



FILED
2/5/21

BEFORE THE BOARD OF DISCIPLINARY APPEALS THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas
APPOINTED BY
THE SUPREME COURT OF TEXAS

IN THE MATTER OF § 65166
ROBERT PHILLIP ODLE § CAUSE NO. _____
STATE BAR CARD NO. 00793172 §

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called “Petitioner”), brings this action against Respondent, Robert Phillip Odle, (hereinafter called “Respondent”), showing as follows:

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

2. Respondent is a member of the State Bar of Texas and is licensed but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Robert Phillip Odle, 9447 Wolf Pack Terrace, Colorado Springs, Colorado 80920.

3. On or about August 16, 2019, a Stipulation, Agreement and Affidavit Containing the Respondent’s Conditional Admission of Misconduct was entered in the Supreme Court, State of Colorado, Before the Presiding Disciplinary Judge, in a matter styled: *Complainant: The People of the State of Colorado, Respondent: Robert Phillip Odle, #18091*. (Exhibit 1)

4. On or about August 19, 2019, an Order Approving Conditional Admission of Misconduct and Imposing Sanctions Under C.R.C.P. 251.22 was entered in the Supreme Court, State of Colorado, Before the Office of the Presiding Disciplinary Judge, in a matter styled:

Complainant: The People of the State of Colorado, Respondent: Robert Phillip Odle, #18091,
Case No. 19PDJ062, that states in pertinent part as follows:

. . . Upon review of the stipulation, the Court ORDERS:

1. The stipulation is APPROVED.
2. ROBERT PHILLIP ODLE, attorney registration number 18091, is SUSPENDED from the practice of law for a period of SIX MONTHS, ALL TO BE STAYED upon the successful completion of a THREE-YEAR period of PROBATION, subject to the conditions set forth in paragraph 16 of the stipulation.
3. Respondent violated Colo. RPC 1.3., 1.4(a)(4), 1.4(b), and 1.15A(a).

(Exhibit 2).

5. In the Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct Respondent stipulates to the following facts and conclusions:

Landlord/Tenant Matter

- a. In early 2017, A.M., an active-duty member of the military, moved out of his Colorado Springs apartment. After he moved out, his management company claimed that he and his wife owed over \$4,000 in damages and fees, which they disputed.
- b. A.M. reached out to Respondent, who agreed to help *pro bono*. Via email, Respondent asked for a number of documents from A.M., including the lease, any photographs, etc., and said he would draft a demand letter to the management company requesting the return of A.M.'s damage deposit. A.M. sent Respondent the requested information, and believed Respondent was handling the matter.
- c. Respondent states he did not receive the response or attachments from A.M. He did not follow up with A.M., and they did not communicate for a year.
- d. In March 2018 - nearly a year later - A.M. received a letter from a collections agency, stating they were trying to collect the management company's debt. A.M. contacted Respondent, who did not remember A.M. said he would look into the matter. Meanwhile,

because A.M. told the collections company he had an attorney, they would no longer deal directly with A.M.

- e. Months went by, and A.M. did not hear from Respondent. He contacted the Office of Attorney Regulation Counsel in August 2018.
- f. Through Respondent's conduct in the landlord/tenant matter, Respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 251.5. Respondent has also violated Colo. RPC 1.3 (diligence); 1.4(a)(4) - (communication); and 1.4(b) (communication).

Probate Matter

- g. B.D. hired Respondent to handle a probate matter. B.D.'s brother had recently died, and B.D. was his brother's executor and sole heir. Respondent agreed to assist with the administration of the estate on an hourly basis, and B.D. paid him a \$5,000 retainer in November 2015. Respondent believes he issued B.D. a fee agreement, but he cannot locate a copy and B.D. denies one exists. However, he also understood Respondent to be working on an hourly basis.
- h. B.D. wanted to handle the estate's creditors, while Respondent assisted with the legal matters. Respondent prepared the letters testamentary and a newspaper notice, and agreed to advise B.D. regarding other actions he needed to take. He also provided B.D. with the creditor notice JDF form.
- i. B.D.'s brother received assistance from Medicaid before his death, and though Respondent attempted to notify B.D. of the Medicaid claim, some of those communications may have not been received.
- j. The estate also contained a condo, which sold before Medicaid issued its claim. Respondent assisted B.D. with the title search and sale. He invoiced B.D. sporadically, recreating from his file the time he spent on the matter and reflecting deductions from the retainer accordingly. But Respondent failed to maintain a sufficient COLTAF balance to cover the money he should have been holding for B.D. at various points in time during the representation. He technically converted B.D.'s money, though he likely earned it by the end of the representation.
- k. During the representation, Respondent was often difficult to reach and he often failed to return B.D.'s calls. B.D. ultimately terminated the representation, and Respondent failed to issue the final invoice and accounting B.D. requested.

1. Through Respondent's conduct in the probate matter, Respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 251.5. Respondent has also violated Colo. RPC 1.3 (diligence); 1.4(a)(4) (communication); 1.4(b) (communication); 1.15A(a) (negligent conversion).

6. Odle was suspended from the practice of law for a period of six months, all to be stayed upon the successful completion of a three-year period of probation, subject to the conditions set forth in paragraph 16 of the stipulation. Through his conduct, Odle violated Colo. RPC 1.7(a) (diligence); Colo. RPC 1.4(a)(4) (communication); 1.4(b) (communication); 1.15A(a) (negligent conversion). Further, per C.R.C.P. 251.7(f), no more than twenty-eight days and no fewer than fourteen days prior to the expiration of the period of probation, Respondent shall file an affidavit with the People attesting to compliance with all terms of probation and shall file with the Court notice and a copy of such affidavit and application for an order terminating probation. Upon receipt of this notice and absent objection from the People, the Court will issue an order terminating probation, to take effect on the date the period of probation expires.

7. Copies of the Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct and Order Approving Conditional Admission of Misconduct and Imposing Sanctions Under C.R.C.P. 251.22 are attached hereto as Petitioner's Exhibits 1 and 2, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 and 2 at the time of the hearing in this case.


8. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted.

Petitioner further prays that upon trial of this matter that this Board enter a judgment imposing discipline identical with that imposed by the Supreme Court of the State of Colorado and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Judith Gres DeBerry
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
Telephone: 512.427.1350
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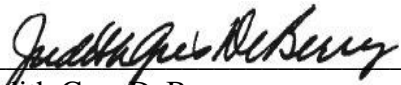


Judith Gres DeBerry
Bar Card No. 24040780
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

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

Robert Phillip Odle
9447 Wolf Pack Terrace
Colorado Springs, Colorado 80920



Judith Gres DeBerry

SUPREME COURT, STATE OF COLORADO

ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE
PRESIDING DISCIPLINARY JUDGE
1300 Broadway, Suite 250
Denver, Colorado 80203

Complainant:
THE PEOPLE OF THE STATE OF COLORADO

Respondent:
ROBERT PHILLIP ODLE, # 18091

Jacob M. Vos, #41562
Assistant Regulation Counsel
Attorneys for Complainant
1300 Broadway, Suite 500
Denver, Colorado 80203
Telephone: (303) 457-5800x7913
Fax No.: (303) 501-1141
j.vos@csc.state.co.us

Robert Phillip Odle, # 18091
Respondent
9447 Wolf Pack Terrace
Colorado Springs, CO 80920
Telephone: 719-428-8977
rpodle6@yahoo.com

FILED

AUG 16 2019

PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF COLORADO

▲ COURT USE ONLY ▲

Case Number:

19 PDJ 062

Supreme Court

State of Colorado

Certified to be a full, true and correct copy

NOV 18 2020

Office of the
Presiding Disciplinary Judge

By 

**STIPULATION, AGREEMENT AND AFFIDAVIT CONTAINING THE
RESPONDENT'S CONDITIONAL ADMISSION OF MISCONDUCT**

On this 16 day of August, 2019, Jacob M. Vos, Assistant Regulation Counsel and attorney for the complainant, and Robert Phillip Odle, the Respondent in these proceedings, enter into the following Stipulation, Agreement, and Affidavit Containing Respondent's Conditional Admission of Misconduct ("Stipulation") and submit the same to the Presiding Disciplinary Judge for his consideration.

RECOMMENDATION: a six-month suspension, fully stayed upon successful completion of a three-year probation, with conditions.

1. Respondent has taken and subscribed to the oath of admission, was admitted to the bar of this Court on November 3, 1988, and is registered as an attorney upon the official records

EXHIBIT

1

of this Court, registration no. 18091. Respondent is subject to the jurisdiction of this Court and the Presiding Disciplinary Judge in these proceedings.

2. Respondent enters into this Stipulation freely and voluntarily. No promises have been made concerning future consideration, punishment, or lenience in the above-referenced matter. It is Respondent's personal decision, and Respondent affirms there has been no coercion or other intimidating acts by any person or agency concerning this matter.

3. This matter has not become public under the operation of C.R.C.P. 251.31(c) as amended. However, Respondent specifically acknowledges that, if the Presiding Disciplinary Judge should decide to accept this Stipulation, and impose the agreed-to discipline contained herein, then this Stipulation and the discipline imposed will be matters of public record.

4. Respondent is familiar with the rules of the Colorado Supreme Court regarding the procedure for discipline of attorneys and with the rights provided by those rules. Respondent acknowledges the right to a full and complete evidentiary hearing on the above-referenced complaint. At any such hearing, Respondent would have the right to be represented by counsel, present evidence, call witnesses, and cross-examine the witnesses presented by Complainant. At any such formal hearing, Complainant would have the burden of proof and would be required to prove the charges contained in the complaint with clear and convincing evidence. Nonetheless, having full knowledge of the right to such a formal hearing, Respondent waives that right.

5. Respondent and Complainant specifically waive the right to a hearing pursuant to C.R.C.P. 251.22(c)(1).

6. Respondent and Complainant stipulate to the following facts and conclusions:

- Landlord/Tenant Matter

- a. In early 2017, A.M., an active-duty member of the military, moved out of his Colorado Springs apartment. After he moved out, his management company claimed that he and his wife owed over \$4,000 in damages and fees, which they disputed.
- b. A.M. reached out to Respondent, who agreed to help *pro bono*. Via email, Respondent asked for a number of documents from A.M., including the lease, any photographs, etc., and said he would draft a demand letter to the management company requesting the return of A.M.'s damage deposit. A.M. sent Respondent the requested information, and believed Respondent was handling the matter.
- c. Respondent states he did not receive the response or attachments from A.M. He did not follow up with A.M., and they did not communicate for a year.
- d. In March 2018 – nearly a year later – A.M. received a letter from a collections agency, stating they were trying to collect the management company's debt. A.M. contacted Respondent, who did not remember A.M. said he would look into the matter. Meanwhile, because A.M. told the collections company he had an attorney, they would no longer deal directly with A.M.

- e. Months went by, and A.M. did not hear from Respondent. He contacted the Office of Attorney Regulation Counsel in August 2018.
- f. Through Respondent's conduct in the landlord/tenant matter, Respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 251.5. Respondent has also violated Colo. RPC 1.3 (diligence); 1.4(a)(4) (communication); and 1.4(b) (communication).

Probate Matter

- g. B.D. hired Respondent to handle a probate matter. B.D.'s brother had recently died, and B.D. was his brother's executor and sole heir. Respondent agreed to assist with the administration of the estate on an hourly basis, and B.D. paid him a \$5,000 retainer in November 2015. Respondent believes he issued B.D. a fee agreement, but he cannot locate a copy and B.D. denies one exists. However, he also understood Respondent to be working on an hourly basis.
- h. B.D. wanted to handle the estate's creditors, while Respondent assisted with the legal matters. Respondent prepared the letters testamentary and a newspaper notice, and agreed to advise B.D. regarding other actions he needed to take. He also provided B.D. with the creditor notice JDF form.
- i. B.D.'s brother received assistance from Medicaid before his death, and though Respondent attempted to notify B.D. of the Medicaid claim, some of those communications may have not been received.
- j. The estate also contained a condo, which sold before Medicaid issued its claim. Respondent assisted B.D. with the title search and sale. He invoiced B.D. sporadically, recreating from his file the time he spent on the matter and reflecting deductions from the retainer accordingly. But Respondent failed to maintain a sufficient COLTAF balance to cover the money he should have been holding for B.D. at various points in time during the representation. He technically converted B.D.'s money, though he likely earned it by the end of the representation.
- k. During the representation, Respondent was often difficult to reach and he often failed to return B.D.'s calls. B.D. ultimately terminated the representation, and Respondent failed to issue the final invoice and accounting B.D. requested.
- l. Through Respondent's conduct in the probate matter, Respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 251.5. Respondent has also violated Colo. RPC 1.3 (diligence); 1.4(a)(4) (communication); 1.4(b) (communication); 1.15A(a) (negligent conversion).

7. Pursuant to C.R.C.P. 251.32, Respondent agrees to pay costs in the amount of \$224.00 (a copy of the statement of costs is attached as Exhibit 1) incurred in conjunction with this matter within thirty-five (35) days after acceptance of the Stipulation by the Presiding Disciplinary Judge, made payable to Colorado Supreme Court Attorney Regulation Offices. Respondent agrees that statutory interest shall accrue from thirty-five (35) days after the Presiding

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Disciplinary Judge accepts this Stipulation. Should Respondent fail to make payment of the aforementioned costs and interest within thirty-five (35) days, Respondent specifically agrees to be responsible for all additional costs and expenses, such as reasonable attorney fees and costs of collection incurred by Complainant in collecting the above stated amount. Complainant may amend the amount of the judgment for the additional costs and expenses by providing a motion and bill of costs to the Presiding Disciplinary Judge, which identifies this paragraph of the Stipulation and Respondent's default on the payment.

8. This Stipulation represents a settlement and compromise of the specific claims and defenses pled by the parties, and it shall have no meaning or effect in any other lawyer regulation case involving another respondent attorney.

9. This Stipulation is premised and conditioned upon acceptance of the same by the Presiding Disciplinary Judge. If for any reason the Stipulation is not accepted without changes or modification, then the admissions, confessions, and Stipulations made by Respondent will be of no effect. Either party will have the opportunity to accept or reject any modification. If either party rejects the modification, then the parties shall be entitled to a full evidentiary hearing; and no confession, Stipulation, or other statement made by Respondent in conjunction with this offer to accept discipline of a six-month stayed suspension may be subsequently used. If the Stipulation is rejected, then the matter will be heard and considered pursuant to C.R.C.P. 251.18.

10. The Office of Attorney Regulation Counsel has notified or will notify shortly after the parties sign this agreement, the complaining witnesses in the matters of the proposed disposition.

PRIOR DISCIPLINE

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11. Respondent was suspended for six months, effective March 1, 2019, for violations of Colo. RPC 1.15A(a), 8.4(a), 1.8(j), and 1.7, in Case No. 18PDJ066. *See* Ex. 2.

ANALYSIS OF DISCIPLINE

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12. Pursuant to American Bar Association *Standards for Imposing Lawyer Sanctions* 1991 and Supp. 1992 ("ABA *Standards*"), §3.0, the Court should consider the following factors generally:

a. The duty violated: duty of communication; duty of diligence; duty to segregate unearned fees.

b. The lawyer's mental state: negligent.

c. The actual or potential injury caused by the lawyer's misconduct: Respondent caused actual harm in the landlord/tenant matter because his inaction caused the landlord's claim to be referred to a collection agency. His violations in the probate matter caused little actual harm, but a considerable amount of potential harm.

d. The existence of aggravating or mitigating factors:

ABA *Standard* § 9.22 aggravating factors include:

- (c) a pattern of misconduct;
- (d) multiple offenses; and
- (i) substantial experience in the practice of law.

ABA *Standard* § 9.32 mitigating factors include:

- (b) absence of a dishonest or selfish motive;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and
- (l) remorse.

13. Pursuant to ABA *Standard* § 4.12, suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. Under *Standard* § 4.13, reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. Pursuant to *Standard* 4.43, reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

14. Technical conversion generally warrants suspension. *See People v. Varallo*, 913 P.2d 1, 11 (Colo. 1996) (discussing the knowing conversion v. technical conversion dichotomy); *People v. McNamara*, 275 P.3d 792, 807 (Colo. O.P.D.J. 2011) (failure to pay child support, insufficient recordkeeping, and technical conversion warranted a year-and-a-day suspension, with three months served). Here, in the event he returns to the practice of law following his suspension in Case No. 18PDJ066, Respondent has expressed a willingness to alter his practices to align with the Rules. A stayed suspension, with education and monitoring, is therefore appropriate.

15. Considering all of the factors described above, as applied to this case, a six-month suspension, stayed for a probationary period of three years, with conditions, is an appropriate sanction. Respondent meets the eligibility requirements for probation set forth in C.R.C.P. 251.7(a).

CONDITIONS

16. **Probation.** The parties stipulate that Respondent is eligible for probation pursuant to C.R.C.P. 251.7(a). Successful completion of all these terms shall stay the imposition of the six-month suspension.

- a. Respondent shall be on probation for a three-year period of time.
- b. During the period of probation, Respondent shall not engage in any further violation of the Colorado Rules of Professional Conduct. *See* C.R.C.P. 251.7(b) (“The conditions [of probation]...shall include no further violations of the Colorado Rules of Professional Conduct”).

- c. Respondent is not currently practicing law. In the event Respondent wishes to return to the active practice of law, Respondent shall attend and successfully pass the one-half day trust account school sponsored by the Office of Attorney Regulation Counsel within six months of the date Respondent returns to the active practice of law and pay the costs associated therewith. Attendance at the trust account school will count as 5 general CLE credits, including 5 ethics credits. Respondent may copy a registration form for the class on-line at www.coloradosupremecourt.com. (Go to the section for Lawyers, Practice Resources, and then Practice Management. The instructions for registering are on the registration forms) Instructions for registering are on the registration form.
- d. Respondent is presently suspended. In the event Respondent wishes to return to the active practice of law¹, Respondent shall engage in a financial review and monitoring according to the **financial monitoring conditions** outlined in Exhibit 3, attached.

Respondent shall also be responsible for all costs of evaluation, treatment and supervision incurred as part of any condition of this probation. Failure to pay these costs prior to termination of probation shall constitute a violation of the probation.

17. **Violation of Conditions.** If, during the period of probation, the Office of Attorney Regulation Counsel receives information that any condition may have been violated, the Regulation Counsel may file a motion with the Presiding Disciplinary Judge specifying the alleged violation and seeking an order that requires the attorney to show cause why the stay should not be lifted and the sanction activated for violation of the condition. *See* C.R.C.P. 251.7(e). The filing of such a motion shall toll any period of suspension and probation until final action. *Id.* Any hearing shall be held pursuant to C.R.C.P. 251.7(e). When, in a revocation hearing, the alleged violation of a condition is Respondent's failure to pay restitution or costs, the evidence of the failure to pay shall constitute *prima facie* evidence of a violation. *Id.*

18. **Successful Completion of Conditions.** Within twenty-eight (28) days and no less than fourteen (14) days prior to the expiration of the period of probation, Respondent shall file an affidavit with the Regulation Counsel stating that Respondent has complied with all terms of probation and shall file with the Presiding Disciplinary Judge notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. *See* C.R.C.P. 251.7(f). Upon receipt of this notice and absent objection from the Regulation Counsel, the Presiding Disciplinary Judge shall issue an order showing that the period of probation was successfully completed. *Id.* The order shall become effective upon the expiration of the period of probation. *Id.*

¹ As of this writing, Respondent is currently suspended in Case No. 18PDJ066. This condition will only be triggered in the event Respondent returns to the active practice of law during the course of his three-year probation. If, during his probation, he remains employed in a non-legal capacity and does not engage in any legal work, this condition will not be triggered.

RECOMMENDATION FOR AND CONSENT TO DISCIPLINE

Based on the foregoing, the parties hereto recommend that a six-month suspension, stayed upon the successful completion of a three-year probation with conditions as described above, be imposed upon Respondent. Respondent consents to the imposition of discipline of a six-month stayed suspension. The parties request that the Presiding Disciplinary Judge order that the effective date of such discipline be on September 1, 2019.

Robert Phillip Odle, Respondent and Jacob M. Vos, attorney for the Complainant, acknowledge by signing this document that they have read and reviewed the above and request the Presiding Disciplinary Judge to accept the Stipulation as set forth above.

Robert B. Odle

Robert Phillip Odle
9447 Wolf Pack Terrace
Colorado Springs, CO 80920
Telephone: 719-428-8977
rpodle6@yahoo.com
Respondent

STATE OF COLORADO)
)
)ss:
COUNTY OF El Paso)

Subscribed and sworn to before me this 16 day of August, 2019, by Robert Phillip Odle, the Respondent.

Witness my hand and official seal.

My commission expires: 12/8/2020

JOSEPHINE PONTILLO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20164046581
MY COMM. EXPIRES DECEMBER 08, 2020

Josephine Pontillo
Notary Public

Jacob M. Vos
Jacob M. Vos, #41562
Assistant Regulation Counsel

-
1300 Broadway, Suite 500
Denver, CO 80203
Telephone: (303) 928-7811
Attorney for the Complainant

Statement of Costs

Robert P Odle
19-4, 18-2740

8/14/2019	Administrative Fee	\$	<u>224.00</u>
	AMOUNT DUE	\$	224.00



COPY

SUPREME COURT, STATE OF COLORADO

ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE
PRESIDING DISCIPLINARY JUDGE
1300 Broadway, Suite 250
Denver, Colorado 80203

Complainant:
THE PEOPLE OF THE STATE OF COLORADO

Respondent:
ROBERT PHILLIP ODLE, # 18091

Jacob M. Vos, #41562
Assistant Regulation Counsel
Attorneys for Complainant
1300 Broadway, Suite 500
Denver, Colorado 80203
Telephone: (303) 928-7907
Fax No.: (303) 501-1141
j.vos@csc.state.co.us

Robert Phillip Odle, # 18091
Respondent
121 S. Tejon Street Ste. 900
Colorado Springs, CO 80903-2207
rpodle6@yahoo.com

FILED

NOV 01 2018

PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF COLORADO

▲ COURT USE ONLY ▲

Case Number: 18PDJ066

**STIPULATION, AGREEMENT AND AFFIDAVIT CONTAINING THE
RESPONDENT'S CONDITIONAL ADMISSION OF MISCONDUCT**

On this 1st day of November, 2018, Jacob M. Vos, Assistant Regulation Counsel and attorney for the complainant, and Robert Phillip Odle, the Respondent, in these proceedings, enter into the following Stipulation, Agreement, and Affidavit Containing Respondent's Conditional Admission of Misconduct ("Stipulation") and submit the same to the Presiding Disciplinary Judge for his consideration.

RECOMMENDATION: six-month served suspension

1. The Respondent has taken and subscribed to the oath of admission, was admitted to the bar of this Court on November 3, 1988, and is registered as an attorney upon the official records of this Court, registration no. 18091. Respondent is subject to the jurisdiction of this Court and the Presiding Disciplinary Judge in these proceedings.

EXHIBIT

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2

2. Respondent enters into this Stipulation freely and voluntarily. No promises have been made concerning future consideration, punishment, or lenience in the above-referenced matter. It is Respondent's personal decision, and Respondent affirms there has been no coercion or other intimidating acts by any person or agency concerning this matter.

3. This matter has not become public under the operation of C.R.C.P. 251.31(c) as amended. However, Respondent specifically acknowledges that, if the Presiding Disciplinary Judge should decide to accept this Stipulation, and impose the agreed-to discipline contained herein, then this Stipulation and the discipline imposed will be matters of public record.

4. Respondent is familiar with the rules of the Colorado Supreme Court regarding the procedure for discipline of attorneys and with the rights provided by those rules. Respondent acknowledges the right to a full and complete evidentiary hearing on the above-referenced complaint. At any such hearing, Respondent would have the right to be represented by counsel, present evidence, call witnesses, and cross-examine the witnesses presented by Complainant. At any such formal hearing, Complainant would have the burden of proof and would be required to prove the charges contained in the complaint with clear and convincing evidence. Nonetheless, having full knowledge of the right to such a formal hearing, Respondent waives that right.

5. Respondent and Complainant specifically waive the right to a hearing pursuant to C.R.C.P. 251.22(c)(1).

6. Respondent and Complainant stipulate to the following facts and conclusions:

- a. Respondent is a sole practitioner in Colorado Springs, Colorado.
- b. In the summer of 2017, a significant portion of his income came from a Colorado Springs nonprofit organization called TESSA. TESSA provides services to victims of domestic violence, including safe-house services, victim advocacy, counseling, and outreach.
- c. One of TESSA's programs is targeted towards assisting victims who have filed for protective orders against their abusive partners *pro se*. Court clerks and other staff direct these victims to a table in the courthouse staffed with TESSA volunteers, and TESSA offers to coordinate legal representation for the victims at the permanent protection order hearings. TESSA then hires attorneys on a flat-fee basis to represent the victims at the permanent protection order hearings.
- d. Ms. M¹ filed for a protective order against her ex-boyfriend after he physically and sexually abused her. She obtained a temporary restraining order on August 28, 2017 *pro se* and then reached out to TESSA for assistance with the permanent protection order.

¹ Because Ms. M is a sexual assault victim, the parties refer to her via her initial.

- e. TESSA appointed Respondent as her counsel. Respondent entered his appearance, set the matter for a hearing, and on October 2, 2017, the court entered a permanent protection order against Ms. M's ex-boyfriend.
- f. Respondent collected his \$750 from TESSA for the representation, and he and Ms. M explored filing a replevin action against the ex-boyfriend to seek the return of or compensation for personal items he took from Ms. M's home after the break-up.
- g. TESSA pays for the representation at the permanent protection order hearing, but it also allows attorneys on its rolls to offer their own services to clients, payable at the client's expense.
- h. Respondent agreed to represent Ms. M for a \$1,700 flat fee (\$1,500 in fees and the remainder for costs) on the replevin action. They confirmed the fee in text messages, but he did not issue her any other fee agreement or invoice.
- i. Respondent treated the flat fee as earned upon receipt, even though he received the fee near the outset of the replevin representation.
- j. Respondent and Ms. M often communicated via text message, and Ms. M was able to produce a record of their conversations. They included the following:

9/10/17

[Respondent "R"]: If you're up for it, I'm thinking about seeing a movie downtown. Starts in about an hour. At least you'd be distracted for a couple of hours.

[Ms. M "M"]²: Thank you but I have some reading to do for a class I guest teach. Am still not very comfortable going out at all...

[R]: Ok. Just thought I'd ask. See you in the morning

[M]: Yeah. Thanks!

[R]: So. Should I ask you another time? Or should we pretend I never asked?

[M]: Sorry, it's a tough question for me right now. I really don't know. I am having PTSD and I haven't been able to even see any male friends in these last weeks. The only one is my therapist and he sits 6 feet away.

[R]: I understand. I'm offering friendship. Nothing more. I'm a mess right now too. Separated but still married etc. but, I can offer sincere non-threatening male friendship. If you ever get to a place to accept, let me know. I'm harmless.

[R]: And so long as you're my client, I lose my license if it moves any farther than friendship. So you've got that protection.

[R]: Just offering to get you out and back to normalcy as quickly as possible.

² Typos are *sic* throughout.

[M]: Thank you for the offer, I understand perfectly what you're saying :) I need a little time, right now the struggle is just basic functioning. Takes me an enormous amount of time to do normal things and I feel exhausted. These have been the hardest weeks of my life, I'm still so confused and scared...but let me see how the sight of male human beings feels in a bit. Ok? Have a good evening. Am going to try hard to prep my guest lesson and will put the phone aside for a while. Ciao, see you tomorrow.

...

9/13/17

[Respondent sends Ms. M information regarding a speaker at CU Boulder]

[R]: I'm going to buy my ticket the morning of 10/23. Got it marked on my calendar. Wanna go with me?

[M]: I checked on ed my calendar, it will be in the middle of a work week, so I won't be able to come. You'll have to tell me all about it. Ok?

[R]: Ok. Will do. 😊

😊

...

9/16/17

[R]: [responding to an earlier text from Ms. M regarding her ex-boyfriend's new partner] Hi darling girl. I'm so sorry this is affecting you so profoundly. I wish I could protect you from it better.

[R]: I don't see how his living with a 21 year old affects our case. I may be missing something though.

[R]: Be well.

...

[R]: You're learning and you're so smart.

[R]: And beautiful 😊

[R]: Sorry. I could not resist.

[R]: Yes. You are lucky. His obsession escalates. Progresses. Only gets worse and worse.

[R]: The violence will grow with each new victim

[R]: That's why I'm so set on stopping the cycle as quickly as possible.

[R]: For that, we need strong courageous women to come forward.

[R]: When you come back, can we go over the questions and answers again, please, to better prepare for court?

[M]: I'll be back tomorrow.

[M]: I feel nervous. I have a feeling. Remember he can try to accuse me of abusing his daughter. Even if I clarified abundantly this part with her mom last night.

[R]: Of course. I'm available any time

[M]: OK tomorrow I am gone all day

[M]: I leave my house at 7am tomorrow

[R]: Then let's plan on early next week

[R]: Thanks for the chat. I hope the weather gets better! Go eat some oysters 🍷

[R]: Denver has good food

[R]: Be well today my dear girl.

[R]: These communications between us are very intimate

[M]: Will do my best. I need to mow my lawn. Which makes me sad, of course, because that was his thing

[M]: I feel a connection very deep

[R]: Please be aware of that and set appropriate boundaries for yourself ok?

[M]: Well you are my attorney and I need to be able to let you know. I really don't know which info can help our case. Plus I am really super super stressed out

[M]: I will.

[M]: You are my attorney! Boundary right there... 😊

[R]: Please do not allow my emotions/feelings to intrude into your beautiful space

🙏

[R]: I'm very sensitive and I feel for you. With you.

[R]: I sense your inner struggle and I want to help.

[R]: But you must tell me if I cross a line that makes you uncomfortable

[R] ["kiss" emoji]

...

9/29/17

[R]: Wanna go see a movie this weekend sometime?

[M]: Thank you, Bob. I can't this weekend, am all booked up, believe it or not, also with work stuff. But going to the Tessa gala tomorrow night thanks to Montana's generosity.

[R]: OK. Want me to stop asking?

[M]: I am waiting for two repair guys to fix stuff, if I stop texting it's because I am with them

[M]: No it's ok!

[R]: You can be honest. Im a big boy

...

10/1/17

[R]: Hi Amanda. I was in the movie. I asked a nice girl to go with me but she declined. 😊

[R]: so I went with my mom.

[R]: Yes. This helps. Good work.

[R]: It has been a good weekend. How about yours?

[M]: I went out with my horseback riding friends to have a beer and am trying to go to sleep early. I really hope I can sleep.

[M]: Am glad the testimony can help!

[M]: Which film did you watch?

[R]: Menashe at Kimballs.

[R]: A glass of wine help?

[R]: Dont you Italians use wine to sleep? 🍷³

[R]: Or a massage? That relaxes me.

[R]: We Americans take Xanax. I have some if you'd like. Ha ha

[M]: Haha

[M]: No I don't take drugs 🙅

[M]: Beer will have to do

[R]: I know. But, I could bring wine and give you a massage till you fell asleep.

[R]: Consider it part of my work representing you. 😊

[M]: Haha wow you're services are quite extensive. Am already in bed thank you 😊

[R]: Can't blame a lonely guy for trying, right?

[R]: See you in the morning

[M]: Lol

[M]: See you tomorrow

...

10/2/17

[after the court entered the Permanent Protection Order, but before Respondent successfully filed the replevin action (his first filing was rejected)]

[M] Ciao Bob how are you doing?

³ Notably, Ms. M's ex-boyfriend sexually assaulted her by pouring her numerous glasses of wine (she is not much of a drinker); then, after she passed out, he raped her.

[M]: I am back to the office. Feeling much better. Was wondering if you'd like to talk about the next steps. Also, I got word that the ogre is now worried he's going back to jail, if this Protection Order will be considered a violation of his parole. Is that even a possibility?

10/5/18

[R]: Yes. Of course it is a violation of his parole. That was a part of the point. Part only. Main purpose was to vindicate you. 😊

[R]: Of course I'd like to get together. Anytime.

[M]: Wow, I never saw it that way because his parole officer was so vague about it...

[M]: So do you think he will actually go back to jail?

[R]: But, right now I am technically not your attorney.⁴ So, we could go out to a movie. 😊

[M]: [Thank you so much, let's schedule for next week?]

[M]: hahah

[They discuss the replevin action]

[R]: So it's crack the whip and get back to work? No break to go to a movie together?

[R]: I'm in town. Working on two other cases set for Tuesday

[M]: marina and I are going to the mountains this weekend

[M]: I promised to take her out of town

[M]: and I would like to meet you on Monday morning if you have time

[R]: Ah. Good for you. You deserve that.

[M]: but a movie can always happen, I don't see why not

[M]: I personally have not been at the movies for so long... I can't even remember the last time

[M]: Maybe the ogre and I went to a dollar movie back in June or something

[R]: Monday is a court holiday so I'll be casual and free. All day.

[M]: exception made for the films we screen at the college, of course

...

10/10/17

[R]: Fratelli Ristorante Italiano on Nevada. That is where I am going to take you to dinner if you will ever let me!

...

10/11/18

[M]: Ciao Bob, I have therapy in a bit and need to get in the car. My cousin in Rome just told me the detective called her!!

[M]: After the testimony, they told her it was very useful and thanked her.

⁴ This is inaccurate; he was still representing her at the time.

[R]: Excellent. That is great news girl. Great news. We know he has not closed the case.
[Referring to the potential criminal prosecution of the ex-boyfriend]

[R]: I had no idea things were going further. Great news.

[M]: Indeed!

[M]: So he must have said something suspicious on Friday.

[R]: Wanna go to dinner with me to celebrate? 🍷

[M]: I "prayed" so much for it. I hope there will be some justice

[M]: Can't right now!!

[R]: Ah ha. But, you might some other time?

[M]: Going to therapy.

[R]: Am I making progress with you?

[M]: As my attorney! Yes.

[M]: And you rock

[R]: Shit. Oh well, Ill take what I can get. 🍷

...

10/18/17

[M]: I had a horrible nightmare last night during the 3 hours I slept. So am a bit skittish

[R]: Sorry. Can I take your o dinner to make up for it?

[M]: You're kind. I am very horse busy these days so in the evening am staying in with Marina.
But am not saying NO, ever!

[R]: OK. That is all I can hope for. And, if you ever change your mind and want me to quit asking, you'll tell me. And once you tell me, I'll never ask again.

[M]: Yeah. I know. No worries. Am okay telling you how things are!

...

11/1/17

[M]: Thank you, Bob.

[R]: My pleasure Amanda. So sorry it took the court so long. Ugh!!!!

[R]: But, he might be served today or tonight so be careful.

[R]: Need me to come over to protect you? 🍷

[M]: Ha ha.

[R]: Lol

[M]: I have my Italian friend who's a fencing and Kung Fu champ!!

[R]: Damn. Oh well, I tried.

[M]: Fair try!

[M]: Wasn't he served this one already?

[R]: Obviously not fair enough of a try.

...

- k. Respondent successfully filed the replevin complaint on Ms. M's behalf in November 2017.
- l. The ex-boyfriend failed to answer, and though the matter was delayed due to Respondent's failure to appear on the day of the show cause hearing, the court ultimately entered a default against the ex-boyfriend.
- m. In the spring of 2018, Ms. M discussed Respondent's romantic advances with her therapist, and her therapist believed them to be improper.
- n. Ms. M reported his conduct to TESSA, who removed Respondent from their approved provider list.
- o. She also demanded a refund from Respondent. He issued her a check for \$1,500 from his office account, but it was rejected because it was written on a closed account.
- p. He then repaid her \$1,600 in cash, adding \$100 to cover any costs she incurred due to the bad check.
- q. Through Respondent's conduct described above, Respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 251.5. Respondent has also violated Colo. RPC 1.7(a), which provides that "Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (2) there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer." Respondent's romantic interest in Ms. M. gave rise to a personal interest conflict and did significant harm to the attorney-client relationship. Respondent violated Colo. RPC 8.4(a) and 1.8(j), which provide: "It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;" and "a lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced." Respondent attempted to have a sexual relationship with his client after the attorney-client relationship began. Finally, Respondent violated Colo. RPC 1.15A(a), which provides "A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property." Respondent technically converted client funds in the replevin action when he treated his flat fee as earned upon receipt.

7. Pursuant to C.R.C.P. 251.32, Respondent agrees to pay costs in the amount of \$224.00 (a copy of the statement of costs is attached hereto as Exhibit 1) incurred in conjunction with this matter within thirty-five (35) days after acceptance of the Stipulation by the Presiding Disciplinary Judge, made payable to Colorado Supreme Court Attorney Regulation Offices. Respondent agrees that statutory interest shall accrue from thirty-five (35) days after the Presiding Disciplinary Judge accepts this Stipulation. Should Respondent fail to make payment of the aforementioned costs and interest within thirty-five (35) days, Respondent specifically agrees to be responsible for all additional costs and expenses, such as reasonable attorney fees and costs of collection incurred by Complainant in collecting the above stated amount. Complainant may amend the amount of the judgment for the additional costs and expenses by providing a motion and bill of costs to the Presiding Disciplinary Judge, which identifies this paragraph of the Stipulation and Respondent's default on the payment.

8. This Stipulation represents a settlement and compromise of the specific claims and defenses pled by the parties, and it shall have no meaning or effect in any other lawyer regulation case involving another respondent attorney.

9. This Stipulation is premised and conditioned upon acceptance of the same by the Presiding Disciplinary Judge. If for any reason the Stipulation is not accepted without changes or modification, then the admissions, confessions, and Stipulations made by Respondent will be of no effect. Either party will have the opportunity to accept or reject any modification. If either party rejects the modification, then the parties shall be entitled to a full evidentiary hearing; and no confession, Stipulation, or other statement made by Respondent in conjunction with this offer to accept discipline of a six-month served suspension may be subsequently used. If the Stipulation is rejected, then the matter will be heard and considered pursuant to C.R.C.P. 251.18.

10. The Office of Attorney Regulation Counsel has notified or will notify shortly after the parties sign this agreement, the complaining witness in the matter of the proposed disposition.

PRIOR DISCIPLINE

11. None.

ANALYSIS OF DISCIPLINE

12 Pursuant to American Bar Association *Standards for Imposing Lawyer Sanctions* 1991 and Supp. 1992 ("ABA *Standards*"), §3.0, the Court should consider the following factors generally:

- a. The duty violated: the duty of loyalty.
- b. The lawyer's mental state: knowing.

c. The actual or potential injury caused by the lawyer's misconduct: Respondent's conduct caused actual harm to the attorney-client relationship when he abused his position of trust. He caused potential harm, though not actual harm, when he technically converted unearned funds.

d. The existence of aggravating or mitigating factors:

ABA *Standards* § 9.22 Aggravating factors include:

- (b) selfish motive;
- (h) vulnerability of victim; and
- (i) substantial experience in the practice of law.

ABA *Standards* 9.32 Mitigating factors include:

- (a) absence of a prior disciplinary record;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and
- (l) remorse.

13. The ABA *Standards for Imposing Lawyer Discipline* do not fit neatly with either Rules 1.8(j) or 8.4(a), but *Standard* § 4.32 is the most applicable: "suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client."

14. Few cases are directly on-point. In an older case, *People v. Barr*, 929 P.2d 1325, 1326 (Colo. 1996), the respondent had sex with his client on one occasion. He represented her in her dissolution of marriage case. The Court found that the client was particularly vulnerable during the dissolution of marriage case, and due to the nature of the representation Respondent also violated Rule 1.7. Barr had also received three prior letters of admonition and a public censure. Barr received a three-month served suspension. Additionally, the presumptive sanction for technical conversion is suspension. See *People v. Varallo*, 913 P.2d 1, 11 (Colo. 1996). A baseline suspension, before aggravating and mitigating factors apply, is a six-month served suspension. See ABA *Standard* 2.3 ("Generally, suspension should be for a period of time equal to or greater than six months . . ."); see also *In re Cummings*, 211 P.3d 1136, 1140 (Alaska 2009) (using a baseline sanction of six months); *In re Moak*, 71 P.3d 343, 348 (Ariz. 2003) (same); *In re McGrath*, 280 P.3d 1091, 1101 (Wash. 2012) (same).

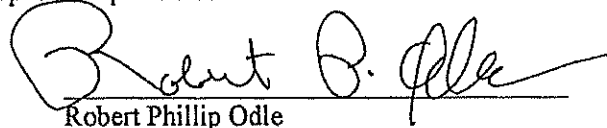
15. Considering all of the factors described above, as applied to this case, a six-month served suspension is appropriate.

RECOMMENDATION FOR AND CONSENT TO DISCIPLINE

Based on the foregoing, the parties hereto recommend that a six-month served suspension be imposed upon Respondent. Respondent consents to the imposition of discipline of

a six-month served suspension. The parties request that the Presiding Disciplinary Judge order that the effective date of such discipline be **March 1, 2019**.⁵

Robert Phillip Odle, Respondent and Jacob M. Vos, attorney for the Complainant, acknowledge by signing this document that they have read and reviewed the above and request the Presiding Disciplinary Judge to accept the Stipulation as set forth above.



Robert Phillip Odle
121 S. Tejon Street Ste. 900
Colorado Springs, CO 80903-2207
Respondent

STATE OF COLORADO)
)ss:
COUNTY OF EL PASO)

Subscribed and sworn to before me this 24th day of October, 2018, by Robert Phillip Odle, the Respondent.

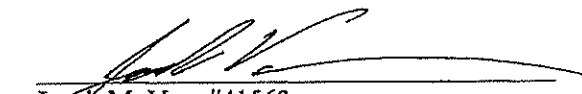
Witness my hand and official seal.

My commission expires:



February 14, 2022

Michelle Lenette Stanka
Notary Public



Jacob M. Vos, #41562
Assistant Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203
Telephone: (303) 928-7811
Attorney for the Complainant

⁵ Though the start date of Respondent's suspension is unusually far out from the date of this stipulation, the parties agree that a full disciplinary hearing is the likely alternative, and in the event the same result is reached at a hearing, Respondent's suspension would be unlikely to start any earlier than March 1, 2019.

Statement of Costs

Robert P. Odle
18-208

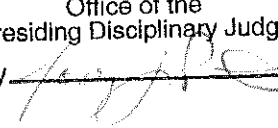
10/3/2018	Administrative Fee	\$	<u>224.00</u>
	AMOUNT DUE	\$	224.00



Supreme Court

State of Colorado

Certified to be a full, true and correct copy

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	NOV 18 2020 Office of the Presiding Disciplinary Judge By 
Complainant: THE PEOPLE OF THE STATE OF COLORADO	Case Number: 19PDJ062
Respondent: ROBERT PHILLIP ODLE, #18091	
ORDER APPROVING CONDITIONAL ADMISSION OF MISCONDUCT AND IMPOSING SANCTIONS UNDER C.R.C.P. 251.22	

Before the Presiding Disciplinary Judge (“the Court”) is a “Stipulation, Agreement and Affidavit Containing the Respondent’s Conditional Admission of Misconduct” filed by Jacob M. Vos, Office of Attorney Regulation Counsel (“the People”), and Robert Phillip Odle (“Respondent”) on August 16, 2019. In their stipulation, the parties waive their right to a hearing under C.R.C.P. 251.22(c).

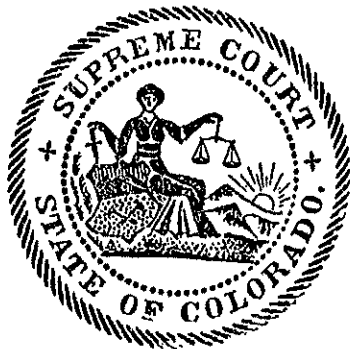
Upon review of the stipulation, the Court **ORDERS:**

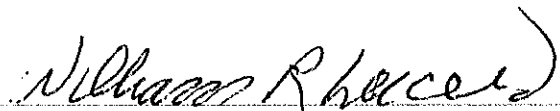
1. The stipulation is **APPROVED**.
2. **ROBERT PHILLIP ODLE**, attorney registration number **18091**, is **SUSPENDED** from the practice of law for a period of **SIX MONTHS, ALL TO BE STAYED** upon the successful completion of a **THREE-YEAR** period of **PROBATION**, subject to the conditions set forth in paragraph 16 of the stipulation.
3. Respondent violated Colo. RPC 1.3, 1.4(a)(4), 1.4(b), and 1.15A(a).
4. If, during the period of probation, the People receive information that any probationary condition may have been violated, the People may file a motion under C.R.C.P. 251.7(e) specifying the alleged violation and seeking an order that requires Respondent to show cause why the stay should not be lifted and the sanction activated. Under C.R.C.P. 251.7(e), the filing of such a motion tolls any period of suspension or probation until final action. When the alleged violation in a revocation hearing is a respondent’s failure to pay restitution or costs, evidence of failure to pay constitutes *prima facie* evidence of a violation.

5. Per C.R.C.P. 251.7(f), no more than twenty-eight days and no fewer than fourteen days prior to expiration of the period of probation, Respondent shall file an affidavit with the People attesting to compliance with all terms of probation and shall file with the Court notice and a copy of such affidavit and application for an order terminating probation. Upon receipt of this notice and absent objection from the People, the Court will issue an order terminating probation, to take effect on the date the period of probation expires.

6. Under C.R.C.P. 251.32, Respondent shall pay costs incurred in conjunction with this matter in the amount of \$224.00 within thirty-five days of the date of this order. Costs are payable to the Colorado Supreme Court Attorney Regulation Office. Statutory interest shall accrue from thirty-five days after the date of this order. Should Respondent fail to pay the aforementioned costs within thirty-five days, Respondent will be responsible for all additional costs and expenses, including reasonable attorney's fees, incurred by the People in collecting the above-stated amount. The People may seek to amend the amount of the judgment for additional costs and expenses by providing a motion and bill of costs to the Court.

THIS ORDER IS ENTERED THE 19th DAY OF AUGUST, 2019. THE EFFECTIVE DATE OF THE PROBATION IS THE 1st DAY OF SEPTEMBER, 2019.




WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Respondent

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INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

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INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. GENERAL PROVISIONS

Rule 1.01. Definitions

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

Rule 1.02. General Powers

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

Rule 1.03. Additional Rules in Disciplinary Matters

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

Rule 1.04. Appointment of Panels

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

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

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

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

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

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

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

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

- (4) Exceptions.

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

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

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

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

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

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

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

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

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

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

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

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

Rule 1.06. Service of Petition

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

Rule 1.07. Hearing Setting and Notice

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

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

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

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

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

Rule 1.08. Time to Answer

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

Rule 1.09. Pretrial Procedure

(a) Motions.

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

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

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

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

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

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

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

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

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

Rule 1.10. Decisions

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

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

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

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

Rule 1.11. Board of Disciplinary Appeals Opinions

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

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

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

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

Rule 1.12. BODA Work Product and Drafts

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

Rule 1.13. Record Retention

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

Rule 1.14. Costs of Reproduction of Records

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

Rule 1.15. Publication of These Rules

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

II. ETHICAL CONSIDERATIONS

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

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

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

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

Rule 2.02. Confidentiality

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

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

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

Rule 2.03. Disqualification and Recusal of BODA Members

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

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

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

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

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

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

Rule 3.02. Record on Appeal

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

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

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

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

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

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

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

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

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

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

Rule 4.02. Record on Appeal

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

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

(c) Responsibility for Filing Record.

(1) Clerk's Record.

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

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

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

(2) Reporter's Record.

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

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

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

(d) Preparation of Clerk's Record.

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

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

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

(ii) start each document on a new page;

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

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

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

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

(vii) certify the clerk's record.

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

(3) The table of contents must:

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

(ii) be double-spaced;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹ So in original.

Rule 4.03. Time to File Record

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

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

(b) If No Record Filed.

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

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

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

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

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

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

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

Rule 4.04. Copies of the Record

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

Rule 4.05. Requisites of Briefs

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

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

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

(c) Contents. Briefs must contain:

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

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

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

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

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

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

failure to timely file a brief;

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

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

Rule 4.06. Oral Argument

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

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

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

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

Rule 4.07. Decision and Judgment

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

- (1) affirm in whole or in part the decision of the evidentiary panel;
- (2) modify the panel's findings and affirm the findings as modified;
- (3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or
- (4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:

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

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

Rule 4.08. Appointment of Statewide Grievance Committee

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

Rule 4.09. Involuntary Dismissal

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

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

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

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

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

Rule 5.02. Hearing

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

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

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

Rule 6.02. Interlocutory Suspension

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

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

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

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

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

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

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

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

Rule 7.02. Order to Show Cause

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

Rule 7.03. Attorney's Response

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

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

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

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

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

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

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

Rule 8.02. Petition and Answer

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

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

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

Rule 8.03. Discovery

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

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

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

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

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

Rule 8.04. Ability to Compel Attendance

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

Rule 8.05. Respondent's Right to Counsel

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

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

Rule 8.06. Hearing

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

Rule 8.07. Notice of Decision

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

Rule 8.08. Confidentiality

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

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

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

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

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

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

Rule 9.02. Discovery

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

Rule 9.03. Physical or Mental Examinations

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

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

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

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

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

Rule 9.04. Judgment

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

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

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

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

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