

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



F I L E D

Sep. 09, 2020

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

IN THE MATTER OF §
JOSE MARCOS PERALES PINA, § **CAUSE NO. 64720**
STATE BAR CARD NO. 24091472 §

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called “Petitioner”), brings this action against Respondent, Jose Marcos Perales Pina (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 and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Jose Marcos Perales Pina, 7033 Canyon Run Drive, El Paso, Texas 79912-7654.

3. Attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein, is a true and correct certified copy of a set of documents in the Perales Pina matter consisting of the Verified Motion for Order to Show Cause; Reply to Verified Motion for Order to Show Cause; and Disciplinary Counsel’s Reply to Respondent’s Reply [sic] to Verified Motion to Show Cause; relating to the matter entitled *In the Matter of J. Marcos Perales*

Pina, Esq., an Attorney Disbarred from the Practice of Law in the State of New Mexico, Disciplinary No. S-1-SC-37402, (Exhibit 1).

4. Attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein, is a true and correct copy of New Mexico Rule of Professional Conduct: Rule 17-212 regarding resigned, disbarred or suspended attorneys, (Exhibit 2).

5. On or about November 6, 2019, an Order was entered in the Supreme Court of the State of New Mexico, in a case styled: No. S-1-SC-37402, *In the Matter of J. Marcos Perales Pina, An Attorney Disbarred from the Practice Law in the State of New Mexico*, that states in pertinent part as follows:

. . . NOW, THEREFORE, IT IS ORDERED that Respondent, J. Marcos Perales Pina, is found in CONTEMPT OF COURT for failure to comply with and attempting to circumvent this Court's order dated March 8, 2019, through misrepresentations and a continued pattern of deceitful practices.

IT IS FURTHER ORDERED that Respondent is PERMANENTLY DISBARRED from the practice of law under Rule 17-206(A)(1) & (G) NMRA, effective immediately; and

IT IS FURTHER ORDERED that Respondent shall report the fact of his disbarment in accordance with the provisions of Rule 17-212 NMRA to all former clients of Respondent who subsequently became clients of Ramon Hernandez.

(Exhibit 3).

6. The Verified Motion for Order to Show Cause; Reply to Verified Motion for Order to Show Cause; and Disciplinary Counsel's Reply to Respondent's Reply [sic] to Verified Motion to Show Cause establish that Respondent violated the following New Mexico Rule of Professional Conduct: Rule 17-212 regarding resigned, disbarred or suspended attorneys.

7. Copies of the set of documents consisting of Verified Motion for Order to Show Cause; Reply to Verified Motion for Order to Show Cause; and Disciplinary Counsel's Reply to

Respondent's Reply [sic] to Verified Motion to Show Cause; New Mexico Rule of Professional Conduct: Rule 17-212; and Order are attached hereto as Petitioner's Exhibits 1 through 3, and made a part hereof for all intents and purposes as if the same was copied verbatim herein. Petitioner expects to introduce copies of Exhibits 1 through 3 at the time of hearing of this cause.

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 enters a judgment imposing discipline identical with that imposed by the State Bar of New Mexico Presiding Disciplinary Judge and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

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



Amanda M. Kates
Bar Card No. 24075987

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE


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

Jose Marcos Perales Pina
7033 Canyon Run Drive
El Paso, Texas 79912-7654



Amanda M. Kates

ATTEST: A TRUE COPY
Madeline Garcia
Clerk of the Supreme Court
of the State of New Mexico

Filed
Supreme Court of New Mexico
6/19/2019 1:49 PM
Office of the Clerk

Joey D. Moya

**BEFORE THE SUPREME COURT OF
THE STATE OF NEW MEXICO**

NO. S-1-SC-37402

**IN THE MATTER OF
J. MARCOS PERALES PINA**

**An Attorney Suspended from
Practice Before the Courts
of the State of New Mexico**

VERIFIED MOTION FOR ORDER TO SHOW CAUSE

Chief Disciplinary Counsel William D. Slease, by assistant disciplinary counsel Jane Gagne, hereby moves this Court to enter its Order pursuant to Rules 17-206(G) NMRA to Respondent J. Marcos Perales Pina to show cause, if any he has, why he should not be held in contempt for attempting to circumvent this Court's Order suspending Respondent effective March 15, 2019, as follows:

1. On March 5, 2019, this Court held its hearing on Respondent's disciplinary proceeding and announced its decision imposing a one-year definite suspension effective March 15, 2019. The Court issued its Order on March 8, 2019.
2. Yet, on March 7, 2019, Respondent filed with the Office of the Secretary of State of New Mexico Articles of Organization for New Horizons Law Firm, LLC ("Law Firm"), under the address of record for Respondent: 1127 E. Idaho



Ave., Las Cruces, New Mexico. *Articles of Organization*, attached as **Exhibit**

1.

3. Respondent listed as Members of the Law Firm the law office of Mark Gemoets, LLC, with the same address as Respondent's, and "Perales Law Firm, PLLC"; Respondent listed himself as the Organizer. *See id.*

4. On March 13, 2019, Respondent filed Articles of Amendment adding attorney Michael E. Cain as a Member, again with Respondent's address of record, and changing his own address to an El Paso, Texas address. *Articles of Amendment*, attached as **Exhibit 2**.

5. Neither Mr. Gemoets nor Mr. Cain authorized his inclusion as a Member of the Law Firm. *See Affidavit of Mark Gemoets*, attached as **Exhibit 3**; *Affidavit of Michael E. Cain*, attached as **Exhibit 4**.

6. On March 8, 2019, prior to sending the letters required by Rule 17-212 of the Rules Governing Discipline, Respondent sent to at least twenty-six (26) clients a letter telling them that he was selling his practice to the Law Firm; he praised and recommended the Law Firm to the clients. *See, e.g.*, March 8, 2019 Letter to Client (name and address redacted), attached as **Exhibit 5**.¹

¹ When Respondent first sent the 17-212 letters, he omitted the first sentence from the form letter which notified the clients of his suspension. *See* April 1, 2019 Email string, attached as **Exhibit 6**. Respondent subsequently provided disciplinary counsel with the corrected letters.

7. On March 15, 2019, disciplinary counsel learned that Respondent had informed a client that he was selling his practice; disciplinary counsel asked then-counsel for Respondent to remind Respondent of his 17-212 obligations and of Rule 16-117 (governing the sale of a law practice). May 15, 2019 email attached as **Exhibit 7**.
8. On or about May 15, 2019, disciplinary counsel discovered through the Secretary of State's corporations search website that Respondent had formed the Law Firm, and immediately began investigating that formation. Respondent has been cooperative in the investigation.
9. The Law Firm has numerous clients, many of whom were Respondent's clients prior to the suspension.
10. The Law Firm has one attorney, Ramon Hernandez, who was Respondent's paralegal until he was admitted to practice law in New Mexico on April 29, 2019.
11. A search under SOPA shows that Mr. Hernandez has thirty-four active cases pending, including cases in which Respondent was the attorney of record.
12. Mr. Hernandez uses Respondent's address of record, and has entered appearances under the Law Firm, including cases in which Respondent was attorney of record. *See e.g., March 5, 2019² Entry of Appearance by*

² March 5 was also the day of the Hearing before this Court.

Respondent, and May 10, 2019 *Entry of Appearance* by Ramon Hernandez in *Eliserio v. Eliserio*, No. D-307-DM-2019-00293, attached as **Exhibit 8**; *see also*, May 17, 2019 Agreement for Legal Services, attached as **Exhibit 9**.

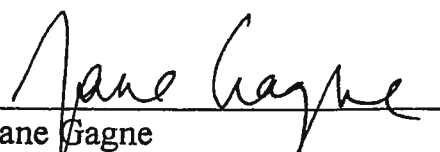
13. Thus, by forming the Law Firm knowing of his imminent suspension, and the Law Firm continuing after the date of the effective suspension, and with only one brand-new attorney who is Respondent's employee and who continues to represent Respondent's former clients, Respondent has practiced law without a license, and is in violation of this Court's March 8, 2019 Order suspending him from the practice of law effective March 15, 2019.

THEREFORE, disciplinary counsel respectfully requests that the Court issue its Order to Respondent J. Marcos Perales Pina to show cause, if any he has, why he should not be held in contempt for attempting to circumvent this Court's March 8, 2019 Order.

DATED: June 19, 2019

Respectfully Submitted,

William D. Slease
Chief Disciplinary Counsel

BY: 
Jane Gagne
Assistant Disciplinary Counsel
20 First Plaza, Suite 710
Albuquerque, NM 87102
(505) 842-5781

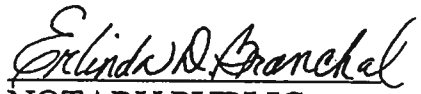

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

William D. Slease, Chief Disciplinary Counsel, being first sworn on his oath, states that he is the Movant herein, that he has read the foregoing Verified Motion for Order to Show Cause, and it is true and correct to the best of his information and belief.



WILLIAM D. SLEASE

SUBSCRIBED AND SWORN TO before me this 19th day of June, 2019 by William D. Slease.

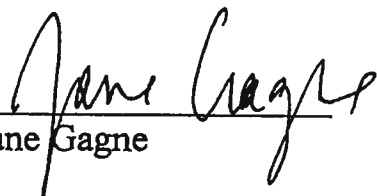

NOTARY PUBLIC
 OFFICIAL SEAL
ERLINDA D. BRANCH
NOTARY PUBLIC - State of New Mexico
My Commission Expires 8/28/2021

My Commission Expires:

8/28/2021

I hereby certify that a copy of this pleading has been emailed on June 19, 2019 to:

J. Marcos Perales Pina
Respondent
marcos.perales@peraleslegal.com



Jane Gagne

OFFICE OF THE SECRETARY OF STATE

NEW MEXICO

CERTIFICATE OF COMPARISON

OF

New Horizons Law Firm, LLC

5849667

The Office of the Secretary of State certifies that the attached is a true and complete copy of the 6 page document on file in this office.

This Certification is in accordance with Section:

53-19-1 to 53-19-74 NMSA 1978

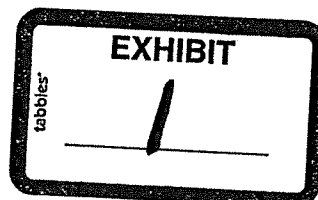
Dated: **May 15, 2019**

In testimony whereof, the Office of the Secretary of State has caused this certificate to be signed on this day in the City of Santa Fe, and the seal of said office to be affixed hereto.



Maggie Toulouse Oliver

Maggie Toulouse Oliver
Secretary of State





OFFICE OF THE SECRETARY OF STATE
NEW MEXICO

Limited Liability Company
ONLINE ARTICLES OF ORGANIZATION

The undersigned, acting as organizer(s) of a Limited Liability Company pursuant to the New Mexico Limited Liability Company Act, adopt the following Articles of Organization:

ARTICLE ONE: The name of the Limited Liability Company is:

New Horizons Law Firm, LLC

ARTICLE TWO: The period of duration is: Perpetual

ARTICLE THREE:

(1) The name of the initial registered agent at the address is:

First Name	Last Name
Jose	Perales Pina

(2) The New Mexico street address of the company's initial registered agent is:

Type	Address	City	State	Zip	Country
Physical Address	1127 E. Idaho Ave.	Las Cruces	NM	88001	USA

(Post Office Box is not acceptable. Provide a description of the geographical location if a street address does not exist.)

(3) The street address of the company's principal place of business, if different from its registered agent's address is:

Address	City	State	Zip	Country
1127 E. Idaho Ave.	Las Cruces	NM	88001	USA

(4) The mailing address of the Limited Liability Company is:

Address	City	State	Zip	Country
NONE	NONE	NONE	NONE	USA

Email Address: marcos.perales@peraleslegal.com

Phone: 575-523-0144

ARTICLE FOUR: (Check only if applicable):

YES Management of the business and affairs of the company is vested in a manager(s).

Manager Name and address:

Name	Physical Address	Mailing Address
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ARTICLE FIVE: (Check only if applicable):

YES The Limited Liability Company is a single member Limited Liability Company.

Member Name and address:

Name	Physical Address	Mailing Address
Law office of Mark Gemoets LLC	1127 E. Idaho Ave., Las Cruces, NM 88001	1127 E. Idaho Ave., Las Cruces, NM 88001
Perales Law Firm, PLLC	7033 Canyon Run Dr, El Paso, TX 79912	1127 E. Idaho Ave., Las Cruces, NM 88001

ARTICLE SIX: If these Articles of Organization are not to be effective upon filing with the Secretary of State's Office, the effective date is *(if an effective date is specified here, it cannot be a date prior to the date the articles are received by the Secretary of State's Office.)*

Effective Date

03/07/2019

Purpose: Legal Services

NAICS Code: Professional, Scientific, and Technical Services - 541110

NAICS Sub Code: Offices of Lawyers

Organizer(s) Printed Name(s):

(Typing the First and Last Name of the Organizer(s), is the equivalent of an electronic signature.)

First Name	Last Name
Jose M	Pina

Limited Liability Company

ONLINE STATEMENT OF ACCEPTANCE OF APPOINTMENT
BY DESIGNATED INITIAL REGISTERED AGENT

I,		
<table border="1"><tr><td>Jose</td><td>Perales Pina</td></tr></table>	Jose	Perales Pina
Jose	Perales Pina	
hereby acknowledge that the undersigned individual accepts the appointment as Initial Registered Agent of New Horizons Law Firm, LLC the Limited Liability Company which is named in the annexed Articles of Organization.		
(Typing the First and Last Name of Initial Registered Agent, is the equivalent of an electronic signature.)		

OFFICE OF THE SECRETARY OF STATE
NEW MEXICO

Certificate of Organization

OF

New Horizons Law Firm, LLC

5849667

New Mexico

The Office of the Secretary of State certifies that the Articles of Organization, duly signed and verified pursuant to the provisions of the

Limited Liability Company Act

53-19-1 to 53-19-74 NMSA 1978

have been received and are found to conform to law. Accordingly, by virtue of the authority vested in it by law, the Office of the Secretary of State issues this Certificate of Organization and attaches hereto a duplicate of the Articles of Organization.

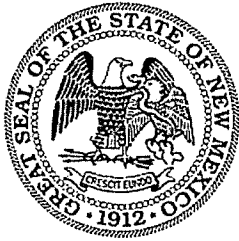
Dated: **March 7, 2019**

In testimony whereof, the Office of the Secretary of State has caused this certificate to be signed on this day in the City of Santa Fe, and the seal of said office to be affixed hereto.



Maggie Toulouse Oliver

Maggie Toulouse Oliver
Secretary of State



OFFICE OF THE SECRETARY OF STATE
NEW MEXICO

March 7, 2019

J. MARCOS PERALES PINA
1127 E. IDAHO
LAS CRUCES, NM 88001

RE: New Horizons Law Firm, LLC
Business ID #: 5849667

The Office of the Secretary of State has approved and filed the Articles of Organization for the above captioned organization effective March 7, 2019. The enclosed Certificate of Organization is evidence of filing, and should become a permanent document of the organization's records.

Please be advised that although the Certificate of Organization has been approved, you must also comply with all other federal or state laws applicable to your organization. This includes, but is not limited to state licensing requirements. It is the organization's sole responsibility to obtain such compliance with all legal requirements applicable thereto prior to engaging in the business for which it has obtained approval of the referenced document.

If you have any questions, please contact the Corporations Bureau at (505) 827-3600 or toll free at 1-800-477-3632 for assistance.

Corporations Bureau

OFFICE OF THE SECRETARY OF STATE

NEW MEXICO

Certificate of Amendment

OF

New Horizons Law Firm, LLC

5849667

New Mexico

The Office of the Secretary of State certifies that the Articles of Amendment, duly signed and verified pursuant to the provisions of the

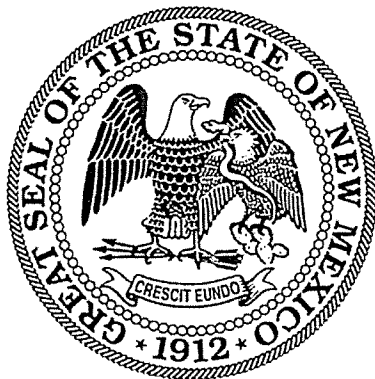
Limited Liability Company Act

53-19-1 to 53-19-74 NMSA 1978

have been received and are found to conform to law. Accordingly, by virtue of the authority vested in it by law, the Office of the Secretary of State issues this Certificate of Amendment and attaches hereto a duplicate of the Articles of Amendment.

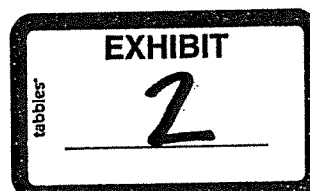
Dated: **March 18, 2019**

In testimony whereof, the Office of the Secretary of State has caused this certificate to be signed on this day in the City of Santa Fe, and the seal of said office to be affixed hereto.



Maggie Toulouse Oliver

Maggie Toulouse Oliver
Secretary of State





OFFICE OF THE SECRETARY OF STATE
NEW MEXICO

April 1, 2019

NEW HORIZONS LAW FIRM, LLC
1127 E. IDAHO
LAS CRUCES, NM 88001

RE: New Horizons Law Firm, LLC
Business ID #: 5849667

The Office of the Secretary of State has approved and filed the Articles of Amendment for the above captioned organization effective March 18, 2019. The enclosed Certificate of Amendment is evidence of filing, and should become a permanent document of the organization's records.

Please be advised that although the Certificate of Amendment has been approved, you must also comply with all other federal or state laws applicable to your organization. This includes, but is not limited to state licensing requirements. It is the organization's sole responsibility to obtain such compliance with all legal requirements applicable thereto prior to engaging in the business for which it has obtained approval of the referenced document.

If you have any questions, please contact the Corporations Bureau at (505) 827-3600 or toll free at 1-800-477-3632 for assistance.

Corporations Bureau



New Mexico
Secretary of State
Business Services Division
325 Don Gaspar, Suite 300 · Santa Fe, NM 87501
(800) 477-3632 · www.sos.state.nm.us

SUBMIT ORIGINAL
TYPE OR PRINT LEGIBLY
\$50 FEE

LIMITED LIABILITY COMPANY
ARTICLES OF AMENDMENT
TO THE ARTICLES OF ORGANIZATION

Pursuant to the provisions of the New Mexico Limited Liability Company Act, the undersigned limited liability company adopts the following Articles of Amendment for the purpose of amending its Articles of Organization:

ARTICLE ONE: The name of the limited liability company is (include Business ID #):

New Horizons Law Firm, LLC

ARTICLE TWO: The date the Articles of Organization were filed is:

3/7/2019

ARTICLE THREE: The Articles of Organization are amended as follows (Identify original article number being amended, along with amended information. Please submit an attachment if needed):

AMENDING ARTICLE FIVE:

MICHAEL E. CAIN 1127 E. Idaho Las Cruces NM 88901

PERALES LAW FIRM, PLLC 7033 CANYON RUN DR
EL PASO TX 79912

ARTICLE FOUR: If these Articles of Amendment are not to be effective upon filing, the effective date is: (if an effective date is specified here, it cannot be a date prior to the date the articles are received by the Secretary of State)

Dated: 3/13/2019

By:
Signature of Member or Manager

Jose M Perales Pina
Printed Name and Title (Member or Manager)

PERALES LAW FIRM
PLLC

AFFIDAVIT OF MARK E. GEMOETS

I, **MARK E. GEMOETS**, upon my oath and based upon my own personal knowledge and under the penalty of perjury under the laws of the State of New Mexico, do hereby declare and affirm that:

1. I am a lawyer licensed to practice in the Courts of New Mexico.
2. My address of record and my office location is: 135 W. Griggs Ave., Las Cruces, New Mexico, 88001.
3. I know J. Marcos Perales Pina, and I know that the Supreme Court recently suspended him.
4. In mid-May 2019, attorney Michael Cain called me and told me that according to papers he received from the Office of Disciplinary Counsel, I had been listed as a Member of "New Horizons Law Firm, LLC," which, Mr. Cain told me, Mr. Perales Pina had formed.
5. Although I participated in discussions with J. Marcos Perales Pina about the possibility of forming a law office, I was unaware that he filed the Articles of Organization to begin such an entity.
6. Over a several week period, Mr. Pina and I had face-to-face conversations and some email exchanges about forming a law firm. We did not reach the point of executing a partnership agreement and had not identified the specific nature of the contemplated business relationship (i.e., no decision had been



made about client transfers, the appropriate business entity, terms of ownership, or capital contributions).

7. In other words, with the above-discussed items undecided, the necessary terms of the entity had not been established and no contract had ever been executed to complete the formation of any entity with J. Marcos Perales Pina. We were in the discussion stage.
8. I learned about potential disciplinary issues involving Mr. Perales Pina on March 7, 2019 or March 8, 2019. On one of those days, he spoke to me and informed me of the existence of disciplinary issues with the bar. I asked him to send me the written documents regarding the discipline so that I could become apprised of the nature of those proceedings. Mr. Perales Pina did not send me any documentation, and I have not spoken to him since that conversation.
9. On March 20, 2019 I received a letter from Mr. Perales Pina letting me know he was suspended. I received the letter from him because I was opposing counsel to him on a case and he was required to notify me of his suspension and withdrawal in that case.
10. Upon receiving the March 20, 2019 letter, I understood any potential partnership to be over. The organization of an entity with J. Marcos Perales Pina never came to fruition and at no time did I ever engage in any business

while associating with J. Marcos Perales Pina, or the New Horizons Law Firm, LLC in any way.

11. I did learn later that Mr. Perales Pina had moved forward with the formation of an entity called New Horizons Law Firm, LLC, with my name listed as a member. After Michael Cain informed me that I had been listed as a member of "New Horizons Law Firm, LLC," and sent me a copy of the paperwork that he had received, I was surprised to observe on the Articles of Organization that while Mr. Perales Pina listed me as a member on March 7, 2019, he removed my name when he filed the Articles of Amendment on March 13, 2019. I did not know about either of these documents or their filing until Mr. Cain sent them to me.

12. I have reviewed all of the written communications that I had with Mr. Perales Pina during time periods relevant to this inquiry. In the weeks leading up to my learning about his discipline, I was receiving emails from him about our proposed business, but I was not reading those emails carefully because I did not believe we had agreed upon enough details to be imminently forming a partnership. I believed further meetings would be needed. Of course, when I learned of his discipline, my understanding was that we would no longer be moving forward because Mr. Perales Pina is not eligible to practice law. I would not knowingly enter into a partnership or any other association with a

suspended lawyer. I will make any of the emails I received from Mr. Perales Pina available to the Disciplinary Counsel and/or Disciplinary Board for inspection and copying.

Dated: June 17, 2019


Mark E. Gemoets

Subscribed and sworn to me on this 17th day of June 2019.


Notary Public

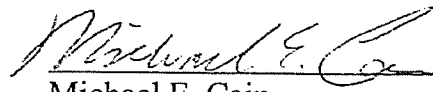
My Commission Expires: 06/25/2023



AFFIDAVIT OF MICHAEL E. CAIN

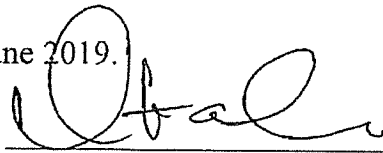
I, **MICHAEL E. CAIN**, upon my oath and based upon my own personal knowledge and under the penalty of perjury under the laws of the State of New Mexico, do hereby declare and affirm that:

1. I am a lawyer licensed to practice in the Courts of New Mexico.
2. My address of record and my office location is: 1060 S. Main Street, Las Cruces, New Mexico, 88005.
3. I know J. Marcos Perales Pina (“Mr. Perales”), and I know that the Supreme Court recently suspended him.
4. In mid-May 2019, the Office of Disciplinary Counsel made me aware that Mr. Perales had formed “New Horizons Law Firm, LLC,” and that he had filed Articles of Amendment which listed me as a Member of that Law Firm.
5. I had no prior knowledge of New Horizons Law Firm, LLC, nor that I was named as a Member; Mr. Perales Pina never informed me of his actions in filing Articles of Organization or Articles of Amendment.
6. I would never have approved my inclusion as a Member had Mr. Perales Pina first consulted with me.


Michael E. Cain



Subscribed and sworn to me on this 19th day of June 2019.



Notary Public

My Commission Expires: March 21st, 2013





J. Marcos Perales Pina
ATTORNEY
LICENSED IN TEXAS & NEW MEXICO

1127 E. Idaho
Las Cruces, NM 88001
Ph: 575.523.0144 Fx: 575.523.0177

March 8, 2019

[REDACTED]
Rio Rancho, NM 87124

Dear Mr. [REDACTED],

As of the date of this letter, I will be selling my practice to New Horizons Law Firm, LLC. While I will no longer be able to represent you, New Horizons Law Firm, LLC is highly qualified to handle your continuing legal needs. You have the right to select the attorney of your choice to represent you. I advise that you immediately engage New Horizons Law Firm, LLC or another attorney to handle your case.

If you wish New Horizons Law Firm, LLC to continue handling your case, please sign the authorization form at the bottom of this letter and return it to my office. If, on the other hand, you wish to retain another attorney, please send me your written authorization to release your file to your new attorney. If you would like, you can come to my office personally to pick up your file and deliver it to your attorney.

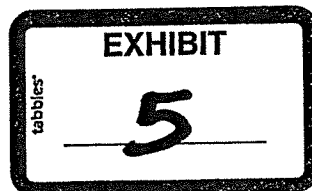
Because deadlines may be important to your case, it is important that you decide immediately who will represent you in the future. Please send me the appropriate authorization form by March 15, 2018.

I have complete confidence in the legal skills of New Horizons Law Firm, LLC. and I want to make the transition as easy as I can for you. Please call me if you have any questions or concerns.

Sincerely,

/s/ J. Marcos Perales Piña

J. Marcos Perales Pina, Attorney.
Perales Law Firm
A Professional Corporation





PERALES
LAW FIRM

A PROFESSIONAL CORPORATION

J. Marcos Perales Pina
ATTORNEY
LICENSED IN TEXAS & NEW MEXICO

1127 E. Idaho
Las Cruces, NM 88001
Ph: 575.523.0144 Fx: 575.523.0177

I want and hereby engage New Horizons Law Firm, LLC to handle my legal case.

(Client Name)

(Date)

Jane Gagne

From: Jack Brant <Jack@brantandhunt.com>
Sent: Monday, April 1, 2019 12:37 PM
To: Jane Gagne
Subject: RE: Perales 212 Client Letters

Jane, I have forwarded your email to Mr. Perales and advised him to comply with it fully by April 8, 2019.

Jack Brant
Brant & Hunt, Attorneys
202 Tulane Drive SE
Albuquerque, New Mexico 87106
(505) 232-5300
jack@brantandhunt.com

From: Jane Gagne [mailto:jgagne@nmdisboard.org]
Sent: Monday, April 01, 2019 12:30 PM
To: Jack Brant <Jack@brantandhunt.com>
Cc: William Slease <wds@nmdisboard.org>
Subject: Perales 212 Client Letters

Jack:

I received Mr. Perales' 212 affidavit with the attached letters. The letters to the clients omitted the first sentence which is required: "Pursuant to the enclosed Supreme Court order, I will be suspended effective on March 15, 2019." The sentence was in the form letter I supplied, and the sentence is in the other letters to the courts and opposing counsel

So it appears that Mr. Perales did not inform the clients of his suspension, or provide the Order, and he is not in compliance. Also, he did not file the letters with the affidavit, as required by Rule 17-212(D).

In order to avoid a motion for order to show cause, please have him fully comply by one week from today, April 8, 2019. He must re-send the correct letter in full to each of the clients, with a copy of the Order; then file an amended affidavit with the letters attached, and provide a copy to me.

Thank you,

Jane Gagne

Assistant Disciplinary Counsel

New Mexico Disciplinary Board

20 First Plaza, NW Ste.710

Albuquerque, NM 87102

(505) 842-5781



Jane Gagne

From: Jane Gagne
Sent: Friday, March 15, 2019 11:46 AM
To: Jack Brant
Subject: Perales: Call from Client

Hello Jack,

A client of Mr. Perales just called here, spoke with Tamma Williams (who did not get the client's name). Tamma said that the client said that Mr. Perales informed her that he is selling his practice; she called to find out if he could do that in the middle of his representation. She did not know that he'd been suspended until Tamma told him. That's a problem.

So, first, please remind him of his 17-212 obligations. Second, if he is selling his practice, he must comply with Rule 16-117.

Thank you.

Jane Gagne

Assistant Disciplinary Counsel

New Mexico Disciplinary Board

20 First Plaza, NW Ste.710

Albuquerque, NM 87102

(505) 842-5781

FAX: (505) 766-6833

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL, EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW, AND PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE.

If the reader of this message is not the intended recipient or agent responsible for delivering the message to the intended recipient, you are hereby notified that any review, dissemination or copying of this communication is strictly prohibited. If you have received this electronic transmission in error, please do not read it, delete it from your system without copying it, and notify the sender by reply e-mail or by calling (505) 842-5781 so that our address record can be corrected. Thank you.



STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

FILED
3rd JUDICIAL DISTRICT COURT
Dona Ana County
3/5/2019 1:08 PM
DAVID S. BORUNDA
CLERK OF THE COURT
Susana Tyfair

AARON ELISERIO,

Petitioner,

D-307-DM-2019-00293

vs.

JUDGE /s/ Susana Tyfair

VANESSA ELISERIO,

Respondent.

ENTRY OF APPEARANCE

COMES NOW attorney J. Marcos Perales-Piña, of *Perales Law Group*, and enters his appearance on behalf of the Petitioner in the above entitled matter. Attorney for the Petitioner would request that all service in this matter be mailed to the address below.

Respectfully submitted,

J. Marcos Perales-Piña

J. Marcos Perales-Piña
Attorney for Petitioner
NM State Bar #25873
1127 E. Idaho Ave.
Las Cruces, NM 88001
(575) 523-0144 Phone
(575) 523-0177 Fax

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading will be served to Respondent, Vanessa Eliserio in a manner consistent with New Mexico law.

J. Marcos Perales-Piña

J. Marcos Perales-Piña



STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

FILED
3rd JUDICIAL DISTRICT COURT
Dona Ana County
5/10/2019 12:45 PM
DAVID S. BORUNDA
CLERK OF THE COURT
Noemi Ramirez

AARON ELISERIO,

Petitioner,

vs.

VANESSA ELISERIO,

Respondent.

D-307-DM-2019-00293

JUDGE ROSNER

ENTRY OF APPEARANCE

COMES NOW attorney Ramon Hernandez, of *New Horizons Law Firm*, and enters his appearance on behalf of the Petitioner in the above entitled matter. Attorney for the Petitioner would request that all service in this matter be mailed to the address below.

Respectfully submitted,

/s/ Ramon Hernandez
Ramon Hernandez
Attorney for Petitioner
NM State Bar #149085
1127 E. Idaho Ave.
Las Cruces, NM 88001
(575) 523-0144 Phone
(575) 523-0177 Fax

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading will be served to Respondent, Vanessa Eliserio in a manner consistent with New Mexico law.

/s/ Ramon Hernandez
Ramon Hernandez



New Horizons
Law Firm, LLC

May 17, 2019

[REDACTED]

Albuquerque, NM 87120

Re: Divorce

1. Names and addresses of parties entering into the agreement.

THIS AGREEMENT FOR LEGAL SERVICES by and between New Horizons Law Firm and Luis Garcia. This agreement constitutes a binding legal contract and should be reviewed carefully.

2. Nature of the services to be rendered.

- a. The client retains New Horizons Law Firm to render services in connection with the prosecution of an action for: Divorce in the District Court of, Dona Ana County, including the attempt to negotiate a resolution of the matter.

- b. It is further understood that:

This agreement does not apply to any appeals or post-judgment actions, proceedings, or applications and that, if such engagements were to be accepted by this firm in the future, the firm's representation would have to be evidenced by execution of another and separate Retainer Agreement. Nor does this agreement apply to any other proceedings commenced by either party unless another, separate retainer is executed. However, this retainer agreement in no way obligates the firm to accept such engagement in the future;

- c. The client authorizes the attorney to take any steps which, in the sole discretion of the attorney, are deemed necessary or appropriate to protect the client's interest in the matter.

3. Amount of the advance retainer, if any, and what it is intended to cover.

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Licensed in Texas

7362 Remcon Circle
El Paso TX 79912
(915) 225-2292



Ramon Hernandez
Licensed in New Mexico

1127 E. Idaho
Las Cruces NM 88001
(575) 523-0144



New Horizons
Law Firm, LLC

a. For us to begin our representation you have agreed to pay us, and we have agreed to accept a retainer payment of \$3,000.00. This retainer payment does not necessarily represent the amount of overall fee which you may incur by virtue of our services. The amount of our eventual fee will be based upon our regular schedule of established hourly time charges, along with any out-of-pocket disbursements (such as court costs, messenger services, transcripts of proceedings, long distance telephone calls, telexes, process service fees, mileage, depositions and court transcripts, and postage) which are incurred in your behalf.

b. Costs include, but are not limited to; filing fees, process server fees (approximately \$50 to \$200 per service) and any services that may be provided by the firm or subcontracted.

c. The client further understands that the hourly rates apply to all time expended relative to the client's matter, including but not limited to, office meetings and conferences, telephone calls and conferences, either placed by or placed to the client, or otherwise made or had on the client's behalf or related to the client's matter, preparation, review and revision of correspondence, pleadings, motions, disclosure demands and responses, affidavits and affirmations, or any other documents, memoranda, or papers relative to the client's matter, legal research, court appearances, conferences, file review, preparation time, travel time, and any other time expended on behalf or in connection with the client's matter.

4. The circumstances under which any portion of the advance retainer may be refunded.

If you discontinue our services prior to a disposition of your matter by agreement or judgment of the court, or if this firm is relieved as your attorney by court order, any unearned portion of the retainer fee you advanced to this firm shall be refunded to you.

5. The client's right to cancel the agreement at any time; how the attorney's fee will be determined and paid should the client discharge the attorney at any time during the representation.

a. You have the absolute right to cancel this retainer agreement at any time. Should you exercise this right, you will be charged only the fee expenses (time charges and

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disbursements) incurred within that period, based upon the hourly rates set forth in this retainer agreement, and the balance of the retainer fee, will be promptly refunded to you.

b. The fair and reasonable fee would be determined in accordance with legally accepted standards, with the unearned balance of the retainer fee, if any, being promptly refunded to you. Presently, the legally recognized elements of a reasonable fee, as set forth in the Code of Professional Responsibility, are as follows:

- o The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly.
- o The likelihood, of apparent or made known to the client, that the acceptance of the employment will preclude other employment by the lawyer. (You should know that the Law Firm, by accepting retention as your attorney, is clearly precluded from representing the opposing party against you.)
- o The fee customarily charged in the locality for similar services.
- o The amount involved and the results obtained.
- o The time limitations imposed by the client or by circumstances.
- o The nature and length of the professional relationship with the client.
- o The experience, reputation and ability of the lawyer or lawyers performing the services.
- o Whether the fee is fixed or contingent. (You should know that the Code of Professional Responsibility provides: "A lawyer shall not enter into an arrangement for, charge or collect ... [any] fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of maintenance, support, equitable distribution, or property settlement...")

6. How the attorney will be paid through the conclusion of the case after the retainer is depleted.

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a. You agree to pay us such additional fees and to reimburse us for our advances on your behalf that may be due from time to time not later than 30 days from the date that we shall submit a bill to you for same. If an amount due to us is not paid within 30 days after our statement to you of the amount due, interest at the rate of 9% per annum shall be added to the balance due to us.

7. The hourly rate of each person whose time may be charged to the client; any out-of-pocket disbursements for which the client will be required to reimburse the attorney. Any changes in such rates or fees shall be incorporated into a written agreement constituting an amendment to the original agreement, which must be signed by the client before it may take effect.

a. The hourly rate for work in this matter is as follows:

(i) Ramon Hernandez' hourly rate is \$200.00 per hour, for all legal work, in and out of court.

(ii) Paralegal and law clerk's hourly rate is \$150.00 per hour

(iii) Legal Secretary, and other office support staff will be billed at \$100.00 per hour.

b. In addition to the foregoing, your responsibility will include direct payment or reimbursement of this firm for disbursements advanced on your behalf, recording fees, charges of process servers, travel expenses, copying costs, messenger services, necessary secretarial overtime, transcripts and the customary fees of stenographers referable to examinations before trial in the event such examinations are utilized.

c. Depositions: Client shall pay the sum of \$750.00 at least 10 days prior to a scheduled Deposition to cover the costs of stenographer fees.

d. The minimum time increment is one twentieth of an hour (.05), and client shall be billed at this increment for all work under this agreement.

e. Each letter will be billed at a minimum of .2 hour and every telephone conversation at a minimum of .1 hour. This amount has been arrived at as a

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result of calculating the time involved in retrieving the file, and examining the documents or letters required to dictate the letter or respond to the call, in addition to the time required to consider the problem arising from or to be dealt with in the call or letter.

f. The hourly rates set forth in this retainer agreement will remain in effect throughout the period of our representation for the matter set forth in this retainer agreement, unless changed by mutual consent of you and our firm, in which event any modification of the hourly rates shall be reduced to writing and signed by you and our firm.

8. Frequency of itemized billing, which shall be at least every 60 days; the client may not be charged for time spent in discussing of the bills received.

a. You will be billed periodically, generally each month, but in no event less frequently than every 60 days. Included in the billing will be a detailed explanation of the services rendered, by whom rendered, and the disbursement incurred by our firm in connection with your matter.

b. Upon receipt of our bill, you are expected to review the bill and promptly bring to our attention any objections you may have to the bill. While we strive to keep perfectly accurate time records, we recognize the possibility of human error, and we shall discuss with you any objection you raise to your bill. You will not be charged for time expended in discussing with us any aspect of the bill rendered to you.

c. Any objections to your bill shall be made in writing within 60 days of receiving each bill. If no written objection is made within that time, it will be presumed that you agree with the charges.

9. Client's rights to be provided with copies of correspondence and documents relating to the case, and to be kept apprised of the status of the case.

a. We shall keep you informed of the status of your case, and to explain the laws pertinent to your situation, the available course of action, and the attendant risks. We shall notify you promptly of any developments in your case, including court appearances, and will be available for meetings and telephone conversations with you at mutually convenient times. We do insist that appointments be made for personal

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visits to our offices. Copies of all papers will be supplied to you as they are prepared (unless you request to the contrary), and you will be billed a reasonable photocopy charge (15 cents per page) for these materials which will be included in your periodic billing.

10. Whether and under what circumstances the attorney might seek a security interest from the client, which can be obtained only upon court approval and on notice to the adversary.

a. While we expect to be paid the fees due to us in timely fashion, in situations where the client does not have funds readily available to pay additional fees as they accrue, we may, as an accommodation, agree to take a security interest in property in lieu of immediate payment. A security interest may take the form of a promissory note, or mortgage upon specified property. In either event, a lien will attach to your property. In the case of your marital residence, any such security interest shall be non-foreclosable, i.e., we shall not force a sale of your home but would be paid at the time you sell the premises. You are advised that any such security interest can be granted to us only with the permission of the judge assigned to your case upon an application on notice to the opposing party, and after an application has been made for your spouse to pay the outstanding fees.

b. In the event such application for payment of counsel fees by your spouse and a security interest for the fees due this firm is made to the Court; the client agrees to cooperate in connection with such application and to consent to the relief being requested from the Court. Failure on the part of the client to so cooperate and consent shall be deemed as a basis for withdrawal by the Law Firm from representation of the client.

11. Under what circumstances the attorney might seek to withdraw from the case for nonpayment of fees, and the attorney's right to seek a charging lien from the court.

a. You are advised that if, in the judgment of this firm, we decide that there has been an irretrievable breakdown in the attorney-client relationship, or a breach of the terms of this retainer agreement, we may decide to make application to the court in which your action is pending to be relieved as your attorney. In such event, you will be provided with notice of the application and an opportunity to be heard. Should any fees be due and owing to this firm at the time of our discharge, we shall have the right, in addition to any other remedy, to seek a charging lien, i.e., a lien upon the

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property that is awarded to you as a result of equitable distribution in the final order or judgment in your case. No such lien may attach to maintenance or child support payments.

b. If any bill from the Law Firm remains unpaid beyond a 30-day period, the client agrees that the Law Firm may withdraw its representation, at the option of the firm. If an action is pending, and absent your consent, an application must be made to the Court for such withdrawal. Where the fee is unpaid for the period set forth above, the client acknowledges that in connection with any such withdrawal application, that the account delinquency shall be good cause for withdrawal.

c. If the client discharges the attorney, the client agrees to inform the attorney in writing of said discharge. Client further agrees to immediately provide the attorney with written authority to withdraw from the case.

12. Should a dispute arise concerning the attorney's fee, the client may seek arbitration, which is binding upon both attorney and client; the attorney shall provide information concerning fee arbitration in the event of such dispute or upon the client's request.

While we seek to avoid any fee disputes with our clients, and rarely have such disputes, in the event such a dispute does arise, you are advised that you have the right, at your election, to seek arbitration to resolve the fee dispute. In such event, we shall advise you in writing by certified mail that you have thirty (30) days from receipt of such notice in which to elect to resolve the dispute by arbitration, and we shall enclose a copy of the arbitration rules and a form for requesting arbitration. The decision resulting from arbitration is binding upon both you and this firm.

13. Retention of Expert

You have been advised that for us to properly protect your interests, it may be necessary to retain outside experts such as appraisers, actuaries and accountants. You will be responsible for the costs incurred for any such service which in some cases may have to be paid in advance depending upon the requirement of the expert. No expert or appraiser shall be retained without your prior approval. If necessary, an application will be made to the Court to have your spouse pay all or part of the fees for experts.

14. Acknowledgment and understanding

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a. The client acknowledges that he or she has read this agreement in its entirety, has had full opportunity to consider its terms, and has had full and satisfactory explanation of same, and fully understands its terms and agrees to such terms.

b. The client fully understands and acknowledges that there are no additional or different terms or agreements other than those expressly set forth in this written agreement.

c. The client acknowledges that he or she was provided with and read the Statement of Client's Rights and Responsibilities, a copy of which is attached to their Retainer Agreement.

15. Certifications

We have informed you that pursuant to court rule, we are required, as you attorneys, to certify court papers submitted by you which contain statements of fact, and specifically to certify that we have no knowledge that the substance of the submission is false. Accordingly, you agree to provide us with complete and accurate information which forms the basis of court papers and to certify in writing to us, prior to the time the papers are actually submitted to the Court, the accuracy of the court submissions which we prepare on your behalf, and which you shall review and sign.

16. No guarantees

It is specifically acknowledged by you that this firm has made no representations to you, express or implied, concerning the outcome of the litigation presently pending or hereafter to be commenced between you and your spouse. You further acknowledge that this firm has not guaranteed and cannot guarantee the success of any action taken by the firm on your behalf during such litigation with respect to any matter therein, including without limitation issues of spousal and/or child support, custody and/or visitation, exclusive occupancy of the marital premises, distribution of marital assets, the declaration of separate property, counsel fees and/or a trial.

17. Review of this agreement by another law firm and right to review this agreement prior to signing.

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The client has a right to have this agreement reviewed by another law firm before signing it. Likewise, the client has the right to review this agreement outside the presence of the lawyer and away from the lawyer's office before signing it. Client understands that the attorney is not retained until the signed original agreement is returned to the lawyer along with the corresponding retainer.

18. Closing

You are aware of the hazards of litigation and acknowledge that we have made no guarantees in the disposition of any phase of the matter for which you have retained this office. If this fee arrangement meets with your approval, kindly sign your name where indicated on the copy of this letter and return same to me in the envelope enclosed for your convenience. You acknowledge that pursuant to court rule, a copy of this retainer letter is required to be filed with the court in which your action is pending.

Kindly indicate your understanding and acceptance of the above by signing the letter below where indicated. We look forward to being of service to you in connection with this matter.

Very truly yours,

Ramon Hernandez, Esq.

I have read and understand the above retainer, have received a copy and accept all its terms:

06-06-19

Date

J. Marcos Perales Pina
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N.M. R. Gov. Disc. 17-212

Rule 17-212 - Resigned, disbarred or suspended attorneys

A. Notification of clients in pending matters. An attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or suspended pursuant to the Rules Governing Discipline shall promptly notify by registered or certified mail, return receipt requested, in a form prescribed or approved by disciplinary counsel, all clients being represented by the attorney in pending matters, other than litigated or administrative matters or proceedings pending in any court or agency, of the resignation, disbarment or suspension and consequent inability to act as an attorney after the effective date of the resignation, disbarment or suspension, and shall inform the clients to seek legal advice elsewhere. If accepted by the Supreme Court, an attorney who enters into a conditional agreement pursuant to Rule 17-211 NMRA that results in the attorney's resignation, suspension or disbarment shall provide the notice required herein to all clients whom the attorney represented as of the date that the conditional agreement was signed by the attorney. In any matter not involving a conditional agreement but in which the order of the Supreme Court suspending or disbaring an attorney delays the effective date of the resignation, suspension or disbarment, the attorney shall provide the notice required to all clients whom the attorney represented as of the date that the Court entered its order, regardless of the subsequent date that the suspension or disbarment takes effect. In all cases, the attorney shall also provide to each of the attorney's clients a copy of the order accepting or providing for the attorney's resignation or disbarment or suspending the attorney. An attorney who has resigned, been disbarred or suspended from the practice of law, or who has signed a conditional agreement providing for the attorney's resignation, suspension or disbarment, may not recommend to the attorney's clients any other lawyer to represent them but shall inform the client that the client may contact the State Bar of New Mexico for one of its lawyer referral programs.

B. Notification in litigated matters. An attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or suspended pursuant to the Rules Governing Discipline shall promptly give notice of disbarment, suspension or resignation in a form prescribed or approved by the Disciplinary Board by registered or certified mail, return receipt requested: to each of his clients who is involved in litigated matters or administrative proceedings; to the attorney for each adverse party in such matter or proceeding; and to the court or administrative agency in which the matter is pending. The notice of disbarment, suspension or resignation shall set forth the effective date of the attorney's resignation, disbarment or suspension. The notice to be given to the client shall inform the client that he should seek the legal advice of another attorney or attorneys in his place. If accepted by the Supreme Court, an attorney who enters into a conditional agreement pursuant to Rule 17-211 NMRA which results in the attorney's resignation, suspension or disbarment shall provide the notice required herein to all clients and all opposing counsel, courts and administrative agencies in all litigated or administrative matters pending on the date that the conditional agreement was signed by the attorney. In any matter not involving a conditional agreement but in which the order of the Supreme Court suspending or disbaring an attorney delays the effective date of the resignation, suspension or disbarment, the attorney shall provide the



notice required to all clients and all opposing counsel, courts and administrative agencies in all litigated or administrative matters pending, on the date that the Court entered its order, regardless of the subsequent date that the suspension or disbarment takes effect. In all cases, the attorney shall also provide to each of the attorney's clients, to every opposing counsel and to every court or administrative agency in each litigated or administrative matter a copy of the order accepting or providing for the attorney's resignation or disbarment or suspending the attorney. An attorney who has resigned, been disbarred or suspended from the practice of law, or who has signed a conditional agreement providing for the attorney's resignation, suspension or disbarment, may not recommend to the attorney's clients any other lawyer to represent them.

In the event the client does not obtain substitute counsel before the effective date of the resignation, disbarment or suspension, it shall be the responsibility of the attorney to advise in writing the court or agency in which the proceeding is pending, of the attorney's automatic withdrawal from participating further in the proceeding.

The notice to be given to the attorney for an adverse party shall state the place of residence of the client of the attorney.

C. Unauthorized practice of law. An attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or suspended pursuant to these rules, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. Subject to the approval of the Supreme Court, until the effective date of the resignation, suspension or disbarment, the attorney may on behalf of any client act on such matters that were pending on the date of the agreement or order.

D. Affidavit of compliance. Within ten (10) days after the effective date of the resignation, disbarment or suspension order, the attorney shall file with the Supreme Court an affidavit showing:

- (1) the attorney has fully complied with the provisions of the order and with this rule; and
- (2) the attorney has served a copy of such affidavit upon disciplinary counsel.

The attorney shall file with the affidavit copies of the letters required to be sent pursuant to Paragraphs A and B of this rule.

Such affidavit shall also set forth the residential or other address where communications may thereafter be directed to the attorney. In order that the attorney can be located in the event complaints are made about the attorney's conduct while the attorney was engaged in practice, for a period of five (5) years following the effective date of the resignation, disbarment or suspension order, the attorney shall continue to file a registration statement in accordance with Rule 17-202 NMRA, listing the residence or other address where communications may thereafter be directed to the attorney.

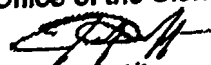
E. Required records. An attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or suspended shall keep and maintain records of the various steps taken by the attorney under this rule so that upon any subsequent proceeding instituted by or against the attorney, proof of compliance with these rules and with the disbarment or suspension order will be available.

F. Contempt. Any attorney who fails or refuses to comply with the provisions of this rule may be held in contempt of the Supreme Court.

N.M. R. Gov. Disc. 17-212

As amended by Supreme Court Order No. 12-8300-008, effective April 5, 2012.




Joey D. Moya

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

November 06, 2019

NO. S-1-SC-37402

**IN THE MATTER OF
J. MARCOS PERALES PINA**

**An Attorney Disbarred from
the Practice of Law in the
State of New Mexico**

ORDER

WHEREAS, this matter came on for consideration by the Court upon Disciplinary Counsel's verified motion for an order to show cause why Respondent, J. Marcos Perales Pina, should not be held in contempt for attempting to circumvent this Court's order dated March 8, 2019, which suspended Respondent from the practice of law effective March 15, 2019;

WHEREAS, Respondent filed a response to the motion for order to show cause on August 12, 2019, and Disciplinary Counsel filed a reply on September 24, 2019;

WHEREAS, this Court granted the motion and issued an order on October 4, 2019, requiring respondent to appear before the Court on November 6, 2019, to show cause why he should not be held in contempt of Court; and

WHEREAS, the Court having considered said pleadings and the oral argument of the parties on November 6, 2019, and being sufficiently advised, Chief Justice Judith K. Nakamura, Justice Barbara J. Vigil, Justice Michael E. Vigil, Justice C.



1 Shannon Bacon, and Justice David K. Thomson concurring;

2 NOW, THEREFORE, IT IS ORDERED that Respondent, J. MARCOS
3 PERALES PINA, is found in CONTEMPT OF COURT for failure to comply with
4 and attempting to circumvent this Court's order dated March 8, 2019, through
5 misrepresentations and a continued pattern of deceitful practices;

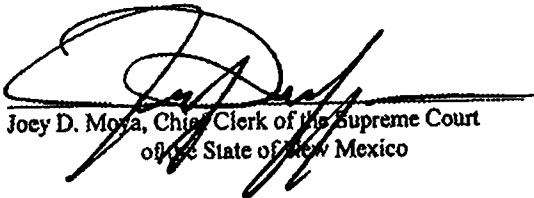
6 IT IS FURTHER ORDERED that Respondent is PERMANENTLY
7 DISBARRED from the practice of law under Rule 17-206(A)(1) & (G) NMRA,
8 effectively immediately; and

9 IT IS FURTHER ORDERED that that Respondent shall report the fact of his
10 disbarment in accordance with the provisions of Rule 17-212 NMRA to all former
11 clients of Respondent who subsequently became clients of Ramon Hernandez.

12 IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura,
Chief Justice of the Supreme Court of the State of
New Mexico, and the seal of said Court this 6th day
of November, 2019.


Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

13 I CERTIFY AND ATTEST:
A true copy was served on all parties
or their counsel of record on date filed.
Joey D. Moya
Chief Clerk of the Supreme Court
of the State of New Mexico

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

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INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. GENERAL PROVISIONS

Rule 1.01. Definitions

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

Rule 1.02. General Powers

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

Rule 1.03. Additional Rules in Disciplinary Matters

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

Rule 1.04. Appointment of Panels

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

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

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

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

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

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

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

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

- (4) Exceptions.

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

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

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

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

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

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

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

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

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

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

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

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

Rule 1.06. Service of Petition

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

Rule 1.07. Hearing Setting and Notice

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

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

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

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

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

Rule 1.08. Time to Answer

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

Rule 1.09. Pretrial Procedure

(a) Motions.

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

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

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

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

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

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

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

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

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

Rule 1.10. Decisions

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

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

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

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

Rule 1.11. Board of Disciplinary Appeals Opinions

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

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

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

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

Rule 1.12. BODA Work Product and Drafts

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

Rule 1.13. Record Retention

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

Rule 1.14. Costs of Reproduction of Records

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

Rule 1.15. Publication of These Rules

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

II. ETHICAL CONSIDERATIONS

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

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

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

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

Rule 2.02. Confidentiality

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

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

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

Rule 2.03. Disqualification and Recusal of BODA Members

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

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

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

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

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

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

Rule 3.02. Record on Appeal

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

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

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

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

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

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

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

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

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

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

Rule 4.02. Record on Appeal

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

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

(c) Responsibility for Filing Record.

(1) Clerk's Record.

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

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

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

(2) Reporter's Record.

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

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

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

(d) Preparation of Clerk's Record.

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

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

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

(ii) start each document on a new page;

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

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

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

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

(vii) certify the clerk's record.

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

(3) The table of contents must:

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

(ii) be double-spaced;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹ So in original.

Rule 4.03. Time to File Record

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

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

(b) If No Record Filed.

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

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

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

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

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

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

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

Rule 4.04. Copies of the Record

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

Rule 4.05. Requisites of Briefs

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

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

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

(c) Contents. Briefs must contain:

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

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

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

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

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

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

failure to timely file a brief;

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

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

Rule 4.06. Oral Argument

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

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

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

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

Rule 4.07. Decision and Judgment

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

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

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

Rule 4.08. Appointment of Statewide Grievance Committee

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

Rule 4.09. Involuntary Dismissal

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

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

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

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

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

Rule 5.02. Hearing

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

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

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

Rule 6.02. Interlocutory Suspension

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

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

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

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

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

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

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

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

Rule 7.02. Order to Show Cause

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

Rule 7.03. Attorney's Response

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

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

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

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

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

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

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

Rule 8.02. Petition and Answer

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

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

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

Rule 8.03. Discovery

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

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

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

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

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

Rule 8.04. Ability to Compel Attendance

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

Rule 8.05. Respondent's Right to Counsel

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

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

Rule 8.06. Hearing

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

Rule 8.07. Notice of Decision

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

Rule 8.08. Confidentiality

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

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

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

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

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

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

Rule 9.02. Discovery

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

Rule 9.03. Physical or Mental Examinations

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

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

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

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

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

Rule 9.04. Judgment

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

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

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

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

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