



F I L E D

Dec 04 2025

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

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

**IN THE MATTER OF
WESLEY S. SPEARS,
STATE BAR CARD NO. 18898400**

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§
§

CAUSE NO. 72209

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

The Commission for Lawyer Discipline (hereinafter referred to as the “Commission”), brings this action against Respondent, Wesley S. Spears, and would show the following:

1. This action is commenced by the Commission pursuant to Part IX of the Texas Rules of Disciplinary Procedure (the “TRDPs”). The Commission is also providing Respondent with a copy of Section 7 of this Board’s Internal Procedural Rules, relating to Reciprocal Discipline Matters.
2. Respondent is a member of the State Bar of Texas and is licensed but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Wesley S. Spears, 5 Constitution Plaza, Apt. 306, Hartford, Connecticut 06103-1823.
3. On or about April 3, 2025, a Memorandum of Decision (Exhibit 1) was entered by the State of Connecticut, Superior Court, J. D. of Waterbury at Waterbury, in Cause No. UWY CV 24 6081813 S; styled: *Office of Chief Disciplinary Counsel v. Wesley S. Spears*, which states in relevant part as follows:

In this matter, the Office of Chief Disciplinary Counsel (petitioner) has filed a one count presentment against Attorney Wesley S. Spears (respondent). The allegations arise out of Grievance Complaint #23-0215, Crystal Rodriguez v. Wesley S. Spears. Having considered the evidence, including the testimony of witnesses and full exhibits, the court, by clear and convincing evidence, finds as follows:

The respondent, Wesley S. Spears, juris number 305297, was admitted to the bar of the State of Connecticut on October 14, 1986. The respondent has a disciplinary history consisting of a reprimand, issued on December 8, 2000 in Grievance Complaint #97-0874 for violations of Rules 1.8(e) and 4.4 of the Rules of Professional Conduct (Trial Exhibit #3); and a two year suspension, issued on September 25, 2023 by the Superior Court (Cobb, J.) for violations of Rules 3.1, 3.3 (a)(1), 8.2 (a), 8.4 (3) and 8.4 (4) of the Rules of Professional Conduct (Trial Exhibit #4).

The facts in this matter are simple and uncontroverted. On or about November 26, 2021, the complainant, Crystal Rodriguez, retained the respondent, Spears, to represent her in a contentious child custody matter against the father of her children. At the time she retained the respondent, the complainant was the victim of domestic violence at the hands of the father of her children. Due to the level of discord and strife between the father of her children and herself, the respondent was under a great deal of stress and anxiety at that time. The Respondent even acknowledged this fact in his retainer letter (Trial Exhibit #1) by noting, "I realize that until this situation stabilizes, you are under a great deal of stress."

Upon being retained, the respondent commenced his representation of the complainant in the underlying contested family court matter. In connection with said representation, a Mandatory Resolution Plan Date meeting with the Family Relations Office was scheduled by the court for October 7, 2022 at 11:00 AM. On October 6, the night before the Mandatory Resolution Plan Date meeting, commencing at 11:49 PM, the respondent sent a series of inappropriate and offensive text messages (Trial Exhibit #2- reproduced below) to the complainant:

10-06-2022

11:49 PM	You like old people
11:50 PM	Send me a picture of you

10-07-2022

12:06AM	A sexy one
12:07 AM	Can I take you shopping for a nice outfit tomorrow
12:15 AM	A nude one would be perfect [sic]
12:16AM	Please forgive me

Responding to these texts, the complainant texted:

12:16AM	This is very inappropriate of you, I thought you were better than that. You're fired.
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The respondent replied:

12:17 AM	Come on sorry
12:17 AM	I will not do it again
12:18AM	I read you wrong
12:20AM	Just forget it
12:20AM	Please
12:57 AM	Can you answer I have worked hard for you!
12:58AM	You need to forgive me!
12:59 AM	I miss understood [<i>sic</i>] you when you said you would go to my reunion
07:28 AM	Please call
09:18AM	Please call there is no court today we are waiting for Judges [<i>sic</i>] decision

As noted above, the facts which gave rise to the complaint and formed the basis of the decision of the reviewing committee of the Statewide Grievance Committee in its decision in complaint #23-0215 are not in dispute. In his testimony at trial, the respondent freely admitted and acknowledged sending the texts. He further apologized to the complainant and the court for sending the texts, acknowledged that the texts were inappropriate and expressed his remorse for having done so.

While the respondent acknowledged and apologized for sending the texts, by way of defense, he also attempted to provide some context and explanation for having sent the texts. On cross examination by the respondent, the complainant acknowledged that the respondent secured a favorable disposition of the contested family court matter for her. In his own testimony and during argument, the respondent also asserted that he is a good and skillful lawyer and secured a very favorable outcome for the complainant in the underlying contested family matter.

By way of further explanation for his apparent lapse in judgment in sending the texts, the respondent testified that at some time prior to sending the texts, he told the complainant about his impending 50th high school reunion and raised the possibility that the complainant might accompany the respondent to the reunion. He further testified that at the time he sent the inappropriate texts, he was out to dinner with a group of classmates celebrating their impending 50th class reunion and that it was a question by one of his dinner companions at the celebratory gathering which prompted the respondent to ask the complainant to send a photo. The dinner companion had asked, "What does she look like?"

None of the respondent's claims in mitigation of his conduct on the night in question can explain, provide context for, or justify the conduct which forms

the basis of this presentment. Securing a favorable outcome for a client does not grant a lawyer a license to engage in conduct outside of the Rules of Professional Conduct. Being in the midst of a celebratory gathering with friends does not excuse or authorize inappropriate conduct by a lawyer. In such circumstances, a lawyer should be even more vigilant that his conduct complies with ethical norms and standards.

On its face, the conduct which forms the basis of this presentment constitutes a violation of Rule 8.4 (4). There can be no doubt that asking for a nude photo of a trusting and vulnerable client is professional misconduct and is prejudicial to the administration of justice. Such conduct constitutes a devastating violation of the trust a client has placed in her attorney. Such was the case in this matter.

At the very time that the respondent sent the texts in question, he knew it was wrong. When he asked for a "nude" photo, the respondent was well aware of the fact that his client was under a great deal of stress and anxiety, due to the nature of the proceedings for which the respondent was retained. The complainant was very vulnerable at that time, a fact acknowledged by the respondent, and had placed her faith and trust in the respondent to represent her interests in a competent, professional and responsible way. By sending the texts in question, late at night, on the evening before a scheduled court appearance, the respondent put the complainant in an even more vulnerable and precarious position. By engaging in such conduct, the respondent breached and exploited the complainant's trust in him. The respondent's assertion in one of the texts that he "read you wrong" and "miss understood" [*sic*] her is no safe harbor. Such claims seem to suggest that there might have been some circumstance under which requesting a nude photo of a client might be permissible or at least defensible. There can never be such a circumstance.

On August 19, 2024, a reviewing committee of the Statewide Grievance Committee issued its decision in complaint #23-0215 finding that the respondent's conduct as noted above, constituted violations of Rule 8.4(4) and 1.8(j) of the Rules of Professional Conduct. The Reviewing Committee ordered that the respondent be presented to the Superior Court for such discipline as deemed appropriate by the Court.

The court having fully heard the matter, finds, by the clear and convincing evidence, that the undisputed conduct of the respondent in this matter constitutes a clear violation of Rules of Professional Conduct. The trial exhibits referenced herein, the testimony of the complainant and the testimony of the respondent, all of which the court finds to have been credible, lead the court to conclude that the respondent has clearly violated 8.4(4) by engaging in conduct that is prejudicial to the administration of justice.

--See Exhibit 1.

4. Accordingly, the Connecticut Superior Court entered an order suspending Respondent for a period of one year, to be served consecutive with a prior suspension that the State of Connecticut imposed against him in Cause No. CV-22-6160733-S styled: *Office of Chief Disciplinary Counsel v. Wesley S. Spears*.

5. A true and correct copy of the Memorandum of Decision in Cause No. UWY CV 24 6081813 S; styled: *Office of Chief Disciplinary Counsel v. Wesley S. Spears*, is attached hereto as the Commission's Exhibit 1. The Commission expects to introduce a certified copy of Exhibit 1 at the time of hearing of this cause.

6. The Commission brings this disciplinary action in accordance with the Chief Disciplinary Counsel's mandatory administrative obligations, as set forth in TRDP 9.01.

7. Respondent was disciplined in another jurisdiction within the meaning of TRDP 9.01. The Connecticut Superior Court found that Respondent violated Rule 8.4(4) of the Connecticut Rules of Professional Conduct, which provides: "It is professional misconduct for a lawyer to ... (4) Engage in conduct that is prejudicial to the administration of justice."

8. The Commission 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 reciprocal discipline in this state would be unwarranted. The Commission also prays that upon trial of this matter this Board enter a judgment imposing discipline identical, to the extent practicable, with that imposed by the Connecticut Superior Court, unless the Respondent proves by clear and convincing evidence that a Rule 9.04 defense applies. Further, the Commission requests such other relief to which it may be entitled.

Respectfully submitted,

Seana Willing

Chief Disciplinary Counsel

Amanda M. Kates

Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel

State Bar of Texas

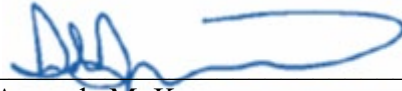
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Amanda M. Kates

Bar Card No. 24075987

ATTORNEYS FOR THE COMMISSION

CERTIFICATE OF SERVICE

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

Wesley S. Spears

5 Constitution Plaza, Apt. 306

Hartford, Connecticut 06103-1823



Amanda M. Kates



RECORDATION OF FILING

Docket Number: **UWY-CV-24-6081813-S (Transferred from HHDCV246194849S)**

Case Caption: **OFFICE OF CHIEF DISCIPLINARY COUNSEL v. SPEARS, WESLEY S.**

<u>Entry Number</u>	<u>Document Name</u>	<u>Document Description</u>
109.00	MEMORANDUM OF DECISION	Courts final decision

Documents issued by the State of Connecticut Superior Court may be signed or verified electronically in the manner prescribed by the E-Services Procedures and Technical Standards. Any document with such an electronic signature or verification has the same validity and status as a document with a physical (pen-to-paper) signature. A pen-to-paper signature does not always appear on a document, and the signer of the document will not always be a judge. For more information, see Section I.E. of the State of Connecticut Superior Court E-Services Procedures and Technical Standards (<https://jud.ct.gov/external/super/E-Services/e-standards.pdf>), Section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.

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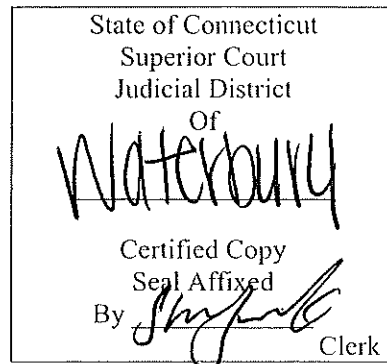
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Payer Name:

Signer Name:



UWY CV 24 6081813 S : SUPERIOR COURT
OFFICE OF CHIEF DISCIPLINARY COUNSEL : J. D. OF WATERBURY at WATERBURY
WESLEY S. SPEARS : APRIL 3, 2025

MEMORANDUM OF DECISION

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As noted above, the facts which gave rise to the complaint and formed the basis of the decision of the reviewing committee of the Statewide Grievance Committee in its decision in complaint

#23-0215 are not in dispute. In his testimony at trial, the respondent freely admitted and acknowledged sending the texts. He further apologized to the complainant and the court for sending the texts, acknowledged that the texts were inappropriate and expressed his remorse for having done so.

While the respondent acknowledged and apologized for sending the texts, by way of defense, he also attempted to provide some context and explanation for having sent the texts. On cross examination by the respondent, the complainant acknowledged that the respondent secured a favorable disposition of the contested family court matter for her. In his own testimony and during argument, the respondent also asserted that he is a good and skillful lawyer and secured a very favorable outcome for the complainant in the underlying contested family matter.

By way of further explanation for his apparent lapse in judgment in sending the texts, the respondent testified that at some time prior to sending the texts, he told the complainant about his impending 50th high school reunion and raised the possibility that the complainant might accompany the respondent to the reunion. He further testified that at the time he sent the inappropriate texts, he was out to dinner with a group of classmates celebrating their impending 50th class reunion and that it was a question by one of his dinner companions at the celebratory gathering which prompted the respondent to ask the complainant to send a photo. The dinner companion had asked, "What does she look like?"

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At the very time that the respondent sent the texts in question, he knew it was wrong. When he asked for a "nude" photo, the respondent was well aware of the fact that his client was under a great deal of stress and anxiety, due to the nature of the proceedings for which the respondent was retained. The complainant was very vulnerable at that time, a fact acknowledged by the respondent, and had placed her faith and trust in the respondent to represent her interests in a competent, professional and responsible way. By sending the texts in question, late at night, on the evening before a scheduled court appearance, the respondent put the complainant in an even more vulnerable and precarious position. By engaging in such conduct, the respondent breached and exploited the complainant's trust in him. The respondent's assertion in one of the texts that he "read you wrong" and "miss understood" [sic] her is no safe harbor. Such claims seem to suggest that there might have been some circumstance under which requesting a nude photo of a client might be permissible or at least defensible. There can never be such a circumstance.

On August 19, 2024, a reviewing committee of the Statewide Grievance Committee issued its decision in complaint #23-0215 finding that the respondent's conduct as noted above, constituted violations of Rule 8.4(4) and 1.8(j) of the Rules of Professional Conduct. The Reviewing Committee ordered that the respondent be presented to the Superior Court for such discipline as deemed appropriate by the Court.

The court having fully heard the matter, finds, by the clear and convincing evidence, that the undisputed conduct of the respondent in this matter constitutes a clear violation of Rules of Professional Conduct. The trial exhibits referenced herein, the testimony of the complainant and

the testimony of the respondent, all of which the court finds to have been credible, lead the court to conclude that the respondent has clearly violated 8.4(4) by engaging in conduct that is prejudicial to the administration of justice.

Rule 1.8(j) specifically provides that “A lawyer shall not have *sexual relations* with a client unless a consensual sexual relationship existed when the client-lawyer relationship commenced.” The evidence presented does not support a finding that the respondent here had “sexual relations” with the complainant. The term “sexual relations” is generally construed to imply some type of physical sexual contact or touching. There is no such allegation in this matter and therefore no explicit facts upon which the court could find a violation of Rule 1.8(j). Nonetheless, the proscriptions of this rule are certainly implicated by the conduct in which the respondent engaged in this matter even though there is no allegation of actual sexual relations. The Official Commentary to Rule 1.8 j notes that “...the relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer’s fiduciary role, in violation of the lawyer’s basic ethical obligation not to use the trust of the client to the client’s disadvantage.” In asking for a nude photograph of the complainant, the respondent leveraged and exploited his trusted fiduciary relationship with the complainant and necessarily adversely impacted her trust and confidence in the respondent. While such conduct and facts may not support a finding of an explicit violation of Rule 1.8 (j), said facts as found by the court do constitute conduct prejudicial to the administration of justice and form the basis of the court’s finding, by clear and convincing evidence, of a violation of Rule 8.4(4).

In a presentment proceeding, the petitioner has the burden of establishing misconduct by clear and convincing evidence. *State v. Perez*, 276 Conn. 285, 307, 885 A.2d 178 (2005). A disciplinary hearing is not the trial of a criminal or civil action or suit, but an investigation by the court into the conduct of one of its own officers. *Burton v. Mottolese*, 267 Conn. 1, 20-21, 835 A.2d 998 (2003), cert. denied, 541 U.S. 1073, 124 S.Ct. 2422, 158 L.Ed.2d 983 (2004). “Attorney disciplinary

proceedings are adversary and quasi-criminal in nature, and, as such, the subject attorneys are entitled to due process of law. . . . Procedural due process is a required constitutional right adhering to those attorneys who are subject to disciplinary action so that they are not unjustly deprived of their reputations or livelihoods.” (Citation omitted) *Statewide Grievance Committee v. Gifford*, 76 Conn. App. 454, 461, 820 A.2d 309 (2003).

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 his 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.” *State v. Peck*, 88 Conn. 447, 450, 91 A. 274 (1914). “An attorney must conduct himself or herself in a manner that comports with the proper functioning of the judicial system.” (Citation omitted; internal quotation marks omitted.) *Notopoulos v. Statewide Grievance Committee*, 277 Conn. 218, 232, 890 A.2d 509, cert. denied, 549 U.S. 823, 127 S.Ct. 157, 166 L.Ed.2d 39 (2006).

“[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.) *Statewide Grievance Committee v. Shluger*, 230 Conn. 668, 675, 646 A.2d 781 (1994).

Connecticut courts have utilized the American Bar Association's Standards for Imposing Lawyer Sanctions as a guide for assessing appropriate discipline, and the Connecticut Supreme Court has approved this approach. *Burton v. Mottolese*, supra, 267 Conn. 55. The standards provide that the court, after a finding of misconduct, 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.” A.B.A., Standards for Imposing Lawyer Sanctions (1986) Standard 3.0, p. 25; see also *Id.*

Listed as aggravating factors are “(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; (j) indifference to making restitution and (k) illegal conduct, including that *involving* the use of controlled substances.” A.B.A., Standards for Imposing Lawyer Sanctions (2001) standard 9.22, pp. 354-55; see also *Id.*

Listed as mitigating factors are “(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 disability; (i) mental disability or chemical dependency including alcoholism or drug abuse when: (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability; (2) the chemical dependency or mental disability caused the misconduct; (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely; (j) delay in disciplinary proceedings; (k) imposition of other penalties or sanctions; (l) remorse; [and] (m) remoteness of prior offenses.” A.B.A., Standards for Imposing Lawyer Sanctions (2001) standard 9.32, pp. 355-56; see also *Burton v. Mottolese*, *supra*, 267 Conn. 55-56.

In applying these standards, having made the requisite finding of misconduct in this matter, the court first considers the nature of the duty implicated. On these facts, the respondent owed a

duty to his client, the complainant, to handle her matter in a competent, faithful and professional manner. The Preamble to the Rules of Professional Conduct sets forth other duties that lawyers have and that the respondent had in this matter. The Preamble provides in pertinent part that "...a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service."

Turning to the respondent's mental state, the ABA Standards recognize three mental states – "intent, knowledge, and negligence."

"Intent" is the most culpable mental state, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. ABA Standards at 9.

"Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.*

"Negligence" is the failure to be aware of a substantial risk that circumstances exist or that a result will follow, and which deviates from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

In this matter there can be no doubt that the respondent here acted with "intent." He was of clear mind and in a stable mental state at the time he engaged in the conduct which forms the basis of this complaint. Indeed, by his own words in the texts he sent to the respondent, he acknowledged the wrongfulness of his conduct and asked for forgiveness. Notwithstanding the admission of the wrongfulness of his conduct, the evidence discloses, and the court finds that the respondent acted knowingly and intelligently and with the clear intent to accomplish a particular result when sending the texts in question.

The potential or actual injury stemming from the respondent's misconduct is clear – the complainant, in the midst of a highly contested and stressful child custody case with the father of her children, had placed her trust and confidence in her lawyer, the respondent. The complainant was under the impression that she had a scheduled court event in that child custody case within hours of receiving the offending texts. By refusing the entreaties of the respondent for a photo, she feared the possibility of appearing in court the next morning without legal representation. Leveraging his trusted position by requesting such a photo of the complainant, aggravated and exacerbated the complainant's fear and anxiety and created a heightened risk of potential or actual injury to the complainant and her child custody case.

Finally, the court turns to aggravating and mitigating factors in assessing the appropriate discipline. With respect to aggravating factors, as noted above, the respondent has a disciplinary history consisting of a reprimand, issued on December 8, 2000 in Grievance Complaint #97-0874 for violations of Rules 1.8(e) and 4.4 of the Rules of Professional Conduct (Trial Exhibit #3); and a two year suspension, issued on September 25, 2023 by the Superior Court (Cobb, J.) for violations of Rules 3.1, 3.3 (a)(1), 8.2 (a), 8.4 (3) and 8.4 (4) of the Rules of Professional Conduct (Trial Exhibit #4).

The respondent's admitted conduct in requesting a nude photo of the complainant evidenced a dishonest or selfish motive. A further aggravating factor is the acknowledged vulnerability of the complainant at the time the respondent engaged in the offensive conduct. The respondent's extensive experience in the practice of law and the simple fact that he knew the wrongfulness of his conduct at the time he engaged in it are further aggravating factors.

Turning to mitigating factors, the court finds that the respondent was generally cooperative throughout the disciplinary proceedings. The respondent did express his remorse at the time the texts were sent but at that time suggested that he had sent the texts because he "read her wrong" and "miss understood" [sic] the complainant. The respondent in his testimony at trial, unequivocally expressed his remorse at having sent the texts. He apologized both to the court

and the complainant at that time. The respondent further made a full and free disclosure at trial of the wrongfulness of his conduct.

While the court acknowledges and welcomes the respondent's admissions and apologies in this matter, the conduct is so egregious as to warrant the imposition of a serious and meaningful sanction. The complainant here placed her faith and trust in the lawyer she retained to represent her in a contentious contested child custody matter. At the time she retained the respondent and throughout his representation of the complainant, the complainant was fearful that she might lose custody of her children. Her stress and vulnerability were acknowledged by the respondent at the time he was retained. At a most stressful and vulnerable time in her life, the person in whom the complainant placed her faith and trust violated that faith and trust in the most demeaning, offensive and inappropriate manner. The conduct of the respondent warrants significant response from the court.

Accordingly, the court orders that the respondent be suspended for a period of one year, consecutive to the suspension which was imposed by the Superior Court (Cobb, J.) in CV-22-6160733-S (Trial Exhibit #4).

The Office of the Chief Disciplinary Counsel shall notify the chief clerks of all judicial districts and Probate Court administration of the respondent's suspension which suspension is consecutive to the suspension the respondent is currently subject to in CV-22-6160733-S (Trial Exhibit #4).

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

The respondent shall continue to cooperate with the Trustee appointed under the terms of the order of suspension in OCDC V. Spears CV-22-6160733-S (Trial Exhibit #4) and said Trustee is appointed as Trustee in this matter as well.

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

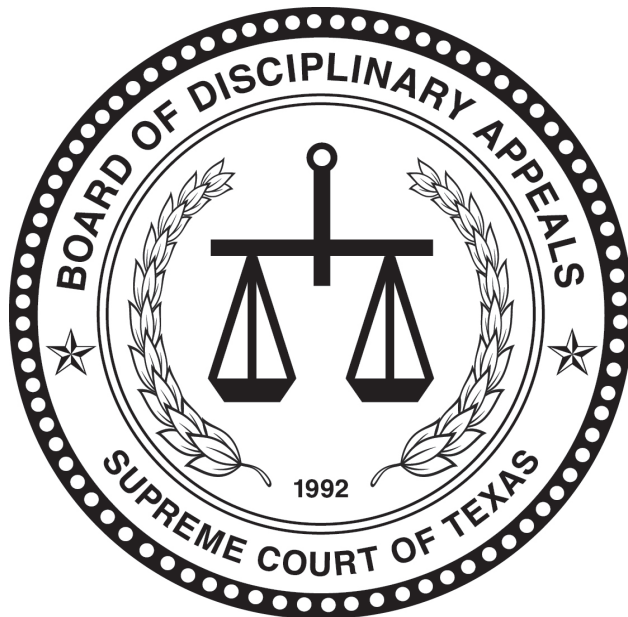
Any application for reinstatement shall be made pursuant to the provisions of Practice Book 2-53.

412186
CARROLL, JTR

THE BOARD *of* DISCIPLINARY APPEALS
APPOINTED BY THE SUPREME COURT *of* TEXAS



INTERNAL PROCEDURAL RULES
(EFFECTIVE SEPTEMBER 24, 2024)



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Austin TX 78711

1414 Colorado, Suite 610
Austin TX 78701

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INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through September 24, 2024

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INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through September 24, 2024

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.

- (c) BODA may, upon decision of the Chair, conduct any business or proceedings—including any hearing, pretrial conference, or consideration of any matter or motion—remotely.

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 or a complaint is not required to be filed electronically.

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

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

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

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

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

(i) be in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, if possible; and

(iii) not be locked.

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

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

(1) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

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

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

Rule 1.06. Service of Petition

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

Rule 1.07. Hearing Setting and Notice

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

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

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

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

Rule 1.08. Time to Answer

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

Rule 1.09. Pretrial Procedure

(a) **Motions.**

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

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

(i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(ii) if an appeal has been perfected, the date when the appeal was perfected;

(iii) the original deadline for filing the item in question;

(iv) the length of time requested for the extension;

(v) the number of extensions of time that have been granted previously regarding the item in question; and

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

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

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

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

(1) marked;

(2) indexed with the title or description of the item offered as an exhibit; and

(3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

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

Rule 1.10. Decisions

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

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

(1) as required by the TRDP; and

(2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

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

Rule 1.11. Board of Disciplinary Appeals Opinions

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

(b) Only a BODA member who participated in the

decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

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

Rule 1.12. BODA Work Product and Drafts

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

Rule 1.13. Record Retention

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

Rule 1.14. Costs of Reproduction of Records

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

Rule 1.15. Publication of These Rules

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

II. ETHICAL CONSIDERATIONS

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

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

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

(c) A BODA member may represent a party in a legal

malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02. Confidentiality

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

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

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

Rule 2.03. Disqualification and Recusal of BODA Members

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

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

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

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule. If a grievance is classified as a complaint, the CDC must notify both the Complainant and the Respondent of the Respondent's 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. For a grievance classified as a complaint, the CDC must send the Respondent an appeal notice form, approved by BODA, with notice of 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 not consider documents or other submissions that the Complainant or Respondent filed with the CDC or BODA after the CDC's classification. 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.

Rule 3.03. Disposition of Classification Appeal

(a) BODA may decide a classification appeal by doing any of the following:

(1) affirm the CDC's classification of the grievance as an inquiry and the dismissal of the grievance;

(2) reverse the CDC's classification of the grievance as an inquiry, reclassify the grievance as a complaint, and return the matter to the CDC for investigation, just cause determination, and further proceedings in accordance with the TRDP;

(3) affirm the CDC's classification of the grievance as a complaint and return the matter to the CDC to proceed with investigation, just cause determination, and further proceedings in accordance with the TRDP; or

(4) reverse the CDC's classification of the grievance as a complaint, reclassify the grievance as an inquiry, and dismiss the grievance.

(b) When BODA reverses the CDC's inquiry classification and reclassifies a grievance as a complaint, BODA must reference any provisions of the TDRPC under which BODA concludes professional misconduct is alleged. When BODA affirms the CDC's complaint classification, BODA may reference any provisions of the TDRPC under which BODA concludes professional misconduct is alleged. The scope of investigation will be determined by the CDC in accordance with TRDP 2.12.

(c) BODA's decision in a classification appeal is final and conclusive, and such decision is not subject to appeal or reconsideration.

(d) A classification appeal decision under (a)(1) or (4), which results in dismissal, has no bearing on whether the Complainant may amend the grievance and resubmit it to the CDC under TRDP 2.10.

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 [TRDP] 2.21 [2.20].

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

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

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

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

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

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

Rule 4.02. Record on Appeal

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

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

(c) Responsibility for Filing Record.

(1) Clerk’s Record.

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

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

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

(2) Reporter’s Record.

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

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

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

(d) Preparation of Clerk’s Record.

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

- (i) gather the documents designated by the parties’ written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);
- (ii) start each document on a new page;
- (iii) include the date of filing on each document;
- (iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;
- (v) number the pages of the clerk’s record in the manner required by (d)(2);

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

(vii) certify the clerk's record.

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

(3) The table of contents must:

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

(ii) be double-spaced;

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

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

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

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

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

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

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

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

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

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

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and

35 and the Uniform Format Manual for Texas Reporters' Records.

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

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

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

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

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

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

¹ So in original.

Rule 4.03. Time to File Record

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

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

(1) If the clerk's record or reporter's record has not been

timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

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

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

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

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

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

Rule 4.04. Copies of the Record

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

Rule 4.05. Requisites of Briefs

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

(b) Appellee's Filing Date. Appellee's brief must be filed within 30 days after the appellant's brief is filed.

(c) Contents. Briefs must contain:

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;
- (3) an index of authorities arranged alphabetically and

indicating the pages where the authorities are cited;

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

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

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

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

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

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

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

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

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

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

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;
- (2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or
- (3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06. Oral Argument

(a) Request. A party desiring oral argument must note the

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

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

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

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

Rule 4.07. Decision and Judgment

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

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

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

Rule 4.08. Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27 [2.26]. The committee must consist of six members: four attorney members and two public members

randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09. Involuntary Dismissal

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

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

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

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

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

Rule 5.02. Hearing

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

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

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

Rule 6.02. Interlocutory Suspension

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA

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

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

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

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

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

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

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

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

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

Rule 7.02. Order to Show Cause

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

Rule 7.03. Attorney's Response

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

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

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

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

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

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

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

Rule 8.02. Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the

CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06.

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

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

Rule 8.03. Discovery

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

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

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

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

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

Rule 8.04. Ability to Compel Attendance

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

Rule 8.05. Respondent's Right to Counsel

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for

indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

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

Rule 8.06. Hearing

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

Rule 8.07. Notice of Decision

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

Rule 8.08. Confidentiality

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

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

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

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

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

Rule 9.02. Discovery

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

Rule 9.03. Physical or Mental Examinations

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

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

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

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

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

Rule 9.04. Judgment

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

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

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

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after

BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

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