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

| | | |
|---|---|---|
| **IN THE MATTER OF** | § | |
| **WESLEY S. SPEARS,** | § | **CAUSE NO. 68987** |
| **STATE BAR CARD NO. 18898400** | § | |

## SECOND AMENDED PETITION FOR RECIPROCAL DISCIPLINE

**TO THE BOARD OF DISCIPLINARY APPEALS:**

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Wesley S. Spears (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 Second Amended Petition for Reciprocal Discipline at Wesley S. Spears, 5 Constitution Plaza, Apt. 306, Hartford, Connecticut 06103-1823.

3. On or about September 25, 2023, a Memorandum of Decision (Exhibit 1) was entered by the State of Connecticut, Superior Court, Judicial District of Hartford, Docket No. CV-22-6160733-S in a matter styled *Office of the Chief Disciplinary Counsel v. Wesley S. Spears*, which states in pertinent part as follows:

## FINDING RE: VIOLATIONS OF RULES

The court finds that disciplinary counsel has proved by clear and convincing evidence that the respondent violated the following rules of professional conduct:[19]

*Rule 3.1 - Meritorious Claims and Contentions*

Rule 3.1 of the Rules of Professional Conduct provides in relevant part: "A lawyer shall not bring 9r defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact . for doing so that is not frivolous ... ..' ' According to the commentary to this rule, "[ w ]hat is required of lawyers ... is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions."

The respondent violated this rule by making statements in pleadings in this case that he knew were false or that were made with reckless disregard for the truth. The allegations were not and have not been supported by law or fact, but only by innuendo, suspicions, and speculation and his personal beliefs.

The respondent has defended his conduct with claims of racial bias. Bias of any sort, including racial and gender bias, has no place in the courtroom or the system of justice. *Burton v. Mottolese*, 267 Conn. 1, 48-49, 835 A.2d 998 (2003), cert. denied, 541 U.S. 1073, 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004). "Of all the charges that might be leveled against one sworn to administer justice and to faithfully and impartially discharge and perform all the duties incumbent upon me ... a charge of bias must be deemed at or near the very top in seriousness, for bias kills the very soul of judging-fairness." (Internal quotation marks omitted.) Id., 49. However, the respondent did not provide any objective reasonable beliefs that his claims of racial bias were true.

*Rule 3.3 – Candor Toward the Tribunal*

19 The respondent does not dispute that the rules of professional conduct apply to attorneys when representing themselves. *Notopoulos* v. *Statewide Grievance Committee,* 277 Conn. 218, 890 A.2d 509, cert. denied, 549 U.S. 823, 127 S. Ct. 157, 166 L. Ed. 2d 39 (2006). "Whether an attorney represents himself or not, his basic obligation to the court as an attorney remains the same. He is an officer of the court … Disciplinary proceedings not only concern the rights of the lawyer and the client, but also the rights of the public and the rights of the judiciary to ensure that lawyers uphold theil' unique position as_ officers ... of the court ... An attorney must conduct himself or herself in a manner that comports with the proper functioning of the judicial system." (Citation omitted) *In the Maller of Presnick.* 19 Conn. App. 340, 345, 563 A.2d 299, *cert.* denied, 213 Conn. 801, 567 A.2d 833 (1989).

Rule 3.3 (a)(1) of the Rules of Professional Conduct provides: "A lawyer shall riot knowingly. . . [m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." "[A]n assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonable diligent inquiry .... " (Internal quotation marks omitted.) *Burton v. Mottolese*, supra, 267 Conn. 46.

The respondent violated this rule by making false and defamatory statements to the court and in· pleadings concerning Superior Court judges and others and asserting a broad-ranging conspiracy against him due to his race for the purpose of undermining his ability to represent his clients properly and effectively.

*Rule 8.2-Judicial and Legal Officials*

Rule 8.2 (a) provides in relevant part: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualification or integrity of a judge, adjudicatory officer of public legal officer . . . ." The commentary to this rule explains: "Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for . . . appointment of judicial office ... Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice." See also *Burton v. Mottolese*, supra, 267 Conn. 46.

The standard under this rule is well-established[20] and provides that the OCDC must "first present evidence of misconduct sufficient to satisfy its burden of proving its case by clear and convincing evidence. . . . If the plaintiff sustains its burden, then the burden of persuasion shifts to the defendant to provide proof of an objective and reasonable basis for the allegations." (Citation omitted.) *Statewide Grievance Committee v. Burton*, 299 Conn. 405, 412-13, 10 A.3d 507 (2011); see also *Somers v. Statewide Grievance Committee*, 245 Conn. 277, 290, 715 A.2d 712 (1998). The court finds that the OCDC met its burden to establish its claims, through the submission of the respondent's statements, testimony from

20 The court made it clear to the respondent several times, both off and on the record, that it would apply this well-established standard in deciding this case.

Judges Gold and Baldini, and through the testimony of the respondent himself who provided no credible or objective proof to support his claims of racial bias, broad-ranging conspiracies against him, an "adulterous affair" or that judges acted to protect or support Judge Baldini.

"When an attorney, subject to sanctions for violating rule 8.2 (a), has presented no evidence establishing a factual basis for [his or] her claims , .. the fact finder reasonably may conclude that the attorney's claims against the court were either knowingly false or made with reckless disregard as to [their] truth or falsity." (Citations omitted; internal quotation marks omitted) *Notopoulos v. Statewide Grievance Committee*, 277 Conn. 218, 227-28, 890 A.2d 509, cert. denied, 549 U.S. 823, 127 S. Ct. 157, 166 L. Ed. 2d 39 (2006), Unsupported allegations do not give rise to "an objective, reasonable belief that the assertions were true." Id., 228. The Supreme Court has "adopted an objective test for attorney speech pursuant to which an attorney speaking critically of a judge or a court must have an objective basis for the statements. . . . [W]holly conclusory allegations of judicial misconduct, without objective factual support, justify the imposition of attorney discipline." (Citations omitted; internal quotation marks omitted.) *Statewide Grievance Committee v. Burton*, supra, 299 Conn. 413. Statements of opinion related to court experiences are insufficient Id. "Adverse rulings in court proceedings, and even incorrect rulings, do not in and of themselves amount to evidence of illegal or unethical behavior on the part of a judge." *Notopoulos v. Statewide Grievance Committee*, supra, 230.

The respondent failed to provide any credible objective evidence to support any of his statements. Rather, the respondent's assertions were wholly conclusory and lacking any objective factual support.

*Rule 8.4 (3) and (4) – Misconduct*

Rule 8.4 of the Rules of Professional Conduct provides in relevant part that "[i]t is professional misconduct for a lawyer to . . . (3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation ... [or] (4) Engage in conduct that is prejudicial to the administration of justice . . . ." "Dishonesty is not defined in the Rules of Professional Conduct; we therefore look to the dictionary definition of the word for its common usage. . . . Merriam-Webster's Collegiate Dictionary defines 'dishonesty' as a 'lack of honesty or integrity: disposition to defraud or deceive.' . . . Black's Law Dictionary defines 'dishonest' as 'not involving straightforward

dealing; discreditable; underhanded; fraudulent."' (Citations omitted.) *Cohen v. Statewide Grievance Committee*, 339 Conn. 503, 525, 261 A.3d 722 (2021). "It is not unusual for a lawyer who violates rule 3.3 (a) (I) to also violate rule 8.4 (3)." Id.; see also *Burton v. Mottolese*, supra, 267 Conn. 51-52 (holding that trial court reasonably concluded plaintiff violated rule 3.3 [a] [1] and that same conduct supported conclusion that plaintiff violated rule 8.4 [(3]).

"An attorney as an officer of the court in the administration of justice, is continually accountable to it for the manner in which he exercises the privilege which has been accorded him." (Internal quotation marks omitted.) *Statewide Grievance Committee v. Ganim*, 311 Conn. 430, 452, 87 A.3d 1078 (2014). Attorneys must "conduct themselves in a manner compatible with the role of courts in the administration of justice." (Internal quotation marks omitted.) *Notopoulos v. Statewide Grievance Committee*, supra, 277 Conn. 235. "[F]alse statements or statements made in reckless disregard of the truth that disparage a judge erode the public confidence in the judiciary and thereby undermine the administration of justice." Id., 236; see also *Burton v. Mottolese*, supra, 267 Conn. 46 ("[F]alse statements by a lawyer can unfairly undermine public confidence in the administration of justice." [Internal quotation marks omitted.]).

"Attorneys have an obligation to act fairly and with candor in *all* of their dealings before the court." (Emphasis in original.) *Cummings Enterprise, Inc. v. Moutinho*, 211,Conn. App. 130, 134, 271 A.3d 1040 (2022). "Because the image of a dishonest lawyer is very difficult to erase from the public mind-set, attorneys are expected to be leading citizens who act with candor and honesty at all times." *Statewide Grievance Committee v. Fountain*, 56 Conn. App. 375, 377, 743 A.2d 647 (2000).

"Disciplinary proceedings not only concern the rights of the lawyer and the client, but also the rights of the public and the rights of the judiciary to ensure that lawyers uphold their unique position as officers and commissioners of the court " *Cohen v. Statewide Grievance Committee*, supra, 339 Conn. 516; see also *Notopoulos v. Statewide Grievance Committee*, supra, 277 Conn. 518.

The court finds that the respondent violated these rules by demonstrating a lack of honesty in his pleadings and testimony before the court and making unsubstantiated allegations of a broad-ranging conspiracy, contrary to his role in the judicial system as an officer of the court and thereby undermining public confidence in the judicial system.

## DISCIPLINE/SANCTIONS

Having concluded that the respondent violated the above Rules of Professional Conduct, the court must now determine what sanction to impose. The OCDC urges the court to disbar the respondent. The respondent asserts that the OCDC failed in its proof.

The court has the authority to discipline an attorney for violating the Rules of Professional Conduct. Practice Book § 2-44; *Heslin v. Connecticut Law Clinic of Trantolo & Trantolo*, 190 Conn. 510,523,461 A.2d 938 (1983) ("The Superior Court possesses inherent authority to regulate attorney conduct and to discipline the members of the bar."). "[A] court is free to determine in each case, as may seem. best in light of the entire record before it, whether a sanction· is appropriate and, if so, what the sanction should be." *Burton v. Mottolese,* supra, 267 Conn. 54.

"An attorney as an officer of the court in the administration of justice, is continually accountable to it for the manner in which he exercises the privilege which has been accorded him. His admission is upon the implied condition that his continued enjoyment of the right conferred is dependent upon him remaining a fit and safe person to exercise it, so that when he, by misconduct in any capacity, discloses that he has become or is an unfit or unsafe person to be entrusted with the responsibilities and obligations of an attorney, his right to continue in .the enjoyment of his professional privilege may and ought to be declared forfeited. . . . Therefore, [i]f a court disciplines an attorney, it does so not to mete out punishment to an offender, but [so] that the administration of justice may be safeguarded, and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession." (Citation omitted; internal quotation marks omitted,) *Massameno v. Statewide Grievance Committee*, 234 Conn. 539, 554-55, 663 A.2d 317 (1995).

Pursuant to Practice Book § 2-47 (a), the court possesses a great deal of discretion as to whether to impose a "reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate." See also *Statewide Grievance Committee v. Timbers*, 70 Conn. App. 1, 3, 796 A.2d 565, cert. denied, 261 Conn. 908, 804 A.2d 214 (2002), cert. denied, 537 U.S. 1192, 123 S. Ct. 1274, 154 L. Ed. 2d 1027 (2003). "Thus, [a] court is free to determine in each case, as may seem best in light of the entire record before it, whether a sanction is appropriate and, if so,

what the sanction should be." (Internal quotation marks omitted.) *Burton v. Mottolese*, supra, 267 Conn. 54. "[T]he power of the courts is left unfettered to act as situations, as they may arise, may seem to require, for efficient discipline of misconduct and the purging of the bar from the taint of unfit membership. Such statutes as ours are not restrictive of the inherent powers which reside in courts to inquire into the conduct of their own officers, and to discipline them for misconduct." (Internal quotation marks omitted.) *Statewide Grievance Committee v. Rozbicki*, 211 Conn. 232, 239, 558 A.2d 986 (I 989).

"Courts considering sanctions against attorneys measure the defendant's conduct against the rules. Although the rules define misconduct, they do not provide guidance for determining what sanctions are appropriate. . . . Connecticut courts reviewing attorney misconduct, therefore, have consulted the American Bar Association's Standards for Imposing Lawyer Sanctions [ABA standards]. . . . Although the [ABA] standards have not been officially adopted in Connecticut, they are used frequently by the Superior Court in evaluating attorney misconduct and in determining discipline." (Internal quotation marks omitted.) *Disciplinary Counsel v. Serafinowicz*, 160 Conn. App. 92, 99, 123 A.3d 1279, cert. denied, 319 Conn. 953, 125 A.3d 531 (2015); see also *Statewide Grievance Committee v. Spirer*, 46 Conn. App. 450, 463-64, 699 A.2d 1047 (1997), rev'd on 9ther grounds, 247 Conn. 762, 725 A.2d 948 (1999).

"The [ABA] Standards provide that, after a finding of misconduct, a court should consider: (1) the nature of the duty violated; (2) the attorney's mental state; (3) the potential or actual injury stemming from the attorney's misconduct; and (4) the existence of aggravating or mitigating factors." *Burton v. Mottolese*, supra, 267 Conn. 55. Aggravating factors include "(a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; [and] G) indifference to making restitution." (Internal quotation marks omitted.) Id. Mitigating factors include: "(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or

cooperative attitude toward proceedings; (f) inexperience in the practice of Jaw; (g) character or reputation; (h) physical or mental disability or impairment; (i) delay in disciplinary proceedings; (j) interim rehabilitation; (k) imposition of other penalties or sanctions; (l) remorse; [and] (m) remoteness of prior offenses." Id., 55-56.

The court now considers these factors:

(1) *The nature of the duty violated*. The respondent violated his duty of honesty as well as his duty as an officer of the court by attacking, without proof, the integrity of the judicial process, judges of the Superior Court, prosecutors, and police. As an experienced attorney, the respondent knows or should know that as a participant in the administration of justice, and officer of the court, he is "continually accountable to it for the manner in which he exercises the privilege which has been accorded him." (Internal quotation marks omitted.) *Statewide Grievance Committee v. Ganim*, supra, 311 Conn. 452. "Attorneys have an obligation to act fairly and with candor in all of their dealings before the court, which includes factual statements made in open court." (Emphasis in original.) *Cummings Enterprise, Inc. v. Moutinho*, supra, 211 Conn. App. 134. "Because the image of a dishonest lawyer is very difficult to erase from the public mind-set, attorneys are expected to be leading citizens who act with candor and honesty at all times." *Statewide Grievance Committee v. Fountain*, supra, 56 Conn. App. 377. "As important as it is that an attorney be competent to deal with the oftentimes intricate matters which may be entrusted to him, it is infinitely more so that he be upright and trustworthy." (Internal quotation marks omitted.) *Statewide Grievance Committee v. Presnick*, 18 Conn. App. 316,325,559 A.2d 220 (1989). "It is paramount that an attorney . . . resolve to be honest at all events; and if [he or she] cannot be an honest lawyer, [he or she should] resolve to be honest without being a lawyer." (Internal quotation marks omitted.) *Statewide Grievance Committee v. Fountain*, supra, 378.

"[A] claim of judicial bias strikes at the very core of judicial integrity and tends to undermine public confidence in the established judiciary. . . . No more elementary statement concerning the judiciary can be made than that the conduct of the trial judge must be characterized by the highest degree 'of impartiality. If [the judge] departs from this standard, he [or she] casts serious reflection upon the system of which [the judge] is a part." (Citations omitted; internal quotation marks omitted.) *Knack v. Knack*, 224 Conn. 776, 792-93,_ 621 A.2d 267 (1993); see also *Burton v. Mattolese*, supra, 267 Conn. 46.

For these reasons, attorneys as officers of the court must be circumspect in their statements about the judiciary, and if they have a claim, they should follow proper channels 'to address their concerns.[21] Angry that Judges Gold and Droney alerted the OCDC of their concerns, the respondent chose to file defamatory, inappropriate, unsubstantiated and legally unsupported motions asserting false and defamatory harmful claims. Judges Gold and Droney were obliged to address their concerns about the respondent's competency under the rules of judicial conduct to protect the public and the respondent's clients. Although the respondent was within his rights to mount a defense to the petition for inactive status and provide an explanation for his erratic conduct and admitted mental health issues, see infra, such a defense did not include making unsubstantiated attacks the judges and the justice system.[22]

(2) *The respondent's mental state*. In this action, after an examination by a court appointed qualified medical expert, the respondent was determined not to be incapacitated to practice law by reason of mental infirmity or illness or because of drug dependency or addiction to alcohol. Thus, the respondent cannot, and does not, argue that his misconduct was caused by an infirmed mental state. The respondent acted willfully with full knowledge of the circumstances and consequences of his conduct. See, e.g., *Burton v. Mottolese*, supra, 267 Conn. 56.

(3) *The potential or actual injury stemming from the attorney's misconduct*. The respondent's conduct caused harm to the public's confidence in the bar, the legal profession and the integrity of the civil justice system. See *Burton v. Mottlese*, supra, 267 Conn. 56.

(4) *The existence of aggravating or mitigating factors*. The following aggravating factors are relevant to the court's determination of what discipline to impose:

**Prior discipline**. The respondent has a disciplinary record which includes a reprimand.

**Dishonest or selfish motive**. In addition to being dishonest, the respondent's conduct evidenced a selfish and vindictive motive. His false and unsubstantiated claims of affairs and racial

21 For example, claims of impropriety or judicial bias may be made by lawyers to the Judicial Review Counsel. See General Statutes§ 51-5lg, et seq.

22 Similarly, if the respondent believed that the search warrant or its execution at his home were illegal, he had legal avenues to challenge the warrant which he did not exercise.

conspiracies against him were made in direct response to the OCDC's petition for inactive status, which in tum were based on the judges' referral letter. Rather than responding to the petition for inactive status in a thoughtful and legally meaningful way, he chose instead to retaliate by making false and unsupported defamatory statements aimed at judges and the judicial system, for his own personal benefit and as retribution.

**Multiple offenses**. The court has found that the respondent's conduct violated numerous sections of the Code of Professional Conduct: Rule 3.1, Rule 3.3, Rule 8.2, and Rule 8.4 (3) and (4).

**Submission of false statements or deceptive practices during the disciplinary process**. The respondent's conduct in making false and defamatory statements all occurred during the process to determine if the respondent was incapacitated to practice law, and then continued through the trial on the misconduct presentment.

**Refusal to acknowledge wrongful nature of his conduct**. The respondent has shown no remorse for his conduct and, in fact, has doubled down on his unsupported claims in his post-hearing briefs, repeating his claim and making additional unsubstantiated claims against Judge Gold.

The respondent takes no responsibility for his own actions, which set these events in motion. It was the respondent's client that admittedly discharged a gun in the respondent's residence. That event resulted in a police investigation of a possible crime (illegal discharge of a firearm) that resulted in a search of his home. As the result of the search of his residence, the respondent was understandably shaken and upset by those events. Then began his unsolicited and improper email barrage to the judges, prosecutors, and court staff, which both in number, manner and substance, and by his own admissions, evidenced that the respondent was potentially incapacitated, sleep-deprived, suffering from PTSD and was unable to handle his criminal caseload. The judges properly responded to the respondent's conduct, by meeting with him informally and formally to no avail, leaving them no choice but to seek an investigation by the OCDC to determine the respondent's capacity to represent his clients in view of his admitted mental infirmities. The judges and others did not cause any of these events but merely reacted or responded to the respondent's conduct and admissions concerning his statements about his mental status and inability to handle his cases to protect his clients.

In response to the inactive status petition, the respondent chose a scorched earth defense by attempting to deflect attention from his own conduct and asserting unsubstantiated claims of improper conduct by others. This strategy did not advance his position in the inactive status proceeding but instead resulted in the present disciplinary proceeding.

Although there was some testimony by the respondent that the court thought showed a glimpse of possible remorse, it was short-lived as evidenced by the arguments made in the respondent's post hearing briefs. The respondent's lack of remorse and seemingly inability to take any responsibility for his own conduct is a serious concern to the court.

**Substantial experience**. The respondent has practiced law in civil and criminal courts for approximately thirty years. He is familiar with the Rules of Professional Conduct and the Practice Book, as well as the Rules of Evidence. Thus, there can be no claim that the respondent's conduct was attributable to inexperience.

The court finds that there was no evidence presented that would support any mitigating factors in this matter.

"Standards 6.1 and 6.12 provide that a suspension generally is appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit or misrepresentation." *Statewide Grievance Committee v. Fountain*, supra, 56 Conn. App. 375. Sanctions for conduct similar to that found here range , from reprimand to disbarment. See *Chief Disciplinary Counsel v. Rozbicki*, 326 Conn. 686, 167 A.3d 351 (2017), cert. denied, 138 S. Ct. 2583, 201 L. Ed. 2d 295 (2018) (4-year suspension for violations of rules 3.1, 8.2, and 8.4 [4]); *Notopoulos v. Statewide Grievance Committee*, supra, 277 Conn. 218 (reprimand for violations of rules 8.2 [a] and 8.4 [4]); *Burton v. Mottolese*, supra, 267 Conn. l (five-year disbarment for violations of rules including 3.3, 8.2, and-8.4 [3] and [4]); *Disciplinary Counsel v. Serafinowicz*, supra, 160 Conn. App. 92 (120-day suspension for violations of rules 8.2 and 8.4 [4]); *Chief Disciplinary Counsel v. Fetscher*, Superior Court, judicial district of Stamford, Docket No. CV-19-6040003-S (March 25, 2019, *Kavanewsky*, J.) (eight-month suspension for violations of rules 8.2 [a] and 8.4 [4]).

Based on all the forgoing factors, the court finds that the respondent's conduct was prejudicial to the administration of justice and involved dishonesty or misrepresentation thereby justifying a substantial period of suspension.

## CONCLUSION

Based on the foregoing findings, conclusions, and consideration of all the factors and legal precedent, the court orders as follows as to all violations:

1. The respondent is suspended for a period of two (2) years effective thirty (30) days from the date this decision is filed.

2. Upon the effective date of the suspension, the OCDC shall notify the chief clerks of all judicial districts and Probate Court administration of the respondent's suspension.

3. Within ten days of this decision, the parties shall provide the court with the names addresses and juris numbers of attorneys who could serve as trustee in this matter, pursuant to Practice Book § 2-64.

4. The respondent shall not deposit to, disburse any funds from, withdraw any funds from or transfer any funds from any client's funds, IOLTA or fiduciary accounts during the period of his suspension.

5. The respondent shall comply with Practice Book § 2-47B (Restrictions on the Activities of Deactivated Attorneys).

6. The respondent shall cooperate with the Trustee in all respects.

7. The respondent's failure to comply with this order shall be considered misconduct and may subject the respondent to additional discipline.

8. Any application for reinstatement shall be made pursuant to the provisions of Practice Book § 2-53.

4. A true and correct copy of Petitioner's Exhibit 1 is attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce a certified copy of Exhibit 1 at the time of hearing of this cause.

5. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the

notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enter a judgment imposing discipline identical, to the extent practicable, with that imposed by the State of Connecticut Superior Court and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

**Seana Willing**
Chief Disciplinary Counsel

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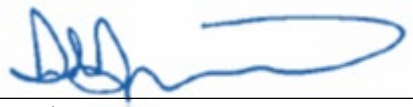


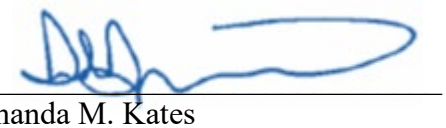
Amanda M. Kates
Bar Card No. 24075987

ATTORNEYS FOR PETITIONER

## CERTIFICATE OF SERVICE

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

Wesley S. Spears
5 Constitution Plaza, Apt. 306
Hartford, Connecticut 06103-1823



Amanda M. Kates

JUDICIAL DISTRICT OF
HARTFORD
STATE OF CONNECTICUT

**STATE OF CONNECTICUT**

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| DOCKET NO. CV-22-6160733-S | : | SUPERIOR COURT |
| OFFICE OF CHIEF DISCIPLINARY COUNSEL | : | JUDICIAL DISTRICT OF HARTFORD |
| v. | : | |
| WESLEY S. SPEARS | : | SEPTEMBER 25, 2023 |

**MEMORANDUM OF DECISION**

In this attorney disciplinary matter, the court must decide whether the respondent, Wesley S. Spears, violated certain rules of professional conduct by making false and defamatory allegations in pleadings in this action against judges and prosecutors and the Glastonbury Police Department. If the court determines that the plaintiff, the Office of Chief Disciplinary Counsel (OCDC), has established that Mr. Spears' conduct violated the Rules of Professional Conduct by clear and convincing evidence, the court must decide what sanction to impose. The court held an evidentiary hearing on April 12 and 13, 2023, at which the parties had the opportunity to present and cross-examine witnesses, introduce documentary proof, and submit posttrial briefs. After considering all of the record evidence and the parties' arguments, the court concludes that the OCDC has established that the respondent has violated the rules of professional conduct, and that a substantial period of suspension is warranted.



*Procedural Background*

This action began after Judges David Gold and Nuala Droney made a referral to the Chief Disciplinary Counsel, Brian Staines, concerning the respondent pursuant to Rule 2.14 of the Code of Judicial Conduct. Rule 2.14 of the Code of Judicial Conduct provides: "A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by



EXHIBIT 1

173.00

drugs or alcohol or by a mental, emotional, or physical condition, ***shall*** take appropriate action, which may include notifying appropriate judicial authorities or a confidential referral to a lawyer or judicial assistance program." (Emphasis added.)

Judge Gold is the presiding judge for Part A Hartford criminal matters and the chief administrative judge for the criminal division. Judge Droney was, at the time of the referral, the presiding judge of Part B criminal matters in Hartford.

The respondent has been practicing law in Connecticut since 1986 and represents defendants in criminal matters in Hartford. He was 69 years old in September 2022. He routinely appears and appeared in Hartford criminal court before the criminal judges, including Judges Droney and Gold.

In their referral letter, dated September 12, 2023, Judges Gold and Droney explained that since July 29, 2022, after the Glastonbury Police executed a search warrant on the respondent's home,[1] he sent numerous emails to judges and court personnel, many related to two pending criminal matters in which he represented the defendants, *State* v. *Edward Brozynski* and *State* v. *Raquan Lambert*, which "cause us to have reasonable concerns for Attorney Spears and his clients."[2] In particular, the judges' referral letter stated that the respondent failed to appear at several court events in August 2022, and that the respondent had provided notes from his physicians to explain his absences. The judges' referral letter states:

[1] In July 2022, a gun was discharged in the respondent's residence by an unidentified client of the respondent, which resulted in a bullet being located in a neighbor's residence. As a result, the Glastonbury Police Department sought and obtained a search warrant to search the respondent's residence. The search warrant was reviewed and approved by Judge Sheila Pratts, the presiding judge of the Manchester criminal court. The execution of the warrant caused the respondent great distress. He was present when the police searched his home. Although criminal charges were filed, they were ultimately dismissed after the respondent successfully completed a diversionary program.

[2] Although normally such a referral letter and its contents would be confidential, the judges' referral letter and attachments were entered into evidence as full exhibits at the public hearing in this matter. The respondent did not object. Although as discussed in this decision, the issue of the respondent's capacity has been resolved, the underlying facts and circumstances leading up to the judges' referral letter provide relevant background to this disciplinary matter.

> Notwithstanding his claims regarding his current health status, Attorney Spears has since filed a motion for speedy trial in the *Brozyniski* matter. Attorney Spears has also faxed the enclosed communication to the court in which he authorizes his doctor to disclose heath information allowing, *inter alia*, 'East Hartford Police or the State's Attorney's office to discuss a call made to my doctor on or about September 2, 2022, by someone purporting to be a Superior Court Judge.' Attorney Spears states in his cover letter that this call resulted in 'denial of treatment because of the call on September 2, 2022.' Neither Judge Gold nor Judge Droney have ever called an attorney's doctor, including any doctor purportedly treating Attorney Spears.

The judges' referral letter attached numerous filings and emails from the respondent to judges, prosecutors, and court personnel, sent at all hours of the day and night, on weekends, sometimes multiple times a day between July 29, 2022, and mid-September 2022. In these emails, the respondent asserted that since his home was searched by the Glastonbury Police Department on July 29, 2022, he believed he would be arrested and claimed that none of his pending criminal matters could move forward because he was not sleeping and had PTSD.[3] The following is a sampling of the respondent's emails:

- In an email dated August 2, 2022, at 3:10 a.m. to Judges Gold, Droney, and Doyle and State's Attorney Walcott, the respondent stated: "Hi: It is now 3 a.m. I am unable to sleep in fear of another Swat Team entering my house. I believe I have PTSD. I have an appointment with a doctor. I will be providing whatever report I receive. I do not believe it is in my client's interest that any cases be scheduled for Trial. I will attempt to manage my other cases to the extent possible. But if I am under a doctor's care for PTSD I do not think it's fair to expect me to try any cases right now."

- On August 3, 2022, at 12:55 a.m., the respondent sent an email to Judge Droney and Assistant State's Attorney Magnani: "Hi Judge and Samantha: I think it is a mistake to go forward with the Lambert plea. Until the state arrests me or ceases any investigation taking a plea could later result in appellate issues. I have been through this about eight times before and every other time my cases came to a halt. Further, since, I am seeking treatment for PTSD there is another issue for appeal. Sincerely, Wesley Spears."

[3] "PTSD" stands for post-traumatic stress disorder. The DSM-5 defines PTSD as a trauma- and stressor-related disorder resulting from exposure to a traumatic or stressful event that causes, among other symptoms, "significant distress or impairment in social, occupational, and other important areas of functioning." American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* § 309.81 (5th ed. 2013).

- On August 4, 2022, at 1:26 a.m., the respondent sent an email to a number of recipients, including Judge Gold: "Hi Everyone: I will be seeking dismissal of all my client's cases because their files were illegally searched on or about July 29th, 2022."[4]

- On August 4, 2022, at 9:57 a.m., the respondent sent an email to Judge Droney and Attorney Magnani: "Hi Judge and Samantha: I do not feel that I am capable of discussing the above cases today please continue!" When Judge Droney responded to the emails and advised him that the proper procedure for seeking a court continuance was a formal motion to continue the matter, the respondent replied with an email, with the subject line, "Re Incapaciti": "If my representation that I cannot participate in today's pretrial is not sufficient, I will sign in! I believe I am entitled to more dignity that this!!!!!!!!!!!!!!!"

- On that same day, August 4, 2022, the respondent sent an email to Attorney Magnani: "I am sick. If I am back before January, you will be lucky."

On August 9, 2022, Judge Gold held an on-the-record hearing in the *Brozynski* case at which Mr. Brozynski was present. Judge Gold explained the reason for the hearing as follows: "The initial matter that I wish to take up concerns events that transpired on or after July 29, 2022. And I am bringing these events up and placing them on the record for two reasons. I want to be convinced, as the trial court, that Mr. Spears is prepared to try this case, and I also want to be convinced that Mr. Brozynski is aware of these events and he's aware also of the issues that could arise as a result of these events, and that Mr. Brozynski is prepared, notwithstanding the events, to indicate his desire to go forward with Mr. Spears as his attorney."

Judge Gold then proceeded to review on the record all of the events that had transpired after the search of the respondent's home, including the emails to the judges, court personnel and prosecutors, and then asked the respondent if he was physically and mentally prepared to

[4] This representation was not accurate. In the hearing before Judge Gold held on August 9, 2022, the respondent admitted that he did not observe the Glastonbury police "invade" his client files, but that it was only a possibility that they did so and he wanted to investigate the issue.

represent Mr. Brozynski and proceed with the trial within thirty days. Mr. Spears said that he was so prepared, "without a doubt."[5]

In the referral letter, Judges Droney and Gold explained that on September 6, 2022, when the respondent appeared for a court matter, they met with him in private and "informed him of our obligation and intention to make this referral." The judges did not request any specific action by the OCDC but ended the referral letter by stating: "We refer these matters for your attention so that you may take any action that you deem appropriate."

On or about September 21, 2022, the OCDC initiated this action by filing a Petition for Inactive Status and Appointment of a Trustee against the respondent pursuant to Practice Book §§ 2-34A and 2-58. Section 2-58 provides in relevant part: "Whenever . . . the disciplinary counsel shall have reason to believe that an attorney is incapacitated from continuing to practice law by reason of mental infirmity or illness . . . counsel . . . shall petition the court to determine whether the attorney is so incapacitated and the court may take or direct such action as it deems necessary or proper for such determination, including examination of the attorney by such qualified medical expert or experts as the court shall designate . . . ." In the Inactive Status Petition, the OCDC requested that the court determine whether the respondent was "incapacitated and unable to practice law by reason of physical and/or mental illness, and that it order an examination of the Respondent by a qualified medical expert or experts as the court shall designate." Disciplinary counsel requested that if the court determined that the respondent was incapacitated, he be placed on inactive status.

The respondent chose to represent himself in the matter.[6] Between September 27, 2022, and October 11, 2022, the respondent filed a flurry of motions in which he asserted that

[5] Mr. Brozynski, after having been canvassed by Judge Gold, indicated that he wished the respondent to continue to represent him.

the petition for inactive status should be dismissed because it was based on a broad-ranging and long-time conspiracy against him by judges, prosecutors and the Glastonbury Police Department, and that Judge Gold "filed" this claim to cover up erroneous rulings of Judge Laura Baldini, with whom Judge Gold was purportedly having an adulterous affair. These motions and the allegations contained in them were not supported by fact or law and did not address the claims as to his conduct set forth in the inactive status petition and were denied.

On October 11, 2022, the OCDC filed in this case a request for an immediate order to show cause why the respondent should not be disciplined "for false statements he has made in pleadings in this matter." The OCDC asserted that the respondent's "outrageous false claims, attacking the integrity and qualification of three Superior Court judges, must be dealt with immediately."[7]

On October 14, 2022, the OCDC filed a pleading entitled, "Specific Claims on Order to Show Cause," in which it specified the alleged false statements made by the respondent in his pleadings in this case and asserted that such assertions were false and professional misconduct, including:

1. "[T]his matter is nothing less than a broad-ranging conspiracy that has continued for years, involving judges, state attorneys and the Glastonbury police Department against the defendant, Wesley Spears." Docket Entry No. 107, Motion for on the Record Trial Management Conference, dated September 30, 2022.

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[6] This court repeatedly urged the defendant to retain counsel throughout these proceedings, but, except when he was represented by appointed counsel, he chose to represent himself, which is, of course, his right.

[7] This court has inherent authority to discipline attorneys regardless of whether the matter is initiated in court or before the Statewide Grievance Committee. *Burton v. Mottolese*, 267 Conn. 1, 25, 835 A.2d 998 (2003), cert. denied, 541 U.S. 1073, 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004). "Once the complaint is made, the court controls the situation and procedure, in its discretion, as the interests of justice may seem to it to require." Id., 26. See also *State* v. *Peck*, 88 Conn 447, 91 A. 274 (1914); Practice Book §§ 2-44 and 2-45.

2. "The Glastonbury Police Department has filed papers prohibiting Wesley Spears from obtaining a firearm for self-protection as part of the ongoing conspiracy indicated in previous motions." Docket Entry No. 108, Motion to Prohibit the Glastonbury Police from Preventing Wesley Spears to Obtain a Replacement Firearm, dated October 2, 2022.

3. "Judge Gold was involved in an adulterous affair with Judge Baldini which led to Judge Gold filing this claim in an attempt to block the discovery of Judge Baldini's erroneous rulings in the State v. Brozynski matter. In addition, Judge [Baldini] made erroneous rulings in State v. Ortiz. Defendant Wesley Spears by accident walked in on an intimate moment between Judge Baldini and Judge Gold. It was quite embarrassing to see Judge Gold act like a kid with his hand caught in the cookie jar as Judge Baldini recovered from her haggard appearance. Defendant Spears has further proof which includes evidence that Judge Pratts who signed the search warrant on defendant's home was aware of his judicial complaint against Judge Baldini who were both assigned to Hartford Superior Court and contained in documents filed in support of his claim of bias and prejudice by Judge Baldini against the defendant, Wesley Spears." Docket Entry No. 110, Motion to for [sic] Dismiss, dated October 1, 2023.[8]

[8] At the hearing on April 12, 2023, the OCDC withdrew its claim as to Assistant State's Attorney Magnani, which stated: "... Assistant State's Attorney Samantha Magnani contacted the defendant, Wesley Spears' doctor and discussed his medical condition without HIPAA authorization and provided the defendant's doctor with false information." This statement appeared in a pleading in this case dated October 2, 2022, Docket Entry No. 109. Because this claim was withdrawn, the court did not consider it. Despite the Magnani claim being withdrawn at the hearing, the respondent seemed to make it the center of his defense and post hearing brief, even attempting to submit new evidence on the topic after the close of evidence and focusing most of his arguments around this event. By doing so, the respondent has missed the big picture, and failed to adequately address or recognize the real concerns that the judges had about his capacity to represent his clients based on his own conduct and statements and admissions in his many communications with the court and attached to the referral letter. See OCDC's Exhibit 1. The judges' referral letter simply referred to one of the respondent's

The OCDC asserts that the respondent's statements violate the following Rules of Professional Conduct: Rule 3.1 (meritorious claims and contentions); Rule 3.3 (false statement of fact to a tribunal, offer of evidence that the lawyer knows to be false); Rule 8.2 (statement by lawyer known to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge); Rule 8.4 (3) (conduct involving dishonesty, fraud, deceit or misrepresentation) and Rule 8.4 (4) (conduct prejudicial to the administration of justice).

This court scheduled a combined hearing on the petition for inactive status and the disciplinary presentment on November 8, 2022. When the respondent appeared without counsel and stated his intention to represent himself in both matters, the court suspended the hearing. Thereafter, with the respondent's consent, the court appointed counsel for the respondent as to the petition for inactive status only and appointed a qualified medical expert to evaluate the respondent's capacity to practice law. See Practice Book § 2-58. The hearing on the disciplinary presentment was continued. On February 10, 2023, after receiving the final evaluation of the medical expert who opined that the respondent was "not currently incapacitated from continuing to practice law," the court dismissed the OCDC's petition for inactive status.[9] Because respondent's counsel's appointment was only as to the petition for inactive status, his appointment was terminated. The evidentiary hearing on the disciplinary presentment began on April 12, 2023, and concluded on April 13, 2023.[10]

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communications with the court, which suggested that someone purporting to be a Superior Court judge contacted his doctor. The judges indicated they had never called any attorney's doctor, including the respondents. No contrary evidence was submitted at the hearing that any judge had contacted the respondent's physician.

[9] Because the expert medical opinion included confidential medical information, and the respondent's interest in privacy outweighed the public's right to review the document, the court sealed the report.

[10] The parties did not object to the hearing date of April 12, 2023, and neither party sought a continuance of the hearing, prior to or during the hearing. Evidence ended early on both days, giving the parties more than sufficient time to present all of their evidence in the two days provided by the court.

The respondent represented himself at the evidentiary hearing held on April 12 and 13, 2023.[11] The parties presented witnesses and documentary evidence and filed post hearing briefs.[12]

*A. Findings of Fact*[13]

Based on the credible and relevant evidence presented at the hearing, the court finds the following facts.[14]

The respondent was admitted to practice law in this State on October 14, 1986. His juris number is 305297. He received a reprimand on December 8, 2000, in Grievance Complaint Number 97-0874, which was resolved by stipulation.

The respondent's law practice involves criminal, civil and family matters, with 50% of his practice being dedicated to criminal cases. He is familiar with the civil Practice Book rules as well as the Code of Professional Conduct.

In response to the OCDC's petition for inactive status, the respondent, with knowledge and intent, drafted, reviewed, signed and filed motions containing the statements that are the subject of this action, Docket Entry Nos. 108, 107 and 110. These motions contained no

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[11] On numerous occasions, both on and off the record, the court advised the respondent concerning the benefits of having an attorney represent him in this matter. Nevertheless, he chose to represent himself.

[12] The respondent filed a motion to disqualify this court, after the conclusion of the hearing, which was referred to Judge Stuart Rosen. Judge Rosen denied the motion to disqualify on August 9, 2023. See Docket Entry No. 168. The respondent's motion to reargue was denied on August 28, 2023. Docket Entry No. 170.86.

[13] These findings of fact are based on the oral and documentary evidence presented at the hearing on April 12 and 13, 2023, only. The court denied the respondent's May 25, 2023 motion to open the evidence. See Docket Entry Nos. 160 and 160.86. Despite the court's ruling denying the respondent's motion, much of the respondent's posttrial brief relies on facts not in evidence. The court did not consider the facts not in evidence, or any arguments based on facts not in evidence, in this opinion.

[14] Prior to their testimony, the court granted Judge Laura Baldini's and Judge David Gold's motions for protective orders, in part, and precluded any questioning by any party as to the judges' deliberative process or mental impressions in conducting any judicial proceeding or any judicial decision-making, which are absolutely privileged. In addition, the judges' motions were granted as to observed facts such that questions were only permitted as to observed facts if it was established that there was a compelling need for the judges' testimony. *Statewide Grievance Committee* v. *Burton*, 299 Conn. 405, 415, 10 A.3d 507 (2011).

factual support or legal authority for the relief sought, dismissal, and served no purpose in advancing the inactive status matter.

*Allegations of an "Adulterous Affair"*

On March 18, 2020, in response to the nationwide COVID-19 pandemic, the Judicial Branch implemented a mitigation plan to reduce daily business at every court location statewide to stem the spread of this serious and deadly disease. Although the criminal courthouse at 101 Layfette Street remained open, its operations were strictly limited, and entrance to the buildings by the public, including attorneys, was restricted to only priority matters, such as arraignments. Court hours and operations were also limited. Judges' and court staff's access to 101 Lafayette was also limited. Matters were handled remotely or on the papers, whenever possible. Due to these restrictions, Judge Baldini was only present in the criminal courthouse on nine occasions from May to July 2020, including May 4; June 1, 17, 19 and 30; and July 2, 8, 9 and 16, 2020. During this period, Judge Gold worked one day every three weeks. All persons entering the court buildings were required to wear masks and exercise social distancing.

Despite these limited court operations and building restrictions, the respondent testified that on an unspecified date and time in May, June or July 2020, he went to the criminal court building at 101 Lafayette Street because he had a matter before Judge Baldini. He could not identify the name of the case, or the event docketed but recalled that the event did not require him to appear in person in the courthouse. Despite this, he appeared in person at the courthouse anyway because he did not want to upset Judge Baldini. The respondent did not, and could not, refer to his calendar to confirm the date he went to the courthouse during this

time period, because he changed phones, and claims he no longer had access to his remote calendars.

The respondent could not recall precisely how he was able to wander through the courthouse to Judge Baldini's chambers in view of the courthouse COVID-19 restrictions but stated he took his "usual route." He claimed to have entered the courthouse through the front door of 101 Lafayette Street, went through security and was allowed to enter the building even though he did not have an in-person priority matter pending before the court. No one questioned him, asked where he was going or why he was there in person. He could not recall if he was wearing a mask. He then took the elevator to the second floor, entered an empty courtroom, walked to the back of the courtroom and though a door to a secure hallway where the judges' chambers are located. He then took another elevator to the third floor and walked through another secure area until he reached Judge Baldini's chambers. Without notice or invitation, he approached Judge Baldini's chambers and saw her door was ajar. He did not knock but heard a sound that he interpreted as an invitation to enter the chambers and he did so. Upon entering Judge Baldini's chambers, he claimed that he witnessed Judges Baldini and Gold sitting in the two visitor chairs in front of Judge Baldini's desk. Judge Baldini was sitting sideways in her chair with her legs draped over the side with her feet on Judge Gold. Neither Judge Baldini or Judge Gold were wearing masks. The respondent did not have any personal knowledge as to the marital status of the judges but testified that in his mind this conduct constituted an "adulterous affair."

Judge Baldini testified credibly that the respondent's account of these events was a "malicious lie," "maliciously false" and "was not true." She does not recall anytime that the respondent walked into her chambers when Judge Gold was also present.

Judge Gold testified credibly that the respondent's statement of the event was "untrue," "an outright falsehood," "absolutely false," "fabricated" and that "nothing like [the respondent] described ever happened." Judge Gold did not recall interacting with the respondent at all from May through July 2020, when he was a Part A trial judge in Hartford and did not become involved in the *State* v. *Brozynski* matter until 2022.

Judge Gold learned about the respondent's assertions of an adulterous affair made in the fall of 2022, from attorneys in the courthouse, who expressed sympathy, and showed him the respondent's motion on their cell phones. Judge Gold received calls from colleagues and others across the state, and he was quite embarrassed.

After the respondent filed the motion in this case, asserting the affair, an article appeared in the *Journal Inquirer* which reported on the pending inactive status petition against the respondent and, although it did not include the judges' names, it repeated the claim that two Superior Court judges were having an adulterous affair. The respondent was quoted in the newspaper article.

The only first-hand evidence of an "adulterous affair" between Judges Gold and Baldini was the respondent's testimony, as described.[15] The court credits Judges Baldini's and Gold's testimony that the events described by the respondent did not occur. The court did not find the respondent's testimony credible for a number of reasons, including: (1) he could not recall the specific date of the event docketed that brought him to court during the early days of the pandemic; (2) he did not provide any evidence that he had any matters on any dockets during these months that required his appearance in court on any of the few days that Judge

[15] This court does not credit the hearsay testimony of the respondent's witnesses, who testified that the respondent told them what he witnessed in Judge Baldini's chambers. In addition to being hearsay, this testimony undermined the respondent's testimony as each one of them told a very different tale to what the respondent told them supposedly occurred in Judge Baldini's chambers.

Baldini was physically present in the courthouse from May to July 2020; (3) although he could not recall the matter on the docket, he stated it was not a priority that required him to appear in person in the courthouse; and (4) it is simply incredible that the respondent, or any attorney, would have been permitted to enter the criminal courthouse during the early days of the COVID-19 pandemic, unless the attorney or person had an in-person priority matter, and, even if the attorney had an in-person matter, that they would have been allowed to wander through the building, no questions asked.

In addition, even if the respondent's version of events were true – which the court has found incredible – the respondent's description of the event did not constitute an "adulterous affair." "Adultery" is defined as "Voluntary sexual intercourse between a married person and someone other than the person's spouse." *Black's Law Dictionary* (11th ed. 2019); see also *Conroy v. Idibi,* 204 Conn. App. 265, 296, 254 A.3d 300 (2021), aff'd 343 Conn. 201, 272 A.3d 1121 (2022) (General Statutes § 46b-40(f) defines adultery as voluntary sexual intercourse between a married person and a person other than a person's spouse). The respondent had no personal knowledge of the judges' marital status and did not describe an adulterous affair as those terms are commonly used and defined by law.[16]

The respondent made his false and defamatory affair allegations to retaliate against Judge Gold (and Judge Droney) for notifying the OCDC of the respondent's erratic and concerning behavior after July 29, 2022. The respondent alerted the press to his filing, and

[16] Claiming that a person had an affair or engaged in adultery is defamatory and sufficient support a claim of slander per se. *Lamson* v. *Farrow*, Superior Court, judicial district of New Haven, Docket No. CV-08-4029172-S (January 10, 2012, *Young, J.*).

testified, "Well, I thought I was being defamed by the whole matter. I mean, I'm being called crazy, so I wanted to dissuade that notion."[17]

As to the respondent's other statements, he provided no evidence, other than his own beliefs, that Judge Gold filed the petition for inactive status, "to block the discovery of Judge Baldini's erroneous rulings in the State v. Brozynsky matter."[18]

As to Judge Pratts, the respondent admitted that he had no specific knowledge that Judge Pratts was aware that the respondent had filed a grievance complaint against Judge Baldini and that such knowledge somehow influenced Judge Pratt's decision to approve the search warrant on the respondent's residence.

*Claims of Broad-Ranging Conspiracy*

In Docket Entry No. 107, filed on October 3, 2022, the respondent claimed that the inactive status petition was "nothing less than a broad-ranging conspiracy that has continued for years, involving Judges, States Attorneys and the Glastonbury Police department against the defendant, Wesley Spears." In Docket Entry No. 108, dated October 2, 2022, the respondent asserted that the "Glastonbury Police Department has filed papers prohibiting Wesley Spears from obtaining a firearm for self-protection as part of the ongoing conspiracy indicated in previous Motions."

During the hearing, the respondent clarified that by "conspiracy" he meant racial bias against him as an African American, and that his claims of conspiracy as to the Glastonbury Police Department only involved events that occurred in 2022, when he moved there. The

[17] There is no evidence that anyone used the term "crazy" to describe the respondent. It was the respondent himself how stated he had PTSD and used the word "incapaciti [sic]."

[18] This assertion is nonsensical as Judge Baldini's rulings in the Brozynsky matter, and in other cases, are a matter of public record that could have been appealed at the appropriate time in the case.

conspiracy between the police, the judges and state's attorneys was intended to prevent him from representing his clients effectively.

The respondent provided no competent, credible, or unbiased testimony to support his claims of conspiracy based on racial bias. Rather, his testimony was based on his own opinions, experiences, suspicions and intuition as a black man and an attorney. For example, he testified that he believes that he was followed around town by the Glastonbury Police Department in undercover vehicles, at the behest of the state's attorney's office. The respondent provided no evidence that this occurred or that the any state's attorney directed that he be followed. He also testified that one evening, he was having dinner at the bar at a Glastonbury restaurant when a white man and woman approached him and began a conversation. He claimed that these two people, where were apparently white, were undercover detectives investigating him. Although he had no proof that this was the case, he believed this to be true because the woman shook his hand firmly and white people do not approach black men in restaurants.

The respondent also claimed that the way the search warrant was executed on his home was evidence of a racial conspiracy. However, there was no evidence presented as to how other similar search warrants were executed against others from which this court could make any comparison or conclusion that the execution of this warrant was racially motivated. Moreover, the respondent did not challenge the warrant or its execution in his criminal case.

When asked what judges were involved in the broad-ranging racial conspiracy against him, the respondent identified deceased Judges Stanley and Norko, as well as Judges Baldini, Gold and Pratts. Allegations as to Judges Stanley and Norko involved arrest warrants signed

against him in the 1990s. Other than his belief that their actions were racially motivated, the respondent provided no proof.

When pressed as to what evidence he had of the racial conspiracy involving Judges Gold, Pratts and Baldini, he did not offer any competent or credible evidence, relying exclusively on his beliefs and suspicions that Judges Pratts and Gold were somehow acting to protect Judge Baldini's decisions in his cases or as retribution for his filing a complaint against Judge Baldini at the Judicial Review Counsel. As for Judge Baldini, he testified that "she had it out for him." Specifically, he complained that she ruled against him and made him come to court when he was ill. Such complaints about judges are insufficient to establish a racial conspiracy against him.

It is noteworthy that the respondent has made no claims of conspiracy or otherwise as to Judge Droney, who co-authored the referral letter to the OCDC with Judge Gold. She and Judge Gold had experienced firsthand the respondent's erratic and concerning behavior in court and through his filings and communications with the court. Together they submitted the referral letter to the OCDC for investigation. They did not call the respondent "crazy" or direct any particular outcome. They provided evidence to support their reasonable belief that the respondent was impaired by "drugs or alcohol or by a mental, emotional or physical condition," based on his own admissions that he was incapacitated, had PTSD, could not sleep and that, as a result, all his cases would have to be continued for many months. See Code of Judicial Conduct, Rule 2.14.

## DISCUSSION

FINDINGS RE: VIOLATIONS OF RULES

The court finds that disciplinary counsel has proved by clear and convincing evidence that the respondent violated the following rules of professional conduct:[19]

*Rule 3.1 – Meritorious Claims and Contentions*

Rule 3.1 of the Rules of Professional Conduct provides in relevant part: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous . . . ." According to the commentary to this rule, "[w]hat is required of lawyers . . . is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions."

The respondent violated this rule by making statements in pleadings in this case that he knew were false or that were made with reckless disregard for the truth. The allegations were not and have not been supported by law or fact, but only by innuendo, suspicions, and speculation and his personal beliefs.

The respondent has defended his conduct with claims of racial bias. Bias of any sort, including racial and gender bias, has no place in the courtroom or the system of justice. *Burton* v. *Mottolese*, 267 Conn. 1, 48-49, 835 A.2d 998 (2003), cert. denied, 541 U.S. 1073, 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004). "Of all the charges that might be leveled against

[19] The respondent does not dispute that the rules of professional conduct apply to attorneys when representing themselves. *Notopoulos* v. *Statewide Grievance Committee*, 277 Conn. 218, 890 A.2d 509, cert. denied, 549 U.S. 823, 127 S. Ct. 157, 166 L. Ed. 2d 39 (2006). "Whether an attorney represents himself or not, his basic obligation to the court as an attorney remains the same. He is an officer of the court . . . Disciplinary proceedings not only concern the rights of the lawyer and the client, but also the rights of the public and the rights of the judiciary to ensure that lawyers uphold their unique position as officers . . . of the court. . . . An attorney must conduct himself or herself in a manner that comports with the proper functioning of the judicial system." (Citation omitted) *In the Matter of Presnick*, 19 Conn. App. 340, 345, 563 A.2d 299, cert. denied, 213 Conn. 801, 567 A.2d 833 (1989).

one sworn to administer justice and to faithfully and impartially discharge and perform all the duties incumbent upon me . . . a charge of bias must be deemed at or near the very top in seriousness, for bias kills the very soul of judging—fairness." (Internal quotation marks omitted.) Id., 49. However, the respondent did not provide any objective reasonable beliefs that his claims of racial bias were true.

*Rule 3.3 – Candor Toward the Tribunal*

Rule 3.3 (a) (1) of the Rules of Professional Conduct provides: "A lawyer shall not knowingly . . . [m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." "[A]n assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonable diligent inquiry . . . ." (Internal quotation marks omitted.) *Burton* v. *Mottolese*, supra, 267 Conn. 46.

The respondent violated this rule by making false and defamatory statements to the court and in pleadings concerning Superior Court judges and others and asserting a broad-ranging conspiracy against him due to his race for the purpose of undermining his ability to represent his clients properly and effectively.

*Rule 8.2 – Judicial and Legal Officials*

Rule 8.2 (a) provides in relevant part: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualification or integrity of a judge, adjudicatory officer of public legal officer . . . ." The commentary to this rule explains: "Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for . . . appointment of judicial

office . . . Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice." See also *Burton* v. *Mottolese*, supra, 267 Conn. 46.

The standard under this rule is well-established[20] and provides that the OCDC must "first present evidence of misconduct sufficient to satisfy its burden of proving its case by clear and convincing evidence. . . . If the plaintiff sustains its burden, then the burden of persuasion shifts to the defendant to provide proof of an objective and reasonable basis for the allegations." (Citation omitted.) *Statewide Grievance Committee* v. *Burton*, 299 Conn. 405, 412-13, 10 A.3d 507 (2011); see also *Somers* v. *Statewide Grievance Committee*, 245 Conn. 277, 290, 715 A.2d 712 (1998). The court finds that the OCDC met its burden to establish its claims, through the submission of the respondent's statements, testimony from Judges Gold and Baldini, and through the testimony of the respondent himself who provided no credible or objective proof to support his claims of racial bias, broad-ranging conspiracies against him, an "adulterous affair" or that judges acted to protect or support Judge Baldini.

"When an attorney, subject to sanctions for violating rule 8.2 (a), has presented no evidence establishing a factual basis for [his or] her claims . . . the fact finder reasonably may conclude that the attorney's claims against the court were either knowingly false or made with reckless disregard as to [their] truth or falsity." (Citations omitted; internal quotation marks omitted) *Notopoulos* v. *Statewide Grievance Committee*, 277 Conn. 218, 227-28, 890 A.2d 509, cert. denied, 549 U.S. 823, 127 S. Ct. 157, 166 L. Ed. 2d 39 (2006). Unsupported allegations do not give rise to "an objective, reasonable belief that the assertions were true."

[20] The court made it clear to the respondent several times, both off and on the record, that it would apply this well-established standard in deciding this case.

Id., 228. The Supreme Court has "adopted an objective test for attorney speech pursuant to which an attorney speaking critically of a judge or a court must have an objective basis for the statements. . . . [W]holly conclusory allegations of judicial misconduct, without objective factual support, justify the imposition of attorney discipline." (Citations omitted; internal quotation marks omitted.) *Statewide Grievance Committee* v. *Burton*, supra, 299 Conn. 413. Statements of opinion related to court experiences are insufficient. Id. "Adverse rulings in court proceedings, and even incorrect rulings, do not in and of themselves amount to evidence of illegal or unethical behavior on the part of a judge." *Notopoulos* v. *Statewide Grievance Committee*, supra, 230.

The respondent failed to provide any credible objective evidence to support any of his statements. Rather, the respondent's assertions were wholly conclusory and lacking any objective factual support.

*Rule 8.4 (3) and (4) - Misconduct*

Rule 8.4 of the Rules of Professional Conduct provides in relevant part that "[i]t is professional misconduct for a lawyer to . . . (3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . . [or] (4) Engage in conduct that is prejudicial to the administration of justice . . . ." "Dishonesty is not defined in the Rules of Professional Conduct; we therefore look to the dictionary definition of the word for its common usage. . . . Merriam-Webster's Collegiate Dictionary defines 'dishonesty' as a 'lack of honesty or integrity: disposition to defraud or deceive.' . . . Black's Law Dictionary defines 'dishonest' as 'not involving straightforward dealing; discreditable; underhanded; fraudulent.'" (Citations omitted.) *Cohen* v. *Statewide Grievance Committee*, 339 Conn. 503, 525, 261 A.3d 722 (2021). "It is not unusual for a lawyer who violates rule 3.3 (a) (1) to also violate rule 8.4 (3)."

Id.; see also *Burton* v. *Mottolese*, supra, 267 Conn. 51–52 (holding that trial court reasonably concluded plaintiff violated rule 3.3 [a] [1] and that same conduct supported conclusion that plaintiff violated rule 8.4 [3]).

"An attorney as an officer of the court in the administration of justice, is continually accountable to it for the manner in which he exercises the privilege which has been accorded him." (Internal quotation marks omitted.) *Statewide Grievance Committee* v. *Ganim*, 311 Conn. 430, 452, 87 A.3d 1078 (2014). Attorneys must "conduct themselves in a manner compatible with the role of courts in the administration of justice." (Internal quotation marks omitted.) *Notopoulos* v. *Statewide Grievance Committee*, supra, 277 Conn. 235. "[F]alse statements or statements made in reckless disregard of the truth that disparage a judge erode the public confidence in the judiciary and thereby undermine the administration of justice." Id., 236; see also *Burton* v. *Mottolese*, supra, 267 Conn. 46 ("[F]alse statements by a lawyer can unfairly undermine public confidence in the administration of justice." [Internal quotation marks omitted.]).

"Attorneys have an obligation to act fairly and with candor in *all* of their dealings before the court." (Emphasis in original.) *Cummings Enterprise, Inc.* v. *Moutinho*, 211 Conn. App. 130, 134, 271 A.3d 1040 (2022). "Because the image of a dishonest lawyer is very difficult to erase from the public mind-set, attorneys are expected to be leading citizens who act with candor and honesty at all times." *Statewide Grievance Committee* v. *Fountain*, 56 Conn. App. 375, 377, 743 A.2d 647 (2000).

"Disciplinary proceedings not only concern the rights of the lawyer and the client, but also the rights of the public and the rights of the judiciary to ensure that lawyers uphold their unique position as officers and commissioners of the court." *Cohen* v. *Statewide Grievance*

*Committee*, supra, 339 Conn. 516; see also *Notopoulos* v. *Statewide Grievance Committee*, supra, 277 Conn. 518.

The court finds that the respondent violated these rules by demonstrating a lack of honesty in his pleadings and testimony before the court and making unsubstantiated allegations of a broad-ranging conspiracy, contrary to his role in the judicial system as an officer of the court and thereby undermining public confidence in the judicial system.

DISCIPLINE/SANCTIONS

Having concluded that the respondent violated the above Rules of Professional Conduct, the court must now determine what sanction to impose. The OCDC urges the court to disbar the respondent. The respondent asserts that the OCDC failed in its proof.

The court has the authority to discipline an attorney for violating the Rules of Professional Conduct. Practice Book § 2-44; *Heslin* v. *Connecticut Law Clinic of Trantolo & Trantolo*, 190 Conn. 510, 523, 461 A.2d 938 (1983) ("The Superior Court possesses inherent authority to regulate attorney conduct and to discipline the members of the bar."). "[A] court is free to determine in each case, as may seem best in light of the entire record before it, whether a sanction is appropriate and, if so, what the sanction should be." *Burton* v. *Mottolese*, supra, 267 Conn. 54.

"An attorney as an officer of the court in the administration of justice, is continually accountable to it for the manner in which he exercises the privilege which has been accorded him. His admission is upon the implied condition that his continued enjoyment of the right conferred is dependent upon him remaining a fit and safe person to exercise it, so that when he, by misconduct in any capacity, discloses that he has become or is an unfit or unsafe person to be entrusted with the responsibilities and obligations of an attorney, his right to continue in

the enjoyment of his professional privilege may and ought to be declared forfeited. . . . Therefore, [i]f a court disciplines an attorney, it does so not to mete out punishment to an offender, but [so] that the administration of justice may be safeguarded, and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession." (Citation omitted; internal quotation marks omitted.) *Massameno* v. *Statewide Grievance Committee,* 234 Conn. 539, 554-55, 663 A.2d 317 (1995).

Pursuant to Practice Book § 2-47 (a), the court possesses a great deal of discretion as to whether to impose a "reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate." See also *Statewide Grievance Committee* v. *Timbers,* 70 Conn. App. 1, 3, 796 A.2d 565, cert. denied, 261 Conn. 908, 804 A.2d 214 (2002), cert. denied, 537 U.S. 1192, 123 S. Ct. 1274, 154 L. Ed. 2d 1027 (2003). "Thus, [a] court is free to determine in each case, as may seem best in light of the entire record before it, whether a sanction is appropriate and, if so, what the sanction should be." (Internal quotation marks omitted.) *Burton* v. *Mottolese,* supra, 267 Conn. 54. "[T]he power of the courts is left unfettered to act as situations, as they may arise, may seem to require, for efficient discipline of misconduct and the purging of the bar from the taint of unfit membership. Such statutes as ours are not restrictive of the inherent powers which reside in courts to inquire into the conduct of their own officers, and to discipline them for misconduct." (Internal quotation marks omitted.) *Statewide Grievance Committee* v. *Rozbicki,* 211 Conn. 232, 239, 558 A.2d 986 (1989).

"Courts considering sanctions against attorneys measure the defendant's conduct against the rules. Although the rules define misconduct, they do not provide guidance for

determining what sanctions are appropriate. . . . Connecticut courts reviewing attorney misconduct, therefore, have consulted the American Bar Association's Standards for Imposing Lawyer Sanctions [ABA standards]. . . . Although the [ABA] standards have not been officially adopted in Connecticut, they are used frequently by the Superior Court in evaluating attorney misconduct and in determining discipline." (Internal quotation marks omitted.) *Disciplinary Counsel* v. *Serafinowicz*, 160 Conn. App. 92, 99, 123 A.3d 1279, cert. denied, 319 Conn. 953, 125 A.3d 531 (2015); see also *Statewide Grievance Committee* v. *Spirer*, 46 Conn. App. 450, 463-64, 699 A.2d 1047 (1997), rev'd on other grounds, 247 Conn. 762, 725 A.2d 948 (1999).

"The [ABA] Standards provide that, after a finding of misconduct, a court should consider: (1) the nature of the duty violated; (2) the attorney's mental state; (3) the potential or actual injury stemming from the attorney's misconduct; and (4) the existence of aggravating or mitigating factors." *Burton* v. *Mottolese*, supra, 267 Conn. 55. Aggravating factors include "(a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; [and] (j) indifference to making restitution." (Internal quotation marks omitted.) Id. Mitigating factors include: "(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f)

inexperience in the practice of law; (g) character or reputation; (h) physical or mental disability or impairment; (i) delay in disciplinary proceedings; (j) interim rehabilitation; (k) imposition of other penalties or sanctions; (*l*) remorse; [and] (m) remoteness of prior offenses." Id., 55-56.

The court now considers these factors:

(1) *The nature of the duty violated.* The respondent violated his duty of honesty as well as his duty as an officer of the court by attacking, without proof, the integrity of the judicial process, judges of the Superior Court, prosecutors, and police. As an experienced attorney, the respondent knows or should know that as a participant in the administration of justice, and officer of the court, he is "continually accountable to it for the manner in which he exercises the privilege which has been accorded him." (Internal quotation marks omitted.) *Statewide Grievance Committee* v. *Ganim*, supra, 311 Conn. 452. "Attorneys have an obligation to act fairly and with candor in *all* of their dealings before the court, which includes factual statements made in open court." (Emphasis in original.) *Cummings Enterprise, Inc.* v. *Moutinho*, supra, 211 Conn. App. 134. "Because the image of a dishonest lawyer is very difficult to erase from the public mind-set, attorneys are expected to be leading citizens who act with candor and honesty at all times." *Statewide Grievance Committee* v. *Fountain*, supra, 56 Conn. App. 377. "As important as it is that an attorney be competent to deal with the oftentimes intricate matters which may be entrusted to him, it is infinitely more so that he be upright and trustworthy." (Internal quotation marks omitted.) *Statewide Grievance Committee* v. *Presnick*, 18 Conn. App. 316, 325, 559 A.2d 220 (1989). "It is paramount that an attorney . . . resolve to be honest at all events; and if [he or she] cannot be an honest lawyer,

[he or she should] resolve to be honest without being a lawyer." (Internal quotation marks omitted.) *Statewide Grievance Committee* v. *Fountain*, supra, 378.

"[A] claim of judicial bias strikes at the very core of judicial integrity and tends to undermine public confidence in the established judiciary. . . . No more elementary statement concerning the judiciary can be made than that the conduct of the trial judge must be characterized by the highest degree of impartiality. If [the judge] departs from this standard, he [or she] casts serious reflection upon the system of which [the judge] is a part." (Citations omitted; internal quotation marks omitted.) *Knock* v. *Knock*, 224 Conn. 776, 792-93, 621 A.2d 267 (1993); see also *Burton* v. *Mottolese*, supra, 267 Conn. 46.

For these reasons, attorneys as officers of the court must be circumspect in their statements about the judiciary, and if they have a claim, they should follow proper channels to address their concerns.[21] Angry that Judges Gold and Droney alerted the OCDC of their concerns, the respondent chose to file defamatory, inappropriate, unsubstantiated and legally unsupported motions asserting false and defamatory harmful claims. Judges Gold and Droney were obliged to address their concerns about the respondent's competency under the rules of judicial conduct to protect the public and the respondent's clients. Although the respondent was within his rights to mount a defense to the petition for inactive status and provide an explanation for his erratic conduct and admitted mental health issues, see infra, such a defense did not include making unsubstantiated attacks the judges and the justice system.[22]

(2) *The respondent's mental state.* In this action, after an examination by a court appointed qualified medical expert, the respondent was determined not to be incapacitated to

[21] For example, claims of impropriety or judicial bias may be made by lawyers to the Judicial Review Counsel. See General Statutes § 51-51g, et seq.

[22] Similarly, if the respondent believed that the search warrant or its execution at his home were illegal, he had legal avenues to challenge the warrant which he did not exercise.

practice law by reason of mental infirmity or illness or because of drug dependency or addiction to alcohol. Thus, the respondent cannot, and does not, argue that his misconduct was caused by an infirmed mental state. The respondent acted willfully with full knowledge of the circumstances and consequences of his conduct. See, e.g., *Burton* v. *Mottolese,* supra, 267 Conn. 56.

(3) *The potential or actual injury stemming from the attorney's misconduct.* The respondent's conduct caused harm to the public's confidence in the bar, the legal profession and the integrity of the civil justice system. See *Burton* v. *Mottlese*, supra, 267 Conn. 56.

(4) *The existence of aggravating or mitigating factors.* The following aggravating factors are relevant to the court's determination of what discipline to impose:

**Prior discipline.** The respondent has a disciplinary record which includes a reprimand.

**Dishonest or selfish motive.** In addition to being dishonest, the respondent's conduct evidenced a selfish and vindictive motive. His false and unsubstantiated claims of affairs and racial conspiracies against him were made in direct response to the OCDC's petition for inactive status, which in turn were based on the judges' referral letter. Rather than responding to the petition for inactive status in a thoughtful and legally meaningful way, he chose instead to retaliate by making false and unsupported defamatory statements aimed at judges and the judicial system, for his own personal benefit and as retribution.

**Multiple offenses.** The court has found that the respondent's conduct violated numerous sections of the Code of Professional Conduct: Rule 3.1, Rule 3.3, Rule 8.2, and Rule 8.4 (3) and (4).

**Submission of false statements or deceptive practices during the disciplinary process.** The respondent's conduct in making false and defamatory statements all occurred during the process to determine if the respondent was incapacitated to practice law, and then continued through the trial on the misconduct presentment.

**Refusal to acknowledge wrongful nature of his conduct.** The respondent has shown no remorse for his conduct and, in fact, has doubled down on his unsupported claims in his post-hearing briefs, repeating his claim and making additional unsubstantiated claims against Judge Gold.

The respondent takes no responsibility for his own actions, which set these events in motion. It was the respondent's client that admittedly discharged a gun in the respondent's residence. That event resulted in a police investigation of a possible crime (illegal discharge of a firearm) that resulted in a search of his home. As the result of the search of his residence, the respondent was understandably shaken and upset by those events. Then began his unsolicited and improper email barrage to the judges, prosecutors, and court staff, which both in number, manner and substance, and by his own admissions, evidenced that the respondent was potentially incapacitated, sleep-deprived, suffering from PTSD and was unable to handle his criminal caseload. The judges properly responded to the respondent's conduct, by meeting with him informally and formally to no avail, leaving them no choice but to seek an investigation by the OCDC to determine the respondent's capacity to represent his clients in view of his admitted mental infirmities. The judges and others did not cause any of these events but merely reacted or responded to the respondent's conduct and admissions concerning his statements about his mental status and inability to handle his cases to protect his clients.

In response to the inactive status petition, the respondent chose a scorched earth defense by attempting to deflect attention from his own conduct and asserting unsubstantiated claims of improper conduct by others. This strategy did not advance his position in the inactive status proceeding but instead resulted in the present disciplinary proceeding.

Although there was some testimony by the respondent that the court thought showed a glimpse of possible remorse, it was short-lived as evidenced by the arguments made in the respondent's post hearing briefs. The respondent's lack of remorse and seemingly inability to take any responsibility for his own conduct is a serious concern to the court.

**Substantial experience.** The respondent has practiced law in civil and criminal courts for approximately thirty years. He is familiar with the Rules of Professional Conduct and the Practice Book, as well as the Rules of Evidence. Thus, there can be no claim that the respondent's conduct was attributable to inexperience.

The court finds that there was no evidence presented that would support any mitigating factors in this matter.

"Standards 6.1 and 6.12 provide that a suspension generally is appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit or misrepresentation." *Statewide Grievance Committee* v. *Fountain*, supra, 56 Conn. App. 375. Sanctions for conduct similar to that found here range , from reprimand to disbarment. See *Chief Disciplinary Counsel* v. *Rozbicki*, 326 Conn. 686, 167 A.3d 351 (2017), cert. denied, 138 S. Ct. 2583, 201 L. Ed. 2d 295 (2018) (4-year suspension for violations of rules 3.1, 8.2, and 8.4 [4]); *Notopoulos* v. *Statewide Grievance Committee*, supra, 277 Conn. 218 (reprimand for violations of rules 8.2 [a] and 8.4 [4]); *Burton* v. *Mottolese*, supra, 267 Conn. 1 (five-year disbarment for violations of rules including 3.3, 8.2,

and 8.4 [3] and [4]); *Disciplinary Counsel* v. *Serafinowicz*, supra, 160 Conn. App. 92 (120-day suspension for violations of rules 8.2 and 8.4 [4]); *Chief Disciplinary Counsel* v. *Fetscher*, Superior Court, judicial district of Stamford, Docket No. CV-19-6040003-S (March 25, 2019, *Kavanewsky, J.*) (eight-month suspension for violations of rules 8.2 [a] and 8.4 [4]).

Based on all the forgoing factors, the court finds that the respondent's conduct was prejudicial to the administration of justice and involved dishonesty or misrepresentation thereby justifying a substantial period of suspension.

CONCLUSION

Based on the foregoing findings, conclusions, and consideration of all the factors and legal precedent, the court orders as follows as to all violations:

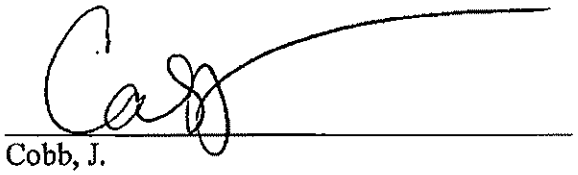
1. The respondent is suspended for a period of two (2) years effective thirty (30) days from the date this decision is filed.
2. Upon the effective date of the suspension, the OCDC shall notify the chief clerks of all judicial districts and Probate Court administration of the respondent's suspension.
3. Within ten days of this decision, the parties shall provide the court with the names addresses and juris numbers of attorneys who could serve as trustee in this matter, pursuant to Practice Book § 2-64.
4. The respondent shall not deposit to, disburse any funds from, withdraw any funds from or transfer any funds from any client's funds, IOLTA or fiduciary accounts during the period of his suspension.
5. The respondent shall comply with Practice Book § 2-47B (Restrictions on the Activities of Deactivated Attorneys).

6. The respondent shall cooperate with the Trustee in all respects.

7. The respondent's failure to comply with this order shall be considered misconduct and may subject the respondent to additional discipline.

8. Any application for reinstatement shall be made pursuant to the provisions of Practice Book § 2-53.

So ordered.



Cobb, J.

# Checklist for Clerk

**Docket Number:** HHD-CV22-6160733-S

**Case Name:** Office of Chief Disciplinary Counsel v. Wesley S. Spears

**Memorandum of Decision dated:** 9/25/23

**File Sealed:** **Yes** **No** X

**Memo Sealed:** **Yes** **No** X

**This Memorandum of Decision may be released to the Reporter of Judicial Decisions for Publication** XXXX

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# HHD-CV22-6160733-S OFFICE OF CHIEF DISCIPLINARY COUNSEL v. SPEARS, WESLEY S.

**Prefix/Suffix:** [none] **Case Type:** M68 **File Date:** 09/21/2022 **Return Date:** 09/21/2022

Case Detail | Notices | History | Scheduled Court Dates | E-Services Login | Screen Section Help | Exhibits

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**Information Updated as of:** 09/25/2023

## Case Information

**Case Type:** M68 - Misc - Bar Discipline - Inactive Status
**Court Location:** HARTFORD JD
**List Type:** No List Type
**Trial List Claim:**
**Last Action Date:** 08/29/2023 (The "last action date" is the date the information was entered in the system)

## Disposition Information

**Disposition Date:**
**Disposition:**
**Judge or Magistrate:**

## Party & Appearance Information

| Party | | No Fee Party | Category |
|---|---|---|---|
| P-01 | **OFFICE OF CHIEF DISCIPLINARY COUNSEL**<br>**Attorney:** OFFICE OF CHIEF DISCIPLINARY COUNSEL (422382) File Date: 09/21/2022<br>100 WASHINGTON STREET<br>HARTFORD, CT 06106 | Y | Plaintiff |
| D-01 | **WESLEY S. SPEARS**<br>**Attorney:** WESLEY S SPEARS (305297) File Date: 09/27/2022<br>P.O. BOX 52<br>BLOOMFIELD, CT 06002 | | Defendant |
| O-01 | **HON. DAVID GOLD**<br>**Attorney:** JUDICIAL BRANCH LEGAL SERVICES (440244) File Date: 11/04/2022<br>100 WASHINGTON STREET<br>3RD FL P.O. BOX 150474<br>HARTFORD, CT 061150474 | | Witness |
| O-02 | **HON. LAURA BALDINI**<br>**Attorney:** JUDICIAL BRANCH LEGAL SERVICES (440244) File Date: 11/04/2022<br>100 WASHINGTON STREET<br>3RD FL P.O. BOX 150474<br>HARTFORD, CT 061150474 | | Witness |
| O-03 | **HON. DANIEL KLAU**<br>**Attorney:** JUDICIAL BRANCH LEGAL SERVICES (440244) File Date: 11/04/2022<br>100 WASHINGTON STREET<br>3RD FL P.O. BOX 150474<br>HARTFORD, CT 061150474 | | Witness |



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If there is an e in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.* For more information on what you can view in all cases, view the Electronic Access to Court Documents Quick Card.
- For civil cases filed prior to 2014, court orders and judicial notices that are electronic are available publicly over the internet. Orders can be viewed by selecting the link to the order from the list below. Notices can be viewed by clicking the **Notices** tab above and selecting the link.*
- Documents, court orders and judicial notices in an electronic (paperless) file can be viewed at any judicial district courthouse during normal business hours.*

# 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.