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

| | | |
|---|---|---|
| **IN THE MATTER OF** | § | |
| **HAO NI,** | § | **CAUSE NO. 71675** |
| **STATE BAR CARD NO. 24047205** | § | |

**FIRST AMENDED PETITION FOR RECIPROCAL DISCIPLINE**

**TO THE BOARD OF DISCIPLINARY APPEALS:**

The Commission for Lawyer Discipline (hereinafter referred to as the "Commission"), brings this action against Respondent, Hao Ni, and would show the following:

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

2. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this First Amended Petition for Reciprocal Discipline at Hao Ni, 8140 Walnut Hill Lane, Ste. 615, Dallas, Texas 75231-4350.

3. On or about March 31, 2025, a Final Order was entered in a matter styled, Proceeding No. D2025-14, *In the Matter of Hao Ni, Respondent*, United States Patent and Trademark Office, Before the Director of the United States Patent and Trademark Office (the "Final Order"), resolving the United States Patent and Trademark Office's disciplinary action against Respondent. *See* Exhibit 1. The Final Order states in pertinent part:

## FINAL ORDER

The Acting Deputy General Counsel for Enrollment and Discipline and the Director of Enrollment and Discipline ("OED Director") for the United States Patent and Trademark Office ("USPTO" or "Office") and Hao Ni ("Respondent"), by counsel, have submitted a Proposed Settlement of Disciplinary Matter Pursuant to 37 C.F.R. § l l.26 ("Agreement") to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office ("USPTO Director") for approval.

The Agreement, which resolves all disciplinary action by the USPTO arising from the Joint Stipulated Facts set forth below, is hereby approved. This Final Order sets forth the parties' stipulated facts, legal conclusions, and sanctions.

. . .

## Joint Stipulated Facts

16. On February 6, 2003, Respondent signed an Oath or Affirmation in which he swore or affirmed that he would observe the laws and rules of practice of the USPTO if admitted to practice before the USPTO.

17. On March 31, 2003, Respondent was registered as a patent agent with the USPTO and assigned registration number 53,858.

18. On November 5, 2004, Respondent was admitted to practice law in the State of Texas (Bar No. 24047205),and an attorney in good standing.

19. On January 10, 2008, Respondent's status changed from a registered agent to a registered attorney with the USPTO.

20. At all relevant times, Respondent was a partner with the intellectual property law firm Ni, Wang & Massand based in Dallas, Texas.

21. Respondent's practice primarily focused on intellectual property litigation in federal court.

22. Respondent supervised at least three paralegals who assisted him with his representation of clients before the USPTO in trademark matters.

23. In 2019, Respondent began a relationship with Shenzhen YaYi Intellectual Property Agency Co., Ltd. (“YaYi”) [深圳市亚安易知识产权代理有限公司], a trademark company based in Shenzhen, China.

24. Since 2019, Respondent received over 4,500 new trademark matters for foreign-domiciled applicants.

25. YaYi paid Respondent a fixed fee of $50 per filing for the filing of a new trademark application.

26. YaYi prepared trademark applications and other trademark documents for Respondent's foreign-domiciled trademark clients and sent them to Respondent for review, signature, and filing with the USPTO.

27. When representing his foreign-domiciled trademark clients referred by YaYi, Respondent communicated primarily with YaYi rather than communicating directly with his clients.

28. Respondent sponsored USPTO.gov accounts for his paralegals who assisted Respondent in connection with his representation of his foreign-domiciled trademark clients referred by YaYi.

29. In the course of representing his foreign-domiciled trademark clients referred by YaYi, Respondent directed his paralegals to electronically sign his name on approximately 4,367 trademark documents (including declarations) that were presented to the USPTO. This practice violated the USPTO trademark signature rules and TMEP direction.

30. On August 12, 2024, Respondent received correspondence from the Office of Enrollment and Discipline ("OED") expressly citing to TMEP § 611.01 (c), including those portions of the TMEP stating, "The person(s) identified as the signatory must manually enter the elements of the electronic signature." and "Another person (e.g., paralegal, legal assistant, or secretary) may not sign the name of a qualified practitioner or other authorized signatory. The OED correspondence also referenced § 11.303 of the USPTO Rules of Professional Conduct, which sets forth a practitioner's ethical obligation of candor to the USPTO, including: (i) that it is misconduct for a practitioner to knowingly make a false statement of fact to a tribunal (e.g., the USPTO) or fail to correct a false statement of material fact previously made to the tribunal by the practitioner; and (ii) in an ex parte proceeding, a practitioner shall inform the tribunal (e.g., the USPTO) of all material facts known to the practitioner that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

31. Although Respondent received OED's correspondence on August 12, 2024, it was over six months later and not until March 4, 2025, that Respondent sent a letter via email to the Deputy Commissioner for Trademark Policy for the USPTO pursuant to his ethical obligations under § 11.303 of the USPTO Rules of Professional Conduct.

32. Respondent's March 4, 2025 letter represented that, from 2021 until early 2024, he allowed his paralegals to sign his name on various trademark filings submitted to the USPTO after he had personally reviewed and approved them.

Respondent's letter also asserted that his actions were not done with the intent to circumvent any USPTO Rules.

33. Respondent's March 4, 2025 communication to the Deputy Commissioner for Trademark Policy for the USPTO also included a list of trademark documents presented to the USPTO that were not filed from Respondent's USPTO.gov account. This list identified 4,367 trademark documents (including declarations) where Respondent was the named signatory on the document. Respondent represented to the Deputy Commissioner for Trademark Policy that each of the 4,367 documents (including declarations) on the list were signed by his paralegals, not him. The list did not identify the named applicant on any of the 4,367 documents.

34. In part, Respondent's March 4, 2025 correspondence also asserted his beliefs as of March 4, 2025, that: (a) his permitting a paralegal to sign his name on a trademark filing may not be in literal compliance with the technical personal entry requirements of 37 C.F.R. § 2.193(c); and (b) doing so without wrongful intent is not a misrepresentation to the USPTO and does not adversely affect the patent or trademark owner's intellectual property rights.

35. As mentioned, on August 12, 2024, Respondent received correspondence from OED. That correspondence also referenced § 11.104 of the USPTO Rules of Professional Conduct, which sets forth a practitioner's ethical obligations regarding communicating with clients, including the duty to keep the client reasonably informed about the status of the matter entrusted to the practitioner and the duty to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

36. Although Respondent received OED's correspondence on August 12, 2024, it was over six months later and not until March *5,* 2025, that Respondent endeavored to communicate with his foreign-domiciled trademark clients referred by YaYi pursuant to his ethical obligations under § 11.104 of the USPTO Rules of Professional Conduct.

37. On March 5, 2025, Respondent sent an email to YaYi explaining that he notified the USPTO of the signature issue presented in his March 4, 2025 letter to the Deputy Commissioner for Trademark Policy.

38. Respondent's March 5, 2025 email to YaYi did not include a copy of his March 4, 2025 letter to the Deputy Commissioner for Trademark Policy. It did include a copy of the list of 4,367 impermissibly signed trademark documents (including declarations).

39. Respondent requested that YaYi forward the information presented in his March 5, 2025 email to YaYi to Respondent's foreign-domiciled trademark clients

affected by the 4,367 impermissibly signed trademark documents (including declarations).

40. Respondent has taken no action to communicate directly with any of his foreign domiciled trademark clients affected by the 4,367 impermissibly signed trademark documents (including declarations).

41. As of the date of the Agreement, Respondent has not provided OED or the USPTO with any information that YaYi has forwarded the information presented in his March 5, 2025 email to any of Respondent's foreign-domiciled trademark clients affected by the 4,367 impermissibly signed trademark documents (including declarations).

**Additional Considerations**

42. Respondent has not been previously disciplined by the USPTO, and he represents that he has never been the subject of professional discipline by any other jurisdiction.

43. In response to OED's August 12, 2024 correspondence, Respondent was candid with OED and admitted that he allowed his paralegals to enter his signature on trademark documents on which Respondent was the named signatory.

44. Respondent is contrite and now acknowledges and understands the following about the USPTO trademark signature rules:

a. All documents must be properly signed. 37 C.F.R. §§ 2.193(a), 11.18(a);

b. The person(s) identified as the signatory must personally sign the printed form or personally enter the signatory's electronic signature, either directly on the trademark electronic filing system's form or in the emailed form. 37 C.F.R. *§* 2.193(a) and (d);

c. A person may not delegate their authority to sign, and no person may sign or enter the name of another. *See In re Zhang,* 2021 TTAB LEXIS 465, at *10, *13 (Dir USPTO 2021) (sanctions); *In re Dermahose Inc.,* Ser. No. 76585901, 2007 TTAB LEXIS 25, at *9 (2007); *In re Cowan,* Reg. No. 1225389, 1990 Comm’r. Pat. LEXIS 24, at *6 (Comm'r Pats. 1990);

d. Just as signing the name of another person on paper does not serve as the signature of the person whose name is written, typing the electronic signature of another person is not a valid signature by that person; and

e. Similarly, another person may not use document-signing software to create or generate the electronic signature of the named signatory.

45. Further, opposite to his March 4, 2025, correspondence to the Deputy Commissioner for Trademark Policy for the USPTO, Respondent now acknowledges and understands the following:

a. The USPTO trademark signature rule requiring the named signatory to enter his or her signature on a trademark document is a substantive rule, not a technical requirement;

b. A failure of the named signatory to enter his or her signature on a trademark document -even without wrongful intent- is a misrepresentation under 37 C.F.R. § 11.804(c) when such document is presented to the USPTO; and

c. A failure of the named signatory to enter his or her signature on a trademark document -even without wrongful intent- potentially adversely affects a trademark applicants' and trademark registrants' intellectual property rights as well as the integrity of the USPTO trademark registration process.

**Joint Legal Conclusions**

46. Respondent acknowledges that, based on the information contained in the joint stipulated facts, above, Respondent's acts and omissions violated the following provisions of the USPTO Rules of Professional Conduct:

a. 37 C.F.R § 11.101 (requiring a practitioner to provide competent representation to a client) by, *inter alia*, (i) representing clients before the Office in trademark matters without understanding adequately the USPTO trademark signature rules or TMEP direction; and (ii) presenting trademark documents (including declarations) to the USPTO that violated the USPTO trademark signature rules and TMEP direction;

b. 37 C.F.R. § 11.103 (not acting with reasonable diligence in representing a client) by, inter alia, by presenting trademark documents (including declarations) to the USPTO that violated the USPTO trademark signature rules and TMEP direction;

c. 37 C.F.R. § 11.503 (a) and (b) (responsibilities over non-practitioner assistants) by, *inter alia*, not supervising adequately a non-practitioner assistant (i.e., his paralegals) in that he did not implement adequate controls and measures to ensure that his paralegals did not enter his signature on trademark documents and sworn declarations presented to the USPTO;

d. 37 C.F.R. § 11.804(c) (engaging in conduct involving misrepresentation) by, *inter alia*, presenting approximately 4,367 trademark documents (including declarations) to the USPTO that were signed by other than the named signatory; and

e. 37 C.F.R. § 11.804(d) (engaging in conduct prejudicial to the administration of the USPTO trademark registration system) by, *inter alia*, presenting approximately 4,367 trademark documents (including declarations) to the USPTO that were signed by other than the named signatory.

**Agreed-Upon Sanction**

47. Based on the foregoing, it is hereby ORDERED that:

a. Respondent is publicly reprimanded;

b. Respondent shall be placed on probation for twenty (20) months beginning on the date of this Final Order;
….

4. Respondent agreed to the entry of a sanction (with the conditions described therein) that resulted in him serving a probationary period of twenty (20) months commencing on the date the Final Order was signed (March 31, 2025).

5. An official copy of the Final Order, issued by the Director of the Office of Enrollment and Discipline ("OED Director") for the United States Patent and Trademark Office ("USPTO" or "Office") is attached hereto as the Commission's Exhibit 1 and made a part hereof for all intents and purposes as if the same were copied verbatim herein. The Commission expects to introduce a certified copy of Exhibit 1 at the time of hearing of this cause.

6. The Commission brings this disciplinary action in accordance with the Chief Disciplinary Counsel's mandatory administrative obligations, as set forth in TRDP 9.01.

7. Respondent was disciplined by a federal court or agency within the meaning of TRDP 9.01. The Final Order found Respondent violated several USPTO Rules of Professional Conduct: (1) 37 C.F.R. §11.101 (a practitioner shall provide competent representation); (2) 37 C.F.R. § 11.103 (not acting with reasonable diligence); (3) 37 C.F.R. §§11.503(a) and (b) (responsibilities regarding non-practitioner assistants); (4) 37 C.F.R. §11.804(c) (engaging in conduct involving misrepresentation) by, inter alia, presenting trademark documents to the USPTO

that were not signed by the named signatory on the document; and (5) 37 C.F.R. § ll.804(d) (engaging in conduct that is prejudicial to the integrity of the trademark system).

8. One or more of Respondent's stipulated violations of the USPTO Rules of Professional Conduct corresponds to similar obligations in the Texas Disciplinary Rules of Professional Conduct (the "TDRPCs"). Those are:

a. 37 C.F.R. §11.101 (a practitioner shall provide competent representation); and Rule 1.01(a) of the TDRPC, which sets forth that: "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, unless …". TEX. DISCIPLINARY R. PROF'L CONDUCT 1.01(a)(1)-(2).

b. 37 C.F.R. §§11.503(a) and (b) (responsibilities regarding non-practitioner assistants); and TDRPC 5.03(a)-(b)(1), which sets forth that: "With respect to a non-lawyer employed or retained by or associated with a lawyer: (a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligation of the lawyer; and (b) a lawyer shall be subject to discipline for the conduct of such person that would be a violation of these rules if engaged in by a lawyer if: (1) the lawyer orders, encourages, or permits the conduct involved … " TEX. DISCIPLINARY R. PROF'L CONDUCT 5.03(a)-(b)(1).

c. 37 C.F.R. §11.804(c) (engaging in conduct involving misrepresentation); and TDRPC 8.04(a)(3), which sets forth that: "(a) A lawyer shall not … (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;" TEX. DISCIPLINARY R. PROF'L CONDUCT 8.04(a)(3).

d. 37 C.F.R. §11.804(d) (engaging in conduct that is prejudicial to the administration of justice); and TDRPC 8.04(a)(3), which sets forth that: "(a) A lawyer shall not … (4) engage

in conduct constituting obstruction of justice;" TEX. DISCIPLINARY R. PROF'L CONDUCT 8.04(a)(4).

9. The Commission prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, this Board issue notice to Respondent, containing a copy of this First Amended Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of reciprocal discipline in this state would be unwarranted. The Commission also prays that upon trial of this matter this Board enter a judgment imposing discipline identical, to the extent practicable, with that imposed by the United States Patent and Trademark Office, unless the Respondent proves by clear and convincing evidence that a Rule 9.04 defense applies. Further, the Commission requests such other relief to which it may be entitled.

Respectfully submitted,

**Seana Willing**
Chief Disciplinary Counsel

**Richard A. Huntpalmer**
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
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Austin, Texas 78711
Telephone: 512.427.1350
Telecopier: 512.427.4253
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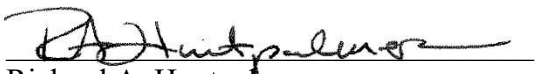
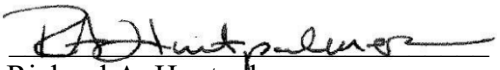


Richard A. Huntpalmer
Bar Card No. 24097857
ATTORNEYS FOR PETITIONER

## CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this First Amended Petition for Reciprocal Discipline and the Order to Show Cause on Hao Ni, by personal service as follows:

Hao Ni
8140 Walnut Hill Lane, Ste. 615
Dallas, Texas 75231-4350



Richard A. Huntpalmer

April 23, 2025

For certified copy purposes, I declare under penalty of perjury that the attached copy of the Final Order in USPTO Proceeding No. D2025-14, *In the Matter of Hao Ni* is a true and correct copy of the Final Order in, *In the Matter of Hao Ni*, USPTO Proceeding No. D2025-14.

/David R. Harley/

David R. Harley
Paralegal Specialist
Office of Enrollment and Discipline

EXHIBIT
1

**UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE DIRECTOR OF THE**
**UNITED STATES PATENT AND TRADEMARK OFFICE**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Hao Ni, | ) | Proceeding No. D2025-14 |
| | ) | |
| Respondent | ) | |
| | ) | |

## FINAL ORDER

The Acting Deputy General Counsel for Enrollment and Discipline and the Director of Enrollment and Discipline ("OED Director") for the United States Patent and Trademark Office ("USPTO" or "Office") and Hao Ni ("Respondent"), by counsel, have submitted a Proposed Settlement of Disciplinary Matter Pursuant to 37 C.F.R. § 11.26 ("Agreement") to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office ("USPTO Director") for approval.

The Agreement, which resolves all disciplinary action by the USPTO arising from the Joint Stipulated Facts set forth below, is hereby approved. This Final Order sets forth the parties' stipulated facts, legal conclusions, and sanctions.

### Jurisdiction

1. At all times relevant hereto, Respondent of Dallas, Texas, has been a registered patent attorney (USPTO Registration No. 53,858) and an attorney in good standing in the State of Texas (Bar No. 24047205) who was engaged in practice before the Office in trademark and patent matters. Therefore, Respondent is subject to the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*

2. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.19, 11.20, and 11.26.

### Background

The U.S. Counsel Rule

3. Foreign-domiciled trademark applicants or registrants must be represented before the USPTO by an attorney who is licensed to practice law in the United States. *See* 37 C.F.R. § 2.11(a)*; Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants*, 84 Fed. Reg. 31498 (July 2, 2019) ("the U.S. Counsel Rule").

4. A policy objective of the U.S. Counsel Rule is to instill greater confidence in the public that U.S. registrations issued to foreign applicants are not subject to invalidation for reasons such as improper signatures. *See* 84 Fed. Reg. 31507.

5. The requirement for representation by a qualified U.S. attorney is necessary to enforce compliance by all foreign applicants, registrants, and parties with U.S. statutory and regulatory requirements in trademark matters. 84 Fed. Reg. 31498. It will not only aid the USPTO in its efforts to improve and preserve the integrity of the U.S. trademark register, but it will also ensure that foreign applicants, registrants, and parties are assisted only by authorized practitioners who are subject to the USPTO's disciplinary rules. *Id.*

6. The USPTO has published ample information about the U.S. Counsel Rule. *See, e.g., Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants*, 84 Fed. Reg. 31498 (Final Rule) (July 2, 2019); 37 C.F.R. § 2.11 (requirement for representation); Trademark Manual of Examining Procedure § 601 (Requirement for Representation Based on Domicile of Mark Owner).

7. At all relevant times, Respondent had access to information concerning the U.S. Counsel Rule, its policy objectives, and its necessity.

8. Since around August 2019, Respondent has been aware of the U.S. Counsel Rule.

USPTO Trademark Signature Rules and TMEP Direction

9. The USPTO trademark signature rules require that all signatures be personally entered by the named signatory and that a person electronically signing a document through the Trademark Electronic Application System ("TEAS") must personally enter any combination of letters, numbers, spaces, and/or punctuation marks that he or she has adopted as a signature, placed between two forward slash ("/") symbols in the signature block on the electronic submission. *See* 37 C.F.R. § 2.193(a) and (c), and 37 C.F.R. § 11.18(a).

10. At all relevant times, Respondent should have known that the USPTO trademark signature rules require that all signatures be personally entered by the named signatory.

11. Trademark applications contain declarations that are signed under penalty of perjury, with false statements being subject to punishment under 18 U.S.C. § 1001. Signatories to declarations in trademark applications make specific representations regarding applicants' use of the mark in commerce and/or their intent to use the mark in commerce. The USPTO relies on such declarations signed under penalty of perjury in trademark applications in the course of examining trademark applications and issuing registrations.

12. At all relevant times, Respondent knew that the USPTO relies on declarations presented to it when determining whether to register a trademark.

13. The USPTO publishes online and regularly updates its Trademark Manual of Examining Procedure ("TMEP") (https://fqt-tmep.etc.uspto.gov/RDMS/TMEP/current). The TMEP provides trademark practitioners, *inter alia*, with a reference work on the practices and

procedures relative to prosecution of applications to register marks in the USPTO.

14. At all relevant times, unequivocal direction from the USPTO identified the proscription against any person other than the named signatory signing electronically trademark documents filed with the USPTO:

> All documents must be properly signed. 37 C.F.R. §§ 2.193(a), 11.18(a).
>
> The person(s) identified as the signatory must personally sign the printed form or personally enter the signatory's electronic signature, either directly on the trademark electronic filing system's form or in the emailed form. 37 C.F.R. §2.193(a), (d).
>
> A person may not delegate their authority to sign, and no person may sign or enter the name of another. *See In re Zhang*, 2021 TTAB LEXIS 465, at *10, *13 (Dir USPTO 2021) (sanctions); *In re Dermahose Inc.*, Ser. No. 76585901, 2007 TTAB LEXIS 25, at *9 (2007); *In re Cowan*, Reg. No. 1225389, 1990 Commr. Pat. LEXIS 24, at *6 (Comm'r Pats. 1990).
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> Just as signing the name of another person on paper does not serve as the signature of the person whose name is written, typing the electronic signature of another person is not a valid signature by that person.
>
> Similarly, another person may not use document-signing software to create or generate the electronic signature of the named signatory.

TMEP § 611.01(c) (November 2024) (paragraph spacing added).[1]

15. At all relevant times, the TMEP was available to Respondent and, as a practitioner who represents trademark clients before the USPTO, he should have known the direction provided by TMEP § 611.01(c).

**Joint Stipulated Facts**

16. On February 6, 2003, Respondent signed an Oath or Affirmation in which he swore or affirmed that he would observe the laws and rules of practice of the USPTO if admitted to practice before the USPTO.

17. On March 31, 2003, Respondent was registered as a patent agent with the USPTO and assigned registration number 53,858.

18. On November 5, 2004, Respondent was admitted to practice law in the State of Texas (Bar No. 24047205) and an attorney in good standing.

[1] Previous versions published in May 2024, November 2023, July 2022, July 2021, and October 2018 (with similar language).

19. On January 10, 2008, Respondent's status changed from a registered agent to a registered attorney with the USPTO.

20. At all relevant times, Respondent was a partner with the intellectual property law firm Ni, Wang & Massand based in Dallas, Texas.

21. Respondent's practice primarily focused on intellectual property litigation in federal court.

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USPTO) or fail to correct a false statement of material fact previously made to the tribunal by the practitioner; and (ii) in an ex parte proceeding, a practitioner shall inform the tribunal (e.g., the USPTO) of all material facts known to the practitioner that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

31. Although Respondent received OED's correspondence on August 12, 2024, it was over six months later and not until March 4, 2025, that Respondent sent a letter via email to the Deputy Commissioner for Trademark Policy for the USPTO pursuant to his ethical obligations under § 11.303 of the USPTO Rules of Professional Conduct.

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34. In part, Respondent's March 4, 2025 correspondence also asserted his beliefs as of March 4, 2025, that: (a) his permitting a paralegal to sign his name on a trademark filing may not be in literal compliance with the technical personal entry requirements of 37 C.F.R. § 2.193(c); and (b) doing so without wrongful intent is not a misrepresentation to the USPTO and does not adversely affect the patent or trademark owner's intellectual property rights.

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37. On March 5, 2025, Respondent sent an email to YaYi explaining that he notified the USPTO of the signature issue presented in his March 4, 2025 letter to the Deputy Commissioner for Trademark Policy.

38. Respondent's March 5, 2025 email to YaYi did not include a copy of his March 4, 2025 letter to the Deputy Commissioner for Trademark Policy. It did include a copy of the list of 4,367 impermissibly signed trademark documents (including declarations).

39. Respondent requested that YaYi forward the information presented in his March 5, 2025 email to YaYi to Respondent's foreign-domiciled trademark clients affected by the 4,367 impermissibly signed trademark documents (including declarations).

40. Respondent has taken no action to communicate directly with any of his foreign-domiciled trademark clients affected by the 4,367 impermissibly signed trademark documents (including declarations).

41. As of the date of the Agreement, Respondent has not provided OED or the USPTO with any information that YaYi has forwarded the information presented in his March 5, 2025 email to any of Respondent's foreign-domiciled trademark clients affected by the 4,367 impermissibly signed trademark documents (including declarations).

**Additional Considerations**

42. Respondent has not been previously disciplined by the USPTO, and he represents that he has never been the subject of professional discipline by any other jurisdiction.

43. In response to OED's August 12, 2024 correspondence, Respondent was candid with OED and admitted that he allowed his paralegals to enter his signature on trademark documents on which Respondent was the named signatory.

44. Respondent is contrite and now acknowledges and understands the following about the USPTO trademark signature rules:

a. All documents must be properly signed. 37 C.F.R. §§ 2.193(a), 11.18(a);

b. The person(s) identified as the signatory must personally sign the printed form or personally enter the signatory's electronic signature, either directly on the trademark electronic filing system's form or in the emailed form. 37 C.F.R. § 2.193(a) and (d);

c. A person may not delegate their authority to sign, and no person may sign or enter the name of another. *See In re Zhang*, 2021 TTAB LEXIS 465, at *10, *13 (Dir USPTO 2021) (sanctions); *In re Dermahose Inc.*, Ser. No. 76585901, 2007 TTAB LEXIS 25, at *9 (2007); *In re Cowan*, Reg. No. 1225389, 1990 Commr. Pat. LEXIS 24, at *6 (Comm'r Pats. 1990);

d. Just as signing the name of another person on paper does not serve as the signature of the person whose name is written, typing the electronic signature of another person is not a valid signature by that person; and

e. Similarly, another person may not use document-signing software to create or generate the electronic signature of the named signatory.

45. Further, opposite to his March 4, 2025 correspondence to the Deputy Commissioner for Trademark Policy for the USPTO, Respondent now acknowledges and understands the following:

a. The USPTO trademark signature rule requiring the named signatory to enter his or her signature on a trademark document is a substantive rule, not a technical requirement;

b. A failure of the named signatory to enter his or her signature on a trademark document —even without wrongful intent— is a misrepresentation under 37 C.F.R. § 11.804(c) when such document is presented to the USPTO; and

c. A failure of the named signatory to enter his or her signature on a trademark document —even without wrongful intent— potentially adversely affects a trademark applicants' and trademark registrants' intellectual property rights as well as the integrity of the USPTO trademark registration process.

**Joint Legal Conclusions**

46. Respondent acknowledges that, based on the information contained in the joint stipulated facts, above, Respondent's acts and omissions violated the following provisions of the USPTO Rules of Professional Conduct:

a. 37 C.F.R § 11.101 (requiring a practitioner to provide competent representation to a client) by, *inter alia*, (i) representing clients before the Office in trademark matters without understanding adequately the USPTO trademark signature rules or TMEP direction; and (ii) presenting trademark documents (including declarations) to the USPTO that violated the USPTO trademark signature rules and TMEP direction;

b. 37 C.F.R. § 11.103 (not acting with reasonable diligence in representing a client) by, *inter alia*, by presenting trademark documents (including declarations) to the USPTO that violated the USPTO trademark signature rules and TMEP direction;

c. 37 C.F.R. § 11.503 (a) and (b) (responsibilities over non-practitioner assistants) by, *inter alia*, not supervising adequately a non-practitioner assistant (i.e., his paralegals) in that he did not implement adequate controls and measures to ensure that his paralegals did not enter his signature on trademark documents and sworn declarations presented to the USPTO;

d. 37 C.F.R. § 11.804(c) (engaging in conduct involving misrepresentation) by, *inter alia*, presenting approximately 4,367 trademark documents (including declarations) to the USPTO that were signed by other than the named signatory; and

e. 37 C.F.R. § 11.804(d) (engaging in conduct prejudicial to the administration of the USPTO trademark registration system) by, *inter alia*, presenting approximately 4,367 trademark documents (including declarations) to the USPTO that were signed by other than the named signatory.

**Agreed-Upon Sanction**

47. Based on the foregoing, it is hereby ORDERED that:

a. Respondent is publicly reprimanded;

b. Respondent shall be placed on probation for twenty (20) months beginning on the date of this Final Order;

c. (1) If the OED Director is of the good-faith opinion that Respondent, during his probationary period, failed to comply with any provision of the Agreement, this Final Order, any of the conditions of his probation, or any provision of the USPTO Rules of Professional Conduct, the OED Director shall:

(A) issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order immediately suspending the Respondent for up to twelve (12) months for the violations set forth in the Joint Legal Conclusions, above;

(B) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to 37 C.F.R. § 11.11(a);

(C) grant Respondent fifteen (15) days to respond to the Order to Show Cause; and

(2) In the event that after the 15-day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the good-faith opinion that Respondent, during Respondent's probationary period, failed to comply with the USPTO Rules of Professional Conduct, this Final Order, or any provisions of the Agreement, including any of the above conditions of probation identified in items b. though c., the OED Director shall:

(A) deliver to the USPTO Director: (i) the Order to Show Cause; (ii) Respondent's response to the Order to Show Cause, if any; and (iii) argument and evidence supporting the OED Director's position; and

(B) request that the USPTO Director enter an order immediately suspending Respondent for up to twelve (12) months for the violations set forth in the Joint Legal Conclusions above;

d. Nothing herein shall prevent the OED Director from seeking discrete discipline for any misconduct that formed the basis for an Order to Show Cause issued pursuant to the preceding subparagraph;

e. During the first twelve (12) months of his probation, Respondent shall, at least on a bi-weekly basis, (i) search the USPTO's online trademark search system (currently located at: https://tmsearch.uspto.gov/search/search-information) for applications identifying him as the attorney of record; and (ii) promptly inform in writing the USPTO Office of Trademark Examination Policy of each trademark

document filing identifying him as the attorney of record that was filed without his knowledge or consent;

f. While Respondent is on probation, Respondent shall, at least on a bi-monthly basis, submit a written report to the OED Director stating that he has completed the bi-weekly searches of the online trademark search system, and, as applicable: (i) stating that he identified no applications or other trademark filings in which he was named as the attorney of record that were not made by him or without his knowledge and consent; or (ii) providing copies of correspondence sent to the USPTO Office of Trademark Examination Policy as described in the preceding subparagraph;

g. As a condition of his probation, Respondent shall, within thirty (30) days of the date of this Final Order (1) submit a written declaration, affidavit, or statement in compliance with 28 U.S.C. § 1746 signed by Respondent to the OED Director attesting to the extent to which YaYi has forwarded the information presented in Respondent's March 5, 2025 email to YaYi to Respondent's foreign-domiciled trademark clients affected by the 4,367 impermissibly signed trademark documents; and (2) provide documentary proof of the clients who were forwarded such information, namely: copies of the written correspondence transmitted to each client;

h. As a condition of his probation, Respondent shall, within sixty (60) days of the date of this Final Order: (1) submit a written declaration, affidavit, or statement in compliance with 28 U.S.C. § 1746 signed by Respondent to the OED Director attesting to the extent to which YaYi has forwarded the information presented in Respondent's March 5, 2025 email to YaYi to Respondent's foreign-domiciled trademark clients affected by the 4,367 impermissibly signed trademark documents; and (2) provide documentary proof of the clients who were forwarded such information, namely: copies of the written correspondence transmitted to each client;

i. As a condition of his probation, if, after sixty (60) days from Respondent has not submitted a declaration(s) executed by Respondent averring that YaYi has forwarded the information presented in Respondent's March 5, 2025 email to YaYi to all of Respondent's foreign-domiciled trademark clients affected by the 4,367 impermissibly signed trademark documents, then Respondent, within ninety (90) days of the date of this Final Order, shall forward the information presented in Respondent's March 5, 2025 email to YaYi to all of his foreign-domiciled trademark clients affected by the 4,367 impermissibly signed trademark documents who have not yet been forwarded such information, correctly translated into the client's native language, to:

    (1) The mailing address for each client as set forth in the "Applicant's Information" portion of each client's trademark application (i.e. not the mailing address belonging to YaYi);

(2) the email address for each client as set forth in the "Applicant's Information" portion of each client's trademark application, but only if such email address is an email address belonging to the client and one that Respondent reasonably believes to which the client has direct access (*i.e.,* not the email address belonging to YaYi); or

(3) another email address belonging to the client and one that Respondent reasonably believes to which the client has direct access (*i.e.*, not the email address belonging to a foreign-domiciled third person or a foreign domiciled entity who referred the matter to Respondent);

j. As a condition of his probation, Respondent shall, within one hundred and twenty days (120) days of the date of this Final Order: (1) submit a written declaration, affidavit, or statement in compliance with 28 U.S.C. § 1746 signed by Respondent to the OED Director attesting to the notification of clients as set forth in subparagraph i.; and (2) provide documentary proof of such notification, namely: copies of the written correspondence transmitted to each client;

k. As a condition of his probation, Respondent shall, within 30 days of the date of this Final Order, provide to the OED Director a written declaration, affidavit, or statement in compliance with 28 U.S.C. § 1746 signed by Respondent stating that he has reviewed thoroughly all provisions of the Trademark Manual of Examining Procedure, including but not limited to, the provisions pertaining to the USPTO's signature requirements;

l. As a condition of his probation, Respondent shall, within ninety (90) days of the date of this Final Order, provide to the OED Director a written, declaration, affidavit, or statement in compliance with 28 U.S.C. § 1746 signed by Respondent stating that he has successfully completed two (2) hours of continuing legal education credit on ethics/professional responsibility;

m. As a condition of his probation, Respondent shall, prior to the termination of his probation, provide to the OED Director a written declaration, affidavit, or statement in compliance with 28 U.S.C. § 1746 signed by Respondent stating that he has enrolled in, virtually attended, and completed each of the eight modules comprising the USPTO's Trademark Basics Boot Camp (located on the USPTO website at https://www.uspto.gov/about-us/events/trademark-basics-boot-camp);

n. Respondent shall cooperate fully with the USPTO in any present or inquiry into YaYi or any other third-party entities (e.g., foreign representatives or foreign associates) or person with whom Respondent worked, or was solicited to work, in connection with patent or trademark documents submitted to the USPTO;

o. In the event the Respondent seeks a review of any action taken pursuant to subparagraph c., above, such review shall not operate to postpone or otherwise hold in abeyance any suspension;

p. The OED Director shall electronically publish this Final Order at the OED's electronic FOIA Reading Room, which is publicly accessible through the Office's website at: https://foiadocuments.uspto.gov/oed/;

q. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

**Notice of Public Reprimand and Probation**

This notice concerns Mr. Hao Ni, of Dallas, Texas, who is registered to practice as a patent attorney (USPTO Registration No. 53,858) and an attorney in good standing in the State of Texas (Bar No. 24047205), and who was engaged in practice before the Office in trademark and patent matters. Mr. Ni is hereby publicly reprimanded for violating 37 C.F.R. §§ 11.101, 11.103, 11.503(a), 11.503(b), 11.804(c), and 11.804(d) predicated on presenting trademark documents (including declarations) to the USPTO that violated the USPTO trademark signature rules. He is also placed on probation for twenty (20) months.

In 2019, Mr. Ni began a relationship with Shenzhen YaYi Intellectual Property Agency Co., Ltd. ("YaYi ") [深圳市亚安易知识产权代理有限公司], a trademark company based in Shenzhen, China.

Since 2019, Mr. Ni received from YaYi referrals to serve as attorney of record in over 4,500 new trademark applications for foreign-domiciled applicants. YaYi prepared trademark applications for foreign-based applicants and sent them to Mr. Ni for review, signature, and filing with the USPTO.

Mr. Ni represented clients before the Office in trademark matters without understanding adequately the USPTO trademark signature rules or TMEP direction and presented trademark documents (including declarations) to the USPTO that violated the USPTO trademark signature rules and TMEP direction;.

As a result of the above misconduct, Mr. Ni agrees that he violated the following provisions of the USPTO Rules of Professional Conduct: 37 C.F.R. §§ 11.101 (practitioner shall provide competent representation to a client), 11.103 (practitioner shall act with reasonable diligence and promptness in representing a

client); 11.503(a) (practitioner who is a partner shall make reasonable efforts to ensure the firm has in effect measures giving reasonable assurance that non-practitioner's conduct is compatible with the professional obligations of the practitioner); 11.503(b) (practitioner having direct supervisory authority over a non-practitioner assistant shall make reasonable efforts to ensure that the non-practitioner's conduct is compatible with the professional obligations of the practitioner; 11.804(c) (practitioner shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 11.804(d) (practitioner shall not engage in conduct that is prejudicial to the federal trademark registration system).

The USPTO has published ample, readily available information for practitioners regarding what is competent practice before the Office in trademark matters. In particular, the agency maintains a webpage regarding important trademark information including specific links to relevant laws, rules, regulations, and rulemaking. (*Available at* www.uspto.gov/trademarks)

The agency publishes online and regularly updates its Trademark Manual of Examining Procedure ("TMEP") (*Available at* tmep.uspto.gov/RDMS/TMEP/current). The TMEP is a direction document that provides trademark practitioners, *inter alia*, with a reference work on the practices and procedures relative to prosecution of applications to register marks in the USPTO.

The USPTO has published ample information about the U.S. Counsel Rule. *See, e.g., Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants*, 84 FR 31498 (Final Rule) (July 2, 2019); 37 C.F.R. § 2.11 (Requirement for representation); TMEP § 611.01. There is also ample, readily-available information for practitioners regarding what is ethical practice before the Office in trademark matters. For example, the USPTO has a searchable OED FOIA webpage (found at https://foiadocuments.uspto.gov/oed).

Therefore, practitioners who represent applicants, registrants, or others before the USPTO in trademark matters —including those who serve as U.S. counsel for foreign-domiciled clients— are reasonably expected to know: (a) the applicable trademark prosecution rules; (b) the provisions of the USPTO Rules of Professional Conduct implicated by such representation, and (c) the potential disciplinary consequences when such provisions of the USPTO Rules of Professional Conduct are violated. The USPTO Director has issued numerous orders imposing discipline on

trademark practitioners who violated the USPTO Rules of Professional Conduct based on not complying with USPTO trademark signature rules, not adequately supervising non-attorneys, and/or not fulfilling obligations under 37 C.F.R. § 11.18 to conduct an inquiry reasonable under the circumstances in support of factual assertions made in trademark documents presented to the USPTO, including:

*In re Swyers*, Proceeding No. D2016-20 (USPTO Jan. 26, 2017)
*In re Meikle*, Proceeding No. D2019-17 (USPTO Mar. 21, 2019)
*In re Crabtree*, Proceeding Nos. D2018-31 & 47 (USPTO Apr. 25, 2019)
*In re Sapp*, Proceeding No. D2019-31 (USPTO May 15, 2019)
*In re Sweeney*, Proceeding No. D2019-33 (USPTO June 19, 2019)
*In re Mar*, Proceeding No. D2019-11 (USPTO Aug. 2, 2019)
*In re Rajan*, Proceeding No. D2019-30 (USPTO Sep. 5, 2019)
*In re Caraco*, Proceeding No. D2019-50 (USPTO Sep. 12, 2019)
*In re Caldwell, II*, Proceeding No. D2020-12 (USPTO Mar. 17, 2020)
*In re Bashtanyk*, Proceeding No. D2020-09 (USPTO Apr. 17, 2020)
*In re Lou*, Proceeding No. D2021-04 (USPTO May 12, 2021)
*In re Mincov*, Proceeding No. D2020-30 (USPTO Aug. 23, 2021)
*In re Reddy*, Proceeding No. D2021-13 (USPTO Sep. 9, 2021)
*In re David*, Proceeding No. D2021-08 (USPTO Sep. 24, 2021)
*In re Di Li*, Proceeding No. D2021-16 (USPTO Oct. 7, 2021)
*In re Hom*, Proceeding No. D2021-10 (USPTO Dec. 17, 2021)
*In re Yang*, Proceeding No. D2021-11 (USPTO Dec. 17, 2021)
*In re Pasquine*, Proceeding No. D2019-39 (USPTO Mar. 28, 2022)
*In re Wan*, Proceeding No. D2022-04 (USPTO Apr. 1, 2022)
*In re Hao*, Proceeding No. D2021-14 (USPTO Apr. 27, 2022)
*In re Zhang*, Proceeding No. D2022-16 (USPTO July 11, 2022)
*In re Liu*, Proceeding No. D2022-03 (USPTO Aug. 9, 2022)
*In re Han*, Proceeding No. D2022-23 (USPTO Jan. 6, 2023)
*In re Song*, Proceeding No. D2023-10 (USPTO May 1, 2023)
*In re Gallagher*, Proceeding No. D2023-08 (USPTO June 23, 2023)
*In re Jabbour*, Proceeding No. D2023-33 (USPTO Sep. 6, 2023)
*In re Wang*, Proceeding No. D2023-38 (USPTO Nov. 21, 2023)
*In re Niu*, Proceeding No. D2023-32 (USPTO Jan. 3, 2024)
*In re Huang*, Proceeding No. D2023-37 (USPTO Jan. 8, 2024)
*In re Bethel*, Proceeding No. D2019-42 (USPTO Jan. 27, 2024)
*In re Koh*, Proceeding No. D2024-07 (USPTO Feb. 7, 2024)
*In re Che-Yang Chen*, Proceeding No. D2024-01 (USPTO Mar. 20, 2024)
*In re Haffner*, Proceeding No. D2023-35 (USPTO May 21, 2024)
*In re Oldham*, Proceeding No. D2024-11 (USPTO May 29, 2024)
*In re Harper*, Proceeding Nos. D2020-10 and D2024-15 (USPTO Aug. 13, 2024)
*In re Yu*, Proceeding No. D2024-24 (USPTO Aug. 20, 2024)
*In re Khalsa*, Proceeding No. D2019-38 (USPTO Sep. 5, 2024)
*In re Weitao Chen*, Proceeding No. D2024-21 (USPTO Sep. 11, 2024)

*In re Campbell,* Proceeding No. D2019-41 (USPTO Oct. 10, 2024)
*In re Jie Luo,* Proceeding No. D2024-02 (USPTO Oct. 25, 2024)
*In re Qinghe Luo,* Proceeding No. D2023-39 (USPTO Nov. 21, 2024)
*In re Angus Ni,* Proceeding No. D2024-20 (USPTO Dec. 19, 2024)
*In re Okeke,* Proceeding No. D2024-18 (USPTO Jan. 6, 2025)

Trademark practitioners should be mindful that the USPTO trademark signature rule requiring the named signatory to enter his or her signature on a trademark document to be presented to the Office is a substantive rule, not a technical requirement; therefore, a failure of a named signatory to enter his or her signature on a trademark document potentially adversely affects a trademark applicants' and trademark registrants' intellectual property rights as well as the integrity of the USPTO trademark registration process.

This action is the result of a settlement agreement between Mr. Ni and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.19, 11.20, and 11.26. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room accessible at: https://foiadocuments.uspto.gov/oed.

r. Nothing in the Agreement or this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including this Final Order: (1) when addressing any further complaint or evidence of the same or similar misconduct concerning Respondent brought to the attention of the Office; (2) in any future disciplinary proceeding against Respondent (i) as an aggravating factor to be taken into consideration in determining any discipline to be imposed, and/or (ii) to rebut any statement or representation by or on Respondent's behalf;

s. Respondent waive all rights to seek reconsideration of this Final Order under 37 C.F.R. § 11.56, waives the right to have this Final Order reviewed under 37 C.F.R. § 11.57, and waives the right otherwise to appeal or challenge this Final Order in any manner; and

t. Each party shall each bear their own costs incurred to date and in carrying out the terms of the Agreement and this Final Order.

(signature page follows)

(signature page for Final Order (D2025-14))

Users, Choe, Tricia

Digitally signed by Users, Choe, Tricia
Date: 2025.03.31 08:27:25 -04'00'

Tricia Choe
Associate General Counsel for General Law
United States Patent and Trademark Office

Date

on delegated authority by

Coke Morgan Stewart
Acting Under Secretary of Commerce for Intellectual Property and
Acting Director of the United States Patent and Trademark Office

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Order was sent, on this day, to the parties in the manner indicated below-

Via e-mail:

Emil Ali
McCabe & Ali, LLP
emil@mccabeali.com
*Counsel for Respondent Hao Ni*

Via e-mail:

Hendrik DeBoer
[redacted]
*Counsel for OED Director*

3/31/2025
Date

U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

# The Board of Disciplinary Appeals

Appointed by the Supreme Court of Texas

# Internal Procedural Rules

## (effective September 24, 2024)


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

1414 Colorado, Suite 610
Austin TX 78701

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

# INTERNAL PROCEDURAL RULES

## BOARD OF DISCIPLINARY APPEALS

*Current through September 24, 2024*

## Contents

# INTERNAL PROCEDURAL RULES

## Board of Disciplinary Appeals

*Current through September 24, 2024*

### I. GENERAL PROVISIONS

**Rule 1.01. Definitions**

(a) "BODA" is the Board of Disciplinary Appeals.

(b) "Chair" is the member elected by BODA to serve as chair or, in the Chair's absence, the member elected by BODA to serve as vice-chair.

(c) "Classification" is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a "complaint" or an "inquiry."

(d) "BODA Clerk" is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.

(e) "CDC" is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.

(f) "Commission" is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.

(g) "Executive Director" is the executive director of BODA.

(h) "Panel" is any three-member grouping of BODA under TRDP 7.05.

(i) "Party" is a Complainant, a Respondent, or the Commission.

(j) "TDRPC" is the Texas Disciplinary Rules of Professional Conduct.

(k) "TRAP" is the Texas Rules of Appellate Procedure.

(l) "TRCP" is the Texas Rules of Civil Procedure.

(m) "TRDP" is the Texas Rules of Disciplinary Procedure.

(n) "TRE" is the Texas Rules of Evidence.

**Rule 1.02. General Powers**

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

**Rule 1.03. Additional Rules in Disciplinary Matters**

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

**Rule 1.04. Appointment of Panels**

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

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

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

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

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

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

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

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

(4) Exceptions.

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

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

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

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

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

(5) Format. An electronically filed document must:

(i) be in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, if possible; and

(iii) not be locked.

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

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

(1) an "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

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

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

**Rule 1.06. Service of Petition**

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

**Rule 1.07. Hearing Setting and Notice**

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

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

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

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

**Rule 1.08. Time to Answer**

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

**Rule 1.09. Pretrial Procedure**

(a) **Motions.**

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

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

(i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(ii) if an appeal has been perfected, the date when the appeal was perfected;

(iii) the original deadline for filing the item in question;

(iv) the length of time requested for the extension;

(v) the number of extensions of time that have been granted previously regarding the item in question; and

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

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

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

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

(1) marked;

(2) indexed with the title or description of the item offered as an exhibit; and

(3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

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

**Rule 1.10. Decisions**

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

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

(1) as required by the TRDP; and

(2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

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

**Rule 1.11. Board of Disciplinary Appeals Opinions**

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

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

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

**Rule 1.12. BODA Work Product and Drafts**

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

**Rule 1.13. Record Retention**

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

**Rule 1.14. Costs of Reproduction of Records**

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

**Rule 1.15. Publication of These Rules**

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

## II. ETHICAL CONSIDERATIONS

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

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

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

(c) A BODA member may represent a party in a legal

malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

**Rule 2.02. Confidentiality**

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

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

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

**Rule 2.03. Disqualification and Recusal of BODA Members**

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

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

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

## III. CLASSIFICATION APPEALS

**Rule 3.01. Notice of Right to Appeal**

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

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

**Rule 3.02. Record on Appeal**

BODA must not consider documents or other submissions that the Complainant or Respondent filed with the CDC or BODA after the CDC's classification. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

**Rule 3.03. Disposition of Classification Appeal**

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

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

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

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

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

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

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

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

## IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

**Rule 4.01. Perfecting Appeal**

(a) **Appellate Timetable.** The date that the evidentiary

judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule [TRDP] 2.21 [2.20].

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

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

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

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

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

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

**Rule 4.02. Record on Appeal**

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

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

(c) **Responsibility for Filing Record.**

(1) Clerk's Record.

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

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

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

(2) Reporter's Record.

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

a) a notice of appeal has been filed;

b) a party has requested that all or part of the reporter's record be prepared; and

c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

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

(d) **Preparation of Clerk's Record.**

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

(i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

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

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

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

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

(vii) certify the clerk's record.

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

(3) The table of contents must:

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

(ii) be double-spaced;

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

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

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

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

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

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

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

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

(f) **Preparation of the Reporter's Record.**

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

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

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

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

(6[1]) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

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

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

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

[1] So in original.

**Rule 4.03. Time to File Record**

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

(b) **If No Record Filed.**

(1) If the clerk's record or reporter's record has not been

timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

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

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

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

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

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

**Rule 4.04. Copies of the Record**

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

**Rule 4.05. Requisites of Briefs**

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

(b) **Appellee's Filing Date.** Appellee's brief must be filed within 30 days after the appellant's brief is filed.

(c) **Contents.** Briefs must contain:

(1) a complete list of the names and addresses of all parties to the final decision and their counsel;

(2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;

(3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;

(4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;

(5) a statement, without argument, of the basis of BODA's jurisdiction;

(6) a statement of the issues presented for review or points of error on which the appeal is predicated;

(7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

(11) an appendix of record excerpts pertinent to the issues presented for review.

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

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

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

(1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;

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

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

**Rule 4.06. Oral Argument**

(a) **Request.** A party desiring oral argument must note the

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

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

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

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

**Rule 4.07. Decision and Judgment**

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

(1) affirm in whole or in part the decision of the evidentiary panel;

(2) modify the panel's findings and affirm the findings as modified;

(3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or

(4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:

(i) the panel that entered the findings; or

(ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

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

**Rule 4.08. Appointment of Statewide Grievance Committee**

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

**Rule 4.09. Involuntary Dismissal**

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

(a) for want of jurisdiction;

(b) for want of prosecution; or

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

## V. PETITIONS TO REVOKE PROBATION

**Rule 5.01. Initiation and Service**

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

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

**Rule 5.02. Hearing**

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

## VI. COMPULSORY DISCIPLINE

**Rule 6.01. Initiation of Proceeding**

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

**Rule 6.02. Interlocutory Suspension**

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA

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

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

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

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

(i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or

(ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

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

## VII. RECIPROCAL DISCIPLINE

### Rule 7.01. Initiation of Proceeding

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

### Rule 7.02. Order to Show Cause

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

### Rule 7.03. Attorney's Response

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

## VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

### Rule 8.01. Appointment of District Disability Committee

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

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

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

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

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

### Rule 8.02. Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the

CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06.

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

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

**Rule 8.03. Discovery**

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

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

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

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

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

**Rule 8.04. Ability to Compel Attendance**

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

**Rule 8.05. Respondent's Right to Counsel**

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

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

**Rule 8.06. Hearing**

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

**Rule 8.07. Notice of Decision**

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

**Rule 8.08. Confidentiality**

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

## IX. DISABILITY REINSTATEMENTS

**Rule 9.01. Petition for Reinstatement**

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

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

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

**Rule 9.02. Discovery**

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

**Rule 9.03. Physical or Mental Examinations**

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

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

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

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

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

**Rule 9.04. Judgment**

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

## X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

**Rule 10.01. Appeals to the Supreme Court**

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

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

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