

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

FIRST AMENDED PETITION FOR RECIPROCAL DISCIPLINE

Gregory Copeland (Copeland) and Respondent to represent her sister, Lisa Woolley (Woolley), in Wagoner County District Court Case No. CF-2018-168 on two counts of Enabling Child Sex Abuse. The case involved the alleged sexual abuse of Woolley's eighteen (18) month old grandson.

7. Savonen and Woolley were told that Respondent was particularly experienced in and adept at trying jury trials involving crimes of this nature. They were advised that Copeland would primarily be responsible for the day-to-day work and communications and that Respondent's involvement would focus on observing the witness testimony at the preliminary hearing and advising Copeland at trial.

8. Savonen signed a contract, as surety on behalf of her sister, with Copeland and Respondent as two separate legal entities. The contract provided that the attorneys would individually represent Woolley for a flat fee of \$40,000.00 through trial and they would divide the fee equally.

9. It was further agreed that, if new or additional charges were filed against Woolley, the attorneys would be paid an additional \$40,000.00 flat fee, to be divided equally, to represent Woolley through trial on all the charges.

10. On December 20, 2018, a felony Information was filed in Wagoner County District Court, case number CF-2018-554, against Woolley alleging in Count I: Murder in the First Degree - Child Abuse; and Count II: Enabling Child Sexual Abuse.

11. Pursuant to the contract terms, Savonen paid an additional \$30,000.00 to Copeland and Respondent with the agreement that the remaining \$10,000.00 would be paid to the attorneys following the sale of the Woolleys' home.

12. On May 2, 2018, Savonen wired \$20,350.00 to Copeland's trust account. On May 3, 2018, Savonen wired \$20,000.00 to Copeland's trust account. On January 4, 2019, Savonen wired an additional \$30,000.00 to Copeland's trust account.

13. On May 3, 2018, Copeland disbursed \$2,000.00 to Respondent. On May 7, 2018, Copeland disbursed \$8,000.00 to Respondent. On May 17, 2018 Copeland withdrew \$2,000.00 from his trust account for money Respondent owed him.

14. Thereafter, through February 13, 2019, Copeland disbursed additional monies to Respondent totaling approximately \$34,600.00 for Respondent's flat fees.

15. Respondent did not deposit any of these funds into his client trust account.

16. In or about March of 2019, Respondent attended only a day and a half of Woolley's preliminary hearings and was not seen again by Woolley or her family. The infrequent communications with Respondent eventually ceased altogether.

17. In the summer of 2019, it was reported to Savonen that Respondent had been suspended from the practice of law.¹ This report increased Savonen and Woolley's concerns over Respondent's absence and lack of participation in the case.

18. Unbeknownst to Savonen and Woolley, on November 17, 2019, Respondent was arrested on a drug related charge (See "Notice", *infra* at ¶103).

19. On January 3, 2020, Woolley texted Copeland regarding her concerns about Respondent's absence and the need to fill the "Chad void." In response, Copeland texted Woolley that, "Chad retired and is on drugs ..." Copeland resisted the suggestion of Woolley hiring another attorney of her choice to replace Respondent.

20. On January 6, 2020, Copeland texted Woolley that he was going to return a portion of her fee so she could hire another attorney because he was "tired of fighting [her]" despite Woolley's explanation that she had only spoken to another attorney to "... just explor[e] options of how to fill the Chad gap."

21. Thereafter, Savonen emailed Copeland requesting a partial refund of the \$70,350.00 in flat fees he and Respondent had been paid given that her sister's case was still pending a jury trial. Copeland declined to refund any of his half of the approximately \$70,350.00 fees paid claiming he had earned his fees.

22. On March 3, 2020, Savonen filed a grievance with the OBA alleging Respondent neglected and abandoned Woolley's case, that he had been suspended from the practice of law in May of 2019, and that he had failed to account for or refund a portion of the unearned flat fees he had been paid.

¹ On May 20, 2019, Respondent was listed on the OBA's Executive Director's Application Recommending Suspension for Noncompliance with Mandatory Continuing Legal Education Requirements for the calendar year 2018 in SCBD No. 6800. Respondent came into compliance thereafter and was removed from the list of attorneys who were suspended in the Oklahoma Supreme Court's Order of Suspension filed on June 10, 2019.

23. From March 19, 2020 through May 7, 2020, the OBA made multiple attempts, by mail addressed to Respondent at his official roster and other possible addresses, to notify Respondent of Savonen's grievance and request his written response.

24. Respondent failed to respond to the grievance as the letters mailed to his official roster address were returned to the OBA. Respondent failed to update his OBA roster address with current contact information as required.

25. Attempts were also made by the OBA Investigator, Les Arnold (Arnold), to reach Respondent at his listed roster telephone number. Arnold was unable to leave a message, however, as Respondent's telephone immediately went to a voice message stating, 'the person you have dialed is unavailable.'

26. On May 7, 2020, Arnold emailed Respondent requesting his written response to the pending grievances filed by Savonen, Templeton (Count II, *infra*), and Hammans (Count III, *infra*).

27. On that date, Respondent telephoned Arnold and provided him with a current address and telephone number. Arnold advised Respondent of his duty to update his OBA roster information and they briefly discussed the pending grievances.

28. During their conversation, Respondent advised Arnold that he had been away from the practice of law pursuing a medical marijuana business venture and was intending to leave the practice of law. Respondent stated that the business venture was recently burglarized and his laptop computer, with all of his client information and files, was stolen, thus making it difficult for him to respond. Respondent was given until May 21, 2020, to respond to the grievances.

29. On May 20, 2020, Respondent emailed Arnold requesting additional time to respond.

30. On May 27, 2020, the OBA received Respondent's written response to Savonen's grievance. In his written response, Respondent claimed that Copeland was hired to be the lead attorney in Woolley's case and that his role was only to assist and advise Copeland when and if it was deemed necessary. Respondent advised that even though the agreement for representation was that client communications were to be handled by Copeland, he nonetheless was contacted frequently by Savonen and Woolley and he did his best to accommodate them.

31. Respondent further advised in his response that he and Copeland had been best friends since high school and that he was somewhat retired from the practice of law when Copeland asked him in April of 2018 to assist in the Woolley case. Respondent stated that Copeland requested his assistance due to Respondent's experience with and record of obtaining client acquittals in sex crime cases involving child victims. Respondent stated he was mostly hired to "support" Copeland in the Woolley case. Respondent claimed he spent "countless hours in preparation and attending the hearings that were had in Mrs. Woolley's case ... " and additionally attended "several court dates that were not required by any agreement, but that Ms. Woolley personally requested that [he] attend."

32. Respondent denied that he "ceased or 'discontinued'" communicating with his client, but unfortunately changed his phone number and phone services and could no longer access those records to "disprove the allegations."

33. Respondent disputed in his written response that Savonen or Woolley were due a refund of any unearned fee and asserted" ... it is clear that an additional \$10,000.00 in fees were owed" to him and Copeland per their contract.

34. On November 24, 2020, Arnold emailed Respondent requesting a meeting with the OBA to discuss his pending grievances.

35. On January 26, 2021, Respondent emailed Arnold and advised he had a conflict and was unable to meet with the OBA. Respondent requested to reschedule the meeting. Arnold responded that same day by email and asked if Respondent could meet on February 4, 2021. Respondent did not reply.

36. On January 27, 2021, Arnold telephoned Respondent and left a voice message asking that Respondent return his call. Respondent did not return Arnold's call and ceased communicating with the OBA for a period of time.

37. The OBA hired a process server and attempted to have Respondent served with a subpoena duces tecum commanding his appearance, sworn testimony, and production of records relating to the grievances filed against him. The process server was unable to locate and serve him despite multiple attempts were made over several weeks to do so.

38. On or about August 6, 2021, Respondent's brother accepted service on his behalf of a subpoena duces tecum for Respondent's deposition to be taken on August 31, 2021.

39. Due to Covid illnesses, Respondent's deposition was continued by agreement to September 23, 2021. Respondent testified at his deposition that he believed he had earned the fees paid to him in Woolley's case but admitted he had not deposited them into his trust account. Respondent testified his commitment in Woolley's case was for trial and that anything else he did was above the agreement. Respondent testified Copeland was the lead attorney, per the agreement, and that he was hired to be available to consult with per Copeland's request.

40. Due to the allegations that Copeland had texted Woolley that Respondent was "on drugs and retired," Respondent was asked about any drug use. Respondent testified that he previously had smoked marijuana to "self-medicate" and that he had last smoked it eight to nine months ago. Respondent further testified, "I'm not ingesting or consuming any illegal drugs or legal drugs, for that matter" currently.

41. Respondent admitted in his deposition that he had a possession charge pending in Tulsa County wherein he was represented by his brother (see Notice at ¶103 *infra*).

42. During his deposition, Respondent agreed to take a drug test. See Count V at ¶94, *infra*.

43. In a supplemental response to Savonen's grievance dated October 4, 2021, Respondent maintained he had zealously represented Woolley and earned the fees he had been paid from May of 2018 through January of 2020. Respondent claimed that per the contract terms, he was to have been paid a total of \$40,000.00 but had only been paid \$34,800.00 and was therefore owed \$5,200.00. Respondent also provided an accounting of services he believed he had performed with an estimation of the amount of time he spent in the case.

44. Respondent's misconduct violates the mandatory provisions of Rules 1.4, 1.5, 1.15, 1.16(d), 8.4(a) ORPC, and Rules 1.3 and 5.2, RGDP, and warrants the imposition of professional discipline.

COUNT II: GRIEVANCE BY DANNY TEMPLETON

45. On or about November 26, 2018, Danny Templeton (Templeton) hired Respondent and Attorney Ronald Kaufman (see *State of Oklahoma ex rel. Oklahoma Bar Ass'n v. Ronald Kaufman*, SCBD No. 7165) to represent him in charges filed in Muskogee County District Court, case number CF-2018-871.

46. Respondent was to represent Templeton in the felony case whereas Kaufman was supposed to represent Templeton in a related civil

suit based upon him being criminally charged. Respondent drafted a contract for the representation but there were several errors. Respondent told Templeton he would revise and correct the contract but never provided a copy to Templeton for his signature.

47. Respondent was paid a total of \$6,500.00 between November 26, 2018 and April 1, 2019 for his representation with Kaufman being paid \$1,000.00 on April 1, 2019 of Respondent's fee due to court appearances he made on Respondent's behalf. Respondent did not deposit any of the flat fee he was paid by Templeton into his client trust account.

48. Respondent did not advise Templeton that Kaufman would be appearing in court on his behalf on occasion. Respondent did, however, attend the preliminary hearing in the case in February and April of 2019.

49. Respondent did not discuss case strategy with his client following the preliminary hearing. Instead, Respondent ceased communicating with Templeton and abandoned his client's case.

50. Templeton claims he attempted to communicate with Respondent multiple times and that after leaving a message for him in September of 2019, Respondent returned his call. At that time, Templeton fired Respondent and asked that he make no further contact with him.

51. Templeton had to hire new counsel to complete his case and on October 18, 2019, Attorneys James Justin Greer and Matthew R. Tarvin filed an entry of appearance on his behalf.

52. On November 17, 2019, Respondent was arrested in Tulsa County on drug charges (See "Notice", *infra* at ¶103).

53. On March 19, 2020, Templeton filed a grievance against Respondent with the OBA alleging Respondent's neglect, abandonment, failure to earn his fee, and failure to refund unearned fees. Templeton also alleged he had been informed that Respondent had a drug abuse issue.

54. On March 25, 2020, by letter mailed to Respondent's official roster address, the OBA provided Respondent with a copy of Templeton's grievance and advised it was opening the matter for formal investigation and that he was required to respond in writing within 20 days.

55. Respondent failed to respond to Templeton's grievance as required.

56. On April 20, 2020, by certified mail, return receipt requested, sent to Respondent's official roster address, the OBA requested

a written response to the grievance within five (5) days.

57. Respondent failed to timely respond as required.

58. On May 7, 2020, Investigator Arnold emailed Respondent requesting his written response to grievances filed by Savonen (Count I, *supra*), Templeton, and Hammans (Count III, *infra*). Respondent telephoned Arnold and provided his current contact information and requested additional time to respond to the grievances (see ¶¶ 28-29, *supra*).

59. On or about June 6, 2020, Respondent provided his written response to the Templeton grievance wherein he denied he had failed to complete his services and claimed that he "... fully represented Mr. Templeton's interests up to the point that he discharged my services." Respondent claimed he had advised his client that he would need additional information and "to observe the state's witnesses at the Preliminary Hearing to fully evaluate the case and opine whether or not the facts and circumstances were such that I felt I could convince a jury of his innocence. I made it clear to Mr. Templeton that I would be in a best position to assess the jury appeal of his case at the conclusion of the Preliminary Hearing.

60. Respondent claimed he advised Templeton it would require \$7,500.00 to handle his case up and through Preliminary Hearing and that he advised his client should he choose a trial over a plea, it would require an additional retainer of \$7,500.00.

61. Respondent admitted in his written response that after Templeton's arraignment on May 30, 2020, "... my contact with Mr. Templeton was somewhat irregular but I was never advised by Mr. Templeton that he had any issue with me, nor was I advised that he was having any difficulty reaching me by phone. To my best recollection, I next received a message from Mr. Templeton in September 2019 and I returned his call within 24 hours. It was during this return call that I was told that my services were no longer needed and it was requested that I make no further contact with Mr. Templeton."

62. On June 17, 2020, the OBA received additional correspondence from Templeton disputing Respondent's version of the representation agreement and handling of his criminal matter. Templeton added that, " ... [d]uring the entire process, we felt something just wasn't right with Chad. During meetings, he would sweat profusely and even doze off. He had difficulty remembering details we had discussed several times, and was late for every meeting and court date. Just before our association with Chad ended, we were told he had a drug addiction and had gotten a bad reputation within the court house [sic] and that nobody there would work deals with him. I feel this greatly affected our case."

63. During his deposition on September 23, 2021, Respondent admitted he was paid \$7,500.00 to represent Templeton but maintained that was only for representation through the preliminary hearing. Respondent testified that the breakdown in his relations with Templeton was due to the client's frustration with Kaufman and the inaction on the civil case.

64. Respondent also admitted at his deposition that he represented Kaufman on felony charges and testified he assumed he still represented Kaufman in those matters but had been unable to reach him for the last month to six weeks. Respondent was reminded by the OBA that he was suspended from the practice of law at that time and that he needed to withdraw from Kaufman's and any other pending client cases.

65. Following his deposition, Respondent emailed the OBA a surrebuttal to Templeton's grievance dated October 4, 2021. Respondent again asserted his fee of \$7,500.00 had been earned by his representation of Templeton through the preliminary hearing in the case. Respondent did not address his failure to deposit his fees into his trust account. Respondent did not address Templeton's assertions and suspicions of Respondent's drug use during his representation nor did he provide a copy of the client contract.

66. Respondent's misconduct violates the mandatory provisions of Rules 1.4, 1.5, 1.15, 8.1(b) ORPC, and Rules 1.3, 5.2, 9.1 RGDP, and warrants the imposition of professional discipline.

COUNT III: GRIEVANCE BY JOHN HAMMANS

67. In or about April of 2018, John Hammans, Jr. (Hammans) paid Respondent an initial \$2,500.00 in cash to represent his wife, Megan, in a custody and support matter. Respondent advised Hammans that he and Attorney Ronald Kaufman would work on the matter together. Hammans paid Respondent an additional \$2,500.00 in cash in or about March of 2019. Respondent's IOL TA records do not indicate that he deposited any of these funds into his trust account.

68. Respondent advised his client and Hammans that it was best to wait for Rogers to establish residency in Oklahoma before taking any legal action. At the time, his wife and her children from a previous relationship had lived in Oklahoma for approximately over a year. Neither Respondent nor Kaufman ever initiated any action in Oklahoma on behalf of Megan Hammans. Whenever Hammans asked about the case, Respondent would state that he was going to file something but never did.

69. On July 10, 2019, Hammans hired Respondent and Kaufman to also assist him in obtaining a marijuana grow license. Hammans had his

wife wire Respondent \$3,000.00 that day. Respondent's IOL TA records do not indicate that he deposited any of these funds into his trust account.

70. Respondent did not file an application on Hammans' behalf nor obtain a marijuana grow license for his client.

71. On March 20, 2020, the OBA received a grievance from Hammans alleging Respondent's neglect of legal matters and failure to earn the fees Respondent had been paid.

72. On March 23, 2020, Hammans' grievance was opened for informal investigation and a letter was mailed to Respondent's official roster address asking for a written response within two weeks. Said letter was returned by the United States Postal Service with the notation, "RETURN TO SENDER/INSUFFICIENT ADDRESS/UNABLE TO FORWARD."

73. Thereafter, the OBA made several attempts to contact Respondent by mail and telephone but was unsuccessful in doing so.

74. On May 7, 2020, Hammans' grievance was opened for formal investigation. In addition to mailing a copy of the grievance to Respondent at his official roster address and requesting a written response within twenty (20) days, the OBA Investigator also emailed Respondent and requested a written response to the grievances filed by Savonen (Count I, *supra*), Templeton (Count II, *supra*), and Hammans.

75. Following the OBA's email, Respondent telephoned Arnold and provided a current address and requested additional time to respond to the grievances (see ¶¶ 28- 29, *supra*).

76. On July 10, 2020, the OBA received a written response from Respondent via email wherein he claimed the custody matter involved a "multi-jurisdictional matter which involved several past 'emergencies' and numerous meetings with the client ... After much consideration the prudent action for the client and the safety of her child [sic] to not stir the pot and simply wait as no visits were planned. Thus there was no action to take until there was an emergency situation or such time had passed as we could establish jurisdiction."

77. Respondent claimed in his written response that he and Kaufman had "fifteen plus hours on the matter at the attorneys' reduced rate of \$250 an hour ... " and that their time " ... far exceeded the 'clients' claim of \$5,000 spent on the matter." Respondent further claimed he had pages of notes and a draft of a Petition and Motion for Temporary Injunction as " ... further evidence that [he] certainly did a significant amount of work well beyond what [he] was compensated to do."

78. With regard to the marijuana grow license, Respondent advised in his written response that he had performed the work for the Hammans and that they were "upset because they failed to budget for the increased OMMA fees, or the extra time it would take to receive a license thus causing an issue with their partner. Rather than take responsibility for their mistake they blamed the lawyers."

79. After receiving Respondent's response to the grievances pending against him, the OBA made multiple attempts to meet with Respondent to discuss the matters in person. (See paragraphs 34-38, *supra*).

80. At his deposition on September 23, 2021, Respondent admitted he had failed to timely respond to the Hammans' and other grievances and apologized to the OBA for the lengths and trouble it had expended as a result of his failure to maintain his current roster information.

81. Respondent's misconduct violates the mandatory provisions of Rules 1.3, 1.5, 1.15, 8.1(b), and 8.4(d), ORPC, and Rules 1.3 and 5.2, RGDP, and warrants the imposition of professional discipline.

COUNT IV: GRIEVANCE BY LARRY WHITAKER

82. On or about April 30, 2021, Larry D. Whitaker (Whitaker) hired Respondent to represent his son, Stephen "Todd" Whitaker (Todd) for the next twelve (12) weeks. Respondent was to seek continuances of criminal cases pending against Todd in Rogers, Creek, and McIntosh counties in Oklahoma.

83. Whitaker paid Respondent \$1,300.00, noting that Todd owed Respondent \$100.00 at that time. Respondent did not deposit the \$1,200.00 retainer fee into his client trust account.

84. After being paid, Respondent initially communicated with Whitaker but then ceased altogether after May 15, 2021.

85. As previously alleged (see ¶1-2, *supra*), Respondent was suspended on May 24, 2021 by Order of the Oklahoma Supreme Court for non-payment of dues for failure to comply with his mandatory continuing legal education requirements. Despite his suspension from the practice of law, Respondent failed to advise the Whitakers of his suspension from the practice of law.

86. On August 9, 2021, the OBA received a grievance from Whitaker alleging Respondent's neglect and failure to earn the retainer fee in his son's cases.

87. On September 23, 2021, Respondent was hand-delivered a copy of Whitaker's grievance at his deposition taken at the Oklahoma Bar Association.

88. In his written response dated October 4, 2021, Respondent stated he was originally hired by Todd and Lauren Whitaker to "legally procure continuances in multiple cases over multiple counties. The reason for this was they were out on bond and failed to appear in one of the counties and bond was revoked and warrant [sic] was issued. Therefore, they were hindered from appearing in court for their court dates and matters, without fear of arrest. Thusly, their goal was to raise funds for bond prior to being arrested and wanted me to gain time for this goal by obtaining continuances. Ultimately, once they raised funds for the bond, they would surrender themselves, and be back on track. However, in the interim, after obtaining some continuances, Todd was arrested on the aforementioned warrant."

89. Respondent further claimed in his written response that Todd and Lauren had an outstanding balance owed to him in the amount of \$1,000.00 for his past efforts and that Whittaker paid the outstanding balance on his son's and daughter-in-law's behalf plus an additional \$300.00 " ... for my new efforts to attempt to procure Todd's release without necessity of posting bond ... This effort occurred for Todd Whitaker, on the date of payment and immediate days thereafter." Respondent denied that he was ever hired to appear in court and claimed, "Mike Loeffler, the ADA for Creek County objected to allowing Todd Whittaker out without bond upon suggested showing acceptance into rehab."

90. On or about December 20, 2021, Creek County First Assistant District Attorney Mike Loeffler (Loeffler) advised the OBA that he had no notations in the district attorney's file of ever communicating with Respondent about Todd Whitaker's case and that Respondent did not file an entry of appearance or appear in court on the matter. Per Loeffler's file, the defendant was represented by an Oklahoma Indigent Defense (OIDS) attorney.

91. Loeffler also reviewed Lauren Whitaker's cases and advised that Respondent was not involved in her case, either. The district attorney files on her cases indicate she was originally represented by Mark Matheson and then OIDS.

92. On December 20, 2021, the OBA interviewed Pawnee County Assistant District Attorney Jeff Jones (Jones) regarding Todd Whitaker's case. Jones advised he was assigned to the case and had no recollection of ever speaking with Respondent. Jones further advised that if he had discussed the case with an attorney for the defendant, he would have

noted it in his file. Jones checked his file and advised he had no notations of ever speaking with Respondent on Todd Whitaker's behalf.

93. Respondent's misconduct violates the mandatory provisions of Rules 1.4, 1.5, 1.15, and 8.4(d), ORPC, and Rules 1.3 and 9.1, RGDP, and warrants the imposition of professional discipline.

COUNT V: RESPONDENT'S POSITIVE DRUG TESTS

94. During his deposition taken on September 23, 2021, Respondent was asked about using any illegal substances or taking any prescribed medications. Respondent testified that he was not using any illegal substances.

95. Based upon the allegations submitted in the grievances filed against him and Respondent's appearance and demeanor, Respondent was asked if he would take a drug test following his deposition. Respondent agreed to do so.

96. On or about September 29, 2021, the OBA received notification that Respondent tested presumptive positive for Methamphetamine following a urine test.

97. On September 30, 2021, the OBA requested Respondent follow up with a hair follicle drug test.

98. On October 14, 2021, Respondent provided a hair follicle sample. Respondent's test results were positive for Methamphetamine, Amphetamine, Opiates, Morphine, Codeine, and Heroin.

99. Respondent's misconduct violates the mandatory provisions of Rules 8.4(b), ORPC, and Rule 1.3, RGDP, and warrants the imposition of professional discipline.

COUNT VI: RESPONDENT'S PRIOR DEFERRED PROSECUTION

100. During the OBA's investigation of these grievances and monitoring of Respondent's pending criminal drug charge in Tulsa County, Oklahoma (see Notice, ¶103, *infra*), it was discovered that Respondent was charged on June 22, 2016 in Wagoner County District Court, Case No. CM-2016-496, with Possession of a Controlled Dangerous Substance, Possession of Paraphernalia, Failure to Pay State Taxes, Failure to Carry Insurance/Security Verification Form, and Transporting a Loaded Firearm in a Motor Vehicle. Respondent was also charged in CM-2016-1038 with a related charge of Violation of a License Restriction. Pursuant to

negotiations with the State, Respondent was given a deferred prosecution, did not enter a plea, and the charges were dismissed against him on or about August 10, 2017.

101. Respondent's misconduct violates the mandatory provisions of Rules 8.4(b), ORPC, and Rule 1.3, RGDP, and warrants the imposition of professional discipline.

4. On or about October 2, 2023, an Order Approving Resignation (Exhibit 2) was issued In the Supreme Court of the State of Oklahoma in a matter styled, *State of Oklahoma ex rel. Oklahoma Bar Association, Complainant, v. Chadwick R. Richardson, Respondent, 2023 OK 95, SCBD No. 7278*, that states in pertinent part as follows:

¶1 The State of Oklahoma ex rel. Oklahoma Bar Association (Complainant) has presented this Court with an application to approve the resignation of Chadwick R. Richardson (Respondent) from membership in the Oklahoma Bar Association. Respondent wishes to resign pending disciplinary proceedings and investigation into alleged misconduct, as provided in Rule 8.1 of the Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2021, ch. 1, app. 1-A. Upon consideration of the Complainant's application and the Respondent's affidavit in support of resignation, we make the following findings:

a. Respondent was admitted to the Oklahoma Bar Association on April 30, 1993, and his bar number is 15589. On August 28, 2023, Respondent offered to resign his membership in the Oklahoma Bar Association and relinquish his right to practice law.

b. Respondent's name and address appears on the official roster maintained by the Oklahoma Bar Association as follows:

Chadwick R. Richardson
7447 S. Lewis Avenue
Tulsa, Oklahoma 74136

c. Respondent tendered his resignation freely and voluntarily, without coercion or duress, and he was fully aware of the consequences of submitting his resignation.

d. Respondent acknowledged that the Complainant's Office of the General Counsel was investigating certain allegations of professional misconduct against him. On May 25, 2022, Complainant instigated disciplinary proceedings against Respondent pursuant to Rule 6, RGDP,

case number SCBD 7278. The complaint contained six allegations of misconduct relating to four grievances filed by Respondent's former clients, Respondent's drug use, and Respondent's previous deferred prosecution.

i. Count I: Grievance filed on March 3, 2020. This grievance stemmed from Respondent's representation of the complainant's sister. Respondent was brought in as co-counsel due to Respondent's experience in defending crimes of the kind alleged. The complainant signed a contract with Respondent acting as surety on behalf of her sister, and ultimately, Respondent was paid \$34,600.00 for his work on the case. None of the funds were deposited into Respondent's trust account. After attending a day and a half of preliminary hearings in the case, Respondent was not seen by the client or her family again. Other forms of contact eventually ceased as well. In the grievance with the OBA, the complainant alleged that Respondent: neglected and abandoned her sister's case; was practicing law without a license because he had been suspended from the practice of law in May of 2019; and had failed to account for or refund a portion of the unearned flat fees he had been paid.

ii. Count II: Grievance filed March 19, 2020. This grievance stemmed from Respondent's representation of a client with pending criminal felony charges. Respondent was paid \$6,500.00 to represent the client. None of the funds were deposited into Respondent's trust account. Respondent attended the preliminary hearing in the case but allowed another attorney to attend other hearings on his behalf without advising the client. After the preliminary hearing, Respondent ceased communication with the client and abandoned the case. In the grievance filed with the OBA, the client alleged that Respondent: neglected and abandoned his case; failed to earn his fee; and failed to return unearned fees. The client later alleged that Respondent had a drug abuse issue, asserting that Respondent would sweat profusely and doze off during meetings; had difficulty remembering details that were discussed repeatedly; and was late for every meeting and court date.

iii. Count III: Grievance filed March 20, 2020. Respondent was hired to represent complainant's wife in a custody and support matter. Respondent was paid a total of \$5,000.00. None of the fees were deposited into Respondent's trust account. Respondent never filed any pleadings in the custody case. Instead, Respondent advised that the complainant's wife should establish residency in Oklahoma prior to taking legal action, even though the wife and her children from a previous relationship had lived in Oklahoma for over a year. When complainant would ask about the case, Respondent would state that he was going to file something,

yet never did. Later, the complainant hired Respondent to assist in obtaining a marijuana grow license, wiring \$3,000.00 to Respondent. These funds were not placed in Respondent's trust account. Respondent never obtained a marijuana grow license of behalf of the complainant. In the grievance filed with the OBA, the complainant alleged that Respondent was neglectful of legal matters and failed to earn the fees Respondent was paid.

iv. Count IV: Grievance filed August 9, 2021. Respondent was hired to represent the complainant's son and obtain continuances of criminal cases that were pending in three counties. The complainant alleged that Respondent was paid \$1,200.00 for the case. Respondent did not deposit the fee into his trust account. Initially, Respondent communicated with the complainant, but communication had ceased two weeks into Respondent's representation. Respondent was suspended from the practice of law on May 24, 2021, by Order of the Supreme Court, for failure to pay dues and failure to comply with mandatory continuing legal education requirements. Respondent failed to advise the complainant and his son of this suspension. In the grievance filed with the OBA, the complainant alleged Respondent was neglectful of the case and failed to earn the retainer fee in his son's case.

v. Count V: Respondent's Positive Drug Tests. Respondent participated in a deposition regarding the grievances filed against him on September 23, 2021. Due to Respondent's alleged drug use, he was asked in the deposition if he would be amenable to taking a drug test. He agreed, testifying that he was not using any illegal substances. On September 29, 2021, the OBA received notification that Respondent's urine test was presumptive positive for methamphetamine. The OBA requested a follow up hair follicle test, which was performed on October 14, 2021. Respondent's hair follicle sample was positive for methamphetamine, amphetamine, opiates, morphine, codeine, and heroin.

vi. Count VI: Respondent's Prior Deferred Prosecution. During its investigation into Respondent, the OBA discovered that Respondent was charged on June 22, 2016, in Wagoner County District Court case number CM-2016-496, with Possession of a Controlled Substance, Possession of Paraphernalia, Failure to Pay State Taxes, Failure to Carry Insurance/Security Verification Form, and Transporting a Loaded Firearm in a Motor Vehicle. Respondent was also charged in CM-2016-1038 with a related charge of Violation of a License Restriction. Pursuant to negotiations with the

State, Respondent received a deferred prosecution, and the charges were dismissed against him on August 10, 2017.

e. Respondent's affidavit states he is aware that the allegations concerning the conduct specified above, if proven, would constitute violations of Rules 1.3, 1.4, 1.5, 1.15, 1.16(d), 8.1(b), 8.4(a), 8.4(b), and 8.4(d) of the Oklahoma Rules of Professional Conduct, 5 O.S. 2021, ch.1, app. 3-A; Rules 1.3, 5.2, and 9.1 of the Rules Governing Disciplinary Proceedings, 5 O.S. 2021, Ch. 1, App. 1-A; and his oath as an attorney.

f. Respondent acknowledges that he is currently prohibited from practicing law as he was stricken from the roll of attorneys on June 7, 2021, pursuant to SCBD No. 7059, 2022 OK 54, for failure to pay dues as a member of the Oklahoma Bar Association for the year 2021.

g. Respondent further acknowledges that, as a result of his conduct, the Client Security Fund may receive claims from his former client(s). Should the Oklahoma Bar Association approve and pay such Client Security Fund claims, Respondent agrees to reimburse the fund for both the principal amount and the applicable statutory interest before filing any application seeking reinstatement.

h. Respondent recognizes and agrees he may not make application for reinstatement to membership in the Oklahoma Bar Association prior to the expiration of five (5) years from the effective date of this Court's approval of his resignation; he acknowledges he may be reinstated to practice law only upon compliance with the conditions and procedures prescribed by Rule 11, RGDP.

i. Respondent has agreed to comply with Rule 9.1, RGDP within twenty (20) days following the date of this resignation.

j. Respondent's resignation pending disciplinary proceedings complies with Rule 8.1, RGDP.

k. Complainant has made an application asserting that costs in the amount of \$1,574.95 were incurred in this matter and that reimbursement is necessary. Respondent acknowledges the OBA has incurred costs in the investigation and prosecution of this matter, and agrees he is responsible for reimbursement of such fees.

l. Respondent's resignation should be approved.

m. In his Affidavit of Resignation Pending Disciplinary Proceedings, Respondent requested that his resignation be retroactively applied to June 7, 2021, the date he was suspended for non-payment of dues

in SCBD No. 7059. This Court finds no compelling reason to accept Respondent's request. This Order accepting the Respondent's resignation is to be effective as of October 2, 2023.

¶2 It is therefore ORDERED that Complainant's application is approved and Respondent's resignation during the pendency of disciplinary proceedings is accepted and approved effective October 2, 2023.

¶3 It is further ORDERED that Respondent's name remain stricken from the Roll of Attorneys and that he may make no application for reinstatement to membership in the Oklahoma Bar Association prior to October 2, 2028.

¶4 It is further ORDERED that the Respondent comply with Rule 9.1, RGDP, no later than twenty (20) days from the date of this order.

¶5 It is further ORDERED that Respondent pay costs in the amount of \$1,574.95 within thirty days from the date of this Order. Any consideration of any future Rule 11 petitions is conditioned upon such payment.

¶6 DONE BY ORDER OF THE SUPREME COURT THIS 2nd DAY OF OCTOBER, 2023.

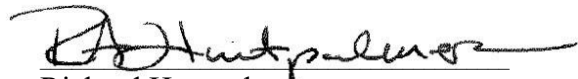
5. Copies of the Complaint, and Order Accepting Resignation of the Supreme Court of the State of Oklahoma, are attached hereto as Petitioner's Exhibits 1 and 2 and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 and 2 at the time of hearing of this cause.

6. 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 Supreme Court of the State of Oklahoma and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

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Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
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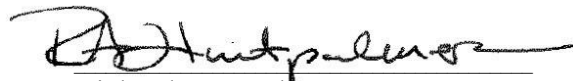
Richard Huntpalmer
Bar Card No. 24097857

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this First Amended Petition for Reciprocal Discipline and the Order to Show Cause on Chadwick Ray Richardson by personal service.

Chadwick Ray Richardson
33707 Cyclone Lane
Wagoner, OK 74467-3651



Richard Huntpalmer

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED

STATE OF OKLAHOMA *ex rel.*
OKLAHOMA BAR ASSOCIATION,

Complainant,

v.

CHADWICK R. RICHARDSON,

Respondent.

FILED
SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA

JUN 16 2022

JOHN D. HADDEN
CLERK

RULE 6, RCDP

MAY 25 2022

Office of the Chief Justice
Bar Docket

OBAD No. 2378

SCBD No.

7278

COMPLAINT

COMES NOW the Complainant, State of Oklahoma *ex. rel.* Oklahoma Bar Association, by its First Assistant General Counsel, Loraine Dillinder Farabow, and for its claim against the Respondent, Chadwick R. Richardson, alleges and states:

1. Respondent was admitted to practice law in the state of Oklahoma by the Oklahoma Supreme Court on April 30, 1993. Respondent was suspended, however, on May 24, 2021 by Order of the Oklahoma Supreme Court for non-payment of dues (SCBD No. 7059, 2021 OK 36) and for failure to comply with his mandatory continuing legal education requirements (SCBD No. 7058, 2021 OK 35).

2. Respondent remains suspended from the practice of law as of the date of this filing and is currently listed on the Application for Order Striking Names for Failure to Comply with Rules for Mandatory Continuing Legal Education (SCBD 7058) and Application for Order Striking Names (for Non-Payment of Dues in SCBD No. 7059) filed May 24, 2022.

3. To the best knowledge, information, and belief of Complainant, the Respondent has committed specific acts which constitute professional misconduct in

violation of the Oklahoma Rules of Professional Conduct, ("ORPC"), 5 O.S. 2011, ch. 1, app. 3-A, and are cause for professional discipline as provided in the Rules Governing Disciplinary Proceedings, ("RGDP"), 5 O.S. 2011, ch. 1, app. 1-A. These standards of conduct, adopted and enforced by the Supreme Court of Oklahoma, provide guidelines by which all attorneys are to practice law in Oklahoma.

4. These proceedings are begun pursuant to Rule 6, RGDP.

5. The official Oklahoma Bar Association roster address of the Respondent is: Chadwick R. Richardson, OBA No. 15589, 7447 S. Lewis Avenue, Tulsa, OK 74136.

COUNT I: GRIEVANCE BY ANNE SAVONEN

6. In May of 2018, Anne Savonen (Savonen) hired Attorney Gregory Copeland (Copeland) and Respondent to represent her sister, Lisa Woolley (Woolley), in Wagoner County District Court Case No. CF-2018-168 on two counts of Enabling Child Sex Abuse. The case involved the alleged sexual abuse of Woolley's eighteen (18) month old grandson.

7. Savonen and Woolley were told that Respondent was particularly experienced in and adept at trying jury trials involving crimes of this nature. They were advised that Copeland would primarily be responsible for the day-to-day work and communications and that Respondent's involvement would focus on observing the witness testimony at the preliminary hearing and advising Copeland at trial.

8. Savonen signed a contract, as surety on behalf of her sister, with Copeland and Respondent as two separate legal entities. The contract provided that the attorneys would individually represent Woolley for a flat fee of \$40,000.00 through trial and they would divide the fee equally.

9. It was further agreed that, if new or additional charges were filed against Woolley, the attorneys would be paid an additional \$40,000.00 flat fee, to be divided equally, to represent Woolley through trial on all the charges.

10. On December 20, 2018, a felony Information was filed in Wagoner County District Court, case number CF-2018-554, against Woolley alleging in Count I: Murder in the First Degree – Child Abuse; and Count II: Enabling Child Sexual Abuse.

11. Pursuant to the contract terms, Savonen paid an additional \$30,000.00 to Copeland and Respondent with the agreement that the remaining \$10,000.00 would be paid to the attorneys following the sale of the Woolleys' home.

12. On May 2, 2018, Savonen wired \$20,350.00 to Copeland's trust account. On May 3, 2018, Savonen wired \$20,000.00 to Copeland's trust account. On January 4, 2019, Savonen wired an additional \$30,000.00 to Copeland's trust account.

13. On May 3, 2018, Copeland disbursed \$2,000.00 to Respondent. On May 7, 2018, Copeland disbursed \$8,000.00 to Respondent. On May 17, 2018 Copeland withdrew \$2,000.00 from his trust account for money Respondent owed him.

14. Thereafter, through February 13, 2019, Copeland disbursed additional monies to Respondent totaling approximately \$34,600.00 for Respondent's flat fees.

15. Respondent did not deposit any of these funds into his client trust account.

16. In or about March of 2019, Respondent attended only a day and a half of Woolley's preliminary hearings and was not seen again by Woolley or her family. The infrequent communications with Respondent eventually ceased altogether.

17. In the summer of 2019, it was reported to Savonen that Respondent had been suspended from the practice of law.¹ This report increased Savonen and Woolley's concerns over Respondent's absence and lack of participation in the case.

18. Unbeknownst to Savonen and Woolley, on November 17, 2019, Respondent was arrested on a drug related charge (See "Notice", *infra* at ¶103).

19. On January 3, 2020, Woolley texted Copeland regarding her concerns about Respondent's absence and the need to fill the "Chad void." In response, Copeland texted Woolley that, "Chad retired and is on drugs . . ." Copeland resisted the suggestion of Woolley hiring another attorney of her choice to replace Respondent.

20. On January 6, 2020, Copeland texted Woolley that he was going to return a portion of her fee so she could hire another attorney because he was "tired of fighting [her]" despite Woolley's explanation that she had only spoken to another attorney to "... just explor[e] options of how to fill the Chad gap."

21. Thereafter, Savonen emailed Copeland requesting a partial refund of the \$70,350.00 in flat fees he and Respondent had been paid given that her sister's case was still pending a jury trial. Copeland declined to refund any of his half of the approximately \$70,350.00 fees paid claiming he had earned his fees.

22. On March 3, 2020, Savonen filed a grievance with the OBA alleging Respondent neglected and abandoned Woolley's case, that he had been suspended from

¹ On May 20, 2019, Respondent was listed on the OBA's Executive Director's Application Recommending Suspension for Noncompliance with Mandatory Continuing Legal Education Requirements for the calendar year 2018 in SCBD No. 6800. Respondent came into compliance thereafter and was removed from the list of attorneys who were suspended in the Oklahoma Supreme Court's Order of Suspension filed on June 10, 2019.

the practice of law in May of 2019, and that he had failed to account for or refund a portion of the unearned flat fees he had been paid.

23. From March 19, 2020 through May 7, 2020, the OBA made multiple attempts, by mail addressed to Respondent at his official roster and other possible addresses, to notify Respondent of Savonen's grievance and request his written response.

24. Respondent failed to respond to the grievance as the letters mailed to his official roster address were returned to the OBA. Respondent failed to update his OBA roster address with current contact information as required.

25. Attempts were also made by the OBA Investigator, Les Arnold (Arnold), to reach Respondent at his listed roster telephone number. Arnold was unable to leave a message, however, as Respondent's telephone immediately went to a voice message stating, 'the person you have dialed is unavailable.'

26. On May 7, 2020, Arnold emailed Respondent requesting his written response to the pending grievances filed by Savonen, Templeton (Count II, *infra*), and Hammans (Count III, *infra*).

27. On that date, Respondent telephoned Arnold and provided him with a current address and telephone number. Arnold advised Respondent of his duty to update his OBA roster information and they briefly discussed the pending grievances.

28. During their conversation, Respondent advised Arnold that he had been away from the practice of law pursuing a medical marijuana business venture and was intending to leave the practice of law. Respondent stated that the business venture was recently burglarized and his laptop computer, with all of his client information and files,

was stolen, thus making it difficult for him to respond. Respondent was given until May 21, 2020 to respond to the grievances.

29. On May 20, 2020, Respondent emailed Arnold requesting additional time to respond.

30. On May 27, 2020, the OBA received Respondent's written response to Savonen's grievance. In his written response, Respondent claimed that Copeland was hired to be the lead attorney in Woolley's case and that his role was only to assist and advise Copeland when and if it was deemed necessary. Respondent advised that even though the agreement for representation was that client communications were to be handled by Copeland, he nonetheless was contacted frequently by Savonen and Woolley and he did his best to accommodate them.

31. Respondent further advised in his response that he and Copeland had been best friends since high school and that he was somewhat retired from the practice of law when Copeland asked him in April of 2018 to assist in the Woolley case. Respondent stated that Copeland requested his assistance due to Respondent's experience with and record of obtaining client acquittals in sex crime cases involving child victims. Respondent stated he was mostly hired to "support" Copeland in the Woolley case. Respondent claimed he spent "countless hours in preparation and attending the hearings that were had in Mrs. Woolley's case ..." and additionally attended "several court dates that were not required by any agreement, but that Ms. Woolley personally requested that [he] attend."

32. Respondent denied that he “ceased or ‘discontinued’” communicating with his client, but unfortunately changed his phone number and phone services and could no longer access those records to “disprove the allegations.”

33. Respondent disputed in his written response that Savonen or Woolley were due a refund of any unearned fee and asserted “... it is clear that an additional \$10,000.00 in fees were owed” to him and Copeland per their contract.

34. On November 24, 2020, Arnold emailed Respondent requesting a meeting with the OBA to discuss his pending grievances.

35. On January 26, 2021, Respondent emailed Arnold and advised he had a conflict and was unable to meet with the OBA. Respondent requested to reschedule the meeting. Arnold responded that same day by email and asked if Respondent could meet on February 4, 2021. Respondent did not reply.

36. On January 27, 2021, Arnold telephoned Respondent and left a voice message asking that Respondent return his call. Respondent did not return Arnold's call and ceased communicating with the OBA for a period of time.

37. The OBA hired a process server and attempted to have Respondent served with a subpoena duces tecum commanding his appearance, sworn testimony, and production of records relating to the grievances filed against him. The process server was unable to locate and serve him despite multiple attempts were made over several weeks to do so.

38. On or about August 6, 2021, Respondent's brother accepted service on his behalf of a subpoena duces tecum for Respondent's deposition to be taken on August 31, 2021.

39. Due to Covid illnesses, Respondent's deposition was continued by agreement to September 23, 2021. Respondent testified at his deposition that he believed he had earned the fees paid to him in Woolley's case but admitted he had not deposited them into his trust account. Respondent testified his commitment in Woolley's case was for trial and that anything else he did was above the agreement. Respondent testified Copeland was the lead attorney, per the agreement, and that he was hired to be available to consult with per Copeland's request.

40. Due to the allegations that Copeland had texted Woolley that Respondent was "on drugs and retired," Respondent was asked about any drug use. Respondent testified that he previously had smoked marijuana to "self-medicate" and that he had last smoked it eight to nine months ago. Respondent further testified, "I'm not ingesting or consuming any illegal drugs or legal drugs, for that matter" currently.

41. Respondent admitted in his deposition that he had a possession charge pending in Tulsa County wherein he was represented by his brother (see Notice at ¶103 *infra*).

42. During his deposition, Respondent agreed to take a drug test. See Count V at ¶94, *infra*.

43. In a supplemental response to Savonen's grievance dated October 4, 2021, Respondent maintained he had zealously represented Woolley and earned the fees he had been paid from May of 2018 through January of 2020. Respondent claimed that per the contract terms, he was to have been paid a total of \$40,000.00 but had only been paid \$34,800.00 and was therefore owed \$5,200.00. Respondent also provided an accounting

of services he believed he had performed with an estimation of the amount of time he spent in the case.

44. Respondent's misconduct violates the mandatory provisions of Rules 1.4, 1.5, 1.15, 1.16(d), 8.4(a) ORPC, and Rules 1.3 and 5.2, RGDP, and warrants the imposition of professional discipline.

COUNT II: GRIEVANCE BY DANNY TEMPLETON

45. On or about November 26, 2018, Danny Templeton (Templeton) hired Respondent and Attorney Ronald Kaufman (see *State of Oklahoma ex rel. Oklahoma Bar Ass'n v. Ronald Kaufman*, SCBD No. 7165) to represent him in charges filed in Muskogee County District Court, case number CF-2018-871.

46. Respondent was to represent Templeton in the felony case whereas Kaufman was supposed to represent Templeton in a related civil suit based upon him being criminally charged. Respondent drafted a contract for the representation but there were several errors. Respondent told Templeton he would revise and correct the contract but never provided a copy to Templeton for his signature.

47. Respondent was paid a total of \$6,500.00 between November 26, 2018 and April 1, 2019 for his representation with Kaufman being paid \$1,000.00 on April 1, 2019 of Respondent's fee due to court appearances he made on Respondent's behalf. Respondent did not deposit any of the flat fee he was paid by Templeton into his client trust account.

48. Respondent did not advise Templeton that Kaufman would be appearing in court on his behalf on occasion. Respondent did, however, attend the preliminary hearing in the case in February and April of 2019.

49. Respondent did not discuss case strategy with his client following the preliminary hearing. Instead, Respondent ceased communicating with Templeton and abandoned his client's case.

50. Templeton claims he attempted to communicate with Respondent multiple times and that after leaving a message for him in September of 2019, Respondent returned his call. At that time, Templeton fired Respondent and asked that he make no further contact with him.

51. Templeton had to hire new counsel to complete his case and on October 18, 2019, Attorneys James Justin Greer and Matthew R. Tarvin filed an entry of appearance on his behalf.

52. On November 17, 2019, Respondent was arrested in Tulsa County on drug charges (See "Notice", *infra* at ¶103).

53. On March 19, 2020, Templeton filed a grievance against Respondent with the OBA alleging Respondent's neglect, abandonment, failure to earn his fee, and failure to refund unearned fees. Templeton also alleged he had been informed that Respondent had a drug abuse issue.

54. On March 25, 2020, by letter mailed to Respondent's official roster address, the OBA provided Respondent with a copy of Templeton's grievance and advised it was opening the matter for formal investigation and that he was required to respond in writing within 20 days.

55. Respondent failed to respond to Templeton's grievance as required.

56. On April 20, 2020, by certified mail, return receipt requested, sent to Respondent's official roster address, the OBA requested a written response to the grievance within five (5) days.

57. Respondent failed to timely respond as required.

58. On May 7, 2020, Investigator Arnold emailed Respondent requesting his written response to grievances filed by Savonen (Count I, *supra*), Templeton, and Hammans (Count III, *infra*). Respondent telephoned Arnold and provided his current contact information and requested additional time to respond to the grievances (see ¶¶ 28-29, *supra*).

59. On or about June 6, 2020, Respondent provided his written response to the Templeton grievance wherein he denied he had failed to complete his services and claimed that he "... fully represented Mr. Templeton's interests up to the point that he discharged my services." Respondent claimed he had advised his client that he would need additional information and "to observe the state's witnesses at the Preliminary Hearing to fully evaluate the case and opine whether or not the facts and circumstances were such that I felt I could convince a jury of his innocence. I made it clear to Mr. Templeton that I would be in a best position to assess the jury appeal of his case at the conclusion of the Preliminary Hearing.

60. Respondent claimed he advised Templeton it would require \$7,500.00 to handle his case up and through Preliminary Hearing and that he advised his client should he choose a trial over a plea, it would require an additional retainer of \$7,500.00.

61. Respondent admitted in his written response that after Templeton's arraignment on May 30, 2020, "... my contact with Mr. Templeton was somewhat

irregular but I was never advised by Mr. Templeton that he had any issue with me, nor was I advised that he was having any difficulty reaching me by phone. To my best recollection, I next received a message from Mr. Templeton in September 2019 and I returned his call within 24 hours. It was during this return call that I was told that my services were no longer needed and it was requested that I make no further contact with Mr. Templeton."

62. On June 17, 2020, the OBA received additional correspondence from Templeton disputing Respondent's version of the representation agreement and handling of his criminal matter. Templeton added that, ". . . [d]uring the entire process, we felt something just wasn't right with Chad. During meetings, he would sweat profusely and even doze off. He had difficulty remembering details we had discussed several times, and was late for every meeting and court date. Just before our association with Chad ended, we were told he had a drug addiction and had gotten a bad reputation within the court house [sic] and that nobody there would work deals with him. I feel this greatly affected our case."

63. During his deposition on September 23, 2021, Respondent admitted he was paid \$7,500.00 to represent Templeton but maintained that was only for representation through the preliminary hearing. Respondent testified that the breakdown in his relations with Templeton was due to the client's frustration with Kaufman and the inaction on the civil case.

64. Respondent also admitted at his deposition that he represented Kaufman on felony charges and testified he assumed he still represented Kaufman in those matters but had been unable to reach him for the last month to six weeks. Respondent was

reminded by the OBA that he was suspended from the practice of law at that time and that he needed to withdraw from Kaufman's and any other pending client cases.

65. Following his deposition, Respondent emailed the OBA a surrebuttal to Templeton's grievance dated October 4, 2021. Respondent again asserted his fee of \$7,500.00 had been earned by his representation of Templeton through the preliminary hearing in the case. Respondent did not address his failure to deposit his fees into his trust account. Respondent did not address Templeton's assertions and suspicions of Respondent's drug use during his representation nor did he provide a copy of the client contract.

66. Respondent's misconduct violates the mandatory provisions of Rules 1.4, 1.5, 1.15, 8.1(b) ORPC, and Rules 1.3, 5.2, 9.1 RGDP, and warrants the imposition of professional discipline.

COUNT III: GRIEVANCE BY JOHN HAMMANS

67. In or about April of 2018, John Hammans, Jr. (Hammans) paid Respondent an initial \$2,500.00 in cash to represent his wife, Megan, in a custody and support matter. Respondent advised Hammans that he and Attorney Ronald Kaufman would work on the matter together. Hammans paid Respondent an additional \$2,500.00 in cash in or about March of 2019. Respondent's IOLTA records do not indicate that he deposited any of these funds into his trust account.

68. Respondent advised his client and Hammans that it was best to wait for Rogers to establish residency in Oklahoma before taking any legal action. At the time, his wife and her children from a previous relationship had lived in Oklahoma for approximately over a year. Neither Respondent nor Kaufman ever initiated any action in

Oklahoma on behalf of Megan Hammans. Whenever Hammans asked about the case, Respondent would state that he was going to file something but never did.

69. On July 10, 2019, Hammans hired Respondent and Kaufman to also assist him in obtaining a marijuana grow license. Hammans had his wife wire Respondent \$3,000.00 that day. Respondent's IOLTA records do not indicate that he deposited any of these funds into his trust account.

70. Respondent did not file an application on Hammans' behalf nor obtain a marijuana grow license for his client.

71. On March 20, 2020, the OBA received a grievance from Hammans alleging Respondent's neglect of legal matters and failure to earn the fees Respondent had been paid.

72. On March 23, 2020, Hammans' grievance was opened for informal investigation and a letter was mailed to Respondent's official roster address asking for a written response within two weeks. Said letter was returned by the United States Postal Service with the notation, "RETURN TO SENDER/INSUFFICIENT ADDRESS/UNABLE TO FORWARD."

73. Thereafter, the OBA made several attempts to contact Respondent by mail and telephone but was unsuccessful in doing so.

74. On May 7, 2020, Hammans' grievance was opened for formal investigation. In addition to mailing a copy of the grievance to Respondent at his official roster address and requesting a written response within twenty (20) days, the OBA Investigator also emailed Respondent and requested a written response to the grievances filed by Savonen (Count I, *supra*), Templeton (Count II, *supra*), and Hammans.

75. Following the OBA's email, Respondent telephoned Arnold and provided a current address and requested additional time to respond to the grievances (see ¶¶ 28-29, *supra*).

76. On July 10, 2020, the OBA received a written response from Respondent via email wherein he claimed the custody matter involved a "multi-jurisdictional matter which involved several past 'emergencies' and numerous meetings with the client . . . After much consideration the prudent action for the client and the safety of her child [sic] to not stir the pot and simply wait as no visits were planned. Thus there was no action to take until there was an emergency situation or such time had passed as we could establish jurisdiction."

77. Respondent claimed in his written response that he and Kaufman had "fifteen plus hours on the matter at the attorneys' reduced rate of \$250 an hour . . ." and that their time ". . . far exceeded the 'clients' claim of \$5,000 spent on the matter." Respondent further claimed he had pages of notes and a draft of a Petition and Motion for Temporary Injunction as ". . . further evidence that [he] certainly did a significant amount of work well beyond what [he] was compensated to do."

78. With regard to the marijuana grow license, Respondent advised in his written response that he had performed the work for the Hammans and that they were "upset because they failed to budget for the increased OMMA fees, or the extra time it would take to receive a license thus causing an issue with their partner. Rather than take responsibility for their mistake they blamed the lawyers."

79. After receiving Respondent's response to the grievances pending against him, the OBA made multiple attempts to meet with Respondent to discuss the matters in person. (See paragraphs 34-38, *supra*).

80. At his deposition on September 23, 2021, Respondent admitted he had failed to timely respond to the Hammans' and other grievances and apologized to the OBA for the lengths and trouble it had expended as a result of his failure to maintain his current roster information.

81. Respondent's misconduct violates the mandatory provisions of Rules 1.3, 1.5, 1.15, 8.1(b), and 8.4(d), ORPC, and Rules 1.3 and 5.2, RGDP, and warrants the imposition of professional discipline.

COUNT IV: GRIEVANCE BY LARRY WHITAKER

82. On or about April 30, 2021, Larry D. Whitaker (Whitaker) hired Respondent to represent his son, Stephen "Todd" Whitaker (Todd) for the next twelve (12) weeks. Respondent was to seek continuances of criminal cases pending against Todd in Rogers, Creek, and McIntosh counties in Oklahoma.

83. Whitaker paid Respondent \$1,300.00, noting that Todd owed Respondent \$100.00 at that time. Respondent did not deposit the \$1,200.00 retainer fee into his client trust account.

84. After being paid, Respondent initially communicated with Whitaker but then ceased altogether after May 15, 2021.

85. As previously alleged (see ¶1-2, *supra*), Respondent was suspended on May 24, 2021 by Order of the Oklahoma Supreme Court for non-payment of dues for

failure to comply with his mandatory continuing legal education requirements. Despite his suspension from the practice of law, Respondent failed to advise the Whitakers of his suspension from the practice of law.

86. On August 9, 2021, the OBA received a grievance from Whitaker alleging Respondent's neglect and failure to earn the retainer fee in his son's cases.

87. On September 23, 2021, Respondent was hand-delivered a copy of Whitaker's grievance at his deposition taken at the Oklahoma Bar Association.

88. In his written response dated October 4, 2021, Respondent stated he was originally hired by Todd and Lauren Whitaker to "legally procure continuances in multiple cases over multiple counties. The reason for this was they were out on bond and failed to appear in one of the counties and bond was revoked and warrant [sic] was issued. Therefore, they were hindered from appearing in court for their court dates and matters, without fear of arrest. Thusly, their goal was to raise funds for bond prior to being arrested and wanted me to gain time for this goal by obtaining continuances. Ultimately, once they raised funds for the bond, they would surrender themselves, and be back on track. However, in the interim, after obtaining some continuances, Todd was arrested on the aforementioned warrant."

89. Respondent further claimed in his written response that Todd and Lauren had an outstanding balance owed to him in the amount of \$1,000.00 for his past efforts and that Whittaker paid the outstanding balance on his son's and daughter-in-law's behalf plus an additional \$300.00 ". . . for my new efforts to attempt to procure Todd's release without necessity of posting bond . . . This effort occurred for Todd Whitaker, on the date of payment and immediate days thereafter." Respondent denied that he was ever hired

to appear in court and claimed, "Mike Loeffler, the ADA for Creek County objected to allowing Todd Whittaker out without bond upon suggested showing acceptance into rehab."

90. On or about December 20, 2021, Creek County First Assistant District Attorney Mike Loeffler (Loeffler) advised the OBA that he had no notations in the district attorney's file of ever communicating with Respondent about Todd Whitaker's case and that Respondent did not file an entry of appearance or appear in court on the matter. Per Loeffler's file, the defendant was represented by an Oklahoma Indigent Defense (OIDS) attorney.

91. Loeffler also reviewed Lauren Whitaker's cases and advised that Respondent was not involved in her case, either. The district attorney files on her cases indicate she was originally represented by Mark Matheson and then OIDS.

92. On December 20, 2021, the OBA interviewed Pawnee County Assistant District Attorney Jeff Jones (Jones) regarding Todd Whitaker's case. Jones advised he was assigned to the case and had no recollection of ever speaking with Respondent. Jones further advised that if he had discussed the case with an attorney for the defendant, he would have noted it in his file. Jones checked his file and advised he had no notations of ever speaking with Respondent on Todd Whitaker's behalf.

93. Respondent's misconduct violates the mandatory provisions of Rules 1.4, 1.5, 1.15, and 8.4(d), ORPC, and Rules 1.3 and 9.1, RGDP, and warrants the imposition of professional discipline.

COUNT V: RESPONDENT'S POSITIVE DRUG TESTS

94. During his deposition taken on September 23, 2021, Respondent was asked about using any illegal substances or taking any prescribed medications. Respondent testified that he was not using any illegal substances.

95. Based upon the allegations submitted in the grievances filed against him and Respondent's appearance and demeanor, Respondent was asked if he would take a drug test following his deposition. Respondent agreed to do so.

96. On or about September 29, 2021, the OBA received notification that Respondent tested presumptive positive for Methamphetamine following a urine test.

97. On September 30, 2021, the OBA requested Respondent follow up with a hair follicle drug test.

98. On October 14, 2021, Respondent provided a hair follicle sample. Respondent's test results were positive for Methamphetamine, Amphetamine, Opiates, Morphine, Codeine, and Heroin.

99. Respondent's misconduct violates the mandatory provisions of Rules 8.4(b), ORPC, and Rule 1.3, RGDP, and warrants the imposition of professional discipline.

COUNT VI: RESPONDENT'S PRIOR DEFERRED PROSECUTION

100. During the OBA's investigation of these grievances and monitoring of Respondent's pending criminal drug charge in Tulsa County, Oklahoma (see Notice, ¶103, *infra*), it was discovered that Respondent was charged on June 22, 2016 in Wagoner County District Court, Case No. CM-2016-496, with Possession of a Controlled Dangerous Substance, Possession of Paraphernalia, Failure to Pay State Taxes, Failure

to Carry Insurance/Security Verification Form, and Transporting a Loaded Firearm in a Motor Vehicle. Respondent was also charged in CM-2016-1038 with a related charge of Violation of a License Restriction. Pursuant to negotiations with the State, Respondent was given a deferred prosecution, did not enter a plea, and the charges were dismissed against him on or about August 10, 2017.

101. Respondent's misconduct violates the mandatory provisions of Rules 8.4(b), ORPC, and Rule 1.3, RGDP, and warrants the imposition of professional discipline.

ENHANCEMENT

102. On November 1, 2013, Respondent was administered a Private Reprimand by the Professional Responsibility Commission in *State ex rel. Oklahoma Bar Association v. Chadwick R. Richardson*, OBAD No. 1976, for his neglect of client cases and his failure to promptly account for and refund unearned client fees in matters involved Krystal Miles, Joshua Fury, and Larry Swaggerty. The Commission found Respondent's conduct violated the mandatory provisions of Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16, and 8.4(d), ORPC, and Rule 1.3, RGDP.

NOTICE OF PENDING CRIMINAL CASE

103. On or about November 17, 2019, Respondent and Jacob Alan Rathburn were arrested by police officers in Glenpool, Oklahoma. At the time of their arrest, Respondent was representing Rathburn as an attorney in a possession of firearms case pending in Tulsa County.

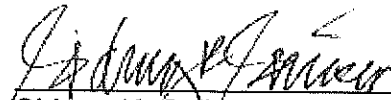
104. On or about November 25, 2019, Respondent was charged with Possession of a Controlled Substance in violation of 63 O.S. 2-402(A)(1) in Tulsa County District

Court, Case No. CM-2019-5399. The substances involved in the underlying arrest included Heroin and Methamphetamine (a combination sometimes known as a "speedball" or "goofball"), said drugs being classified as controlled dangerous substances in Schedule I of the Uniform Controlled Dangerous Substances Act of Oklahoma.

105. As of the date of this filing, per OSCN, Respondent's criminal charge in State of Oklahoma v. Chadwick Richardson, Tulsa County District Court case number CM-2019-5399, remains pending and is currently scheduled for a status conference on June 6, 2022.

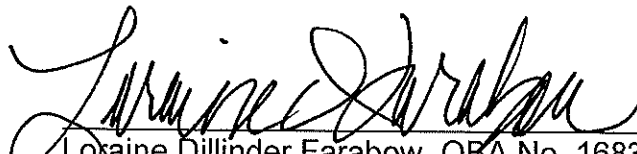
WHEREFORE, premises considered, Complainant, Oklahoma Bar Association prays that the Respondent, Chadwick R. Richardson, be disciplined as this Court finds equitable and proper, and for such other relief as this Court finds appropriate.

Done by the direction of the Professional Responsibility Commission this the 25th day of May, 2022.



Sidney K. Swinson, Chair
Professional Responsibility Commission

and




Loraine Dillinder Farabow, OBA No. 16833
First Assistant General Counsel
Oklahoma Bar Association
P.O. Box 53036 / 1901 N. Lincoln Blvd.
Oklahoma City, OK 73152
(o) 405.416.7007 (f) 405.416.7003
lorainef@okbar.org

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF DELIVERY

The undersigned hereby certifies that on the 13 day of May, 2022, a true and correct copy of the foregoing Complaint was mailed certified, return receipt requested, via the United States Postal Service, to: Chadwick R. Richardson, Respondent, 7447 S. Lewis Avenue, Tulsa, OK 74136 and by first-class mail, postage prepaid, to: Sheila Naifeh, Attorney for Respondent, 1408 S. Denver, Tulsa, OK 74119. Said document was also electronically transmitted by email to: Angela Ailles-Bahm, Chief Master of the Professional Responsibility, at angela.ailles-bahm.ga2e@statefarm.com.


Lorraine Dillinder Farabow

I have been thinking about you very much lately, and wondering how you are getting along. I hope you are well and happy. I am still working hard, but I manage to find some time for my family and friends.

With love,
John

I, John D. Hadden, Clerk of the Appellate Courts of the State of Oklahoma do hereby certify that the above and foregoing is a full, true and complete copy of the Complaint in the above entitled cause, as the same remains on file in my office.

In Witness Whereof I hereunto set my hand and affix the Seal of said Court at Oklahoma City, this 13th day of October 2023.

By [Signature] Clerk
DEPUTY

2023 OK 95
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA



STATE OF OKLAHOMA, ex rel.
OKLAHOMA BAR ASSOCIATION,

Complainant,

V.

CHADWICK R. RICHARDSON

Respondent.

ORDER APPROVING RESIGNATION

¶ 1 The State of Oklahoma ex rel. Oklahoma Bar Association (Complainant) has presented this Court with an application to approve the resignation of Chadwick R. Richardson (Respondent) from membership in the Oklahoma Bar Association. Respondent wishes to resign pending disciplinary proceedings and investigation into alleged misconduct, as provided in Rule 8.1 of the Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2021, ch. 1, app. 1-A. Upon consideration of the Complainant's application and the Respondent's affidavit in support of resignation, we make the following findings:

- a. Respondent was admitted to the Oklahoma Bar Association on April 30, 1993, and his bar number is 15589. On August 28, 2023, Respondent offered to resign his membership in the Oklahoma Bar Association and relinquish his right to practice law.

Rec'd (date) 10-7-73
 Posted PK
 Mailed PK
 Distrib PK
 Publish X yes no

EXHIBIT
2

- b. Respondent's name and address appears on the official roster maintained by the Oklahoma Bar Association as follows:

Chadwick R. Richardson
7447 S. Lewis Avenue
Tulsa, Oklahoma 74136

- c. Respondent tendered his resignation freely and voluntarily, without coercion or duress, and he was fully aware of the consequences of submitting his resignation.
- d. Respondent acknowledged that the Complainant's Office of the General Counsel was investigating certain allegations of professional misconduct against him. On May 25, 2022, Complainant instigated disciplinary proceedings against Respondent pursuant to Rule 6, RGDP, case number SCBD 7278. The complaint contained six allegations of misconduct relating to four grievances filed by Respondent's former clients, Respondent's drug use, and Respondent's previous deferred prosecution.
- i. Count I: Grievance filed on March 3, 2020. This grievance stemmed from Respondent's representation of the complainant's sister. Respondent was brought in as co-counsel due to Respondent's experience in defending crimes of the kind alleged. The complainant signed a contract with Respondent acting as surety on behalf of her sister, and ultimately, Respondent was paid \$34,600.00 for his work on the case. None of the funds were deposited into Respondent's trust account. After attending a day and a half of preliminary hearings in

the case, Respondent was not seen by the client or her family again. Other forms of contact eventually ceased as well. In the grievance with the OBA, the complainant alleged that Respondent: neglected and abandoned her sister's case; was practicing law without a license because he had been suspended from the practice of law in May of 2019; and had failed to account for or refund a portion of the unearned flat fees he had been paid.

- ii. Count II: Grievance filed March 19, 2020. This grievance stemmed from Respondent's representation of a client with pending criminal felony charges. Respondent was paid \$6,500.00 to represent the client. None of the funds were deposited into Respondent's trust account. Respondent attended the preliminary hearing in the case but allowed another attorney to attend other hearings on his behalf without advising the client. After the preliminary hearing, Respondent ceased communication with the client and abandoned the case. In the grievance filed with the OBA, the client alleged that Respondent: neglected and abandoned his case; failed to earn his fee; and failed to return unearned fees. The client later alleged that Respondent had a drug abuse issue, asserting that Respondent would sweat profusely and doze off during meetings; had difficulty remembering details that were discussed repeatedly; and was late for every meeting and court date.

- iii. Count III: Grievance filed March 20, 2020. Respondent was hired to represent complainant's wife in a custody and support matter. Respondent was paid a total of \$5,000.00. None of the fees were deposited into Respondent's trust account. Respondent never filed any pleadings in the custody case. Instead, Respondent advised that the complainant's wife should establish residency in Oklahoma prior to taking legal action, even though the wife and her children from a previous relationship had lived in Oklahoma for over a year. When complainant would ask about the case, Respondent would state that he was going to file something, yet never did. Later, the complainant hired Respondent to assist in obtaining a marijuana grow license, wiring \$3,000.00 to Respondent. These funds were not placed in Respondent's trust account. Respondent never obtained a marijuana grow license of behalf of the complainant. In the grievance filed with the OBA, the complainant alleged that Respondent was neglectful of legal matters and failed to earn the fees Respondent was paid.
- iv. Count IV: Grievance filed August 9, 2021. Respondent was hired to represent the complainant's son and obtain continuances of criminal cases that were pending in three counties. The complainant alleged that Respondent was paid \$1,200.00 for the case. Respondent did not deposit the fee into his trust account. Initially, Respondent communicated with the complainant, but communication had ceased

two weeks into Respondent's representation. Respondent was suspended from the practice of law on May 24, 2021, by Order of the Supreme Court, for failure to pay dues and failure to comply with mandatory continuing legal education requirements. Respondent failed to advise the complainant and his son of this suspension. In the grievance filed with the OBA, the complainant alleged Respondent was neglectful of the case and failed to earn the retainer fee in his son's case.

- v. Count V: Respondent's Positive Drug Tests. Respondent participated in a deposition regarding the grievances filed against him on September 23, 2021. Due to Respondent's alleged drug use, he was asked in the deposition if he would be amenable to taking a drug test. He agreed, testifying that he was not using any illegal substances. On September 29, 2021, the OBA received notification that Respondent's urine test was presumptive positive for methamphetamine. The OBA requested a follow up hair follicle test, which was performed on October 14, 2021. Respondent's hair follicle sample was positive for methamphetamine, amphetamine, opiates, morphine, codeine, and heroin.
- vi. Count VI: Respondent's Prior Deferred Prosecution. During its investigation into Respondent, the OBA discovered that Respondent was charged on June 22, 2016, in Wagoner County District Court

case number CM-2016-496, with Possession of a Controlled Substance, Possession of Paraphernalia, Failure to Pay State Taxes, Failure to Carry Insurance/Security Verification Form, and Transporting a Loaded Firearm in a Motor Vehicle. Respondent was also charged in CM-2016-1038 with a related charge of Violation of a License Restriction. Pursuant to negotiations with the State, Respondent received a deferred prosecution, and the charges were dismissed against him on August 10, 2017.

- e. Respondent's affidavit states he is aware that the allegations concerning the conduct specified above, if proven, would constitute violations of Rules 1.3, 1.4, 1.5, 1.15, 1.16(d), 8.1(b), 8.4(a), 8.4(b), and 8.4(d) of the Oklahoma Rules of Professional Conduct, 5 O.S. 2021, ch.1, app. 3-A; Rules 1.3, 5.2, and 9.1 of the Rules Governing Disciplinary Proceedings, 5 O.S. 2021, Ch. 1, App. 1-A; and his oath as an attorney.
- f. Respondent acknowledges that he is currently prohibited from practicing law as he was stricken from the roll of attorneys on June 7, 2021, pursuant to SCBD No. 7059, 2022 OK 54, for failure to pay dues as a member of the Oklahoma Bar Association for the year 2021.
- g. Respondent further acknowledges that, as a result of his conduct, the Client Security Fund may receive claims from his former client(s). Should the Oklahoma Bar Association approve and pay such Client Security Fund claims, Respondent agrees to reimburse the fund for both the principal

amount and the applicable statutory interest before filing any application seeking reinstatement.

- h. Respondent recognizes and agrees he may not make application for reinstatement to membership in the Oklahoma Bar Association prior to the expiration of five (5) years from the effective date of this Court's approval of his resignation; he acknowledges he may be reinstated to practice law only upon compliance with the conditions and procedures prescribed by Rule 11, RGDP.
- i. Respondent has agreed to comply with Rule 9.1, RGDP within twenty (20) days following the date of this resignation.
- j. Respondent's resignation pending disciplinary proceedings complies with Rule 8.1, RGDP.
- k. Complainant has made an application asserting that costs in the amount of \$1,574.95 were incurred in this matter and that reimbursement is necessary. Respondent acknowledges the OBA has incurred costs in the investigation and prosecution of this matter, and agrees he is responsible for reimbursement of such fees.
- l. Respondent's resignation should be approved.
- m. In his Affidavit of Resignation Pending Disciplinary Proceedings, Respondent requested that his resignation be retroactively applied to June 7, 2021, the date he was suspended for non-payment of dues in SCBD No. 7059. This Court finds no compelling reason to accept Respondent's

request. This Order accepting the Respondent's resignation is to be effective as of October 2, 2023.

¶ 2 It is therefore ORDERED that Complainant's application is approved and Respondent's resignation during the pendency of disciplinary proceedings is accepted and approved effective October 2, 2023.

¶ 3 It is further ORDERED that Respondent's name remain stricken from the Roll of Attorneys and that he may make no application for reinstatement to membership in the Oklahoma Bar Association prior to October 2, 2028.

¶ 4 It is further ORDERED that the Respondent comply with Rule 9.1, RGDP, no later than twenty (20) days from the date of this order.

¶ 5 It is further ORDERED that Respondent pay costs in the amount of \$1,574.95 within thirty days from the date of this Order. Any consideration of any future Rule 11 petitions is conditioned upon such payment.

¶ 6 DONE BY ORDER OF THE SUPREME COURT THIS 2nd DAY OF OCTOBER, 2023.


CHIEF JUSTICE

ALL JUSTICES CONCUR.

I, John D. Hadden, Clerk of the Appellate Courts of the State of Oklahoma do hereby certify that the above and foregoing is a full, true and complete copy of the Order

_____ in the above entitled cause, as
the same remains on file in my office.

In Witness Whereof I hereunto set my hand and affix the Seal of said Court at Oklahoma City, this 13th day of October

Clerk

By

DEPUTY

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.