

- C. Evidentiary Panel Proceedings. Proceedings of an Evidentiary Panel shall be conducted by a Panel for the county where Respondent's principal place of practice is maintained; or if the Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent's residence; or if the Respondent maintains neither a residence nor a place of practice within the State of Texas, then in the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas.

2.12. Investigation and Determination of Just Cause:

- A. The Chief Disciplinary Counsel will investigate a Complaint to determine whether Just Cause exists.
1. *General Rule:* The Chief Disciplinary Counsel must make a Just Cause determination within 60 days of the date that the Respondent's response to the Complaint is due.
 2. *Exceptions:* The Just Cause determination date is extended to 60 days after the latest of:
 - a. the date of compliance specified in any investigatory subpoena issued by the Chief Disciplinary Counsel;
 - b. the date of any enforcement order issued by a district court under (E);
or
 - c. the date that an investigatory hearing is completed.
- B. During the investigation, the Chief Disciplinary Counsel, with the Committee chair's approval, may issue a subpoena that relates directly to a specific allegation of attorney misconduct for the production of documents, electronically stored information, or tangible things or to compel the attendance of a witness, including the Respondent, at an investigatory hearing.
- C. A subpoena must notify the recipient of the time, date, and place of appearance or production and must contain a description of materials to be produced. A subpoena must be served on a witness personally or in accordance with Rule 21a, Texas Rules of Civil Procedure. Proof of service may be by certification of the server or by return receipt. A witness, other than the Respondent, who is commanded to appear at an investigatory hearing is entitled to the same fee and expense reimbursement as a witness commanded to appear in district court.
- D. Before the time specified for compliance, a person commanded to appear or make production must present any objection to the chair of the Investigatory Panel, if an

investigatory hearing has been set, or to the Committee chair, if an investigatory hearing has not been set. Objections must be made in good faith. If the chair overrules an objection in whole or in part, and the objecting party fails to comply with the chair's ruling, the Chief Disciplinary Counsel may seek to enforce the subpoena in district court under (E).

- E. The Chief Disciplinary Counsel may seek enforcement of a subpoena in the district court of the county in which appearance or production is required. The person commanded to appear or make production may raise any good faith objection to the subpoena. If the district court finds that the person's noncompliance with or objection to a subpoena is in bad faith, then after notice and a hearing, the court may order the person to pay the Chief Disciplinary Counsel's reasonable and necessary costs and attorney fees. The district court's order is not appealable. The Chief Disciplinary Counsel must not consider a Respondent's good faith objection to an investigatory subpoena as grounds for Just Cause.
- F. An investigatory hearing on a Complaint will be set before an Investigatory Panel and is a nonadversarial proceeding that may be conducted by teleconference. The chair of the Investigatory Panel may administer oaths and may set forth procedures for eliciting evidence, including witness testimony. Witness examination may be conducted by the Chief Disciplinary Counsel, the Respondent, or the Panel. An investigatory hearing is strictly confidential and any record may be released only for use in a disciplinary matter.
- G. An investigatory hearing may result in a Sanction negotiated with the Respondent or in the Chief Disciplinary Counsel's dismissing the Complaint or finding Just Cause. The terms of a negotiated Sanction must be in a written judgment with findings of fact and conclusions of law. The judgment must be entered into the record by the chair of the Investigatory Panel and signed by the Chief Disciplinary Counsel and the Respondent.

2.13. Summary Disposition Setting: Upon investigation, if the Chief Disciplinary Counsel determines that Just Cause does not exist to proceed on the Complaint, the Chief Disciplinary Counsel shall place the Complaint on a Summary Disposition Panel docket, which may be conducted by teleconference. At the Summary Disposition Panel docket, the Chief Disciplinary Counsel will present the Complaint together with any information, documents, evidence, and argument deemed necessary and appropriate by the Chief Disciplinary Counsel, without the presence of the Complainant or Respondent. The Summary Disposition Panel shall determine whether the Complaint should be dismissed or should proceed. If the Summary Disposition Panel dismisses the Complaint, both the Complainant and Respondent will be so notified. There is no appeal from a determination by the Summary Disposition Panel that the Complaint should be dismissed or should proceed. All Complaints presented to the Summary Disposition Panel and not dismissed will proceed in accordance with Rule 2.14 and Rule 2.15. The fact that a Complaint was placed on the Summary Disposition Panel Docket and not dismissed is wholly inadmissible for any purpose in the instant or any subsequent Disciplinary Proceeding or Disciplinary Action.

2.14. Proceeding Upon a Determination of Just Cause: All rights characteristically reposed in a client by the common law of this State as to every Complaint not dismissed after an investigatory hearing, resolved through a negotiated judgment entered by an Investigatory Panel, or dismissed by the Summary Disposition Panel are vested in the Commission.

- A. Client of Chief Disciplinary Counsel: The Commission is the client of the Chief Disciplinary Counsel for every Complaint not dismissed after an investigatory hearing, resolved through a negotiated judgment entered by an Investigatory Panel, or dismissed by the Summary Disposition Panel.
- B. Interim Suspension: In any instance in which the Chief Disciplinary Counsel reasonably believes based upon investigation of the Complaint that the Respondent poses a substantial threat of irreparable harm to clients or prospective clients, the Chief Disciplinary Counsel may seek and obtain authority from the Commission to pursue interim suspension of the Respondent's license in accordance with Part XIV of these rules.
- C. Disability: In any instance in which the Chief Disciplinary Counsel reasonably believes based upon investigation of the Complaint that the Respondent is suffering from a Disability to such an extent that either (a) the Respondent's continued practice of law poses a substantial threat of irreparable harm to client or prospective clients; or (b) the Respondent is so impaired as to be unable to meaningfully participate in the preparation of a defense, the Chief Disciplinary Counsel shall seek and obtain client authority to refer the Complaint to the Board of Disciplinary Appeals pursuant to Part XII of these rules.
- D. Notification of Complaint: For each Complaint not dismissed after an investigatory hearing, resolved through a negotiated judgment entered by an Investigatory Panel, or dismissed by the Summary Disposition Panel, the Chief Disciplinary Counsel shall give the Respondent written notice of the acts and/or omissions engaged in by the Respondent and of the Texas Disciplinary Rules of Professional Conduct that the Chief Disciplinary Counsel contends are violated by the alleged acts and/or omissions.

2.15. Election: A Respondent given written notice of the allegations and rule violations complained of, in accordance with Rule 2.14, shall notify the Chief Disciplinary Counsel whether the Respondent seeks to have the Complaint heard in a district court of proper venue, with or without a jury, or by an Evidentiary Panel of the Committee. The election must be in writing and served upon the Chief Disciplinary Counsel no later than twenty days after the Respondent's receipt of written notification pursuant to Rule 2.14. If the Respondent timely elects to have the Complaint heard in a district court, the matter will proceed in accordance with Part III hereof. If the Respondent timely elects to have the Complaint heard by an Evidentiary Panel, the matter will proceed in accordance with Rules 2.17 and 2.18. A Respondent's failure to timely file an election shall conclusively be deemed as an affirmative election to proceed in accordance with Rules 2.17 and 2.18.

2.16. Confidentiality:

- A. All members and staff of the Office of Chief Disciplinary Counsel, Board of Disciplinary Appeals, Committees, and Commission shall maintain as confidential all Disciplinary Proceedings and associated records, except that:
1. the pendency, subject matter, status of an investigation, and final disposition, if any, may be disclosed by the Office of Chief Disciplinary Counsel or Board of Disciplinary Appeals if the Respondent has waived confidentiality, the Disciplinary Proceeding is based on conviction of a serious crime, or disclosure is ordered by a court of competent jurisdiction;
 2. a negotiated judgment entered by an Investigatory Panel for any Sanction other than a private reprimand may be disclosed;
 3. if the Evidentiary Panel finds that professional misconduct occurred and imposes any Sanction other than a private reprimand;
 - a. the Evidentiary Panel's final judgment is a public record from the date the judgment is signed; and
 - b. once all appeals, if any, have been exhausted and the judgment is final, the Office of Chief Disciplinary Counsel shall, upon request, disclose all documents, statements, and other information relating to the Disciplinary Proceeding that came to the attention of the Evidentiary Panel during the Disciplinary Proceeding;
 4. the record in any appeal to the Board of Disciplinary Appeals from an Evidentiary Panel's final judgment, other than an appeal from a judgment of private reprimand, is a public record; and
 5. facts and evidence that are discoverable elsewhere are not made confidential merely because they are discussed or introduced in the course of a Disciplinary Proceeding.
- B. The deliberations and voting of an Investigatory Panel or Evidentiary Panel are strictly confidential and not subject to discovery. No person is competent to testify as to such deliberations and voting.
- C. Rule 6.08 governs the provision of confidential information to authorized agencies investigating qualifications for admission to practice, attorney discipline enforcement agencies, law enforcement agencies, the State Bar's Client Security Fund, the State Bar's Lawyer Assistance Program, the Supreme Court's Unauthorized Practice of Law Committee and its subcommittees, and the Commission on Judicial Conduct.

- D. Files of dismissed Disciplinary Proceedings will be retained for one hundred eighty days, after which time the files may be destroyed. No permanent record will be kept of Complaints dismissed except to the extent necessary for statistical reporting purposes.

2.17. Evidentiary Hearings: Within fifteen days of the earlier of the date of Chief Disciplinary Counsel's receipt of Respondent's election or the day following the expiration of Respondent's right to elect, the chair of a Committee having proper venue shall appoint an Evidentiary Panel to hear the Complaint. The Evidentiary Panel may not include any person who served on a Summary Disposition Docket or an Investigatory Panel that heard the Complaint and must have at least three members but no more than one-half as many members as on the Committee. Each Evidentiary Panel must have a ratio of two attorney members for every public member. Proceedings before an Evidentiary Panel of the Committee include:

- A. Evidentiary Petition and Service: Not more than sixty days from the earlier of receipt of Respondent's election or Respondent's deadline to elect to proceed before an Evidentiary Panel, the Chief Disciplinary Counsel shall file with the Evidentiary Panel an Evidentiary Petition in the name of the Commission. The Evidentiary Petition shall be served upon the Respondent in accordance with Rule 2.09 and must contain:
1. Notice that the action is brought by the Commission for Lawyer Discipline, a committee of the State Bar.
 2. The name of the Respondent and the fact that he or she is an attorney licensed to practice law in the State of Texas.
 3. Allegations necessary to establish proper venue.
 4. A description of the acts and conduct that gave rise to the alleged Professional Misconduct in detail sufficient to give fair notice to the Respondent of the claims made, which factual allegations may be grouped in one or more counts based upon one or more Complaints.
 5. A listing of the specific rules of the Texas Disciplinary Rules of Professional Conduct allegedly violated by the acts or conduct, or other grounds for seeking Sanctions.
 6. A demand for judgment that the Respondent be disciplined as warranted by the facts and for any other appropriate relief.
 7. Any other matter that is required or may be permitted by law or by these rules.
- B. Answer: A responsive pleading either admitting or denying each specific allegation of Professional Misconduct must be filed by or on behalf of the

Respondent no later than 5:00 p.m. on the first Monday following the expiration of twenty days after service of the Evidentiary Petition.

- C. **Default:** A failure to file an answer within the time permitted constitutes a default, and all facts alleged in the Evidentiary Petition shall be taken as true for the purposes of the Disciplinary Proceeding. Upon a showing of default, the Evidentiary Panel shall enter an order of default with a finding of Professional Misconduct and shall conduct a hearing to determine the Sanctions to be imposed.

- D. **Request for Disclosure:** The Commission or Respondent may obtain disclosure from the other party of the information or material listed below by serving the other party, no later than thirty days before the first setting of the hearing. The responding party must serve a written response on the requesting party within thirty days after service of the request, except that a Respondent served with a request before the answer is due need not respond until fifty days after service of the request. A party who fails to make, amend, or supplement a disclosure in a timely manner may not introduce in evidence the material or information that was not timely disclosed, or offer the testimony of a witness (other than a named party) who was not timely identified, unless the panel finds that there was good cause for the failure to timely make, amend, or supplement the disclosure response; or the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other party. No objection or assertion of work product is permitted to a request under this Rule. A party may request disclosure of any or all of the following:
 - 1. The correct names of the parties to the Disciplinary Proceeding.
 - 2. In general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial).
 - 3. The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the disciplinary matter.
 - 4. For any testifying expert, the expert's name, address, and telephone number; the subject matter on which the expert will testify, and the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them.
 - 5. Any witness statements.

- E. **Limited Discovery:** In addition to the Request for Disclosure, the Commission and the Respondent may conduct further discovery with the following limitations:
 - 1. All discovery must be conducted during the discovery period, which

begins when the Evidentiary Petition is filed and continues until thirty days before the date set for hearing.

2. Each party may have no more than six hours in total to examine and cross-examine all witnesses in oral depositions.

3. Any party may serve on the other party no more than twenty-five written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

4. Any party may serve on the other party requests for production and inspection of documents and tangible things.

5. Any party may serve on the other party requests for admission.

F. **Modification of Discovery Limitations:** Upon a showing of reasonable need, the Evidentiary Panel chair may modify the discovery limitations set forth in Rule 2.17E. The parties may by agreement modify the discovery limitations set forth in Rule 2.17E.

G. **Discovery Dispute Resolution:** Except where modified by these rules, all discovery disputes shall be ruled upon by the Evidentiary Panel chair generally in accord with the Texas Rules of Civil Procedure; provided, however, that no ruling upon a discovery dispute shall be a basis for reversal solely because it fails to strictly comply with the Texas Rules of Civil Procedure.

H. **Subpoena Power:** the Commission or the Respondent may compel the attendance of witnesses, including the Respondent, and the production of documents electronically stored information, or tangible things by subpoena. A subpoena must notify the witness of the time, date, and place of appearance or production; contain a description of the materials to be produced; be signed by the Evidentiary Panel chair; and be served personally or in accordance with Rule 21a, Texas Rules of Civil Procedure. Proof of service may be by certification of the server or by return receipt. Any contest between the Commission and the Respondent about the materiality of the testimony or production sought will be determined by the Evidentiary Panel chair, and is subject to review. The Commission or the Respondent may seek enforcement of a subpoena in the district court of the county in which the attendance or production is required. A witness, other than the Respondent, who is commanded to appear at an Evidentiary Panel hearing is entitled to the same fee and expense reimbursement as a witness commanded to appear in district court.

I. **Enforcement of Subpoenas and Examination Before a District Judge:** If any witness, including the Respondent, fails or refuses to appear or to produce the things named in the subpoena, or refuses to be sworn or to affirm or to testify, the

witness may be compelled to appear and produce tangible evidence and to testify at a hearing before a district judge of the county in which the subpoena was served. The application for such a hearing is to be styled “In re: Hearing Before The District _____ Grievance Committee.” The court shall order a time, date, and place for the hearing and shall notify the Commission, the Respondent, and the witness. Unless the Respondent requests a public hearing, the proceedings before the court shall be closed and all records relating to the hearing shall be sealed and made available only to the Commission, the Respondent, or the witness. If the witness fails or refuses to appear, testify, or produce such tangible evidence, he or she shall be punished for civil contempt.

- J. **Right to Counsel:** The Respondent and the Complainant may, if they so choose, have counsel present during any evidentiary hearing.
- K. **Alternative Dispute Resolution:** Upon motion made or otherwise, the Evidentiary Panel Chair may order the Commission and the Respondent to participate in mandatory alternative dispute resolution as provided by Chapter 154 of the Civil Practice and Remedies Code or as otherwise provided by law when deemed appropriate.
- L. **Evidence:** The Respondent, individually or through his or her counsel if represented, and the Commission, through the Chief Disciplinary Counsel, may, if they so choose, offer evidence, examine witnesses and present argument. Witness examination may be conducted only by the Commission, the Respondent, and the panel members. The inability or failure to exercise this opportunity does not abate or preclude further proceedings. The Evidentiary Panel chair shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the Texas Rules of Evidence; provided, however, that admission or exclusion of evidence shall be in the discretion of the Evidentiary Panel chair and no ruling upon the evidence shall be a basis for reversal solely because it fails to strictly comply with the Texas Rules of Evidence.
- M. **Burden of Proof:** The burden of proof is upon the Commission for Lawyer Discipline to prove the material allegations of the Evidentiary Petition by a preponderance of the evidence.
- N. **Record of the Hearing:** A verbatim record of the proceedings will be made by a certified shorthand reporter in a manner prescribed by the Board of Disciplinary Appeals. In the event of an appeal from the Evidentiary Panel to the Board of Disciplinary Appeals, the party initiating the appeal shall pay the costs of preparation of the transcript. Such costs shall be taxed at the conclusion of the appeal by the Board of Disciplinary Appeals.
- O. **Setting:** Evidentiary Panel proceedings must be set for hearing with a minimum of forty-five days' notice to all parties unless waived by all parties. Evidentiary

Panel proceedings shall be set for hearing on the merits on a date not later than 180 days after the date the answer is filed, except for good cause shown. If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent. No continuance may be granted unless required by the interests of justice.

- P. Decision: After conducting the Evidentiary Hearing, the Evidentiary Panel shall issue a judgment within thirty days. In any Evidentiary Panel proceeding where Professional Misconduct is found to have occurred, such judgment shall include findings of fact, conclusions of law and the Sanctions to be imposed. The Evidentiary Panel may:
1. dismiss the Disciplinary Proceeding and refer it to the voluntary mediation and dispute resolution procedure;
 2. find that the Respondent suffers from a disability and forward that finding to the Board of Disciplinary Appeals for referral to a district disability committee pursuant to Part XII; or
 3. find that Professional Misconduct occurred and impose Sanctions.

2.18. Terms of Judgment: In any judgment of disbarment or suspension that is not stayed, the Evidentiary Panel shall order the Respondent to surrender his or her law license and permanent State Bar card to the Chief Disciplinary Counsel for transmittal to the Clerk of the Supreme Court. In all judgments imposing disbarment or suspension, the Evidentiary Panel shall enjoin the Respondent from practicing law or from holding himself or herself out as an attorney eligible to practice law during the period of disbarment or suspension. In all judgments of disbarment, suspension, or reprimand, the Evidentiary Panel shall make all other orders as it finds appropriate, including probation of all or any portion of suspension.

2.19. Restitution: In all cases in which the proof establishes that the Respondent's misconduct involved the misappropriation of funds and the Respondent is disbarred or suspended, the panel's judgment must require the Respondent to make restitution during the period of suspension, or before any consideration of reinstatement from disbarment, and must further provide that its judgment of suspension shall remain in effect until evidence of satisfactory restitution is made by Respondent and verified by the Chief Disciplinary Counsel.

2.20. Notice of Decision: The Complainant, the Respondent, and the Commission must be notified in writing of the judgment of the Evidentiary Panel. The notice sent to the Respondent and the Commission must clearly state that any appeal of the judgment must be filed with the Board of Disciplinary Appeals within thirty days of the date of the notice. If the Evidentiary Panel finds that the Respondent committed professional misconduct, a copy of the Evidentiary Petition and the judgment shall be transmitted by the Office of the Chief Disciplinary Counsel to the Clerk of the Supreme Court. The Clerk of the Supreme Court shall make an appropriate notation on the Respondent's permanent record.

2.21. Post Judgment Motions: Any motion for new hearing or motion to modify the judgment must comport with the provisions of the applicable Texas Rules of Civil Procedure pertaining to motions for new trial or to motions to modify judgments.

2.22. Probated Suspension–Revocation Procedure: If all or any part of a suspension from the practice of law is probated under this Part II, the Board of Disciplinary Appeals is hereby granted jurisdiction for the full term of suspension, including any probationary period, to hear a motion to revoke probation. If the Chief Disciplinary Counsel files a motion to revoke probation, it shall be set for hearing within thirty days of service of the motion upon the Respondent. Service upon the Respondent shall be sufficient if made in accordance with Rule 21a of the Texas Rules of Civil Procedure. Upon proof, by a preponderance of the evidence, of a violation of probation, the same shall be revoked and the attorney suspended from the practice of law for the full term of suspension without credit for any probationary time served. The Board of Disciplinary Appeals’ Order revoking a probated suspension cannot be superseded or stayed.

2.23. Appeals by Respondent or Commission: The Respondent or Commission may appeal the judgment to the Board of Disciplinary Appeals. Such appeals must be on the record, determined under the standard of substantial evidence. Briefs may be filed as a matter of right. The time deadlines for such briefs shall be promulgated by the Board of Disciplinary Appeals. An appeal, if taken, is perfected when a written notice of appeal is filed with the Board of Disciplinary Appeals. The notice of appeal must reflect the intention of the Respondent or the Commission to appeal and identify the decision from which appeal is perfected. The notice of appeal must be filed within thirty days after the date of judgment, except that the notice of appeal must be filed within ninety days after the date of judgment if any party timely files a motion for new trial or a motion to modify the judgment.

2.24. No Supersedeas: An Evidentiary Panel’s order of disbarment cannot be superseded or stayed. The Respondent may within thirty days from entry of judgment petition the Evidentiary Panel to stay a judgment of suspension. The Respondent carries the burden of proof by preponderance of the evidence to establish by competent evidence that the Respondent’s continued practice of law does not pose a continuing threat to the welfare of Respondent’s clients or to the public. An order of suspension must be stayed during the pendency of any appeals therefrom if the Evidentiary Panel finds that the Respondent has met that burden of proof. An Evidentiary Panel may condition its stay upon reasonable terms, which may include, but are not limited to, the cessation of any practice found to constitute Professional Misconduct, or it may impose a requirement of an affirmative act such as an audit of a Respondent’s client trust account.

2.25. Disposition on Appeal: The Board of Disciplinary Appeals may, in any appeal of the judgment of an Evidentiary Panel within its jurisdiction:

- A. Affirm the decision of the Evidentiary Panel, in whole or in part;
- B. Modify the Evidentiary Panel’s judgment and affirm it as modified;
- C. Reverse the decision of the Evidentiary Panel, in whole or in part, and render the

judgment that the Evidentiary Panel should have rendered;

- D. Reverse the Evidentiary Panel’s judgment and remand the Disciplinary Proceeding for further proceeding by either the Evidentiary Panel or a statewide grievance committee panel composed of members selected from state bar districts other than the district from which the appeal was taken;
- E. Vacate the Evidentiary Panel’s judgment and dismiss the case; or
- F. Dismiss the appeal.

2.26. Remand to Statewide Grievance Committee Panel: In determining whether a remand is heard by a statewide grievance committee panel, the Board of Disciplinary Appeals must find that good cause was shown in the record on appeal. The Board of Disciplinary Appeals shall randomly select the members of the statewide grievance committee panel from grievance committees other than the district from which the appeal was taken. Six such members shall be selected, four of whom are attorneys and two of whom are public members. The statewide grievance committee panel, once selected, shall have all duties and responsibilities of the Evidentiary Panel for purposes of the remand.

2.27. Appeal to Supreme Court of Texas: An appeal from the decision of the Board of Disciplinary Appeals on an Evidentiary Proceeding is to the Supreme Court of Texas in accordance with Rule 7.11.

Comment: Consistent with section 81.086 of the Texas Government Code, these rules permit the Office of Chief Disciplinary Counsel to allow or require anyone involved in an investigatory hearing, a summary disposition setting, or an evidentiary hearing—including but not limited to a party, attorney, witness, court reporter, or grievance panel member—to participate remotely, such as by teleconferencing, videoconferencing, or other means. A panel may consider as evidence sworn statements or sworn testimony given remotely. The term “teleconference” in these rules includes videoconference or other remote means.

PART III. TRIAL IN DISTRICT COURT

3.01. Disciplinary Petition: If the Respondent timely elects to have the Complaint heard by a district court, with or without a jury, in accordance with Rule 2.15, the Chief Disciplinary Counsel shall, not more than sixty days after receipt of Respondent's election to proceed in district court, notify the Presiding Judge of the administrative judicial region covering the county of appropriate venue of the Respondent’s election by transmitting a copy of the Disciplinary Petition in the name of the Commission to the Presiding Judge. The petition must contain:

- A. Notice that the action is brought by the Commission for Lawyer Discipline, a committee of the State Bar.
- B. The name of the Respondent and the fact that he or she is an attorney licensed to practice law in the State of Texas.

- C. A request for assignment of an active district judge to preside in the case.
- D. Allegations necessary to establish proper venue.
- E. A description of the acts and conduct that gave rise to the alleged Professional Misconduct in detail sufficient to give fair notice to Respondent of the claims made, which factual allegations may be grouped in one or more counts based upon one or more Complaints.
- F. A listing of the specific rules of the Texas Disciplinary Rules of Professional Conduct allegedly violated by the acts or conduct, or other grounds for seeking Sanctions.
- G. A demand for judgment that the Respondent be disciplined as warranted by the facts and for any other appropriate relief.
- H. Any other matter that is required or may be permitted by law or by these rules.

3.02. Assignment of Judge:

- A. **Assignment Generally:** Upon receipt of a Disciplinary Petition, the Presiding Judge shall assign an active district judge whose district does not include the county of appropriate venue to preside in the case. An assignment of a judge from another region shall be under Chapter 74, Government Code. The Presiding Judge shall transmit a copy of the Presiding Judge's assignment order to the Chief Disciplinary Counsel. Should the judge so assigned be unable to fulfill the assignment, he or she shall immediately notify the Presiding Judge, and the Presiding Judge shall assign a replacement judge whose district does not include the county of appropriate venue. A judge assigned under this Rule shall be subject to recusal or disqualification as provided by the Texas Rules of Civil Procedure and the laws of this state. The motion seeking recusal or motion to disqualify must be filed by either party within the time provided by Rule 18a, Texas Rules of Civil Procedure. In the event of recusal or disqualification, the Presiding Judge shall assign a replacement judge whose district does not include the county of appropriate venue. If an active district judge assigned to a disciplinary case becomes a retired, senior, or former judge, he or she may be assigned by the Presiding Judge to continue to preside in the case, provided the judge has been placed on a visiting judge list. If the Presiding Judge decides not to assign the retired, senior, or former judge to continue to preside in the case, the Presiding Judge shall assign an active district judge whose district does not include the county of appropriate venue. A visiting judge may only be assigned if he or she was originally assigned to preside in the case while an active judge. Any judge assigned under this Rule is not subject to objection under Chapter 74, Government Code.

- B. **Transfer of Case:** If the county of alleged venue is successfully challenged, the case shall be transferred to the county of proper venue. If the case is transferred to a county in the assigned judge's district, the judge must recuse himself or herself, unless the parties waive the recusal on the record. In the event of recusal, the Presiding Judge of the administrative judicial region shall assign a replacement judge whose district does not include the county of appropriate venue. If the case is transferred to a county outside the administrative judicial region of the Presiding Judge who made the assignment, the Presiding Judge of the administrative judicial region where the case is transferred shall oversee assignment for the case and the previously assigned judge shall continue to preside in the case unless he or she makes a good cause objection to continued assignment, in which case the Presiding Judge shall assign a replacement judge whose district does not include the county of appropriate venue.

3.03. Filing, Service and Venue: After the trial judge has been assigned, the Chief Disciplinary Counsel shall promptly file the Disciplinary Petition and a copy of the Presiding Judge's assignment order with the district clerk of the county of alleged venue. The Respondent shall then be served as in civil cases generally with a copy of the Disciplinary Petition and a copy of the Presiding Judge's assignment order. In a Disciplinary Action, venue shall be in the county of Respondent's principal place of practice; or if the Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent's residence; or if the Respondent maintains neither a residence nor a place of practice within the State of Texas, then in the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas.

3.04. Answer of the Respondent: The answer of the Respondent must follow the form of answers in civil cases generally and must be filed no later than 10:00 a.m. on the first Monday following the expiration of twenty days after service upon the Respondent.

3.05. Discovery: Discovery is to be conducted as in civil cases generally, except that the following matters are not discoverable:

- A. The discussions, thought processes, and individual votes of the members of a Summary Disposition Panel.
- B. The thought processes of the Chief Disciplinary Counsel.
- C. Any communication to or from the Chief Disciplinary Counsel that would be privileged in the case of a private attorney representing a private litigant.

3.06. Trial by Jury: In a Disciplinary Action, either the Respondent or the Commission shall have the right to a jury trial upon timely payment of the required fee and compliance with the provisions of Rule 216, Texas Rules of Civil Procedure. The Complainant has no right to demand a jury trial.

3.07. Trial Setting: Disciplinary Actions shall be set for trial on a date not later than 180 days

after the date the answer is filed, except for good cause shown. If the Respondent fails to answer, a default may be taken at any time appropriate under the Texas Rules of Civil Procedure. No motion for continuance, resetting, or agreed pass may be granted unless required by the interests of justice.

3.08. Additional Rules of Procedure in the Trial of Disciplinary Actions: In all Disciplinary Actions brought under this part, the following additional rules apply:

- A. Disciplinary Actions are civil in nature.
- B. Except as varied by these rules, the Texas Rules of Civil Procedure apply.
- C. Disciplinary Actions must be proved by a preponderance of the evidence.
- D. The burden of proof in a Disciplinary Action seeking Sanction is on the Commission. The burden of proof in reinstatement cases is upon the applicant.
- E. The parties to a Disciplinary Action may not seek abatement or delay of trial because of substantial similarity to the material allegations in any other pending civil or criminal case.
- F. The unwillingness or neglect of a Complainant to assist in the prosecution of a Disciplinary Action, or a compromise and settlement between the Complainant and the Respondent, does not alone justify the abatement or dismissal of the action.
- G. It shall be the policy of the Commission to participate in alternative dispute resolution procedures where feasible; provided, however, that Disciplinary Actions shall be exempt from any requirements of mandatory alternative dispute resolution procedures as provided by Chapter 154 of the Civil Practice and Remedies Code or as otherwise provided by law.

3.09. Judgment: If the trial court fails to find from the evidence in a case tried without a jury, or from the verdict in a jury trial, that the Respondent's conduct constitutes Professional Misconduct, the court shall render judgment accordingly. If the court finds that the Respondent's conduct does constitute Professional Misconduct, the court shall determine the appropriate Sanction or Sanctions to be imposed. If the court finds that the Respondent committed an act or acts of Professional Misconduct, the court shall direct transmittal of certified copies of the judgment and all trial pleadings to the Clerk of the Supreme Court. The Clerk of the Supreme Court shall make an appropriate notation on the Respondent's permanent record. The trial court shall promptly enter judgment after the close of evidence (in the case of a nonjury trial) or after the return of the jury's verdict. Mandamus lies in the Supreme Court of Texas to enforce this provision, upon the petition of either the Respondent or the Chief Disciplinary Counsel.

3.10. Terms of Judgment: In any judgment of disbarment or suspension that is not stayed, the court shall order the Respondent to surrender his or her law license and permanent State Bar

card to Chief Disciplinary Counsel for transmittal to the Clerk of the Supreme Court. In all judgments imposing disbarment or suspension, the court shall enjoin the Respondent from practicing law or from holding himself or herself out as an attorney eligible to practice law during the period of disbarment or suspension. In all judgments of disbarment, suspension, or reprimand, the court shall make all other orders as it finds appropriate, including probation of all or any portion of suspension. The continuing jurisdiction of the trial court to enforce a judgment does not give a trial court authority to terminate or reduce a period of active or probated suspension previously ordered.

3.11. Restitution: In all cases in which the proof establishes that the Respondent's conduct involved misapplication of funds and the judgment is one disbaring or suspending the Respondent, the judgment must require the Respondent to make restitution during the period of suspension, or before any consideration of reinstatement from disbarment, and shall further provide that a judgment of suspension shall remain in effect until proof is made of complete restitution.

3.12. Probation Suspension–Revocation Procedure: If all or any part of a suspension from the practice of law is probated under this Part III, the court retains jurisdiction during the full term of suspension, including any probationary period, to hear a motion to revoke probation. If the Chief Disciplinary Counsel files a motion to revoke probation, it shall be set for hearing before the court without the aid of a jury within thirty days of service of the motion upon the Respondent. Service upon the Respondent shall be sufficient if made in accordance with Rule 21a of the Texas Rules of Civil Procedure. Upon proof by a preponderance of the evidence of a violation of probation, the same shall be revoked and the attorney suspended from the practice of law for the full term of suspension without credit for any probationary time served.

3.13. No Supersedeas: A district court judgment of disbarment or an order revoking probation of a suspension from the practice of law cannot be superseded or stayed. The Respondent may within thirty days from entry of judgment petition the court to stay a judgment of suspension. The Respondent carries the burden of proof by preponderance of the evidence to establish by competent evidence that the Respondent's continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public. A judgment of suspension shall be stayed during the pendency of any appeals therefrom if the district court finds that the Respondent has met that burden of proof. The district court may condition its stay upon reasonable terms, which may include, but are not limited to, the cessation of any practice found to constitute Professional Misconduct, or it may impose a requirement of an affirmative act such as an audit of a Respondent's client trust account. There is no interlocutory appeal from a court's stay of a suspension, with or without conditions.

3.14. Exemption from Cost and Appeal Bond: No cost or appeal bond is required of the Chief Disciplinary Counsel or the Commission. In lieu thereof, when a cost or appeal bond would be otherwise required, a memorandum setting forth the exemption under this rule, when filed, suffices as a cost or appeal bond.

3.15. Appeals: A final judgment of the district court and any order revoking or refusing to revoke probation of a suspension from the practice of law may be appealed as in civil cases

generally.

PART IV. THE COMMISSION FOR LAWYER DISCIPLINE

4.01. Composition and Membership: The Commission for Lawyer Discipline is hereby created as a permanent committee of the State Bar and is not subject to dissolution by the Board under Article VIII of the State Bar Rules. The Commission must be composed of twelve members. Six members shall be attorneys licensed to practice law in the State of Texas and in good standing as members of the State Bar. Six members shall be public members who have, other than as consumers, no interest, direct or indirect, in the practice of law or the profession of law. No person may serve as a member of the Commission while he or she is a member of a Committee, an officer or Director of the State Bar, an employee of the State Bar, or an officer or director of the Texas Young Lawyers Association; provided, however, the Chairman of the Board of the State Bar shall appoint a Director of the State Bar as an adviser to the Commission and a Director of the State Bar as an alternate adviser to the Commission, and the President of the Texas Young Lawyers Association shall appoint a Director of the Texas Young Lawyers Association as an adviser to the Commission. Members of the Commission and its advisers will be compensated for their reasonable, actual, and necessary expenses, and members, but not advisers, will be compensated for their work as determined by the Board to be appropriate.

4.02. Appointment and Terms: Except for initial appointments as set forth in Rule 4.03 hereof, Commission members will serve three-year terms unless sooner terminated through disqualification, resignation, or other cause. Terms begin on September 1 of the year and expire on August 31 of the third year thereafter. The lawyer members of the Commission are appointed by the President of the State Bar, subject to the Board's concurrence, no later than June 1 of the year. The public members are appointed by the Supreme Court of Texas no later than June 1 of the year. Members may be removed by the Supreme Court, but only for good cause. Vacancies are to be filled in the same manner as term appointments but are only for the unexpired term of the position vacated. Members of the Commission are not eligible for reappointment to more than one additional three-year term.

4.03. Initial Appointments: Two lawyers shall initially be appointed for a term to expire on August 31 after at least twelve months of service; two lawyers shall initially be appointed for a term to expire on August 31 after twenty-four months of service; and two lawyers shall initially be appointed for a term to expire on August 31 after thirty-six months of service. One public member shall initially be appointed for a term to expire on August 31 after at least twelve months of service; one public member shall initially be appointed for a term to expire on August 31 after twenty-four months of service; and one public member shall initially be appointed for a term to expire on August 31 after thirty-six months of service. After the terms provided above, all terms shall be as provided in Rule 4.02.

4.04. Oath of Committee Members: As soon as possible after appointment, each newly appointed member of the Commission for Lawyer Discipline shall take the following oath to be administered by any person authorized by law to administer oaths:

“I do solemnly swear (or affirm) that I will faithfully execute my duties as a member of the Commission for Lawyer Discipline, as required by the Texas Rules of Disciplinary Procedure, and will, to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of the State of Texas. I further solemnly swear (or affirm) that I will keep secret all such matters and things as shall come to my knowledge as a member of the Commission for Lawyer Discipline arising from or in connection with each Disciplinary Action and Disciplinary Proceeding unless permitted to disclose the same in accordance with the Rules of Disciplinary Procedure or unless ordered to do so in the course of a judicial proceeding or a proceeding before the Board of Disciplinary Appeals. I further solemnly swear (or affirm) that I have neither directly nor indirectly paid, offered, or promised to pay, contributed any money or valuable thing, or promised any public or private office to secure my appointment. So help me God.”

4.05. Chair: The President of the State Bar, subject to the concurrence of the Board, shall annually designate a lawyer member to chair the Commission and another member to serve as vice-chair, each for a one-year term.

4.06. Duties and Authority of the Commission: The Commission has the following duties and responsibilities:

- A. To exercise, in lawyer disciplinary and disability proceedings only, all rights characteristically reposed in a client by the common law of this State for all Complaints not dismissed after an investigatory hearing, resolved through a negotiated judgment entered by an Investigatory Panel, or dismissed by the Summary Disposition Panel.
- B. To monitor and, from time to time as appropriate, to evaluate and report to the Board on the performance of the Chief Disciplinary Counsel.
- C. To retain special counsel or local counsel when necessary.
- D. To recommend to the Board such educational programs on legal ethics and lawyer discipline as it may consider advisable.
- E. To recommend to the Board an annual budget for the operation of the attorney professional disciplinary and disability system.
- F. To meet monthly or at such other times, in such places, and for such periods of time as the business of the Commission requires.
- G. To draft and recommend for adoption to the Board the Commission's internal operating rules and procedures, which rules and procedures, as adopted by the Board, will then be submitted to the Supreme Court for approval and, after approval, be published in the Texas Bar Journal.

- H. To recommend to the Board the removal, for cause, of members of Committees.
- I. To refer to an appropriate disability screening committee information coming to its attention indicating that an attorney is disabled physically, mentally, or emotionally, or by the use or abuse of alcohol or other drugs.
- J. To report to the Board, at each regular meeting, and to the Grievance Oversight Committee, at least annually, on the state of the attorney professional disciplinary and disability system and to make recommendations and proposals to the Board on the refinement and improvement of the system.
- K. To formulate and recommend to the Board for adoption a system for monitoring disabled lawyers.
- L. To notify each jurisdiction in which an attorney is admitted to practice law of any Sanction imposed in this State, other than a private reprimand (which may include restitution and payment of Attorneys' Fees), and any disability suspension, resignation, and reinstatement.
- M. To provide statistics and reports on lawyer discipline to the National Discipline Data Bank maintained by the American Bar Association.
- N. To maintain, subject to the limitations elsewhere herein provided, permanent records of disciplinary and disability matters; and to transmit notice of all public discipline imposed against an attorney, suspensions due to Disability, and reinstatements to the National Discipline Data Bank maintained by the American Bar Association.
- O. To make recommendations to the Board on the establishment and maintenance of regional offices as required for the expeditious handling of Inquiries, Complaints, and other disciplinary matters.

4.07. Meetings:

- A. Seven members shall constitute a quorum of the Commission, except that a panel of three members may consider such matters as may be specifically delegated by the Chair, or, in the absence of the Chair, the Vice-Chair, of the Commission. The Commission and each of its panels may act only with the concurrence of a majority of those members present and voting.
- B. In any event in which the Commission shall conduct business in a panel of three members, at least one of the members assigned to each such panel shall be a public member of the Commission.
- C. The Commission may, at the instance of the Chair, or, in the absence of the Chair,

at the instance of the Vice-Chair of the Commission, conduct its business by conference telephone calls. Any action taken in a telephone conference must be reduced to writing and signed by each participant certifying the accuracy of the written record of action taken.

4.08. Funding: The State Bar shall allocate sufficient funds to pay all reasonable and necessary expenses incurred in the discharge of the duties of the Commission; of the Chief Disciplinary Counsel; of the Board of Disciplinary Appeals; of Committees and their individual members; and of witnesses. Further, the State Bar shall allocate funds to pay all other reasonable and necessary expenses to administer the disciplinary and disability system effectively and efficiently.

4.09. Open Meetings and Open Records: The Commission is not a “governmental body” as that term is defined in Section 551.001(3) of V.T.C.A., Government Code, and is not subject to either the provisions of the Open Meetings Act or the Open Records Act.

PART V. CHIEF DISCIPLINARY COUNSEL

5.01. Selection: The General Counsel of the State Bar shall, subject to the provisions of this Rule, serve as the Chief Disciplinary Counsel under these rules. If the Commission determines that the General Counsel of the State Bar should no longer function as the Chief Disciplinary Counsel, then the Commission shall notify the Board of such decision and, in the next succeeding fiscal year of the State Bar, funds shall be provided to the Commission sufficient for it to select and hire a lawyer as Chief Disciplinary Counsel and sufficient deputies and assistants as may be required to operate the disciplinary and disability system effectively and efficiently. The Commission's determination must be made, if at all, and the notification herein provided must be given, if at all, during the months of January or February 1993, or during the same months of any odd numbered year thereafter. In such event, the Commission shall alone possess the right of selection, but nothing herein precludes its employment of the General Counsel or a member of the General Counsel's staff for such positions.

5.02. Duties: In addition to the other disciplinary duties set forth in these rules, the Chief Disciplinary Counsel shall:

- A. Review and screen all information coming to his or her attention or to the attention of the Commission relating to lawyer misconduct. Such review may encompass whatever active investigation is deemed necessary by the Chief Disciplinary Counsel independent of the filing of a writing.
- B. Reject all matters and Inquiries not constituting a Complaint and so advise the Complainant.
- C. Investigate Complaints to ascertain whether Just Cause exists. The investigation may include the issuance of subpoenas, an investigatory hearing, and the entry of a negotiated judgment by an Investigatory Panel.
- D. Recommend dismissal of a Complaint, if appropriate, to a Summary Disposition

Panel of appropriate venue.

- E. Move the Board of Disciplinary Appeals to transfer a pending Disciplinary Proceeding from one Committee to another within the same District if the Committee fails or refuses to hear the Disciplinary Proceeding.
- F. Move the Board of Disciplinary Appeals to transfer matters from one Committee to another, whether or not within the same District, when the requirements of fairness to the Complainant or the Respondent require.
- G. Represent the Commission in all Complaints, Disciplinary Proceedings and Disciplinary Actions in which the Commission is the client.
- H. When information regarding a Complaint becomes eligible for public disclosure under these rules, refer a Complaint and information related thereto to any other professional organizations or bodies that he or she deems appropriate for consultation on the nature of the Complaint, the events giving rise to the Complaint, and the proper manner of resolution of the Complaint. The Chief Disciplinary Counsel shall provide the Respondent written notice of the referral at the time it is made. Neither the Chief Disciplinary Counsel nor any person or body acting under these rules is bound by any recommendation of another professional organization to which the Complaint or related information is referred under this Rule.
- I. Present cases to Evidentiary Panels of Committees, or in a district court if such has been elected by the Respondent, as provided in these rules, unless disqualified from doing so under the Texas Disciplinary Rules of Professional Conduct.
- J. Represent the Commission, if the need arises, before all courts and administrative bodies.
- K. Notify the Respondent and the Complainant promptly of the disposition of each Complaint.
- L. Upon receiving information of a violation of any term or condition of probation by an attorney suspended from the practice of law where all or any part of the suspension has been probated, file on behalf of the Commission a motion to revoke probation. The motion must state the terms or conditions of the probation and the conduct alleged to violate the same. The Chief Disciplinary Counsel shall cause a copy of the motion to be served on the attorney involved.
- M. Perform such other duties relating to disciplinary and disability matters as may be assigned by the Commission.

5.03. **Accountability**: On disciplinary and disability matters, the Chief Disciplinary Counsel is

accountable only to the Commission.

PART VI. PUBLIC INFORMATION AND ACCESS

6.01. Availability of Materials: The Commission shall ensure that sufficient copies of these rules, the Texas Disciplinary Rules of Professional Conduct, and forms for the filing of disciplinary Grievances are made available to the public. In addition, the Commission shall make available to the public a brochure, summarizing in plain language the disciplinary and disability system for attorneys in the State of Texas. Such brochure shall be made available in English and in Spanish.

6.02. Public and Media Inquiries: The Commission shall respond, as appropriate, to all public and media inquiries concerning the operation of the attorney professional disciplinary and disability system, but in so doing may not disclose information that is confidential or privileged. The Commission shall disclose, upon proper request, information in its custody or control that is neither confidential nor privileged. Any attorney may waive confidentiality and privilege as to his or her disciplinary record by filing an appropriate waiver on a form to be prescribed by the Commission. The Commission shall maintain complete records and files of all disciplinary and disability matters and compile reports and statistics to aid in the administration of the system.

6.03. Telephone Inquiries: The Commission shall maintain a toll-free telephone number. The toll-free number shall be publicized to ensure that all Texas residents have access to it. Telephone inquiries about specific attorney conduct will not be taken, but the Commission will send a Grievance form to any person or entity inquiring by telephone.

6.04. Abstracts of Appeals: Any Disciplinary Proceeding appealed to the Board of Disciplinary Appeals shall be abstracted by the Board of Disciplinary Appeals. A copy of the abstract shall be made available to any person or other entity upon proper request and shall be published in the Texas Bar Journal. No information that is otherwise confidential may be disclosed in an abstract under these provisions.

6.05. Report to the Clerk of the Supreme Court: The final disposition of any Disciplinary Proceeding or Disciplinary Action resulting in the imposition of a Sanction other than a private reprimand (which may include restitution and payment of attorneys' fees) shall be reported by the Commission to the Clerk of the Supreme Court of Texas.

6.06. Court and Board of Disciplinary Appeals Opinions:

- A. Court Opinions: In any case arising out of a Complaint, an opinion of a court of appeals issued on or after May 1, 1992 has precedential value regardless of its designation.
- B. Board of Disciplinary Appeals Opinions: Board of Disciplinary Appeals opinions are open to the public and must be made available to public reporting services, print or electronic, for publishing. These opinions are persuasive, not precedential, in disciplinary proceedings tried in district court.

Comment to 2009 change: Rule 6.06 is divided into two subdivisions. The language in subdivision A is amended to remove an outdated reference to the official reporter system and to be consistent with Texas Rule of Appellate Procedure (TRAP) 47 amendments intended to prospectively discontinue designating opinions as either “published” or “unpublished.” The erroneously designated opinions addressed in subdivision A have precedential value from May 1, 1992 on because that is the effective date of the prior version of the rule, which mandated publication of “[a]ll cases involving the Professional Misconduct or Disability of an attorney appealed to the Courts of Appeal [sic] or to the Supreme Court of Texas.” New subdivision B addresses Board of Disciplinary Appeals (BODA) opinions and includes a distribution provision similar to TRAP 47.3. This change provides for the publication of BODA opinions issued in any type of case, whether pursuant to BODA's original or appellate jurisdiction.

6.07. Publication of Disciplinary Results: The final disposition of all Disciplinary Proceedings and Disciplinary Actions shall be reported in the Texas Bar Journal, and shall be sent for publication to a newspaper of general circulation in the county of the disciplined attorney's residence or office. Private reprimands (which may include restitution and payment of attorneys' fees) shall be published in the Texas Bar Journal with the name of the attorney deleted. The Commission shall report all public discipline imposed against an attorney, suspensions due to Disability, and reinstatements to the National Discipline Data Bank of the American Bar Association.

6.08. Access to Confidential Information: No officer or Director of the State Bar or any appointed adviser to the Commission shall have access to any confidential information relating to any Disciplinary Proceeding, Disciplinary Action, or Disability suspension. The Office of Chief Disciplinary Counsel may provide this information to authorized agencies investigating qualifications for admission to practice, attorney discipline enforcement agencies, law enforcement agencies, the State Bar's Client Security Fund, the State Bar's Lawyer Assistance Program, the Supreme Court's Unauthorized Practice of Law Committee and its subcommittees and the Commission on Judicial Conduct.

PART VII. BOARD OF DISCIPLINARY APPEALS

7.01. Membership: The Board of Disciplinary Appeals is hereby established. Its members shall be appointed by the Supreme Court of Texas. The Board of Disciplinary Appeals shall consist of twelve lawyer members with not more than eight of such members being residents of Harris, Dallas, Tarrant, Travis, or Bexar Counties, Texas, and with no more than two members from any one county. The term of office of all members of the Board of Disciplinary Appeals shall be for three years. Members are eligible for appointment to one additional three-year term. Members appointed to fill an unexpired term shall be eligible for reappointment for two subsequent terms. Vacancies shall be filled by appointment of the Supreme Court of Texas. Each member shall continue to perform the duties of office until his or her successor is duly qualified. No person may simultaneously be a member of the Board of Disciplinary Appeals and either the Commission, the Board, or a Committee.

7.02. Initial Appointments: Three lawyers shall initially be appointed for a term to expire on

August 31 after at least twelve months of service; three lawyers shall initially be appointed for a term to expire on August 31 after twenty-four months of service; and three lawyers shall initially be appointed for a term to expire on August 31 after thirty-six months of service. After the terms provided above, all terms shall be as provided in Rule 7.01.

7.03. Election of Officers: The Board of Disciplinary Appeals shall annually elect members as chair and vice-chair. The chair, or in his or her absence the vice-chair, shall perform the duties normally associated with that office and shall preside over all en banc meetings of the Board of Disciplinary Appeals.

7.04. Oath of Committee Members: As soon as possible after appointment, each newly appointed member of the Board of Disciplinary Appeals shall take the following oath to be administered by any person authorized by law to administer oaths:

“I do solemnly swear (or affirm) that I will faithfully execute my duties as a member of the Board of Disciplinary Appeals, as required by the Texas Rules of Disciplinary Procedure, and will, to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of the State of Texas. I further solemnly swear (or affirm) that I will keep secret all such matters and things as shall come to my knowledge as a member of the Board of Disciplinary Appeals arising from or in connection with each Disciplinary Action and Disciplinary Proceeding unless permitted to disclose the same in accordance with the Rules of Disciplinary Procedure or unless ordered to do so in the course of a judicial proceeding or a proceeding before the Board of Disciplinary Appeals. I further solemnly swear (or affirm) that I have neither directly nor indirectly paid, offered, or promised to pay, contributed any money or valuable thing, or promised any public or private office to secure my appointment. So help me God.”

7.05. Quorum: Six members constitute a quorum of the Board of Disciplinary Appeals, except that a panel of three members may hear appeals and such other matters as may be specifically delegated to it by the Chair. The Board of Disciplinary Appeals and each of its panels may act only with the concurrence of a majority of those members present and voting.

7.06. Compensation and Expenses: Members of the Board of Disciplinary Appeals are entitled to reasonable compensation for their services and reimbursement for travel and other expenses incident to the performance of their duties.

7.07. Recusal and Disqualification of Members: Board of Disciplinary Appeals members shall refrain from taking part in any matter before the Board of Disciplinary Appeals [proceeding] in which recusal or disqualification would be required of a judge similarly situated.

7.08. Powers and Duties: The Board of Disciplinary Appeals shall exercise the following powers and duties:

A. Propose rules of procedure and administration for its own operation to the

Supreme Court of Texas for promulgation.

- B. Review the operation of the Board of Disciplinary Appeals and periodically report to the Supreme Court and to the Board.
- C. Affirm or reverse a determination by the Chief Disciplinary Counsel that a statement constitutes an Inquiry as opposed to a Complaint.
- D. Hear and determine appeals by the Respondent or the Commission on the record from the judgment of an Evidentiary Panel. The appellate determination must be made in writing and signed by the chair or vice-chair of the Board of Disciplinary Appeals, or other person presiding.
- E. Transfer any pending Disciplinary Proceeding from one Committee to another within the same District if the one Committee fails or refuses to hear the Disciplinary Proceeding.
- F. Transfer matters from one Committee to another, whether or not within the same District, when the requirements of fairness to the Complainant or the Respondent require.
- G. Hear and determine actions for compulsory discipline under Part VIII.
- H. Hear and determine actions for reciprocal discipline under Part IX.
- I. Hear and determine actions for disability suspension under Part XII.
- J. Exercise all other powers and duties provided in these rules.

7.09. Meetings: The Board of Disciplinary Appeals shall meet en banc at least once each year at the call of its chair. Its members may meet more often en banc at the call of the chair or upon the written request to the chair of at least three of the members of the Board of Disciplinary Appeals.

7.10. Conference Calls: The Board of Disciplinary Appeals may, at the instance of the chair, conduct its business by conference telephone calls. Any action taken in a telephone conference must be reduced to writing and signed by each participant certifying the accuracy of the written record of action taken.

7.11. Judicial Review: An appeal from a determination of the Board of Disciplinary Appeals shall be to the Supreme Court. Within fourteen days after receipt of notice of a final determination by the Board of Disciplinary Appeals, the party appealing must file a notice of appeal directly with the Clerk of the Supreme Court. The record must be filed within sixty days after the Board of Disciplinary Appeals' determination. The appealing party's brief is due thirty days after the record is filed, and the responding party's brief must be filed within thirty days thereafter. Except as herein expressly provided, the appeal must be made pursuant to the then

applicable Texas Rules of Appellate Procedure. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court may affirm a decision on the Board of Disciplinary Appeals by order without written opinion. Determinations by the Board of Disciplinary Appeals that a statement constitutes an Inquiry or transferring cases are conclusive, and may not be appealed to the Supreme Court.

7.12. Open Meetings and Open Records: The Board of Disciplinary Appeals is not a “governmental body” as that term is defined in Section 551.001 or Section 552.003 of V.T.C.A., Government Code, and is not subject to either the provisions of the Open Meetings Act or the Open Records Act.

Comment: These rules permit the Board of Disciplinary Appeals, upon decision of its chair, to allow or require anyone involved in a matter before the Board—including but not limited to a party, attorney, witness, court reporter, or Board member—to participate remotely, such as by teleconferencing, videoconferencing, or other means. The Board may consider as evidence sworn statements or sworn testimony given remotely.

PART VIII. COMPULSORY DISCIPLINE

8.01. Generally: When an attorney licensed to practice law in Texas has been convicted of an Intentional Crime or has been placed on probation for an Intentional Crime with or without an adjudication of guilt, the Chief Disciplinary Counsel shall initiate a Disciplinary Action seeking compulsory discipline pursuant to this part. The completion or termination of any term of incarceration, probation, parole, or any similar court ordered supervised period does not bar action under Part VIII of these rules as hereinafter provided. Proceedings under this part are not exclusive in that an attorney may be disciplined as a result of the underlying facts as well as being disciplined upon the conviction or probation through deferred adjudication.

8.02. Conclusive Evidence: In any Disciplinary Action brought under this part, the record of conviction or order of deferred adjudication is conclusive evidence of the attorney's guilt.

8.03. Commencement of Suit: A Disciplinary Action under this part must be initiated by the filing of a petition with the Board of Disciplinary Appeals. The petition must allege the adjudication of guilt (or probation without an adjudication of guilt) of an Intentional Crime; allege that the Respondent is the same person as the party adjudicated guilty or who received probation with or without an adjudication of guilt for such Intentional Crime; and seek the appropriate discipline.

8.04. Procedure: The Board of Disciplinary Appeals shall hear and determine all questions of law and fact. When an attorney has been convicted of an Intentional Crime or has been placed on probation for an Intentional Crime without an adjudication of guilt, he or she shall be suspended as an attorney licensed to practice law in Texas during the appeal of the conviction or the order of deferred adjudication. Upon introduction into evidence of a certified copy of the judgment of conviction or order of deferred adjudication and a certificate of the Clerk of the Supreme Court that the attorney is licensed to practice law in Texas, the Board of Disciplinary Appeals shall immediately determine whether the attorney has been convicted of an Intentional

Crime or granted probation without an adjudication of guilt for an Intentional Crime. Uncontroverted affidavits that the attorney is the same person as the person convicted or granted probation without an adjudication of guilt are competent and sufficient evidence of those facts. Nothing in these rules prohibits proof of the necessary elements in such Disciplinary Action by competent evidence in any other manner permitted by law. The Board of Disciplinary Appeals shall sit, hear and determine whether the attorney should be disciplined and enter judgment accordingly within forty-five days of the answer day; however, any failure to do so within the time limit will not affect its jurisdiction to act. Any suspension ordered during the appeal of a criminal conviction or probation without an adjudication of guilt is interlocutory and immediately terminates if the conviction or probation is set aside or reversed.

8.05. Disbarment: When an attorney has been convicted of an Intentional Crime, and that conviction has become final, or the attorney has accepted probation with or without an adjudication of guilt for an Intentional Crime, the attorney shall be disbarred unless the Board of Disciplinary Appeals, under Rule 8.06, suspends his or her license to practice law. If the attorney's license to practice law has been suspended during the appeal of the criminal conviction, the Chief Disciplinary Counsel shall file a motion for final judgment of disbarment with the Board of Disciplinary Appeals. If the motion is supported by affidavits or certified copies of court documents showing that the conviction has become final, the motion shall be granted without hearing, unless within ten days following the service of the motion pursuant to Rule 21a of the Texas Rules of Civil Procedure, upon the attorney so convicted or his or her attorney of record, the attorney so convicted files a verified denial contesting the finality of the judgment, in which event the Board of Disciplinary Appeals will immediately conduct a hearing to determine the issue. If no Disciplinary Action is pending at the time the conviction becomes final, disbarment shall be initiated by filing a Disciplinary Action.

8.06. Suspension: If an attorney's sentence upon conviction of a Serious Crime is fully probated, or if an attorney receives probation through deferred adjudication in connection with a Serious Crime, the attorney's license to practice law shall be suspended during the term of probation. If an attorney is suspended during the term of probation, the suspension shall be conditioned upon the attorney's satisfactorily completing the terms of probation. If probation is revoked, the attorney shall be disbarred. An early termination of probation does not result in reinstatement until the entire probationary period, as originally assessed, has expired.

8.07. Early Termination: An early termination of criminal probation shall have no effect on any judgment entered pursuant to Part VIII.

8.08. No Supersedeas: In compulsory discipline cases, either party shall have the right to appeal to the Supreme Court of Texas but no Respondent suspended or disbarred by the Board of Disciplinary Appeals shall be entitled to practice law in any form while the appeal is pending and shall have no right to supersede the judgment by bond or otherwise.

PART IX. RECIPROCAL DISCIPLINE

9.01. Orders From Other Jurisdictions: Upon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, including by any

federal court or federal agency, the Chief Disciplinary Counsel shall diligently seek to obtain a certified copy of the order or judgment of discipline from the other jurisdiction, and file it with the Board of Disciplinary Appeals along with a petition requesting that the attorney be disciplined in Texas. A certified copy of the order or judgment is prima facie evidence of the matters contained therein, and a final adjudication in another jurisdiction that an attorney licensed to practice law in Texas has committed Professional Misconduct is conclusive for the purposes of a Disciplinary Action under this Part, subject to the defenses set forth in Rule 9.04 below. For purposes of this Part, “discipline” by a federal court or federal agency means a public reprimand, suspension, or disbarment; the term does not include a letter of “warning” or “admonishment” or a similar advisory by a federal court or federal agency.

9.02. Notice to the Respondent: Upon the filing of the petition, the Board of Disciplinary Appeals shall issue a notice to the attorney, containing a copy of the petition, a copy of the order or judgment from the other jurisdiction, and an order directing the attorney to show cause within thirty days from the date of the mailing of the notice why the imposition of the identical discipline in this state would be unwarranted.

9.03. Discipline to be Imposed: If the attorney fails to file his or her answer with the Board of Disciplinary Appeals within the thirty-day period provided by Rule 9.02, the Board of Disciplinary Appeals shall enter a judgment imposing discipline identical, to the extent practicable, with that imposed in the other jurisdiction. If the attorney files an answer, the Board of Disciplinary Appeals shall proceed to determine the case upon the pleadings, the evidence, and the briefs, if any.

9.04. Defenses: If the Respondent files an answer, he or she shall allege, and thereafter be required to prove, by clear and convincing evidence, to the Board of Disciplinary Appeals one or more of the following defenses to avoid the imposition of discipline identical, to the extent practicable, with that directed by the judgment of the other jurisdiction:

- A. That the procedure followed in the other jurisdiction on the disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.
- B. That there was such an infirmity of proof establishing the misconduct in the other jurisdiction as to give rise to the clear conviction that the Board of Disciplinary Appeals, consistent with its duty, should not accept as final the conclusion on the evidence reached in the other jurisdiction.
- C. That the imposition by the Board of Disciplinary Appeals of discipline identical, to the extent practicable, with that imposed by the other jurisdiction would result in grave injustice.
- D. That the misconduct established in the other jurisdiction warrants substantially different discipline in this state.
- E. That the misconduct for which the attorney was disciplined in the other

jurisdiction does not constitute Professional Misconduct in this state.

If the Board of Disciplinary Appeals determines that one or more of the foregoing defenses have been established, it shall enter such orders as it deems necessary and appropriate.

PART X. RESIGNATION IN LIEU OF DISCIPLINE

10.01. Disciplinary Resignation: Any person licensed to practice law in the State of Texas shall be permitted to file a motion for resignation in lieu of discipline, in a form promulgated by the Commission, in the Supreme Court of Texas, attaching thereto his or her Texas law license and permanent State Bar membership card.

10.02. Response of Chief Disciplinary Counsel: The Chief Disciplinary Counsel shall, within twenty days after service upon him or her of a motion for resignation in lieu of discipline, file a response on behalf of the State Bar (acting through the Commission) stating whether the acceptance of the resignation is in the best interest of the public and the profession and setting forth a detailed statement of the Professional Misconduct with which the movant is charged. The movant may, within ten days after service of such response, withdraw the motion. If a motion to withdraw is not timely filed, the detailed statement of Professional Misconduct shall be deemed to have been conclusively established for all purposes.

10.03. Effect of Filing: The filing of a motion for resignation in lieu of discipline does not, without the consent of the Chief Disciplinary Counsel, serve to delay or abate any then pending Grievance, Complaint, Disciplinary Proceeding, Disciplinary Action or disciplinary investigation.

10.04. Acceptance of Resignation and Notification: Any motion to resign in lieu of discipline under this part must be filed in the Supreme Court and is ineffective until and unless accepted by written order of the Supreme Court. The movant; the Evidentiary Panel Chair, if any; the Commission; and the Complainant, if any, shall be notified by the Chief Disciplinary Counsel of the Court's disposition of such motion.

10.05. Effect of Resignation: Any resignation under this part shall be treated as a disbarment for all purposes, including client notification, discontinuation of practice, and reinstatement.

PART XI. REINSTATEMENT AFTER DISBARMENT OR RESIGNATION

11.01. Eligibility and Venue: A disbarred person or a person who has resigned in lieu of discipline may, at any time after the expiration of five years from the date of final judgment of disbarment or the date of Supreme Court order accepting resignation in lieu of discipline, petition the district court of the county of his or her residence for reinstatement; provided, however, that no person who has been disbarred or resigned in lieu of discipline by reason of conviction of or having been placed on probation without an adjudication of guilt for an Intentional Crime or a Serious Crime, is eligible to apply for reinstatement until five years following the date of completion of sentence, including any period of probation and/or parole. If, at the time the petition for reinstatement is filed, the disbarred person or person who has

resigned in lieu of discipline is a nonresident of the State of Texas, then the petition shall be filed in Travis County, Texas.

11.02. Petition for Reinstatement: A petition for reinstatement shall be verified and shall set forth all the following information:

- A. The name, age, and residential address of the petitioner.
- B. The offenses, misconduct, or convictions upon which the disbarment or resignation was based.
- C. The name of the body or entity where the Disciplinary Proceeding or Disciplinary Action was adjudicated and the identity of the Committee before whom the Just Cause hearing was held, if any.
- D. A statement that the petitioner has made restitution to all persons, if any, naming them and their current addresses, who may have suffered financial loss by reason of the offenses, misconduct, or Serious Crimes for which the petitioner was disbarred or resigned, and that the petitioner has paid all costs and fines assessed in connection with the Disciplinary Proceeding or Disciplinary Action that resulted in his or her disbarment or resignation.
- E. A statement that at the time of the filing of the petition the petitioner is of good moral character, possesses the mental and emotional fitness to practice law, and during the five years immediately preceding the filing of the petition, has been living a life of exemplary conduct.
- F. A statement that the petitioner has recently read and understands the Texas Disciplinary Rules of Professional Conduct; that he or she has recently read and understands the Texas Lawyer's Creed – A Mandate For Professionalism; that he or she has a current knowledge of the law; and that the public and profession will be served by the petitioner's reinstatement.
- G. A listing of the petitioner's occupations from the date of disbarment or resignation, including the names and current addresses of all partners, associates, and employers, if any, and the dates and duration of all such relationships and employment.
- H. A statement listing all residences maintained from the date of disbarment or resignation, and the current names and addresses of all landlords.
- I. A statement of the dates, cause numbers, courts, and the general nature of all civil actions in which the petitioner was a party or in which he or she claimed an interest, and that were pending at any time from the date of disbarment or resignation.

- J. A statement of the dates, cause numbers, courts, the general nature and disposition of all matters pending at any time from the date of disbarment or resignation and involving the prosecution of the petitioner for any crime, felony, or misdemeanor, together with the names and current addresses of all complaining persons in each such matter.
- K. A statement whether any application for a license requiring proof of good moral character for its procurement was filed at any time after the disbarment or resignation and, for each application, the name and address of the licensing authority and the disposition of the application.
- L. A statement explaining any proceeding after the date of disbarment or resignation concerning the petitioner's standing as a member of any profession or organization or holder of any license or office that involved censure, removal, suspension of license, revocation of any license, or discipline of the petitioner and the disposition thereof, and the name and address of each authority in possession of the records.
- M. A statement whether any allegations or charges, formal or informal, of fraud were made or claimed against the petitioner at any time after the disbarment or resignation and the names and current addresses of the persons or entities making such allegations or charges. The petitioner has a duty to amend and keep current all information in the petition until the petition has been heard and determined by the trial court.

11.03. Burden of Proof: The petitioner has the burden of establishing by a preponderance of the evidence that the best interests of the public and the profession, as well as the ends of justice, would be served by his or her reinstatement. The court shall deny the petition for reinstatement if it contains any false statement of a material fact or if the petitioner fails to meet the burden of proof.

11.04. Notice and Procedure: The petitioner shall serve notice of a petition for reinstatement by U.S. certified mail, return receipt requested, on the Chief Disciplinary Counsel and shall publish the notice as a paid classified announcement in the Texas Bar Journal. After the filing of the petition and service, the Texas Rules of Civil Procedure shall apply except when in conflict with these rules. All questions of fact and law shall be determined by the trial court without the aid of a jury.

11.05. Relevant Factors to be Considered: In determining the petitioner's fitness for reinstatement, in addition to any other relevant matters, the trial court may consider:

- A. Evidence concerning the nature and degree of Professional Misconduct for which the petitioner was disbarred or resigned and the circumstances attending the offenses.
- B. The petitioner's understanding of the serious nature of the acts for which he or

she was disbarred or resigned.

- C. The petitioner's conduct during the Disciplinary Proceeding and Disciplinary Action.
- D. The profit to the petitioner and the hardship to others.
- E. The petitioner's attitude toward the administration of justice and the practice of law.
- F. The petitioner's good works and other accomplishments.
- G. Any other evidence relevant to the issues of the petitioner's fitness to practice law and the likelihood that the petitioner will not engage in further misconduct.

11.06. Judgment and Conditions: If the court is satisfied after hearing all the evidence, both in support and in opposition to the petition, that the material allegations of the petition are true and that the best interests of the public and the profession, as well as the ends of justice, will be served, the court may render judgment authorizing the petitioner to be reinstated upon his or her compliance within eighteen months from the date of the judgment with Rule II of the Rules Governing Admission to the Bar of Texas in effect as of the date upon which judgment authorizing reinstatement is entered. The judgment shall direct the Board of Law Examiners to admit the petitioner to a regularly scheduled bar examination in accordance with that Board's rules and procedures relating to the examination of persons who have not previously been licensed as lawyers in Texas or in any other state. No judgment of reinstatement may be rendered by default. If after hearing all the evidence the court determines that the petitioner is not eligible for reinstatement, the court may, in its discretion, either enter a judgment denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof that he or she has satisfied the requirements of these rules. The court's judgment may include such other orders as protecting the public and the petitioner's potential clients may require.

11.07. Appeal and Readmission: When a judgment has been signed in any proceeding under this part, the petitioner and the Commission shall each have a right of appeal. If the petition is granted and an appeal is perfected, the trial court's judgment shall be stayed pending resolution of the appeal. After the petitioner has complied with the terms of the judgment of reinstatement and with this part, he or she shall furnish the Commission with a certified copy of the judgment and evidence of compliance and shall pay all membership fees, license fees and assessments then owed and the costs of the reinstatement proceeding. Upon receipt of a certified copy of the judgment, evidence of compliance and proof of payment of all membership fees, license fees and assessments then owed, the Commission shall direct the Chief Disciplinary Counsel to issue a declaration of the petitioner's eligibility for licensure to the Clerk of the Supreme Court. Upon receipt of such declaration, the Clerk of the Supreme Court shall enter the name of the petitioner on the membership rolls of the Supreme Court and shall issue a new Bar card and law license in the name of the petitioner reflecting as the date of licensure the date of the declaration of eligibility. Once the petitioner has taken the attorney's oath, the new Bar card and law license

shall be delivered by the Clerk of the Supreme Court to the petitioner.

11.08. Repetitioning: If a petition for reinstatement is denied after a hearing on the merits, the petitioner is not eligible to file another petition until after the expiration of three years from the date of final judgment denying the last preceding petition.

PART XII. DISABILITY SUSPENSION

12.01. Grounds for Suspension: Any person licensed to practice law in the State of Texas shall be suspended for an indefinite period upon a finding that the attorney is suffering from a Disability.

12.02. Procedure: Should the Chief Disciplinary Counsel reasonably believe based upon investigation of the Complaint that an attorney is suffering from a Disability and be authorized or directed to do so by the Commission, the Chief Disciplinary Counsel shall forward the Complaint and any other documents or statements which support a finding that the attorney is suffering from a Disability immediately to the Board of Disciplinary Appeals. Upon receipt of the Complaint and documents, the Board of Disciplinary Appeals shall forward it to a District Disability Committee to be composed of one attorney; one doctor of medicine or mental health care provider holding a doctorate degree, trained in the area of Disability; and one public member who does not have any interest, directly or indirectly, in the practice of the law other than as a consumer. The members of the District Disability Committee shall be appointed ad hoc by the chair of the Board of Disciplinary Appeals. The Board of Disciplinary Appeals may appoint any attorney to represent the interests of the disabled attorney.

12.03. District Disability Committee: The same rules regarding immunity, expenses, and confidentiality as apply to members of a Committee shall apply to the members appointed to a District Disability Committee. The District Disability Committee shall proceed in a de novo proceeding to receive evidence and determine whether the attorney is suffering from a Disability. In all cases where the referral has been made by the Chief Disciplinary Counsel, the Commission shall carry the burden of establishing by a preponderance of the evidence that the attorney suffers from a Disability. In all cases where the referral is made by an Evidentiary Panel, the party asserting that the attorney is suffering from a Disability shall carry the burden of establishing by a preponderance of the evidence that the attorney suffers from a Disability. The Respondent shall be given reasonable notice and shall be afforded an opportunity to appear before, and present evidence to, the District Disability Committee. If there is no finding of Disability by the District Disability Committee, the entire record and the finding of the District Disability Committee will be returned to the Chief Disciplinary Counsel and the matter shall continue in the disciplinary process from the point where it was referred to the Board of Disciplinary Appeals for the determination of Disability. If, however, there is a finding of Disability, the District Disability Committee shall certify the finding to the Board of Disciplinary Appeals.

12.04. Board of Disciplinary Appeals' Responsibilities: Upon receiving a finding of Disability from the District Disability Committee, the Board of Disciplinary Appeals shall immediately enter its order suspending the attorney indefinitely. The record of all proceedings on disability must be sealed and must remain confidential, except as to the Respondent; only the order of

indefinite suspension is to be made public.

12.05. Effect on Limitations: Any statute of limitations applying to a disciplinary matter is tolled during the period of any Disability suspension.

12.06. Reinstatement After Disability Suspension:

- A. **Venue:** An attorney who has been indefinitely suspended under this part may have the suspension terminated by filing a verified petition with the Board of Disciplinary Appeals or a district court. Venue of a district court action is:
 - 1. In the county, immediately prior to suspension, of the Respondent's principal place of practice.
 - 2. If the Respondent did not maintain a place of practice immediately before suspension within the State of Texas, in the county of the Respondent's residence.
 - 3. If neither 1. nor 2. applies, then in Travis County, Texas.
- B. **Petition and Service:** The petition must set out the attorney's name, address, the date, and the docket number of the suspension, a detailed description of his or her activities since the suspension, including employment, the details of any hospitalization or medical treatment, and any other matters the attorney believes entitles him or her to termination of the suspension. A copy of the petition shall be served by U.S. certified mail, return receipt requested, upon the Chief Disciplinary Counsel and the matter shall promptly thereafter be set for hearing. The petition must have the following documents attached: a certified copy of any court order pertaining to the petitioner's competence; an affidavit from a mental health care provider as to the petitioner's current condition; and a report from a physician as to the petitioner's current condition if the suspension was based in whole or in part on the abuse or use of alcohol or other drugs. Such attachments shall not constitute evidence, per se, but the attachment of the same is a requirement of pleading. In an action for reinstatement under this part, either the petitioner or the Commission shall have the right to a jury trial upon timely payment of the required fee.
- C. **Burden of Proof:** The petitioner has the burden to come forward and prove, by a preponderance of the evidence, that the reasons for suspension no longer exist and that termination of the suspension would be without danger to the public and the profession. The Board of Disciplinary Appeals or the district court, as the case may be, may order the petitioner to be examined by one or more health care providers trained in the area for which the attorney was suspended.
- D. **Time for Filing Subsequent Petitions:** A first petition for termination of suspension may be filed at any time after the petitioner's license has been suspended under this part. If the first petition is denied after a hearing, subsequent

petitions may not be filed until the expiration of one year from the date of the denial of the last preceding petition.

- E. **Judgment:** If the attorney meets the burden of proof, the Board of Disciplinary Appeals or the district court shall order a termination of the period of suspension, provided that whenever an attorney has been suspended for a period of two or more consecutive years, he or she may be required by the Board of Disciplinary Appeals or the district court, as the case may be, to obtain a passing grade on the multistate Professional Responsibility portion of the State Bar examination administered by the Board of Law Examiners, or take a prescribed course of study through a law school or through continuing legal education courses, or do both.
- F. **Disability Probation:** The Board of Disciplinary Appeals or the district court, as the case may be, may order that an attorney be placed on probation if the attorney has demonstrated each of the following:
1. The ability to perform legal services and that the attorney's continued practice of law will not cause the courts or profession to fall into disrepute.
 2. The unlikelihood of any harm to the public during the period of rehabilitation and the adequate supervision of necessary conditions of probation.
 3. A Disability that can be successfully arrested and treated while the attorney is engaged in the practice of law.

Probation shall be ordered for a specified period of time or until further order of the Board of Disciplinary Appeals or the district court, as the case may be, whenever a suspension is probated in whole or in part.

- G. **Conditions:** The order placing an attorney on Disability probation must state the conditions of probation. The conditions must take into consideration the nature and circumstances of the Professional Misconduct and the history, character, and condition of the attorney. Any or all of the following conditions, and such others as the Board of Disciplinary Appeals or the district court deems appropriate, may be imposed:
1. Periodic reports to the Chief Disciplinary Counsel.
 2. Supervision over client trust accounts as the Board of Disciplinary Appeals or the district court may direct.
 3. Satisfactory completion of a course of study.
 4. Successful completion of the multistate Professional Responsibility

Examination.

5. Restitution.
6. Compliance with income tax laws and verification of such to Chief Disciplinary Counsel.
7. Limitations on practice.
8. Psychological evaluation, counseling, and treatment.
9. The abstinence from alcohol or drugs.
10. Payment of costs (including Reasonable Attorneys' Fees and all direct expenses) associated with the proceedings.
11. Substance abuse evaluation, counseling, and treatment.
12. Participation in an Impaired Attorney Recovery and Supervision Program if such a program has been adopted by the Board of Directors of the State Bar of Texas.

H. Administration: The Chief Disciplinary Counsel is responsible for the supervision of attorneys placed on Disability probation. Where appropriate, he or she may recommend to the Board of Disciplinary Appeals or to the district court, as the case may be, the modification of the conditions and shall report any failure of the probationer to comply with the conditions of probation. Upon a showing of failure to comply with the conditions of probation, the Board of Disciplinary Appeals or the district court, as the case may be, may revoke the probation or impose such other conditions deemed necessary for the protection of the public and the rehabilitation of the attorney.

12.07. Appeals: A final judgment of the Board of Disciplinary Appeals denying a petition for reinstatement may be appealed to the Supreme Court. If such an appeal is taken, it must be filed with the Clerk of the Supreme Court within fourteen days after the receipt by the appealing party of the determination of the Board of Disciplinary Appeals. Except as herein expressly provided, an appeal must be made pursuant to the then applicable Texas Rules of Appellate Procedure. Oral argument may be granted on motion. The case shall be reviewed under the substantial-evidence rule. The Court may affirm a decision of the Board of Disciplinary Appeals by order without written opinion. A final judgment of a district court denying a petition for reinstatement may be appealed as in civil cases generally.

PART XIII. CESSATION OF PRACTICE

13.01. Notice of Attorney's Cessation of Practice: When an attorney licensed to practice law in Texas dies, resigns, becomes inactive, is disbarred, or is suspended, leaving an active client matter

for which no other attorney licensed to practice in Texas, with the consent of the client, has agreed to assume responsibility, written notice of such cessation of practice shall be mailed to those clients, opposing counsel, courts, agencies with which the attorney has matters pending, malpractice insurers, and any other person or entity having reason to be informed of the cessation of practice. If the attorney has died, the notice may be given by the personal representative of the estate of the attorney or by any person having lawful custody of the files and records of the attorney, including those persons who have been employed by the deceased attorney. In all other cases, notice shall be given by the attorney, a person authorized by the attorney, a person having lawful custody of the files of the attorney, or by Chief Disciplinary Counsel. If the client has consented to the assumption of responsibility for the matter by another attorney licensed to practice law in Texas, then the above notification requirements are not necessary and no further action is required.

13.02. Assumption of Jurisdiction: A client of the attorney, Chief Disciplinary Counsel, or any other interested person may petition a district court in the county of the attorney's residence to assume jurisdiction over the attorney's law practice. If the attorney has died, such petition may be filed in a statutory probate court. The petition must be verified and must state the facts necessary to show cause to believe that notice of cessation is required under this part. It must state the following:

- A. That an attorney licensed to practice law in Texas has died, disappeared, resigned, become inactive, been disbarred or suspended, or become physically, mentally or emotionally disabled and cannot provide legal services necessary to protect the interests of clients.
- B. That cause exists to believe that court supervision is necessary because the attorney has left client matters for which no other attorney licensed to practice law in Texas has, with the consent of the client, agreed to assume responsibility.
- C. That there is cause to believe that the interests of one or more clients of the attorney or one or more interested persons or entities will be prejudiced if these proceedings are not maintained.

13.03. Hearing and Order on Application to Assume Jurisdiction: The court shall set the petition for hearing and may issue an order to show cause, directing the attorney or his or her personal representative, or if none exists, the person having custody of the attorney's files, to show cause why the court should not assume jurisdiction of the attorney's law practice. If the court finds that one or more of the events stated in Rule 13.02 has occurred and that the supervision of the court is required, the court shall assume jurisdiction and appoint one or more attorneys licensed to practice law in Texas to take such action as set out in the written order of the court including, but not limited to, one or more of the following:

- A. Examine the client matters, including files and records of the attorney's practice, and obtain information about any matters that may require attention.
- B. Notify persons and entities that appear to be clients of the attorney of the

assumption of the law practice, and suggest that they obtain other legal counsel.

- C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.
- D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.
- E. Give appropriate notice to persons or entities that may be affected other than the client.
- F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

The custodian shall observe the attorney-client relationship and privilege as if the custodians were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this part. Except for intentional misconduct or gross negligence, no person acting under this part may incur any liability by reason of the institution or maintenance of a proceeding under this Part XIII. No bond or other security is required.

Comment: Chapter 456, Estates Code, authorizes the personal representative of a deceased attorney to designate an attorney—including him- or herself, if the personal representative is an attorney—to disburse and close the deceased attorney's trust or escrow accounts for client funds. *See* TEX. EST. CODE § 456.002. Before appointing an attorney to wind up a deceased attorney's practice under this rule, the court should determine whether the deceased attorney's personal representative has designated an attorney under Chapter 456 to close the deceased attorney's trust and escrow accounts.

13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice: In lieu of the procedures set forth in Rules 13.02 and 13.03, an attorney ceasing practice or planning for the cessation of practice ("appointing attorney" for purposes of this Rule) may voluntarily designate a Texas attorney licensed and in good standing to act as custodian ("custodian attorney" for purposes of this Rule) to assist in the final resolution and closure of the attorney's practice. The terms of the appointing documents, which shall be signed and acknowledged by the appointing attorney and custodian attorney, may include any of the following duties assumed:

- A. Examine the client matters, including files and records of the appointing attorney's practice, and obtain information about any matters that may require attention.
- B. Notify persons and entities that appear to be clients of the appointing attorney of the cessation of the law practice, and suggest that they obtain other legal counsel.
- C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.

- D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.
- E. Give appropriate notice to persons or entities that may be affected other than the client.
- F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

The custodian attorney shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this Rule. Except for intentional misconduct or gross negligence, no person acting as custodian attorney under this Rule shall incur any liability by reason of the actions taken pursuant to this Rule.

The privileges and limitations of liability contained herein shall not apply to any legal representation taken over by the custodian attorney.

Comment: Performing the duties of a custodian under this Rule does not create a client-lawyer relationship. If a lawyer serving as custodian assumes representation of a client, the lawyer's role as custodian terminates, and the lawyer's actions are subject to the Texas Disciplinary Rules of Professional Conduct regarding the client-lawyer relationship.

PART XIV. INTERIM SUSPENSION

14.01. Irreparable Harm to Clients: Should the Chief Disciplinary Counsel reasonably believe based upon investigation of a Complaint that an attorney poses a substantial threat of irreparable harm to clients or prospective clients and be authorized or directed to do so by the Commission, the Chief Disciplinary Counsel shall seek the immediate interim suspension of the attorney. The Commission shall file a petition with a district court of proper venue alleging substantial threat of irreparable harm, and the district court shall, if the petition alleges facts that meet the evidentiary standard in Rule 14.02, set a hearing within ten days. If the Commission, at the hearing, meets the evidentiary standard and burden of proof as established in Rule 14.02, the court shall enter an order without requiring bond, immediately suspending the attorney pending the final disposition of the Disciplinary Proceedings or the Disciplinary Action based on the conduct causing the harm. The matter shall thereafter proceed in the district court as in matters involving temporary injunctions under the Texas Rules of Civil Procedure. If a temporary injunction is entered, the court may appoint a custodian under Part XIII. If, at the conclusion of all Disciplinary Proceedings and Disciplinary Actions, the Respondent is not found to have committed Professional Misconduct, the immediate interim suspension may not be deemed a "Sanction" for purposes of insurance applications or any other purpose.

14.02. Burden of Proof and Evidentiary Standard: The Commission has the burden to prove the case for an interim suspension by a preponderance of the evidence. If proved by a preponderance of the evidence, any one of the following elements establishes conclusively that the attorney poses a substantial threat of irreparable harm to clients or prospective clients:

- A. Conduct by an attorney that includes all of the elements of a Serious Crime as defined in these rules.
 - B. Three or more acts of Professional Misconduct, as defined in subsections (a) (2) (3) (4) (6) (7) (8) or (10) of Rule 8.04 of the Texas Disciplinary Rules of Professional Conduct, whether or not actual harm or threatened harm is demonstrated.
- B. Any other conduct by an attorney that, if continued, will probably cause harm to clients or prospective clients.

PART XV. GUIDELINES FOR IMPOSING SANCTIONS

15.01. Purpose and Nature of Sanctions

- A. Purpose of Lawyer Discipline Proceedings.
The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.
- B. Purpose of These Guidelines.
These Guidelines are designed for use in Disciplinary Actions and Disciplinary Proceedings under Parts II and III of the Texas Rules of Disciplinary Procedure. The Guidelines set forth a comprehensive system for determining sanctions, permitting flexibility and creativity in assigning Sanctions in particular cases of lawyer misconduct. They are designed to promote: (1) consideration of all factors relevant to imposing the appropriate level of Sanction in an individual case; (2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; and (3) consistency in the imposition of disciplinary Sanctions for the same or similar rule violations among the various district grievance committees and district courts that consider these matters. The Guidelines do not limit the authority of a district grievance committee or of a district judge to make a finding or issue a decision.

15.02. General Factors to be Considered in Imposing Sanctions

In imposing a sanction after a finding of Professional Misconduct, the disciplinary tribunal should consider the following factors:

- (a) the duty violated;
- (b) the Respondent's level of culpability;
- (c) the potential or actual injury caused by the Respondent's misconduct; and
- (d) the existence of aggravating or mitigating factors.

15.03. Imposition of Sanctions

In any Disciplinary Proceeding or Disciplinary Action where Professional Misconduct is found have occurred, the district grievance committee or district court may, in its discretion, conduct a separate hearing and receive evidence as to the appropriate Sanctions to be imposed.

15.04. Violations of Duties Owed to Clients

A. Lack of Diligence

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving neglect, frequent failure to carry out completely the obligations owed to a client, failure to communicate, failure to provide competent representation, or failure to abide by client decisions:

1. Disbarment is generally appropriate when:

(a) a Respondent abandons the practice and causes serious or potentially serious injury to a client; or

(b) a Respondent knowingly fails to perform services for a client, fails to adequately communicate with a client, fails to provide competent representation, or fails to abide by client decisions and causes serious or potentially serious injury to a client; or

(c) a Respondent engages in a pattern of neglect with respect to client matters, inadequate client communications, lack of competent representation, or failure to abide by client decisions and causes serious or potentially serious injury to a client.

2. Suspension is generally appropriate when:

(a) a Respondent knowingly fails to perform services for a client, fails to adequately communicate with a client, fails to provide competent representation, or fails to abide by client decisions and causes injury or potential injury to a client, or

(b) a Respondent engages in a pattern of neglect with respect to client matters, inadequate client communications, lack of competent representation, or failure to abide by client decisions and causes injury or potential injury to a client.

3. Public reprimand is generally appropriate when a Respondent does not act with reasonable diligence in representing a client, communicating with a client, providing competent representation, or abiding by client decisions and causes

injury or potential injury to a client.

4. Private reprimand is generally appropriate when a Respondent does not act with reasonable diligence in representing a client, communicating with a client, providing competent representation or abiding by client decisions and causes little or no actual or potential injury to a client.

B. Failure to Preserve the Client's Property

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving the failure to preserve client property, including the failure to surrender papers and property or to refund any advance payment of fee that has not been earned on the termination of representation:

1. Disbarment is generally appropriate when a Respondent knowingly converts client property and causes injury or potential injury to a client.
2. Suspension is generally appropriate when a Respondent knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
3. Public reprimand is generally appropriate when a Respondent is negligent in dealing with client property and causes injury or potential injury to a client.
4. Private reprimand is generally appropriate when a Respondent is negligent in dealing with client property and causes little or no actual or potential injury to a client.

C. Failure to Preserve the Client's Confidences

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving improper disclosure of information relating to the representation of a client:

1. Disbarment is generally appropriate when a Respondent, with the intent to benefit the Respondent or another, knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
2. Suspension is generally appropriate when a Respondent knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
3. Public reprimand is generally appropriate when a Respondent negligently reveals

information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

4. Private reprimand is generally appropriate when a Respondent negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes little or no actual or potential injury to a client.

D. Failure to Avoid Conflicts of Interest

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving conflicts of interest:

1. Disbarment is generally appropriate when a Respondent, without the informed consent of client(s):
 - (a) engages in representation of a client knowing that the Respondent's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
 - (b) simultaneously represents clients that the Respondent knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
 - (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the Respondent or another, and causes serious or potentially serious injury to a client.
2. Suspension is generally appropriate when a Respondent knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.
3. Public reprimand is generally appropriate when a Respondent is negligent in determining whether the representation of a client may be materially affected by the Respondent's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.
4. Private reprimand is generally appropriate when a Respondent engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the Respondent's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

E. Lack of Candor

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases where the lawyer engages in dishonesty, fraud, deceit, or misrepresentation directed toward a client:

1. Disbarment is generally appropriate when a Respondent knowingly deceives a client with the intent to benefit the Respondent or another, and causes serious injury or potential serious injury to a client.
2. Suspension is generally appropriate when a Respondent knowingly deceives a client, and causes injury or potential injury to the client.
3. Public reprimand is generally appropriate when a Respondent is negligent in determining the accuracy or completeness of information provided to a client, and causes injury or potential injury to the client.
4. Private reprimand is generally appropriate when a Respondent engages in an isolated instance of negligence in determining the accuracy or completeness of information provided to a client, and causes little or no actual or potential injury to the client.

15.05. Violations of Duties Owed to the Legal System

A. False Statements, Fraud, and Misrepresentation

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving conduct that impedes the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court or another:

1. Disbarment is generally appropriate when a Respondent, with the intent to deceive the court or another, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
2. Suspension is generally appropriate when a Respondent knows that false statements or documents are being submitted to the court or another or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party, or causes an adverse or potentially adverse effect on the legal proceeding.
3. Public reprimand is generally appropriate when a Respondent is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and

causes injury or potential injury to a party, or causes an adverse or potentially adverse effect on the legal proceeding.

4. Private reprimand is generally appropriate when a Respondent engages in an isolated instance of negligence in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

B. Abuse of the Legal Process

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving failure to bring a meritorious claim, failure to minimize the burdens and delays of litigation, lack of fairness in adjudicatory proceedings, improper extrajudicial statements, improper means involving third persons, or improper discriminatory activities:

1. Disbarment is generally appropriate when a Respondent knowingly engages in an abuse of the legal process with the intent to obtain a benefit for the Respondent or another, and causes serious injury or potentially serious injury to a client or other party or causes serious or potentially serious interference with a legal proceeding.
2. Suspension is generally appropriate when a Respondent knows that he or she is abusing the legal process, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
3. Public reprimand is generally appropriate when a Respondent negligently engages in conduct involving an abuse of the legal process, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
4. Private reprimand is generally appropriate when a Respondent engages in an isolated instance of negligence that involves an abuse of the legal process, and causes little or no actual or potential injury to a client or other party, or causes little or no actual or potential interference with a legal proceeding.

C. Improper Communications with Individuals in the Legal System

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following Sanctions are generally appropriate in cases involving attempts to influence a judge, juror, prospective juror or other

official by means prohibited by law or rules of practice or procedure, or improper communications with one represented by counsel or unrepresented individuals:

1. Disbarment is generally appropriate when a Respondent:
 - (a) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
 - (b) makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
 - (c) improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding, and causes significant or potentially significant interference with the outcome of the legal proceeding.
2. Suspension is generally appropriate when a Respondent engages in communication with an individual in the legal system when the Respondent knows or should know that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.
3. Public reprimand is generally appropriate when a Respondent is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.
4. Private reprimand is generally appropriate when a Respondent engages in an isolated instance of negligence in improperly communicating with an individual in the legal system, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with the outcome of the legal proceeding.

15.06. Violations of Duties Owed to the Public

A. Failure to Maintain Personal Integrity

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following Sanctions are generally appropriate in cases involving (1)

barratry or the commission of any other criminal act that reflects adversely on the Respondent's honesty, trustworthiness, or fitness as a lawyer in other respects; or (2) the failure to maintain personal integrity in other respects, including stating or implying an ability to influence improperly a government agency or official or by improperly assisting a judge or judicial official in conduct that violates rules of judicial conduct or other law:

1. Disbarment is generally appropriate when:

- (a) a Respondent engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a Respondent knowingly engages in any other conduct involving the failure to maintain personal integrity and causes serious injury of potential injury to others or the legal system.

2. Suspension is generally appropriate when:

- (a) a Respondent knowingly engages in criminal conduct that does not contain the elements listed in Guideline 15.06(A)(1) and that seriously adversely reflects on the Respondent's fitness to practice law; or
- (b) knowingly engages in conducting involving the failure to maintain personal integrity and causes injury or potential injury to others or the legal system.

3. Public reprimand is generally appropriate when a Respondent negligently engages in any other conduct involving the failure to maintain personal integrity and causes injury or potential injury to others or the legal system.

4. Private reprimand is generally appropriate when a Respondent negligently engages in any other conduct involving the failure to maintain personal integrity and causes little or no actual or potential injury to others or the legal system.

B. Failure to Maintain the Public Trust

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving public officials who engage in conduct that impedes the administration of justice:

1. Disbarment is generally appropriate when a Respondent in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal

process.

2. Suspension is generally appropriate when a Respondent in an official or governmental position knowingly fails to follow applicable procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.
3. Public reprimand is generally appropriate when a Respondent in an official or governmental position negligently fails to follow applicable procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.
4. Private reprimand is generally appropriate when a Respondent in an official or governmental position engages in an isolated instance of negligence in not following applicable procedures or rules, and causes little or no actual or potential injury to a party or to the integrity of the legal process.

15.07. Violations of Other Duties as a Professional

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services; improper solicitation of professional employment from a prospective client; unconscionable, illegal, or improper fees; unauthorized practice of law; improper withdrawal from representation; failure to supervise; improper restrictions on the right to practice; appointments by a tribunal; failure to report professional misconduct; failure to respond to a disciplinary agency; improper conduct involving bar admission or reinstatement proceedings; statements regarding judicial and legal officials or a lawyer as a judicial candidate; or improper conduct in the role as advisor or evaluator.

1. Disbarment is generally appropriate when a Respondent knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the Respondent or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
2. Suspension is generally appropriate when a Respondent knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
3. Public reprimand is generally appropriate when a Respondent negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
4. Private reprimand is generally appropriate when a Respondent engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

15.08. Prior Discipline Orders

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving prior discipline.

1. Disbarment is generally appropriate when a Respondent:
 - (a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
 - (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
2. Suspension is generally appropriate when a Respondent has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
3. Public reprimand is generally appropriate when a Respondent:
 - (a) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
 - (b) has received a private reprimand for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
4. A private reprimand is generally not an appropriate sanction when a Respondent violates the terms of a prior disciplinary order or when a Respondent has engaged in the same or similar misconduct in the past.
5. A private reprimand should not be utilized when a Respondent:
 - (a) has received a private reprimand within the preceding five-year period for a violation of the same disciplinary rule; or
 - (b) has engaged in misconduct involving theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or
 - (c) has engaged in misconduct involving the failure of a prosecutor to make timely disclosure to the defense of all evidence or information known to

the prosecutor that tends to negate the guilt of the accused or mitigate the offense.

6. A private reprimand is not an available sanction in a Disciplinary Action.

15.09. Aggravation and Mitigation

A. Generally

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.

B. Aggravation

1. **Definition.** Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.
2. Factors which may be considered in aggravation.

Aggravating factors include:

- (a) prior disciplinary record, including private reprimands;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple violations;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority or uncooperative conduct during proceedings;
- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;
- (j) indifference to making restitution;
- (k) illegal conduct, including that involving the use of controlled

substances;

- (l) unsuccessful participation in the Grievance Referral Program.

C. Mitigation

1. **Definition.** Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.
2. Factors which may be considered in mitigation.

Mitigating factors include:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and free disclosure to disciplinary authority or cooperative conduct during proceedings;
- (f) inexperience in the practice of law;
- (g) character or reputation;
- (h) physical disability suffered by the Respondent at the time of the misconduct that caused or contributed to the misconduct;
- (i) mental disability or chemical dependency including alcoholism or drug abuse when:
 - (1) there is medical evidence that the Respondent is affected by a chemical dependency or mental disability;
 - (2) the chemical dependency or mental disability caused the misconduct;
 - (3) the Respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and

(4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;

- (j) delay in disciplinary proceedings;
- (k) imposition of other penalties or sanctions;
- (l) remorse;
- (m) remoteness of prior sanctions.

D. Factors which are neither aggravating nor mitigating.

The following factors should not be considered as either aggravating or mitigating:

- (a) forced or compelled restitution;
- (b) agreeing to the client's demand for certain improper behavior or result;
- (c) withdrawal of complaint against the Respondent;
- (d) complainant's recommendation as to sanctions;
- (e) failure of injured client to complain.

PART XVI. GRIEVANCE REFERRAL PROGRAM

16.01. Grievance Referral Program. The Grievance Referral Program is established as a diversion program designed to address professionalism issues in minor misconduct cases and component of the attorney discipline system.

16.02. Eligibility. The following criteria are to be considered for participation in the program:

- A. Respondent has not been disciplined within the prior three years.
- B. Respondent has not been disciplined for similar conduct within the prior five years.
- C. Misconduct does not involve misappropriation of funds or breach of fiduciary duties.
- D. Misconduct does not involve dishonesty, fraud, or misrepresentation.
- E. Misconduct did not result in substantial harm or prejudice to client or complainant.

- F. Respondent maintained cooperative attitude toward the proceedings.
- G. Participation is likely to benefit the Respondent and further the goal of protection of the public.
- H. Misconduct does not constitute a crime that would subject the Respondent to compulsory discipline under Part VIII of these Rules.

16.03. Procedure.

- A. The Commission may refer an eligible Respondent to the program in any disciplinary matter that has reached the Just Cause stage of the process. An eligible Respondent may also be referred to the program after an investigatory hearing pursuant to Rule 2.12.
- B. The Respondent must agree to meet with the program administrator for an assessment of the professionalism issues that contributed to the misconduct.
- C. The Respondent must agree in writing to waive any applicable time limits and to complete specific terms and conditions, including restitution if appropriate, by a date certain and to pay for any costs associated with the terms and conditions.
- D. If the Respondent agrees to participate and completes the terms in a timely manner, the underlying grievance will be dismissed.
- E. If the Respondent does not fully complete the terms of the agreement in a timely manner, the underlying grievance will continue in the ordinary disciplinary process.
- F. Generally, a Respondent is eligible to participate in the program one time.

16.04. Reporting.

The program administrator will provide periodic reports to the Commission on the progress of the program, including the number of cases resolved.

PART XVII. MISCELLANEOUS PROVISIONS

17.01. Enforcement of Judgments: The following judgments have the force of a final judgment of a district court: judgments entered by an Investigatory Panel, final judgments of an Evidentiary Panel and judgments entered by the Board of Disciplinary Appeals. To enforce a judgment, the Commission may apply to a district court in the county of the residence of the Respondent. In enforcing the judgment, the court has available to it all writs and processes, as well as the power of contempt, to enforce the judgment as if the judgment had been the court's own.

17.02. **Effect of Related Litigation:** The processing of a Grievance, Complaint, Disciplinary Proceeding, or Disciplinary Action is not, except for good cause, to be delayed or abated because of substantial similarity to the material allegations in pending civil or criminal litigation.

17.03. **Effect on Related Litigation:** Neither the Complainant nor the Respondent is affected by the doctrines of res judicata or estoppel by judgment from any Disciplinary Action.

17.04. **Effect of Delay or Settlement by Complainant:** None of the following alone justifies the discontinuance or abatement of a Grievance or Complaint being processed through the disciplinary system: (1) the unwillingness or the neglect of a Complainant to cooperate; (2) the settlement or compromise of matters between the Complainant and the Respondent; (3) the payment of monies by the Respondent to the Complainant.

17.05. **Effect of Time Limitations:** The time periods provided in Rules 2.10, 2.12, 2.15, 2.17C, 2.17E, 2.17P, 2.25, 3.02, 3.04, 7.11, 9.02, 9.03, 10.02, 11.01, 11.08, and 12.06(d) are mandatory. All other time periods herein provided are directory only and the failure to comply with them does not result in the invalidation of an act or event by reason of the noncompliance with those time limits.

17.06. **Limitations, General Rule and Exceptions:**

- A. *General Rule:* No attorney may be disciplined for Professional Misconduct that occurred more than four years before the date on which a Grievance alleging the Professional Misconduct is received by the Chief Disciplinary Counsel.
- B. *Exception: Compulsory Discipline:* The general rule does not apply to a Disciplinary Action seeking compulsory discipline under Part VIII.
- C. *Exception: Alleged Violation of the Disclosure Rule:* A prosecutor may be disciplined for a violation of Rule 3.09(d), Texas Disciplinary Rules of Professional Conduct, that occurred in a prosecution that resulted in the wrongful imprisonment of a person if the Grievance alleging the violation is received by the Chief Disciplinary Counsel within four years after the date on which the Wrongfully Imprisoned Person was released from a Penal Institution.
- D. *Effect of Fraud or Concealment:* Where fraud or concealment is involved, the time periods stated in this rule do not begin to run until the Complainant discovered, or in the exercise of reasonable diligence should have discovered, the Professional Misconduct.

17.07. **Residence:** For purposes of these rules, a person licensed to practice law in Texas is considered a resident of the county in Texas of his or her principal residence. A person licensed to practice law in Texas but not residing in Texas is deemed to be a resident of Travis County, Texas, for all purposes.

17.08. **Privilege:** All privileges of the attorney-client relationship shall apply to all

communications, written and oral, and all other materials and statements between the Chief Disciplinary Counsel and the Commission or the Chief Disciplinary Counsel and Investigatory Panel subject to the provisions of Rule 6.08.

17.09. Immunity: No lawsuit may be instituted against any Complainant or witness predicated upon the filing of a Grievance or participation in the attorney disciplinary and disability system. All members of the Commission, the Chief Disciplinary Counsel (including Special Assistant Disciplinary Counsel appointed by the Commission and attorneys employed on a contract basis by the Chief Disciplinary Counsel), all members of Committees, all members of the Board of Disciplinary Appeals, all members of the District Disability Committees, all officers and Directors of the State Bar, and the staff members of the aforementioned entities are immune from suit for any conduct in the course of their official duties. The immunity is absolute and unqualified and extends to all actions at law or in equity.

17.10. Maintenance of Funds or Other Property Held for Clients and Others: Every attorney licensed to practice law in Texas who maintains, or is required to maintain, a separate client trust account or accounts, designated as such, into which funds of clients or other fiduciary funds must be deposited, shall further maintain and preserve for a period of five years after final disposition of the underlying matter, the records of such accounts, including checkbooks, canceled checks, check stubs, check registers, bank statements, vouchers, deposit slips, ledgers, journals, closing statements, accountings, and other statements of receipts and disbursements rendered to clients or other parties with regard to client trust funds or other similar records clearly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client.

APPENDIX A TO THE TEXAS RULES OF DISCIPLINARY PROCEDURE

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Solicitation and Other Prohibited Communications 7.03	Guideline 15.07
Filing Requirements for Advertisements and Solicitation Communications 7.04	Guideline 15.07
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Bar Admission, Reinstatement, and Disciplinary Matters 8.01	Guideline 15.07
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Reporting Professional Misconduct 8.03	Guideline 15.07
Misconduct 8.04 8.04(a)(2)(5)(6)(9) 8.04(a)(3) 8.04(a)(4) 8.04(a)(7)(10)(11) 8.04(a)(8)(12)	Guideline 15.04 - 15.08 15.06A 15.04E; 15.05A 15.05A 15.08 15.07
Jurisdiction 8.05	Guideline: None
Severability 9.01	Guideline: None

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App 2

**BEFORE EVIDENTIARY PANEL 4-6 OF THE
STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE**

05/10/2024

COMMISSION FOR LAWYER DISCIPLINE,
Petitioner,

§ 202205608 [PARRISH]
§ 202206116 [LAU]
§ 202207092 [KRAESIG]
§ 202301900 [MARTIN]
§ 202302230 [NASRA]

v.

VY THUAN NGUYEN,
Respondent.

§
§
§
§
§
§ HARRIS COUNTY, TEXAS



Houston Office

Chief Disciplinary Counsel

JUDGMENT OF DISBARMENT

Parties and Appearance

On May 8, 2024, came to be heard the above styled and numbered causes. Petitioner, the Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, Vy Thuan Nguyen, Texas Bar Number 24060334, appeared in person and announced ready.

Jurisdiction and Venue

Evidentiary Panel 4-6, having been duly appointed to hear these complaints by the chair of the Grievance Committee for State Bar of Texas District No. 4, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Professional Misconduct

The Evidentiary Panel, having considered all of the pleadings, evidence, stipulations, and argument, finds that Respondent has committed Professional Misconduct as defined by Rule 1.06(CC) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

The Evidentiary Panel, having considered the pleadings, evidence, and argument of counsel, makes the following findings of fact and conclusions of law:

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
2. Respondent resides in and maintains her principal place of practice in Harris County, Texas.
3. The Office of the Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees in the amount of \$4,312.50 and direct expenses in the amount of \$175.00 associated with this Disciplinary Proceeding.

COUNT ONE: 202205608 – Billy Joe Parrish matter

4. In representing Billy Joe Parrish, Respondent neglected the legal matter entrusted to her.
5. In representing Billy Joe Parrish, Respondent frequently failed to carry out completely the obligations that Respondent owed to Billy Joe Parrish.
6. Respondent failed to keep Billy Joe Parrish reasonably informed about the status of his legal matter and failed to promptly comply with reasonable requests for information.
7. In representing Billy Joe Parrish, Respondent did not accept or continue employment in a legal matter which Respondent knew or should know was beyond Respondent's competence.

COUNT TWO: 202206116 – Trang Lau matter

8. Respondent failed to keep Trang Lau reasonably informed about the status of her legal matter and failed to promptly comply with reasonable requests for information.
9. Respondent failed to timely furnish to the Office of the Chief Disciplinary Counsel a response or other information as required by the Texas Rules of Disciplinary Procedure and did not, in good faith, timely assert a privilege or other legal ground for failure to do so.

COUNT THREE: 202207092 – Kyle Kraesig matter

10. Respondent failed to keep Kyle Kraesig reasonably informed about the status of his legal matter and failed to promptly comply with reasonable requests for information.
11. Respondent did not fail to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

COUNT FOUR: 202301900 – Cody Woods Martin matter

12. Respondent failed to timely furnish to the Office of the Chief Disciplinary Counsel a response or other information as required by the Texas Rules of Disciplinary Procedure and did not, in good faith, timely assert a privilege or other legal ground for failure to do so.
13. Respondent did not fail to hold funds belonging in whole or in part to third persons that were in Respondent's possession in connection with a representation separate from the lawyer's own property.
14. Respondent did not fail to promptly deliver to a third person funds that the third person was entitled to receive.
15. Respondent did not take a position that unreasonably increased the costs or other burdens of the case or that unreasonably delayed resolution of the matter.
16. Respondent did not knowingly disobey an obligation under a ruling by a tribunal.

COUNT FIVE: 202302230 – Jason Samir Nasra matter

17. Respondent failed to timely furnish to the Office of the Chief Disciplinary Counsel a response or other information as required by the Texas Rules of Disciplinary Procedure and did not, in good faith, timely assert a privilege or other legal ground for failure to do so.
18. With respect to the grievance filed by or on behalf of Jason Samir Nasra, the Evidentiary Panel did not adjudicate the pleaded allegations of alleged violations of Texas Disciplinary Rules of Professional Conduct 1.01(b)(1), 1.01(b)(2), 1.03(a), 1.03(b), 1.14(b), and 1.15(d), because such allegations were discontinued as a matter of prosecutorial discretion and withdrawn from consideration by the Evidentiary Panel.

FINDINGS OF FACT APPLICABLE TO EACH OF FINDINGS OF FACTS 1-18

19. The sanction of disbarment set forth in this Judgment of Disbarment was found with respect to each individual violation set forth in Findings of Fact 4, 5, 6, 8, 9, 10, 12 and 17, and was not the result of aggregating or combining any of the violations set forth in Findings of Fact 4, 5, 6, 8, 9, 10, 12, and 17.
20. As the sole judges of the credibility of the witnesses and the weight to give their testimony, the Evidentiary Panel found certain aspects of Respondent's testimony to lack credibility and candor. Conversely, the Evidentiary Panel found the testimony of each of the non-party witnesses to be generally credible. Therefore, the Evidentiary Panel exercised its discretion to believe certain non-party witnesses and disbelieve Respondent, where appropriate to do so. These factual determinations formed a basis for the findings of fact and conclusions of law set forth in this Judgment of Disbarment.

FINDINGS OF FACT APPLICABLE TO DETERMINATION OF SANCTIONS

21. In imposing sanctions, the Evidentiary Panel considered the duties violated by Respondent, Respondent's level of culpability, the potential or actual injury caused by Respondent's misconduct, and the existence of aggravating or mitigating factors.
22. The Evidentiary Panel found the following aggravating factors: prior disciplinary record, including private reprimands; dishonest or selfish motive; a pattern of misconduct; multiple violations; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge wrongful nature of conduct; vulnerability of victims; and substantial experience in the practice of law.
23. The Evidentiary Panel found no mitigating factors.

Conclusions of Law

The Evidentiary Panel concludes that, based on foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 1.01(b)(1), 1.01(b)(2), 1.03(a), and 8.04(a)(8).

Sanction

The Evidentiary Panel, having found Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument, the Evidentiary Panel finds that proper discipline of the Respondent for each act of Professional Misconduct is DISBARMENT.

Disbarment

It is therefore ORDERED, ADJUDGED, and DECREED that effective the date of this judgment, Respondent, Vy Thuan Nguyen, State Bar Number 24060334, is hereby DISBARRED from the practice of law in the State of Texas.

It is further ORDERED that Respondent is prohibited from practicing law in Texas, holding herself out as an attorney at law, performing any legal services for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity

in any proceeding in any Texas court or before any administrative body or holding herself out to others or using her name, in any manner, in conjunction with the words “attorney at law,” “attorney,” “counselor at law,” or “lawyer.”

Notification

It is further ORDERED that Respondent shall immediately notify each of her current clients in writing of this disbarment. In addition to such notification, Respondent is ORDERED to return any files, papers, unearned monies and other property belonging to clients and former clients in the Respondent’s possession to the respective clients or former clients or to another attorney at the client’s or former client’s request.

Respondent is further ORDERED to file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that all current clients have been notified of Respondent’s disbarment and that all files, papers, unearned monies and other property belonging to all clients and former clients have been returned as ordered herein. If it is Respondent’s assertion that at the time of disbarment she possessed no current clients and/or Respondent was not in possession of any files, papers, unearned monies or other property belonging to clients, Respondent shall submit an affidavit attesting that, at the time of disbarment, Respondent had no current clients and did not possess any files, papers, unearned monies, and/or other property belonging to clients.

It is further ORDERED that Respondent shall, on or before thirty (30) days from the signing of this judgment by the Panel Chair, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and

cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing. Respondent is further ORDERED to file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice has received written notice of the terms of this judgment.

Surrender of License

It is further ORDERED that Respondent shall, within thirty (30) days of the signing of this judgment by the Panel Chair, surrender her law license and permanent State Bar Card to the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of the State of Texas.

Attorneys' Fees and Expenses

It is further ORDERED that Respondent shall pay reasonable and necessary attorneys' fees in the amount of \$4,312.50 and direct expenses in the amount of \$175.00 to the State Bar of Texas. The payment shall be due and payable on or before July 1, 2024, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further ORDERED that all amounts ordered herein are due to the misconduct of Respondent and are assessed as a part of the sanction in accordance with Rule 1.06(FF) of the Texas Rules of Disciplinary Procedure. Any amount not paid shall accrue interest at the maximum

legal rate per annum until paid and the State Bar of Texas shall have all writs and other post-judgment remedies against Respondent in order to collect all unpaid amounts.

Publication

It is further ORDERED this disbarment shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Conditions Precedent to Reinstatement

It is further ORDERED payment of the foregoing attorney's fees and expenses amounts shall be a condition precedent to any consideration of reinstatement from disbarment as provided by Rules 2.19, 2.20 and 11.02(D) of the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED. This is a final judgment that disposes of all parties and all claims and causes of action, and is, therefore, appealable.

SIGNED this 10th day of May, 2024.

**EVIDENTIARY PANEL 4-6
DISTRICT NO. 4
STATE BAR OF TEXAS**


SCOTT ROTHENBERG
Panel 4-6 Presiding Member

App 3

**BEFORE EVIDENTIARY PANEL 4-6 OF THE
STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE**



COMMISSION FOR LAWYER DISCIPLINE,	§	202205608 [PARRISH]	Houston Office
Petitioner,	§	202206116 [LAU]	Chief Disciplinary Counsel
	§	202207092 [KRAESIG]	
v.	§	202301900 [MARTIN]	
	§	202302230 [NASRA]	
VY THUAN NGUYEN,	§		
Respondent.	§	HARRIS COUNTY, TEXAS	

PETITIONER’S ORIGINAL EVIDENTIARY PETITION

COMES NOW Petitioner, the Commission for Lawyer Discipline, a committee of the State Bar of Texas, and would respectfully show unto the Evidentiary Panel as follows:

PARTIES

1. Petitioner is the Commission for Lawyer Discipline, a committee of the State Bar of Texas.
2. Respondent is Vy Thuan Nguyen, Texas Bar Card No. 24060334, a licensed attorney and a member of the State Bar of Texas. Respondent may be served at 5177 Richmond Avenue, Suite 1200, Houston, Texas 77056, vy.nguyen@vnlawoffices.com.

NATURE OF PROCEEDING

3. Petitioner brings this disciplinary proceeding pursuant to the State Bar Act, Texas Government Code Annotated §81.001, *et seq.* (West 2013); the Texas Disciplinary Rules of Professional Conduct; and the Texas Rules of Disciplinary Procedure. The complaints that form the bases of these causes of action were filed on or after June 1, 2018.

VENUE

4. Respondent’s principal place of practice is Harris County, Texas; therefore, venue is appropriate in Harris County, Texas, pursuant to Rule 2.11C of the Texas Rules of Disciplinary Procedure.

PROFESSIONAL MISCONDUCT

5. The acts and/or omissions of Respondent, as hereinafter alleged, constitute professional misconduct as defined by Rule 1.06CC of the Texas Rules of Disciplinary Procedure.

CAUSES OF ACTION

COUNT ONE: 202205608 – Billy Joe Parrish matter

6. On February 5, 2020, Billy Parrish (Parrish) hired Vy Thaun Nguyen (Respondent) to obtain proof of his citizenship so that he may renew his commercial driver's license. Parrish paid Respondent \$1,725 for her services.

7. Over a three-year period, Respondent consistently failed to respond to Parrish's phone calls and emails requesting information and status updates on the matter. Further, Respondent failed to file any documents or make any headway in Parrish's matter.

8. Respondent accepted and continued employment in the matter which Respondent should have known was beyond her competence.

COUNT TWO: 202206116 – Trang Lau matter

9. On September 1, 2021, Trang Lau (Lau) hired Vy Thaun Nguyen (Respondent) to represent her in a child support modification matter. Lau paid Respondent a \$1,500 retainer for her matter.

10. For the next year, Respondent consistently failed to respond to Lau's phone calls and emails requesting information and status updates on the matter.

11. On or about October 31, 2022, Respondent received notice from the State Bar of Texas of the pending grievance against her. Said notice required that Respondent file a written response to the allegations of professional misconduct. Respondent's response was due on or

before November 30, 2022. Respondent, however, failed to timely file a response. Respondent did not assert a privilege or other legal ground for her failure to timely file a response.

COUNT THREE: 202207092 – Kyle Kraesig matter

12. On July 28, 2021, Kyle Kraesig (Kraesig) hired Vy Thau Nguyen (Respondent) to represent him in a divorce. Kraesig paid Respondent a \$1,800 retainer for her services.

13. On January 27, 2022, the parties in the divorce entered into a mediated settlement agreement (MSA). On several occasions, Kraesig asked Respondent questions regarding the MSA. Respondent failed explain the matter to Kraesig to the extent necessary to permit him to make informed decisions regarding the matter.

14. The divorce was finalized on May 25, 2022. Respondent failed to inform Kraesig that the divorce was finalized or respond to his requests for information regarding the matter.

COUNT FOUR: 202301900 – Cody Woods Martin matter

15. On or about April 12, 2022, Vy Thuan Nguyen (Respondent) agreed, on the record, to remit \$3,500 from her IOLTA account to the opposing counsel in a divorce matter, Cody Martin (“Martin”) by 5:00 pm the same day. On or about September 12, 2022, the court signed an order awarding \$3,500 to MartinOostdyk, PLLC, Martin’s firm, for reasonable attorney’s fees, expenses, and costs. Respondent has failed to comply with the court order and has failed to appear at hearings regarding the judgment.

16. On or about April 12, 2023, Respondent received notice from the State Bar of Texas of the pending grievance against her. Said notice required that Respondent file a written response to the allegations of professional misconduct. Respondent’s response was due on or before May 12, 2023. Respondent, however, failed to timely file a response. Respondent did not assert a privilege or other legal ground for her failure to timely file a response.

COUNT FIVE: 202302230 – Jason Samir Nasra matter

17. On or about December 20, 2021, Jason Nasra (“Complainant”) hired Vy Thuan Nguyen (“Respondent”) to represent him in a Child Custody modification. Complainant paid Respondent a \$5,000 retainer for her services. On January 6, 2021, Respondent filed a Petition to Modify Parent-Child Relationship.

18. Throughout her representation, Respondent missed several deadlines and neglected the matter. This includes but is not limited to, failing to timely file Initial Disclosures, failing to respond to discovery requests, and failing to respond to opposing counsel’s attempts to confer and schedule a mediation. Respondent’s only filing beyond the initial petition was a certificate of written discovery for the Initial Disclosures, which Respondent filed almost six months late.

19. Throughout her representation, Respondent failed to keep Complainant informed of the status of the matter and respond to Complainant’s requests for updates. This includes but is not limited to, failing to inform Complainant of the need to make Initial Disclosures for over two months, failing to inform Complainant that discovery had been served despite him specifically asking about the status of discovery.

20. Throughout her representation, Respondent failed explain the matter to Complainant to the extent to allow him to make informed decisions regarding the representation. This includes but is not limited to, failing to inform Complainant of the need to make Initial Disclosures for over two months, failing to inform Complainant that discovery had been served despite him specifically asking about the status of discovery.

21. On or about September 19, 2022, new counsel filed an appearance on behalf of Complainant. Upon termination, Respondent failed to return Complainant’s file and any unearned fees. Respondent further failed to provide Complainant with an accounting of his retainer.

22. On or about April 27, 2023, Respondent received notice from the State Bar of Texas of the pending grievance against her. Said notice required that Respondent file a written response to the allegations of professional misconduct. Respondent's response was due on or before May 27, 2023. Respondent, however, failed to timely file a response. Respondent did not assert a privilege or other legal ground for her failure to timely file a response.

RULE VIOLATIONS

23. The acts and/or omissions of Respondent described above violates the following Texas Disciplinary Rule of Professional Conduct:

COUNT ONE: 202205608 – Billy Joe Parrish matter

- 1.01(a) A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence.
- 1.01(b)(1) In representing a client, a lawyer shall not: neglect a legal matter entrusted to the lawyer.
- 1.01(b)(2) In representing a client, a lawyer shall not: frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.
- 1.03(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

COUNT TWO: 202206116 – Trang Lau matter

- 1.03(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- 8.04(a)(8) A lawyer shall not: fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so.

COUNT THREE: 202207092 – Kyle Kraesig matter

- 1.03(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- 1.03(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

COUNT FOUR: 202301900 – Cody Woods Martin matter

- 1.14(a) A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account, maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
- 1.14(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
- 3.02 In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.
- 3.04(d) A lawyer shall not: knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal except for an open refusal based either on an assertion that no valid obligation exists or on the client's willingness to accept any sanctions arising from such disobedience.
- 8.04(a)(8) A lawyer shall not: fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so.

COUNT FIVE: 202302230 – Jason Samir Nasra matter

- 1.01(b)(1) In representing a client, a lawyer shall not: neglect a legal matter entrusted to the lawyer.
- 1.01(b)(2) In representing a client, a lawyer shall not: frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.
- 1.03(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- 1.03(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- 1.14(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
- 1.15(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.
- 8.04(a)(8) A lawyer shall not: fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so.

COMPLAINTS

24. The complaints that form the bases of these causes of action were brought to the attention of the Office of the Chief Disciplinary Counsel by Billy Joe Parrish’s filing of a grievance on or about August 31, 2022, Trang Lau’s filing of a grievance on or about September 20, 2022, Kyle Kraesig’s filing of a grievance on or about October 27, 2022, Cody Woods Martin’s filing of a grievance on or about March 21, 2023, and Jason Samir Nasra’s filing of a grievance on or about April 3, 2023.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner, the Commission for Lawyer Discipline, respectfully prays that this Evidentiary Panel discipline Respondent, Vy Thuan Nguyen, by reprimand, suspension, or disbarment, as the facts shall warrant; order restitution to Billy Joe Parrish, Trang Lau, Kyle Kraesig, Cody Woods Martin, and Jason Samir Nasra, if applicable; and grant all other relief, general or specific, at law or in equity, including injunctive relief, to which Petitioner may show itself to be justly entitled, including, without limitation, expenses and attorneys’ fees.

Respectfully submitted,

STATE BAR OF TEXAS

SEANA WILLING
Chief Disciplinary Counsel



E. WILLIAM NICHOLS II
State Bar No. 24077666
Assistant Disciplinary Counsel
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Facsimile: 713-758-8254

E-mail: wnichols@texasbar.com

**ATTORNEYS FOR PETITIONER,
COMMISSION FOR LAWYER
DISCIPLINE**

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 2.09A of the Texas Rules of Disciplinary Procedure, a true and correct copy of the foregoing instrument was forwarded on the 31st day of August, 2023, to the following:

Vy Thuan Nguyen
Nguyen Offices, PLLC
5177 Richmond Avenue, Suite 1200
Houston, Texas 77056
Pro se

PERSONAL SERVICE



E. WILLIAM NICHOLS II

App 4

BEFORE EVIDENTIARY PANEL 4-6 OF THE
STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE

FILED

06/12/2024

COMMISSION FOR LAWYER DISCIPLINE,
Petitioner,

v.

VY THUAN NGUYEN,
Respondent.

§ 202205608 [PARRISH]
§ 202206116 [LAU]
§ 202207092 [KRAESIG]
§ 202301900 [MARTIN]
§ 202302230 [NASRA]
§ HARRIS COUNTY, TEXAS



Houston Office
Chief Disciplinary Counsel

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On May 8, 2024, a duly-comprised quorum of the Evidentiary Panel 4-6 of the State Bar District No. 4 Grievance Committee, consisting of one public member and three attorney members (hereinafter “the Evidentiary Panel”), heard the above-captioned and numbered disciplinary matters against Respondent, Vy Thuan Nguyen (hereinafter “Respondent”). Petitioner, Commission for Lawyer Discipline, appeared by Zoom by and through its counsel of record, Mr. E. William Nichols, II. Respondent, Vy Thuan Nguyen, appeared by Zoom and represented herself. An audiovisual record of the proceedings was recorded over Zoom. A duly authorized court reporter also made a record of all proceedings in the above-captioned and numbered disciplinary matters.

The Evidentiary Panel, by and through its duly appointed Presiding Member makes the following findings of fact and conclusions of law pursuant to Texas Rules of Civil Procedure 296 and 297. Any finding of fact that may be more properly characterized as a conclusion of law shall be considered a conclusion of law. Any conclusion of law that may be more properly characterized as a finding of fact shall be considered a finding of fact.

The Evidentiary Panel, having considered the pleadings, the testimony that was admitted into evidence during the evidentiary hearing, the exhibits that were admitted into evidence during the evidentiary hearing, and argument of counsel, makes the following findings of fact and conclusions of law:

Findings of Fact

1. Respondent was an attorney who, until she was disbarred, was licensed to practice law in Texas and was a member of the State Bar of Texas.
2. Respondent resides in and maintains her principal place of practice in Harris County, Texas.
3. The Office of the Chief Disciplinary Counsel of the State Bar of Texas established that \$4,312.50 is a reasonable and necessary amount of attorneys' fees for the legal services performed by their counsel and legal support staff. This evidence was un rebutted. The Office of the Chief Disciplinary Counsel of the State Bar of Texas incurred direct expenses in the amount of \$175.00 associated with this Disciplinary Proceeding. This evidence was un rebutted.

COUNT ONE: 202205608 – Billy Joe Parrish matter

4. In representing Billy Joe Parrish, Respondent neglected the legal matter entrusted to her.
5. In representing Billy Joe Parrish, Respondent frequently failed to carry out completely the obligations that Respondent owed to Billy Joe Parrish.
6. Respondent failed to keep Billy Joe Parrish reasonably informed about the status of his legal matter and failed to promptly comply with reasonable requests for information.
7. The Office of Chief Disciplinary Counsel failed to establish by a preponderance of the evidence that in representing Billy Joe Parrish, Respondent accepted or continued employment in a legal matter which Respondent knew or should know was beyond Respondent's competence.

COUNT TWO: 202206116 – Trang Lau matter

8. Respondent failed to keep Trang Lau reasonably informed about the status of her legal matter and failed to promptly comply with reasonable requests for information.

9. With respect to the grievance filed by or on behalf of Trang Lau, Respondent failed to timely furnish to the Office of the Chief Disciplinary Counsel a response or other information as required by the Texas Rules of Disciplinary Procedure and did not, in good faith, timely assert a privilege or other legal ground for failure to do so.

COUNT THREE: 202207092 – Kyle Kraesig matter

10. Respondent failed to keep Kyle Kraesig reasonably informed about the status of his legal matter and failed to promptly comply with reasonable requests for information.
11. The Office of Chief Disciplinary Counsel failed to establish by a preponderance of the evidence that Respondent failed to explain a matter to the extent reasonably necessary to permit Kyle Kraesig to make informed decisions regarding the representation.

COUNT FOUR: 202301900 – Cody Woods Martin matter

12. With respect to the grievance filed by or on behalf of Cody Woods Martin, Respondent failed to timely furnish to the Office of the Chief Disciplinary Counsel a response or other information as required by the Texas Rules of Disciplinary Procedure and did not, in good faith, timely assert a privilege or other legal ground for failure to do so.
13. With respect to Respondent's representation of Cody Woods Martin, the Office of Chief Disciplinary Counsel failed to establish by a preponderance of the evidence that Respondent failed to hold funds belonging in whole or in part to third persons that were in Respondent's possession in connection with a representation separate from the lawyer's own property.
14. With respect to Respondent's representation of Cody Woods Martin, the Office of Chief Disciplinary Counsel failed to establish by a preponderance of the evidence that Respondent failed to promptly deliver to a third person funds that the third person was entitled to receive.
15. With respect to Respondent's representation of Cody Woods Martin, the Office of Chief Disciplinary Counsel failed to establish by a preponderance of the evidence that Respondent took a position that unreasonably increased the costs or other burdens of the case or that unreasonably delayed resolution of the matter.
16. With respect to Respondent's representation of Cody Woods Martin, the Office of Chief Disciplinary Counsel failed to establish by a preponderance of the evidence that Respondent knowingly disobeyed an obligation under a ruling by a tribunal.

COUNT FIVE: 202302230 – Jason Samir Nasra matter

17. With respect to the grievance filed by or on behalf of Jason Samir Nasra, Respondent failed to timely furnish to the Office of the Chief Disciplinary Counsel a response or other information as required by the Texas Rules of Disciplinary Procedure and did not, in good faith, timely assert a privilege or other legal ground for failure to do so.
18. With respect to the grievance filed by or on behalf of Jason Samir Nasra, Respondent, the Evidentiary Panel did not adjudicate pleaded allegations of violations of Texas Disciplinary Rules of Professional Conduct 1.01(b)(1), 1.01(b)(2), 1.03(a), 1.03(b), 1.14(b), and 1.15(d), because such allegations were discontinued as a matter of prosecutorial discretion and withdrawn from consideration by the Evidentiary Panel.

FINDINGS OF FACT APPLICABLE TO EACH OF FINDINGS OF FACTS 1-18

19. The sanction of disbarment set forth in the Judgment of Disbarment was found with respect to each individual violation set forth in Findings of Fact 4, 5, 6, 8, 9, 10, 12, and 17, and was not the result of aggregating or combining any of the violations set forth in Findings of Fact 4, 5, 6, 8, 9, 10, 12, and 17.
20. As the sole judges of the credibility of the witnesses and the weight to give their testimony, the Evidentiary Panel found numerous aspects of Respondent's testimony to lack credibility and candor. Conversely, the Evidentiary Panel found the testimony of each of the non-party witnesses to be generally credible. Therefore, the Evidentiary Panel exercised its discretion to believe the testimony of certain non-party witnesses and disbelieve the testimony of Respondent, where appropriate to do so. These credibility determinations formed a basis for the findings and conclusions set forth herein and in the panel's previously-signed Judgment of Disbarment.

FINDINGS OF FACT APPLICABLE TO DETERMINATION OF SANCTIONS

21. In imposing sanctions, the Evidentiary Panel considered the duties violated by Respondent, Respondent's level of culpability, the potential or actual injury caused by Respondent's misconduct, and the existence of aggravating or mitigating factors.
22. The Evidentiary Panel found the following aggravating factors: prior disciplinary record, including private reprimands; dishonest or selfish motive; a pattern of misconduct; multiple violations; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge wrongful nature of conduct; vulnerability of victims; and substantial experience in the practice of law.
23. After hearing all evidence and argument, the Evidentiary Panel found that proper discipline of the Respondent for each act of Professional Misconduct is DISBARMENT.

24. The Evidentiary Panel found no mitigating factors.
25. Respondent should pay reasonable and necessary attorneys' fees in the amount of \$4,312.50 and direct expenses in the amount of \$175.00 to the State Bar of Texas, with payment due and payable on or before July 1, 2024.
26. Payment of the foregoing attorney's fees and expenses amounts (contained in numbered paragraph 25) should be a condition precedent to any consideration of reinstatement from disbarment as provided by Rules 2.19, 2.20 and 11.02(D) of the Texas Rules of Disciplinary Procedure.

Conclusions of Law

The Evidentiary Panel concluded that, based on foregoing findings of fact, Respondent, Vy Thuan Nguyen violated the following Texas Disciplinary Rules of Professional Conduct: Rules 1.01(b)(1), 1.01(b)(2), 1.03(a), and 8.04(a)(8). After hearing all evidence and argument, the Evidentiary Panel found that proper discipline of the Respondent for each act of Professional Misconduct set forth herein is DISBARMENT.

SIGNED this 12th day of June, 2024.

**EVIDENTIARY PANEL 4-6
DISTRICT NO. 4
STATE BAR OF TEXAS**


SCOTT ROTHENBERG
Panel 4-6 Presiding Member

App 5

Vernon's Texas Statutes and Codes Annotated
 Government Code (Refs & Annos)
 Title 2. Judicial Branch (Refs & Annos)
 Subtitle G. Attorneys
 Title 2, Subtitle G--Appendices
 Appendix B Rules of Disciplinary Procedure (Refs & Annos)
 Appendix a (Refs & Annos)

V.T.C.A., Govt. Code T. 2, Subt. G App. A-1, Disc. Proc., App. A

Appendix A to the Texas Rules of Disciplinary Procedure

Currentness

APPENDIX

Competent and Diligent Representation	Guideline 15.04A
1.01	
Scope and Objectives of Representation	
1.02 (a)(b)	Guideline 15.04A
1.02 (c)(d)(e)(f)	Guideline 15.05A
1.02 (g)	Guideline 15.07
Communication	Guideline 15.04A
1.03	
Fees	Guideline 15.07; 15.04E
1.04	
Confidentiality of Information	Guideline 15.04C
1.05	
Conflict of Interest: General Rule	Guideline 15.04D
1.06	
Conflict of Interest: Intermediary	Guideline 15.04D
1.07	
Conflict of Interest: Prohibited Transactions	Guideline 15.04D
1.08	

Conflict of Interest: Former Client 1.09	Guideline 15.04D; 15.04C
Successive Government and Private Employment 1.10	Guideline 15.04D
Adjudicatory Official or Law Clerk 1.11	Guideline 15.04D
Organization as a Client 1.12	Guideline 15.04D
Conflicts: Public Interest Activities 1.13	Guideline 15.04D
Safekeeping Property 1.14	Guideline 15.04B
Declining or Termination Representation 1.15 1.15(d)	Guideline 15.07 Guideline 15.04B
Advisor 2.01	Guideline 15.07
Evaluation for Use by Third Person 2.02	Guideline 15.07
Meritorious Claims and Contentions 3.01	Guideline 15.05B
Minimizing the Burdens and Delays of Litigation 3.02	Guideline 15.05B
Candor Toward the Tribunal 3.03	Guideline 15.05A
Fairness in the Adjudicatory Proceedings 3.04	Guideline 15.05B; 15.05A
Maintaining Impartiality of Tribunal	Guideline 15.05C

3.05	
Maintaining Integrity of Jury System	Guideline 15.05C
3.06	
Trial Publicity	Guideline 15.05B
3.07	
Lawyer as Witness	Guideline 15.04D
3.08	
Special Responsibilities of a Prosecutor	Guideline 15.05B; 15.06B
3.09	
Advocate in Nonadjudicative Proceedings	Guideline 15.05B; 15.05C
3.10	
Truthfulness in Statement to Others	Guideline 15.05A
4.01	
Communication with One Represented by Counsel	Guideline 15.05C
4.02	
Dealing with Unrepresented Person	Guideline 15.05C
4.03	
Respect for Rights of Third Persons	Guideline 15.05B
4.04	
Responsibilities of a Partner or Supervisory Lawyer	Guideline 15.07
5.01	
Responsibilities of a Supervised Lawyer	Guideline 15.07
5.02	
Responsibilities Regarding Nonlawyer Assistants	Guideline 15.07
5.03	
Professional Independence of a Lawyer	Guideline 15.07; 15.04D
5.04	
Unauthorized Practice of Law	Guideline 15.07
5.05	

Restrictions on Right to Practice 5.06	Guideline 15.07
Prohibited Discriminatory Activities 5.08	Guideline 15.05B
Accepting Appointments by a Tribunal 6.01	Guideline 15.07
Firm Names and Letterhead 7.01	Guideline 15.07
Communications Concerning a Lawyer's Services 7.02	Guideline 15.07
Prohibited Solicitations and Payments 7.03	Guideline 15.07
Advertisements in the Public Media 7.04	Guideline 15.07
Prohibited Written, Electronic, or Digital Solicitation 7.05	Guideline 15.07
Prohibited Employment 7.06	Guideline 15.07
Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations 7.07	Guideline 15.07
Bar Admission, Reinstatement, and Disciplinary Matters 8.01	Guideline 15.07
Judicial and Legal Officials 8.02	Guideline 15.07
Reporting Professional Misconduct 8.03	Guideline 15.07
Misconduct 8.04	Guideline 15.04--15.08

8.04(a)(2)(5)(6)(9)	15.06A
8.04(a)(3)	15.04E; 15.05A
8.04(a)(4)	15.05A
8.04(a)(7)(10)(11)	15.08
8.04(a)(8)(12)	15.07

Jurisdiction	Guideline: None
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8.05

Severability	Guideline: None
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9.01

<An order of the Supreme Court dated Feb. 26, 1991, as amended by an order of the Supreme Court dated Oct. 9, 1991, adopted the Texas Rules of Disciplinary Procedure, effective May 1, 1992.>

<An order of the Supreme Court dated Aug. 28, 2018, amended the Rule of Disciplinary Procedure, applying the amendments to grievances filed on or after June 1, 2018. The order also adopted a cross-reference table for the Guidelines on Imposing Sanctions as Appendix A to the Rules of Disciplinary Procedure. >

V. T. C. A., Govt. Code T. 2, Subt. G App. A-1, Disc. Proc., App. A, TX ST RULES DISC P App. A
Current with amendments received through August 1, 2023. Some rules may be more current, see credits for details.

End of Document

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