FILED
Mar. 17, 2021
THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

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

IN THE MATTER OF	§	
KENT LEROY SIEGRIST	§	**CAUSE NO.** 65281
STATE BAR CARD NO. 24056323	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Kent LeRoy Siegrist (hereinafter called "Respondent"), showing as follows:

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

2. Respondent is a member of the State Bar of Texas and is licensed but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Kent LeRoy Siegrist, 512 S. Nyssa Avenue, Broken Arrow, OK 74012-3248.

3. On or about September 5, 2019, a Complaint (Exhibit 1) was filed with the Supreme of the State of Oklahoma in a matter styled, *State of Oklahoma ex rel. Oklahoma Bar Association, Complainant v. Kent L. Siegrist, Respondent,* Rule 6, RGDP; OBAD #2247, #6825.

4. On or about November 9, 2019, a Report of the Trial Panel of the Professional Responsibility Tribunal (Exhibit 2) was filed in the Supreme Court of the State of Oklahoma Before the Professional Responsibility Tribunal in a matter styled, *State of Oklahoma ex rel.*

Oklahoma Bar Association, Complainant v. Kent LeRoy Siegrist, Respondent, Rule 6, RGDP; OBAD #2247, SCBD #6825.

5. On or about March 24, 2020, an Original Proceeding for Attorney Discipline (Exhibit 3) was entered in the Supreme Court of the State of Oklahoma in a matter styled, *State of Oklahoma ex rel. Oklahoma Bar Association, Complainant v. Kent LeRoy Siegrist, Respondent,* SCBD #6825 (2020 OK 18), that states in pertinent part as follows:

> …Complainant State of Oklahoma *ex rel.* Oklahoma Bar Association began disciplinary proceedings pursuant to Rule 6, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S.2011 ch. 1, app. 1-A, alleging two (2) counts of professional misconduct against Respondent Kent Leroy Siegrist. The Respondent is an active member of the Oklahoma Bar Association and is currently in good standing. The Complainant's allegations arise in part from the Respondent's mishandling of his father's estate, as the personal representative for that estate, and misconduct towards a separate client. The Complainant alleges the Respondent's actions are in violation of the Oklahoma Rules of Professional Conduct (ORPC), 5 O.S.2011 ch. 1, app. 3-A, and the RGDP and are cause for professional discipline…
>
> The PRT ["Professional Responsibility Tribunal"] filed its Report on November 8, 2019. The Report found the Complainant had proven by clear and convincing evidence that Respondent violated Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), and 8.4(a), (c), and (d), (Violating Rules of Professional Conduct/Engaging in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation), ORPC, and Rules 1.3 (Discipline for Acts Contrary to Prescribed Standards of Conduct) and 5.2 (Investigations), RGDP, with the recommendation that Respondent be disbarred from the practice of law and that he be ordered to pay the costs of these proceedings…
>
> We agree with the Complainant that Respondent's behavior in regards to the Siegrist grievance was dishonest, fraudulent, deceitful, and that he misappropriated the estate's funds for his own personal benefit. We find clear and convincing evidence that Respondent intentionally deceived his brother and the court about the status of his father's estate. Respondent's actions and inactions elevated Respondent's behavior from simple conversion to misappropriation, as Respondent repeatedly failed to respond to inquiries from his brother and his brother's attorney concerning the status of the estate, which forced David Siegrist to hire counsel to request a formal accounting from the estate.

We hold that the Complainant has proven by clear and convincing evidence the Respondent violated Rules 8.4(c) and (d), ORPC, and Rules 1.3 and 5.2, RGDP, in regards to the Siegrist grievance. Respondent failed to respond to the Siegrist grievance, failed to answer the Complaint and failed to appear at his own disciplinary hearing.

We hold Complainant has also proven by clear and convincing evidence that Respondent failed to competently and diligently represent Paige, failed to properly communicate with Paige, failed to earn the fee paid to him by Paige for legal services, and that Respondent's neglect caused an undue prejudice to the administration of justice, all in violation of Rules 1.1, 1.3, 1.4, 1.5 and 8.4(a) and (d), ORPC, and Rules 1.3 and 5.2, RGDP.

We hold that the Respondent's misconduct warrants disbarment. Accordingly, it is ordered by this Court that the Respondent be disbarred and his name be stricken from the roll of attorneys licensed to practice law in this state.

… RESPONDENT DISBARRED AND ORDERED TO PAY COSTS …

6. Siegrist violated the following Oklahoma Rules of Professional Conduct:

1.1 A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

1.3 A lawyer shall act with reasonable diligence and promptness in representing a client.

1.4 Rule 1.4, ORPC, 5 O.S.2011 ch.1, app. 3-A provides:

(a) A lawyer shall:
(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
(3) keep the client reasonably informed about the status of the matter;
(4) promptly comply with reasonable requests for information; and
(5) consult with the client about any relevant limitation on the

lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

1.5 Rule 1.5, ORPC, 5 O.S.2011 ch.1, app. 3-A provides, in pertinent part:

0. A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved; and the skill requisite to perform the legal service properly;
(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent.

8.4(a), (c) and (d), ORPC, 5 O.S.2011 ch.1, app. 3-A provides, in pertinent part:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice….

Rules Governing Disciplinary Proceedings (RGDP):

1.3 **Discipline for Acts Contrary to Prescribed Standards of Conduct:** The commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all. Conviction in a criminal proceeding is not a condition precedent to the imposition of discipline.

5.2 **Investigations:** After making such preliminary investigation as the General Counsel may deem appropriate, the General Counsel shall either (1) notify the person filing the grievance and the lawyer that the allegations of the grievance are inadequate, incomplete, or insufficient to warrant the further attention of the Commission, provided that such action shall be reported to the Commission at its next meeting, or (2) file and serve a copy of the grievance (or, in the case of an investigation instituted on the part of the General Counsel or the Commission without the filing of a signed grievance, a recital of the relevant facts or allegations) upon the lawyer, who shall thereafter make a written response which contains a full and fair disclosure of all the facts and circumstances pertaining to the respondent lawyer's alleged misconduct unless the respondent's refusal to do so is predicated upon expressed constitutional grounds. Deliberate misrepresentation in such response shall itself be grounds for discipline. The failure of a lawyer to answer within twenty (20) days after service of the grievance (or recital of facts or allegations), or such further time as may be granted by the General Counsel, shall be grounds for discipline. The General Counsel shall make such further investigation of the grievance and response as the General Counsel may deem appropriate before taking any action.

7. Certified copies of the Complaint, Report of the Trial Panel of the Professional Responsibility Tribunal, and Original Proceeding for Attorney Discipline, are attached hereto as Petitioner's Exhibits 1 through 3, 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 through 3 at the time of hearing of this cause.

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

Jenny S. Kim
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
Telephone: 512.427.1350
Telecopier: 512.427.4167
Email: Jenny.Kim@texasbar.com

Jenny S. Kim
Bar Card No. 24091883

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

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

Kent LeRoy Siegrist
512 S. Nyssa Avenue
Broken Arrow, OK 74012-3248

Jenny S. Kim

1043781680

ORIGINAL

FILED
SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA
SEP - 5 2019
JOHN D. HADDEN
CLERK

FILED
AUG 15 2019
Office Of Chief Justice
Bar Docket

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA *ex rel.* OKLAHOMA BAR ASSOCIATION,	)	
Complainant,	)	**RULE 6, RGDP**
v.	)	OBAD # 2247
KENT L. SIEGRIST,	)	6825
Respondent.	)	

COMPLAINT

Complainant, State of Oklahoma *ex rel.* Oklahoma Bar Association, for its claim against Respondent, Kent L. Siegrist, alleges and states:

1. The Respondent is a member of the Oklahoma Bar Association and is licensed to practice law by the Supreme Court of the State of Oklahoma. The Respondent was so licensed at all times relevant to this Complaint.

2. To the best knowledge, information, and belief of Complainant, 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 the State of Oklahoma, provide guidelines by which all attorneys are to practice law in Oklahoma.

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

4. The official Oklahoma Bar Association roster address of the Respondent during all applicable times was: Kent L. Siegrist, OBA #21044, 5918 East 31st Street, Tulsa, OK 74135.

EXHIBIT
1

ORIGINAL
Received
Marshall
Reynolds
Cert mailed
Updated

COUNT I: DAVID SIEGRIST

5. David Siegrist is Respondent's brother. They are the only children of their father, Calvin Leroy Siegrist. After the death of their father, a probate was filed on May 5, 2008 in Canadian County, Case No. PB-2008-68. Respondent was named as the Personal Representative of the father's estate.

6. On April 25, 2018, a Journal Entry of Judgment was entered wherein Judge Barbara Hatfield stated that Respondent had misappropriated $1,135,000.00 of estate funds while acting as the Personal Representative.

7. Judge Hatfield specifically ordered that "Respondent should be charged with a statutory enhancement of recovery as a result of conversion, breach of duty of the Court's Citation and to the Estate, disposition of monies, goods or chattels of the decedent, misappropriation and unauthorized transfers of estate assets for his personal use and enters Judgment against Respondent, Kent Siegrist, to double the present amount of the interim Judgment of $1,135,000.00 to a stated interim Judgment in the sum of $2,270,000.00".

8. In the same journal entry, Judge Hatfield also found that Respondent was in Contempt of Court and guilty of conversion, misappropriation, willful breach, and disregard of duty.

9. On May 10, 2018, David Siegrist sent a grievance to the Oklahoma Bar Association regarding Respondent's actions in their father's probate.

10. On May 23, 2018, Complainant sent a copy of the grievance to Respondent requesting a response within twenty (20) days.

11. On August 24, 2018 a letter was sent to Complainant stating that Respondent had entered Valley Hope Alcohol and Drug Treatment Center and would not be discharged until September 21, 2018.

12. On November 27, 2018, Complainant sent a second letter to Respondent, via electronic mail, regular mail and certified mail, enclosing a copy of the grievance and requesting a response by December 17, 2018.

13. Respondent did not respond to the grievance.

14. On April 30, 2019, Respondent was personally served with notice of a deposition scheduled for May 14, 2019 at the Oklahoma Bar Association. Respondent failed to appear.

15. Respondent misappropriated $1,135,000.00 as the Personal Representative from his father's estate. Respondent's behavior was dishonest, fraudulent, and deceitful and was prejudicial to the administration of justice and is a violation of Rules 8.4(c) and (d), ORPC and Rule 1.3, RGDP.

COUNT II: BRIAN PAIGE

16. Respondent represented Brian Paige ("Paige") in a Chapter 13 bankruptcy. Respondent failed to timely file Paige's amended bankruptcy causing the case to be vacated.

17. In August, 2018, Paige called Respondent to determine why the bankruptcy plan had not been timely filed. Respondent told Paige that he had relapsed and due to his drinking, he had not handled his case correctly. Respondent also stated that he planned on going to an alcohol treatment center.

18. On August 24, 2018, Complainant received a grievance from Paige regarding Respondent's handling of his case.

19. On August 30, 2018, Complainant sent a copy of the grievance to Respondent requesting a response within twenty (20) days.

20. On November 27, 2018, Complainant sent a second letter to Respondent, via electronic mail, regular mail and certified mail, enclosing a copy of the grievance and requesting a response by December 17, 2018.

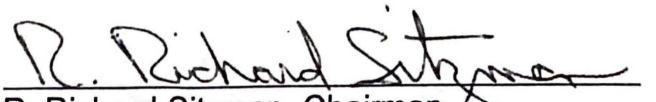
21. Respondent did not respond to the Paige grievance.

22. On April 30, 2019, Respondent was personally served with notice of a deposition scheduled for May 14, 2019 at the Oklahoma Bar Association. Respondent failed to appear.

23. Respondent failed to competently and diligently represent Paige. Respondent failed to communicate properly with his client and did not earn the fee paid to him. Respondent's neglect caused an undue prejudice to the administration of justice in Paige's case. Respondent's actions violated Rules 1.1, 1.3, 1.4, 1.5 and 8.4(a) and (d), ORPC and Rule 1.3, RGDP.

WHEREFORE, premises considered, Complainant, Oklahoma Bar Association prays that Respondent, Kent L. Siegrist, be disciplined as this Court finds equitable and proper, and for such other relief as this Court finds appropriate.

Done at the direction of the Professional Responsibility Commission this 15th day of August, 2019.



R. Richard Sitzman, Chairman
Professional Responsibility Commission

and

Stephen L. Sullins, OBA No. 12004
Assistant General Counsel
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152
405.416.7083(o) 405.416.7003(f)

ATTORNEY FOR COMPLAINANT

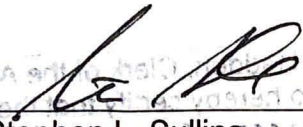
CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 15th day of August, 2019, a true and correct copy of the foregoing Complaint was mailed certified, return receipt requested to:

Kent L. Siegrist
5918 East 31st Street
Tulsa, OK 74135
RESPONDENT

and electronic mail to:

D. Kenyon Williams, Jr.
320 S. Boston Avenue, Suite 200
Tulsa, OK 74103-3708
PRT CHIEF MASTER



Stephen L. Sullins

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 10th day of September 2020.

Clerk

By _____ DEPUTY

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
BEFORE THE PROFESSIONAL RESPONSIBILITY TRIBUNAL

STATE OF OKLAHOMA *ex rel* OKLAHOMA BAR ASSOCIATION,	)	
Complainant,	)	**RULE 6, RGDP**
V.	)	OBAD # 2247
KENT LEROY SIEGRIST,	)	SCBD # 6825
Respondent.	)	

REPORT OF THE TRIAL PANEL
OF THE PROFESSIONAL RESPONSIBILITY TRIBUNAL

This matter came on for hearing before the Professional Responsibility Tribunal (PRT) on October 30, 2019. Complainant, State of Oklahoma *ex rel* Oklahoma Bar Association (OBA or Complainant) appeared by and through its attorney of record Stephen L. Sullins. Respondent Kent Leroy Siegrist (Respondent) did not appear.

The Trial Panel reviewed Rule 13 of the Rules Governing Disciplinary Proceedings (RGDP) and the Tribunal made a finding that the Complaint, the Amended Complaint, Motion to Deem Allegations Admitted and Amended Motion to Deem Allegations Admitted had been served upon the Respondent as required by Rule 13 of the RGDP.

The PRT heard and received testimony from the following witnesses on behalf of the Complainant: Richard Fogg, Katie Reed, David Siegrist, Brian Paige, John Lichtenegger (via telephone), and OBA Investigator Krystal Willis. Complainant's Exhibits 1-52 were admitted without objection. Respondent did not appear, and no witnesses appeared on his behalf.

FINDINGS OF FACTS

1. Respondent was admitted to practice law in Oklahoma on April 21, 2006, Respondent's OBA membership number is 21044, and his official Oklahoma Bar Association roster address is 5918 East 31st Street, Tulsa, OK 74135.

2. A Complaint was filed in this matter on August 15, 20128, pursuant to Rule 6 of the RGDP, 5 O.S. 2011 ch. 1, app. 1-A, alleging professional misconduct of Respondent in violation of the Oklahoma Rules of Professional Conduct (ORPC), 5 O.S. 2011 ch. 1, app. 3-A.

3. On October 8, 2019, Complainant filed an Amended Motion to Deem Allegations Admitted pursuant to Rule 6.4, RGDP. The motion was sustained by the PRT at the hearing.

4. On October 9, 2019, the above-styled and numbered matter came on for hearing before the Professional Responsibility Tribunal (PRT). Complainant, State of Oklahoma *ex rel* Oklahoma Bar Association, appeared by and through Assistant General Counsel, Stephen L. Sullins. Respondent failed to appear.

COUNT I: THE SIEGRIST GRIEVANCE

5. In 2008, Respondent's father passed away and a probate was filed on May 5, 2008 in Canadian County, Case No PB-2008-68. Respondent was named as the Personal Representative of his father's estate.

6. Richard Fogg (Fogg) attorney for David Siegrist, Kent Siegrist's brother, testified that he has represented David Siegrist since 2017.

7. Fogg stated that he drafted a Petition for Accounting and had David Siegrist named as the Personal Representative, replacing Kent Siegrist. (Tr at 12-14; Comp. Exhs 7, 11 and 13)

8. Katie Reed, legal assistant for Richard Fogg, testified how she spent an extensive amount of time looking through the Estate and Kent Siegrist's personal bank accounts in trying to determine how much money was taken from the Estate and transferred to accounts owned by Kent Siegrist. (Tr. At 49-55, Comp. Exh. 19)

9. On April 25, 2018, a Journal Entry of Judgment was entered by Judge Barbara Hatfield which stated that Respondent had converted $1,135,000.00 of estate funds while acting as the Personal Representative. (Comp. Exh 19, p. 2)

10. Judge Hatfield found that "Respondent should be charged with a statutory enhancement of recovery as a result of conversion, breach of duty of the Court's Citation and to the Estate, disposition of monies, goods or chattels of the decedent, misappropriate and unauthorized transfers of estate assets for his personal use and enters Judgment against Respondent, Kent Siegrist, to double the present amount of interim Judgment of $1,135,000.00 to a stated interim Judgment in the sum of $2,270,000.00". (Comp. Exh 19, p. 3)

11. Judge Hatfield further found that Respondent was in Contempt of Court and guilty of conversion, misappropriate, willful breach, and disregard of duty. (Comp. Exh 19, p. 4)

12. Fogg testified that Kent Siegrist, s the Personal Representative of his father's estate, failed to file State and Federal tax returns for several years. (Tr. At 27; Comp. Exh. 28)

13. Fogg explained that he (Fogg) made at least nine (9) court appearances on this matter and that Respondent only appeared one time for a Hearing on Assets. Respondent was also deposed once by Fogg. (Tr. At 39)

14. Mediation was scheduled on the matter and Respondent failed to appear. (Tr. At 43)

15. On May 10, 2018, David Siegrist sent a grievance to the OBA. (Comp. Ex 1)

16. David Siegrist testified that he, Respondent and their father had two primary businesses, Siegrist Farms and KnowCanDo. That each of them owned 1/3 of each business. (Tr. at 59)

17. David Siegrist explained that he started having questions regarding how the estate was being managed and whether income taxes were being filed. (Tr. at 63)

18. On May 23, 2018, Complainant sent a copy of the grievance to Respondent requesting a response within 20 days. (Comp. Exh 2)

19. On August 24, 2018 a letter was faxed to Complainant stating that respondent had entered Valley Hope Alcohol and Drug Treatment Center and would not be discharged until September 21, 2018. (Comp. Exh 39)

20. On November 27, 2018, Complainant sent a second letter to Respondent, via electronic mail, regular mail and certified mail, enclosing a copy of the grievance and requesting a response by December 17, 2018. (Comp. Exh 44)

21. Respondent failed to respond to the David Siegrist grievance.

22. On April 30, 2019, Respondent was personally served with notice of deposition scheduled for May 14, 2019 at the Oklahoma Bar Association. Respondent failed to appears. (Comp. Exhs 40 and 41)

COUNT I: THE SIEGRIST GRIEVANCE

23. Respondent represented Brian Page (Paige) in a Chapter 13 bankruptcy. Respondent failed to timely file Paige's amended bankruptcy causing the case to be dismissed. (Tr. at 76-77)

24. Paige testified that he called Respondent and asked why his case was dismissed. Respondent stated that it was his fault and that he was going to try and get it reinstated. Respondent also mentioned that he was going to go to treatment. (Tr at 76)

25. On August 24, 2018, Paige sent a grievance to the OBA regarding Respondent's handling of his case. (Comp. Exh 32)

26. On August 29, 2018, Complaint sent a copy of the grievance to Respondent requesting a response within twenty (20) days. (Comp. Exh 33)

27. On November 27, 2018, Complaint sent a second letter to Respondent via electronic mail, regular mail and certified mail, enclosing a copy of the grievance and requesting a response by December 17, 2018. (Comp. Exh 44)

28. Respondent failed to respond to the Paige grievance.

29. John Lichtenegger testified that he made fourteen (14) attempts to serve Respondent with the Complaint in this matter. (Tr at 91) Twice he saw Respondent and tried to make service on him, but he was unsuccessful. (Tr at 910-94) He further stated that he believed Respondent was trying to avoid service. (Tr at 94)

30. Krystal Willis, investigator for the General Counsel's office, testified to the attempts made to contact Respondent. (Tr at 103-111; Comp Exh 37) She further stated that she did meet with Respondent in his office in January, 2019. (Tr at 105) She explained to Respondent that he needed to respond to both grievance and Respondent promised that he would do so. (Tr at 106-108)

CONCLUSIONS OF LAW

COUNT I: THE SIEGRIST GRIEVANCE

31. Respondent misappropriated $1,135,000.00 as the Personal Representative of his father's estate.

32. Respondent's behavior was dishonest, fraudulent and deceitful and was prejudicial to the administration of justice.

33. Respondent failed to respond to the grievance, failed to answer the Complaint, and failed to appear for the disciplinary hearing.

34. Complainant proved by clear and convincing evidence that Respondent violated Rules 8.4(c) and (d), ORPC, and Rules 1.3 and 5.2, RDGP.

COUNT II: THE PAIGE GRIEVANCE

35. Respondent failed to competently and diligently represent Paige.

36. Respondent failed to communicate properly with Paige and Respondent did not earn the fee paid to him.

37. Respondent's neglect caused an undue prejudice to the administration of justice.

38. Respondent failed to respond to the grievance, failed to answer the Complaint, and failed to appear for the disciplinary hearing.

39. Complaint proved by clear and convincing evidence that Respondent violated Rules 1.1, 1.3, 1.4, 1.5, 8.4(a) and (d), ORPC and Rules `1.3 and 5.2, RGDP.

RECOMMENDATIONS OF DISCIPLINE

After listening to the sworn testimony of the witnesses, reviewing the exhibits admitted, considering the allegations deemed admitted and reviewing the ORPC relevant to this case, the Trial Panel unanimously finds by clear and convincing evidence that Respondent has committed specific acts which constitutes professional misconduct in violation of ORPC and the RGDP as noted above.

The Trial Panel recommends that Mr. Siegrist be disbarred from the practice of law. The Trial Panel also recommends Mr. Siegrist pay the cost associated with these proceedings.

DATED: November 4, 2019.

Respectfully submitted by:

Douglas L. Jackson
Trial Panel President Master

Jody R. Nathan
Trial Panel Lawyer Member

Kevin Martin
Trial Panel Non-Lawyer Member

CERTIFICATE OF SERVICE

The undersigned certifies that on the 8th day of November, 2019, at the direction of the Presiding Master of the Professional Responsibility Tribunal, service of a true and correct copy of the foregoing document was made by first-class mail, on:

Stephen L. Sullins
Assistant General Counsel
1901 N. Lincoln Blvd.
P.O. Box 53036
Oklahoma City, OK 73152
ATTORNEY FOR COMPLAINANT

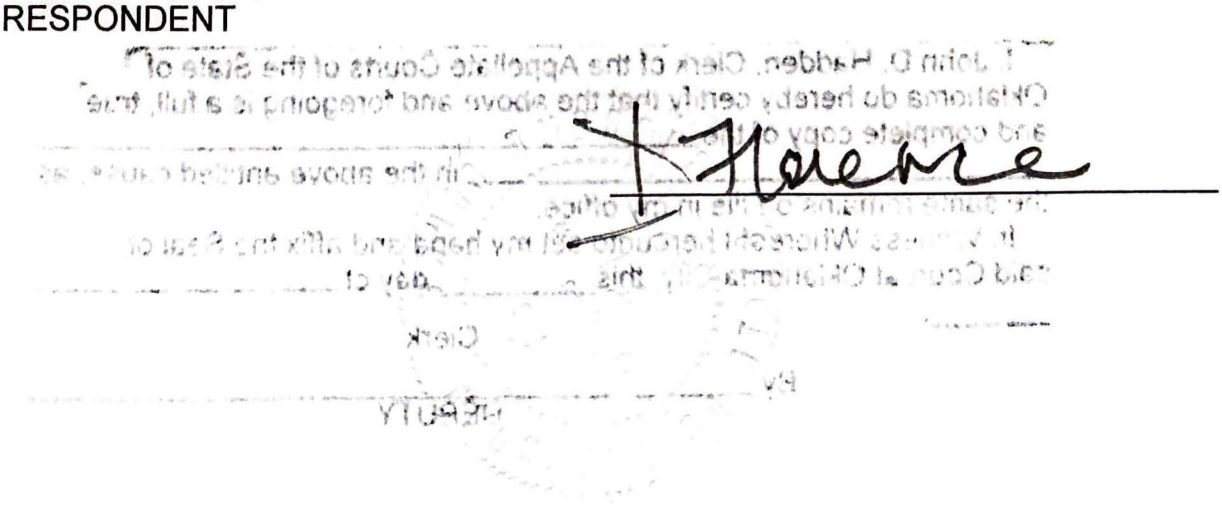
Douglas Jackson
323 W. Broadway
PO Box 1549
Enid, OK 73702
TRIAL PANEL PRESIDING MASTER

Jody R. Nathan
Williams Center Tower II
Two W. Second St., 9th Floor
Tulsa, OK 74103
TRIAL PANEL LAWYER MEMBER

Kevin Martin
3368 Hidden Ridge Rd.
Woodward, OK 73801
TRIAL PANEL NON-LAWYER MEMBER

Kent LeRoy Siegrist
5918 East 31st Street
Tulsa, OK 74135
Roster Address

512 S. Nysssa Avenue
Broken Arrow, OK 74012
Additional Mailing Address
RESPONDENT



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 Report of Trial Panel 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 02 day of September 2020.

Clerk

By _____ DEPUTY

2020 OK 18

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA ex rel., OKLAHOMA BAR ASSOCIATION,	)	
Complainant,	)	
v.	)	SCBD 6825
KENT LEROY SIEGRIST,	)	FOR OFFICIAL PUBLICATION
Respondent.	)	

ORIGINAL PROCEEDING FOR ATTORNEY DISCIPLINE

¶0 The Complainant, State of Oklahoma *ex rel.* Oklahoma Bar Association, charged the Respondent Kent Leroy Siegrist with two counts of professional misconduct: (1) Respondent's misappropriation of $1,135,000.00 as the Personal Representative of his father's estate, and (2) Respondent's failure to competently and diligently represent another client. The Respondent wholly failed to respond to the Complaint, and failed to appear at the disciplinary hearing, where the facts underlying the Complaint were deemed admitted. The Professional Responsibility Tribunal recommended the Respondent be disbarred from the practice of law and to pay the costs associated with the proceedings. Respondent's actions violate the rules of professional conduct and constitute the commission of acts contrary to prescribed standards of conduct. We hold there is clear and convincing evidence that the Respondent's conduct warrants disbarment. The Respondent is disbarred and ordered to pay the costs as herein provided within ninety days after this opinion becomes final.

RESPONDENT DISBARRED
AND ORDERED TO PAY COSTS.

Stephen L. Sullins, Assistant General Counsel, Oklahoma Bar Association, Oklahoma City, Oklahoma, for Complainant.

KANE, J.:

¶1 Complainant State of Oklahoma *ex rel.* Oklahoma Bar Association began disciplinary proceedings pursuant to Rule 6, Rules Governing Disciplinary

EXHIBIT
3

Proceedings (RGDP), 5 O.S.2011 ch.1, app. 1-A, alleging two (2) counts of professional misconduct against Respondent Kent Leroy Siegrist. The Respondent is an active member of the Oklahoma Bar Association and is currently in good standing. The Complainant's allegations arise in part from the Respondent's mishandling of his father's estate, as the personal representative for that estate, and misconduct towards a separate client. The Complainant alleges the Respondent's actions are in violation of the Oklahoma Rules of Professional Conduct (ORPC), 5 O.S.2011 ch.1, app. 3-A, and the RGDP and are cause for professional discipline.

I. PROCEDURAL HISTORY

¶2 On May 10, 2018, Respondent's brother, David Siegrist, filed his grievance (Siegrist grievance) against Respondent with the Oklahoma Bar Association. Thereafter, on August 24, 2018, Brian Paige filed his grievance (Paige grievance) against Respondent with the Oklahoma Bar Association. Respondent failed to respond to either grievance. On August 15, 2019, a Complaint was filed in this matter by the Complainant against Respondent pursuant to Rule 6, RGDP, alleging two counts of professional misconduct. Respondent failed to file an Answer to the Complaint. On October 1, 2019, Complainant filed a Notice of Service detailing its attempts to serve Respondent with the Complaint and all of the filed materials in this matter. There is no dispute that Respondent was

provided with proper notice of the proceedings.[1] On October 8, 2019, Complainant filed an Amended Motion to Deem Allegations Admitted.[2] The motion was sustained by the Professional Responsibility Tribunal (PRT) at the beginning of the disciplinary proceedings on October 9, 2019.[3] Respondent failed to appear at the hearing.

¶3 On November 8, 2019, the PRT issued its Trial Panel Report (Report). The PRT found by clear and convincing evidence that Respondent violated Rules 1.1, 1.3, 1.4, 1.5, and 8.4(a), (c), and (d), ORPC, and Rules 1.3 and 5.2, RGDP, with the recommendation that Respondent be disbarred from the practice of law and that he be ordered to pay the costs of these proceedings.

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In this case, Complainant mailed a copy of the Siegrist grievance to Respondent on May 23, 2018, requesting a response within twenty (20) days. Complainant sent a second letter to Respondent, with the Siegrist grievance enclosed, on November 27, 2018, via electronic mail, regular mail, and certified mail, requesting a response within twenty (20) days. Complainant mailed a copy of the Paige grievance to Respondent on August 29, 2018, requesting a response within twenty (20) days. Complainant also sent a second copy of the Paige grievance to Respondent enclosed within the November 27, 2018 letter via electronic mail, regular mail, and certified mail. *See* Rule 13.1, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S.2011 ch.1, app. 1-A.

On August 15, 2019, a copy of the formal Complaint and entry of appearance was mailed certified mail, return receipt requested, to Respondent at his official roster address as listed with the Oklahoma Bar Association. *See* Rule 6.7, RGDP, 5 O.S.2011 ch.1, app. 1-A.

Additional letters were mailed by the Complainant to Respondent regarding the Siegrist and Paige grievances and the corresponding Complaint, including a letter mailed on August 21, 2019, enclosing a copy of the formal Complaint and entry of appearance to an additional mailing address which Respondent was using when filing documents with the courts and a final letter, mailed September 10, 2019, which contained copies of all of the filed pleadings, was mailed to Respondent's official roster address and to the Respondent's second address. Complainant even went as far as employing a private process server. The private process server, John Lichtenegger, testified he made fourteen attempts to serve Respondent. Twice he testified he saw Respondent and tried to serve him, but was unsuccessful. He testified he believed Respondent was trying to avoid service.

The Complainant went above and beyond the service requirements as set forth in Rule 13.1, RGDP. Despite all of Complainant's efforts, Respondent failed to respond to the grievances, failed to respond to the Complaint when the disciplinary action was filed against him, and failed to appear for his disciplinary hearing.

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See Rule 6.5, RGDP, 5 O.S.2011 ch.1, app. 1-A.

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See Rule 6.4, RGDP, 5 O.S.2011 ch.1, app. 1-A.

II. STANDARD OF REVIEW

¶4 In bar disciplinary proceedings, this Court possesses exclusive original jurisdiction. *State ex rel. Okla. Bar Ass'n v. Holden*, 1995 OK 25, ¶ 10, 895 P.2d 707, 711. Our review of the evidence is *de novo* in determining if the Complainant proved its allegations of misconduct by clear and convincing evidence. *State ex rel. Okla. Bar Ass'n v. Bolusky*, 2001 OK 26, ¶ 7, 23 P.3d 268; Rule 6.12(c), RGDP. Clear and convincing evidence is that measure or degree of proof which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. *See State ex rel. Okla. Bar Ass'n v. Green,* 1997 OK 39, ¶ 5, 936 P.2d 947, 949. Our goals in disciplinary proceedings are to protect the interests of the public and to preserve the integrity of the courts and the legal profession, not to punish the offending lawyers. *State ex rel. Okla. Bar Ass'n v. Kinsey,* 2009 OK 31, ¶ 15, 212 P.3d 1186.

¶5 Whether to impose discipline is a decision that rests solely with this Court, and the recommendations of the PRT are neither binding nor persuasive. *See State ex rel. Okla. Bar Ass'n v. Eakin*, 1995 OK 106, ¶ 8, 914 P.2d 644, 648. To make this assessment, we must receive a record that permits "an independent on-the-record-determination of the critical facts" and impose appropriate discipline. *State ex rel. Okla. Bar Ass'n v. Schraeder*, 2002 OK 51, ¶ 6, 51 P.3d 570. The Complainant submitted the record in this case which consisted of: (1) the pleadings filed with the Supreme Court; (2) the transcript of the hearing

before the PRT on October 9, 2019; (3) Complainant's Exhibits 1-52; (4) Complainant's Application to Assess Costs in the amount of $2,794.50 filed on November 8, 2019; and (5) the PRT's Report filed on November 8, 2019. We agree that the record before us is complete.

III. THE GRIEVANCES

A. Count I - The Siegrist Grievance

¶6 Respondent's father passed away and a probate was filed on May 5, 2008 in Canadian County, Case No. PB-2008-68. Respondent was named the Personal Representative of his father's estate in 2008. Thereafter, on or about May 3, 2017, David Siegrist, Respondent's brother, hired attorney Richard Fogg to represent him in the probate proceeding, and Mr. Fogg filed a Petition for Accounting. Mr. Fogg also sought to have his client David Siegrist named as the Personal Representative, thereby replacing Respondent as the Personal Representative.

¶7 Mr. Fogg testified that Respondent, as the Personal Representative of his father's estate, failed to file state and federal tax returns for several years. Mr. Fogg attended at least nine court appearances on behalf of David Siegrist in the probate proceeding. Respondent only appeared twice.[4] Respondent, likewise, failed to attend his deposition and the scheduled mediation in the probate proceeding. Mr. Fogg's legal assistant, Katie Reed, testified how she spent an

[4] One of Respondent's appearances was a hearing on his assets.

extensive amount of time looking through the estate and Respondent's personal bank accounts trying to determine how much money was taken from the estate and transferred to accounts owned by Respondent.

¶8 On April 25, 2018, a Journal Entry of Judgment was entered by Judge Hatfield which found that Respondent had converted $1,135,000.00 of estate funds while acting as the Personal Representative of his father's estate. Specifically, Judge Hatfield found, in pertinent part, that:

> Respondent should be charged with a statutory enhancement of recovery as a result of conversion, breach of duty of the Court's Citation and to the Estate, disposition of monies, goods or chattels of the decedent, misappropriation and unauthorized transfers of estate assets for his personal use and enters Judgment against Respondent, Kent Siegrist, to double the present amount of interim Judgment of $1,135,000.00 to a stated interim Judgment in the sum of $2,270,000.00. . . .

Judge Hatfield further found that Respondent was in contempt of court and guilty of conversion, misappropriation, willful breach, and disregard of duty. These judgments were not appealed and stand as final adjudications.

B. Count II – The Paige Grievance

¶9 Brian Paige paid Respondent $800.00 to represent him in his Chapter 13 bankruptcy proceeding. Respondent failed to timely file Paige's amended bankruptcy plan causing the case to be dismissed. Paige testified that he tried to contact Respondent numerous times but was unable to reach him. When Paige finally connected with him, Respondent admitted that it was his fault the amended bankruptcy plan was not timely filed and that he would try and get it reinstated.

Respondent also told Paige that he had "relapsed" due to his drinking and was going into "treatment". Eventually, Paige had to have another attorney represent him in his bankruptcy proceeding.

IV. THE RULE VIOLATIONS

¶10 The PRT filed its Report on November 8, 2019. The Report found the Complainant had proven by clear and convincing evidence that Respondent violated Rules 1.1 (Competence)[5], 1.3 (Diligence)[6], 1.4 (Communication)[7], 1.5 (Fees)[8], and 8.4(a), (c), and (d), (Violating Rules of Professional

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[5] "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Rule 1.1, ORPC, 5 O.S.2011 ch.1, app. 3-A.

[6] "A lawyer shall act with reasonable diligence and promptness in representing a client." Rule 1.3, ORPC, 5 O.S.2011 ch.1, app. 3-A.

[7] Rule 1.4, ORPC, 5 O.S.2011 ch.1, app. 3-A provides:

> (a) A lawyer shall:
>
> > (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
> > (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
> > (3) keep the client reasonably informed about the status of the matter;
> > (4) promptly comply with reasonable requests for information; and
> > (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional conduct or other law.
>
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

[8] Rule 1.5, ORPC, 5 O.S.2011 ch.1, app. 3-A provides, in pertinent part:

> 0. A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
>
> > (1) the time and labor required, the novelty and difficulty of the questions

Conduct/Engaging in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation),[9] ORPC, and Rules 1.3 (Discipline for Acts Contrary to Prescribed Standards of Conduct) and 5.2 (Investigations)[10], RGDP, with the recommendation that Respondent be disbarred from the practice of law and that he be ordered to pay the costs of these proceedings.

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involved; and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent.

[9] Rule 8.4(a), (c) and (d), ORPC, 5 O.S.2011 ch.1, app. 3-A provides, in pertinent part:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

....

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice....

[10] Rule 5.2, RGDP, 5 O.S.2011 ch.1, app. 1-A provides, in pertinent part:

After making such preliminary investigations as the General Counsel may deem appropriate the General Counsel **shall** either (1) **notify** the person filing the grievance and **the lawyer** that the allegations of the grievance are inadequate, incomplete, or insufficient to warrant the further attention of the Commission, provided that such action shall be reported to the Commission at its next meeting, or (2) **file and serve a copy of the grievance . . . upon the lawyer, who shall thereafter make a written response which contains a full and fair disclosure of all the facts and circumstances pertaining to the respondent's lawyer's alleged misconduct** . . . . Deliberate misrepresentation in such response shall itself be grounds for discipline. **The failure of a lawyer to answer within twenty (20) days after service of the grievance** (or recital of the factual allegations) . . . **shall be grounds for discipline**.

(emphasis added).

¶11 For conduct to constitute a Rule 8.4, ORPC, violation, the misrepresentation, dishonesty, fraud and/or deceit must be shown by clear and convincing evidence that the declarant had an underlying motive, i.e., bad or evil intent, for making the statement. *See State ex rel. Okla. Bar Ass'n v. Johnston,* 1993 OK 91, ¶ 16, 863 P.2d 1136, 1143. An intent element is required and the complainant must adequately show the attorney had a purpose to deceive. *State ex rel. Okla. Bar Ass'n v. Besly,* 2006 OK 18, ¶ 43, 136 P.3d 590.

¶12 The Complainant asserts in its brief that the Respondent's actions constitute misappropriation of the estate's funds in regards to the Siegrist grievance. This Court has explained many times the three levels of culpability regarding the mishandling of client funds. The three levels are commingling, simple conversion, and misappropriation. *State ex rel. Okla. Bar Ass'n v. Combs,* 2007 OK 65, ¶ 13, 175 P.3d 340. Misappropriation is the most serious offense of the three. It is not merely simple conversion, i.e., the use of a client's funds for a purpose other than that for which they are intended, but additionally involves an element of deceit and fraud. *Id.* ¶¶ 15-16.

¶13 We agree with the Complainant that Respondent's behavior in regards to the Siegrist grievance was dishonest, fraudulent, deceitful, and that he misappropriated the estate's funds for his own personal benefit. We find clear and convincing evidence that Respondent intentionally deceived his brother and the court about the status of his father's estate. Respondent's actions and inactions elevated Respondent's behavior from simple conversion to

misappropriation, as Respondent repeatedly failed to respond to inquiries from his brother and his brother's attorney concerning the status of the estate, which forced David Siegrist to hire counsel to request a formal accounting from the estate.

¶14 **We hold that the Complainant has proven by clear and convincing evidence the Respondent violated Rules 8.4(c) and (d), ORPC, and Rules 1.3 and 5.2, RGDP, in regards to the Siegrist grievance. Respondent failed to respond to the Siegrist grievance, failed to answer the Complaint and failed to appear at his own disciplinary hearing.**

¶15 In regards to the Paige grievance, Respondent failed to timely file Paige's amended bankruptcy plan causing the case to be dismissed. After numerous attempts to contact and communicate with Respondent, Paige testified that Respondent admitted that it was his fault the bankruptcy plan was not timely filed and that he would try and get it reinstated. Ultimately, Paige was forced to retain different counsel to represent him in his bankruptcy case. Respondent's actions show a lack of diligence and failure to communicate with his client. *See* Rules 1.3 and 1.4, RGDP. Respondent did not provide competent representation to Paige, nor did he earn the $800.00 fee he was paid. *See* Rules 1.1 and 1.5, RGDP.

¶16 **We hold Complainant has also proven by clear and convincing evidence that Respondent failed to competently and diligently represent Paige, failed to properly communicate with Paige, failed to earn the fee paid**

to him by Paige for legal services, and that Respondent's neglect caused an undue prejudice to the administration of justice, all in violation of Rules 1.1, 1.3, 1.4, 1.5 and 8.4(a) and (d), ORPC, and Rules 1.3 and 5.2, RGDP.

V. DISCIPLINE

¶17 Discipline is imposed to preserve public confidence in the Bar. *State ex rel. Okla. Bar Ass'n v. Phillips,* 2002 OK 86, ¶ 21, 60 P.3d 1030. Our goal is not to punish, but to gauge an attorney's continued fitness to practice law in order to safeguard the interest of the public, the courts, and the legal profession. *Id.* This Court also administers discipline to deter an attorney from similar future conduct and to act as a restraining vehicle on others who might consider committing similar acts. *State ex rel. Okla. Bar Ass'n v. Townsend*, 2012 OK 44, ¶ 31, 277 P.3d 1269. Discipline is fashioned to coincide with the discipline imposed upon other attorneys for like acts of professional misconduct. *Id.*

¶18 The Court has consistently disbarred attorneys for conduct similar to Respondent's. In *State ex rel. Okla. Bar Ass'n v. Kleinsmith*, 2018 OK 5, 411 P.3d 365, this Court found that Kleinsmith should be disbarred due to his deceitful billing practices that resulted in his client paying approximately $57,000 for services rendered that was then misappropriated by respondent for his own benefit. *See id.* ¶ 12. Similar to the facts in the present case, this Court in *State ex rel. Okla. Bar Ass'n v. Arnold*, 2003 OK 31, 72 P.3d 10, disbarred attorney/trustee Arnold based on his conversion of client funds, specifically holding that the harshest discipline should be applied due to the attorney's special relationship as the trustee of the trust/estate. *See id.* ¶ 22. Likewise, in *State ex rel. Okla. Bar Ass'n v. Mayes,* 2003 OK 23, 66 P.3d 398, this Court imposed disbarment as discipline not only because the attorney misappropriated

his client's funds, but we also emphasized the significance of his failure to cooperate with the grievance process. *See id.* ¶ 32.

¶19 In the present case, Respondent not only has failed to cooperate, but appears to have taken active efforts to thwart the disciplinary process by evasion of service.[11] These uncontroverted facts, combined with the fact that Respondent failed to respond to either grievance, failed to file an Answer to the Complaint, and failed to even appear for his own disciplinary hearing shows a complete indifference by Respondent to the grievance process, and the legitimate goals advanced by said process.

¶20 In addition to the Respondent's misappropriation of his clients' funds, his other misconduct warrants discipline. *See State ex rel. Okla. Bar Ass'n v. Whitebook,* 2010 OK 72, ¶ 17, 242 P.3d 517 (attorney disciplined and suspended for failure to provide competent representation, failure to act with diligence, failure to keep clients reasonably informed, failure to comply with reasonable requests for information, and failure to charge a client a reasonable fee); *State ex rel. Okla. Bar Ass'n v. Beasley,* 2006 OK 49, ¶ 44, 142 P.3d 410 (attorney disciplined and suspended for failure to act with diligence, failure to communicate with clients, failure to refund unearned fees, and failure to provide information to the bar).

¶21 We agree with Complainant's recommendation that Respondent be disbarred from the practice of law and that he be ordered to pay the costs of these proceedings. Respondent's misconduct is disturbing. It is our difficult duty

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[11] *See, supra* note 1.

to withdraw a license to practice law, but we shall if necessary to protect the interest of the public and the legal profession as a whole. Because Respondent has failed to participate at any level in regards to these two grievances and the corresponding Complaint, the record is silent as to Respondent's point of view and thus, we have no choice but to adopt the facts as presented to us by the Complainant. *See* Rule 5.2, RGDP. **We hold that the Respondent's misconduct warrants disbarment. Accordingly, it is ordered by this Court that the Respondent be disbarred and his name be stricken from the roll of attorneys licensed to practice law in this state.**

VI. ASSESSMENT OF COSTS

¶22 The Complainant filed an application to assess costs on November 8, 2019. The total amount assessed was $2,794.50. Rule 6.13, RGDP, provides in pertinent part:

> Within thirty (30) days after the conclusion of the hearing, the Trial Panel shall file with the Clerk of the Supreme Court a written report which shall contain the Trial Panel's findings of fact on all pertinent issues and conclusions of law (including a recommendation as to discipline, if such is found to be indicated, and a recommendation as to whether the costs of the investigation, record and proceedings should be imposed on the respondent) . . . .

Rule 6.15, RGDP, provides: "(a) The Supreme Court may approve the Trial Panel's findings of fact or make its own independent findings, impose discipline, dismiss the proceedings or take such other action as it deems appropriate." We deem the payment of costs in this matter to be appropriate. Rule 6.16, RGDP, requires a disciplined lawyer to pay the costs of the disciplinary proceeding within

90 days after the Supreme Court's order becomes effective unless the costs are remitted in whole or in part by the Court for good cause shown. The Respondent is ordered to pay the cost of this proceeding in the amount of $2,794.50 within ninety (90) days after this opinion becomes final.

RESPONDENT DISBARRED
AND ORDERED TO PAY COSTS.

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 OPINION 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 10th day of September 2020.

Clerk

By _____ DEPUTY

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

Contents

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 himor 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

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

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

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

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

[1] So in original.

Rule 4.03. Time to File Record

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

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

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

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

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

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

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

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

Rule 4.04. Copies of the Record

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

Rule 4.05. Requisites of Briefs

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

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

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

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

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

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

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

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

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

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

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

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

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

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

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

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

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

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

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

Rule 4.06. Oral Argument

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

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

(1) the appeal is frivolous;

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

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

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

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

Rule 4.07. Decision and Judgment

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

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

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

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

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

(i) the panel that entered the findings; or

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

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

Rule 4.08. Appointment of Statewide Grievance Committee

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

Rule 4.09. Involuntary Dismissal

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

(a) for want of jurisdiction;

(b) for want of prosecution; or

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

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

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

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

Rule 5.02. Hearing

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

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

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

Rule 6.02. Interlocutory Suspension

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

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

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

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

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

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

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

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

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

Rule 7.02. Order to Show Cause

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

Rule 7.03. Attorney's Response

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

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

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

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

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

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

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

Rule 8.02. Petition and Answer

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

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

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

Rule 8.03. Discovery

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

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

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

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

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

Rule 8.04. Ability to Compel Attendance

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

Rule 8.05. Respondent's Right to Counsel

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

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

Rule 8.06. Hearing

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

Rule 8.07. Notice of Decision

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

Rule 8.08. Confidentiality

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

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

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

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

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

Rule 9.02. Discovery

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

Rule 9.03. Physical or Mental Examinations

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

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

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

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

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

Rule 9.04. Judgment

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

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

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

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

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